



# **REFORMING THE MODEL PROCUREMENT CODE**

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**FREE ONLINE SUMMER SERIES**

**JULY 18, 20, 25, and 27**

**6-8 PM EST**

**GW** | LAW

**Session 3 – Updating the MPC to Meet the Current OMB  
Grants Guidance – Gap Analysis**

# Welcome

*Professor Christopher Yukins*  
*GW Law School*

- Recording and materials at [www.publicprocurementinternational.com](http://www.publicprocurementinternational.com)
- Questions & Answers (Q&A)
- All speakers' statements are in their personal capacities





# BEYOND THE FAR

GW Law Government Procurement Law Program

# Schedule

**1. Tuesday, July 18:** Introduction to the Model Procurement Code (MPC) – and Potential Reforms

**2. Thursday, July 20:** Understanding the OMB Uniform Grants Guidance – Special guest: Scott Sheffler (Feldesman Tucker, Washington DC)

**3. Tuesday, July 25:** Updating the 2000 MPC to Meet the Current OMB Grants Guidance – Special guest: Yolanda Williams (GW Law LLM 2023)

**4. Thursday, July 27: Looking Beyond the OMB Grants Guidance:** Cybersecurity in State and Local Contracting – Special guests: Brandon Hancock & Jakub Berkowicz (GW Law, JD candidates) and Jessica Kashary (StateRAMP)

**Session 3:**  
**Updating the MPC to Meet the  
Current OMB Grants Guidance**

**Christopher Yukins  
&  
Yolanda Williams**

**GW**

**LAW**

GWU Law student  
Yolanda Williams (USA)  
wrote on this gap  
analysis



## SESSION 3: GAP” ANALYSIS – MPC VERSUS OMB UNIFORM GRANTS GUIDANCE



## Publications

1979 - The Model Procurement Code for State & Local Governments

(click arrow below to link to PDF)



1980 - The Model Procurement Code for State & Local Governments - Recommended Regulations

(click arrow below to link to PDF)



1982 - The Model Procurement for Local Governments

(click arrow below to link to PDF)

2000 - The Model Procurement Code for State & Local Governments

(click arrow below to link to PDF)



2000 - The Model Procurement Code for State & Local Governments - Recommended Regulations

(click arrow below to link to PDF)



2007 - Model Code - Public Infrastructure Procurement (MC PIP)

(click arrow below to link to PDF)

Most Recent

Regulations

Infrastructure

1979

# Intersection of MPC and OMB Grants Guidance

“In the 1970s, states and localities receiving federal grants abruptly were required to comply with complex and rigorous federal procurement standards. . . .

“However, there was a bright side to this for those of us working on the MPC. **In the late 1970s, the federal authorities decreed that a state or locality that adopted the MPC would be deemed to have complied with federal procurement standards. . . .** Hence, adoption of the MPC became an easy way for states and localities to comply with these new federal standards.”



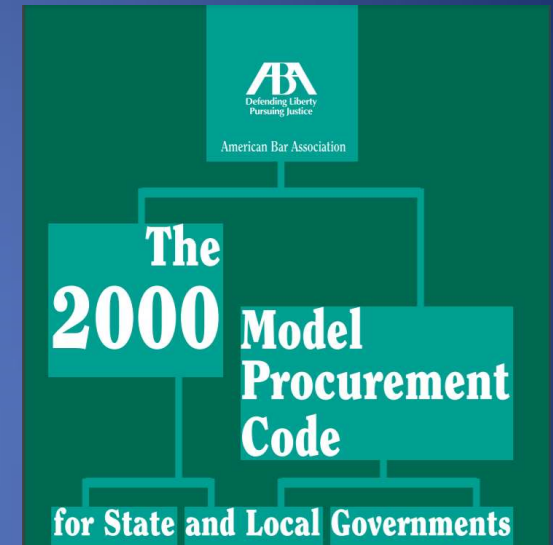
- F. Trowbridge vom Baur, *A Personal History of the Model Procurement Code*, 25 Pub. Cont. L.J. 149, 161 (1996).



# Session 2: Scott Sheffler: OMB Grant Rules

On [www.publicprocurementinternational.com/mpc-reform/](http://www.publicprocurementinternational.com/mpc-reform/)

- Non-Federal Entities (2 CFR 200.317 et seq.)
  - Must have codes of conduct: personal and organizational conflicts
  - Intergovernmental purchases recommended
  - Value engineering: proposals to reduce costs
  - Acquisition records
  - Time & Materials contracting only when no other contracting means
  - Responsible for “source evaluation, protests, disputes, and claims”
  - Must employ “full and open” competition
  - Micro-purchases / simplified acquisitions
  - Sealed bids/ (Requests for) Proposals / Noncompetitive
  - Affirmative steps to promote women- and minority-owned businesses, and those in labor surplus areas
  - To greatest practical extent, preference for U.S. goods
  - Procurement of recovered materials
  - Cost or price analysis required – assess reasonableness and profit
  - Federal agency review of procurement system – unless approved (cf. World Bank “Alternative Procurement Arrangements”)
  - Bonding requirements – payment and performance bonds
  - Appendix II to Part 200: Contract clauses (including anti-Huawei, U.S. domestic preferences, etc.)



	OMB Grants Guidance - 2 CFR	MPC Revision Issue
	§ 200.317 Procurements by states.	States left to own procurement methods. MPC 11-301 defers to federal requirements.
	§ 200.318 General procurement standards.	OCI rules required; must consider contractor integrity; no T&M (IDIQ?) absent determination; oversight required
	§ 200.319 Competition.	Exclude those with OCIs; no geographic preferences; prequalification must be open
	§ 200.320 Methods of procurement to be followed.	Micro-purchases (optional)
	§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. NFE “must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible” --	MPC sets suggested methods for addressing socioeconomic goals.
	§ 200.322 Domestic preferences for procurements. OMB: “As appropriate . . . the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for . . . goods, products, or materials produced in the United States . . .”	No MPC provision on point; separately, OMB calls for no “Buy State” or “Buy Local” requirements
	§ 200.323 Procurement of recovered materials.	No MPC provision on point
	§ 200.324 Contract cost and price. OMB: independent estimate before bids required.	No MPC requirement for independent price estimate
	§ 200.325 Federal awarding agency or pass-through entity review.	No MPC provisions on procurement data standards or open contracting
	§ 200.326 Bonding requirements. Unless NFE bonding requirements approved, must have bid, performance and payment bonds.	MPC includes bonding requirements
	§ 200.327 Contract provisions. Need remedy-granting clauses, T/C, T/D, EEO, Davis-Bacon, Contract Work Hours, Rights to Inventions, debarment, Byrd Anti-Lobbying, Huawei/ZTE,	MPC does not include clauses; in ancillary MPC materials.

# MPC Anticipates Gap

## §11-301 Compliance with Federal Requirements.

Where a procurement involves the expenditure of federal assistance or contract funds, **the Chief Procurement Officer shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Code.**

### COMMENTARY:

Where a [State] chooses to accept federal assistance or contract funds, this provision ensures [State] compliance with federal assistance or contract procurement requirements where they are not presently reflected in this Code. The drafters contemplate that most of the requirements falling within this provision will be socioeconomic in nature.

# OMB Guidance Leaves States to Own Procurement Rules

2 CFR § 200.317 **Procurements by states.** When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. **The State will comply with §§ 200.321 [Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms], 200.322 [Domestic preferences for procurements], and 200.323 [Procurement of recovered materials] and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities,** including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

# PRICING ANALYSIS: INDEPENDENT PRICE ESTIMATE

# OMB Guidance on Price Analysis

§ 200.324 Contract cost and price.

(a) The **non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold** including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, **but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.**

# MPC on Price Analysis:

## No Independent Price Estimate (IPE) Required

§3-403 Substantiation of Offered Prices. **The Procurement Officer may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable**, if: (1) the price is not: (a) based on adequate price competition; **(b) based on established catalogue or market prices [see next slide]**; or (c) set by law or regulation; and (2) the price or cost exceeds an amount established in the regulations.

COMMENTARY: The **2000 revisions have changed the 1979 Code's requirement to submit certified cost or pricing data** (which was modeled on the Truth in Negotiations Act, 10 U.S.C. 2306a) to reflect a less burdensome standard appropriate to the commercial supplies and services that state and local governments buy. The threshold for submission of such data is left to regulations but should be substantial. The data must also be limited to that normally kept by the contractor and not require extensive sweeps to gather data not reasonably available.

# MPC on Price Analysis (cont'd): MPC Proposed Regulations (2002)

R3-403.01.2 Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, **which can be substantiated from sources which are independent of the manufacturer or supplier** and may be an indication of the reasonableness of price



# FULL AND OPEN COMPETITION

# OMB Guidance

## Competition, 2 CFR 200.319

(a) All procurement transactions for the acquisition of property or services required under a Federal award **must be conducted in a manner providing full and open competition** consistent with the standards of this section and § 200.320 [Methods of Procurement].

\* \* \* \* \*

(e) The non-Federal entity 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, the **non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.**

# MPC on Cooperative Purchasing

- All Cooperative Purchasing conducted under this Article shall be **through contracts awarded through full and open competition**, including use of source selection methods substantially equivalent to those specified in Article 3 (Source Selection and Contract Formation) of this Code.

# Issue: What Is a Contract?



Indefinite-Delivery/Indefinite-Quantity  
(IDIQ) Contract (“Framework Agreement”  
“Catalog Contract”)

Purchase

# TIME AND MATERIALS CONTRACTING

# MPC 200.318, General Procurement Standards

## Time and Materials Contracts

(1) The non-Federal entity **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 means a contract whose cost to a non-Federal entity is the sum of:

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

(2) 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, the non-Federal entity awarding such a contract **must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.**

# MPC (2000) on Contract Type

§3-501 Types of Contracts. Subject to the limitations of this Section, **any type of contract which will promote the best interests of the [State] may be used**; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A **cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the [State] than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.**

COMMENTARY: (1) The intent of this Section is to authorize any type of contract which best suits the interest of the [State] except that a cost-plus-a-percentage-of-cost contract is prohibited. Examples of contract types permitted are firm fixed-price, fixed-price with economic price adjustments, fixed-price incentive, cost-reimbursement and time and materials contracts. **Other types of cost-reimbursement contracts may be used when uncertainties involved in the work to be performed are of such magnitude that the cost of performance is too difficult to estimate with reasonable certainty, and use of a fixed-price contract could seriously affect a contractor's financial stability or result in payments by the (State] for contingencies that never occur. Use of cost-type contracts are also authorized when it is impracticable to contract on any other basis.** (2) Article 7 (Cost Principles) requires that only those costs recognized as allowable under the contract will be reimbursed. **(3) It is contemplated that the regulations will contain guidelines or requirements for the review and/or approval of subcontracts awarded by cost-reimbursement contractors as deemed appropriate** to protect the financial interests of the [State].

*N.B.: MPC proposed regulations (MPC) do not confine T&M contracts*

# FAR 16.601 on T&M Contracts

A time-and-materials contract may be used **only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.**

See 12.207(b) [next slide] for the use of time-and-material contracts for certain commercial services.

(1) *Government surveillance.* **A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.** Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.



# FAR 12.207: T&M Safeguards

- (a) **Except as provided in paragraph (b) of this section, agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial products or commercial services.**
- (b) (1) A **time-and-materials contract or labor-hour contract . . . may be used for the acquisition of commercial services when-**
- (i) The service is acquired under a contract awarded using-
    - (A) Competitive procedures . . .
    - (B) The procedures for other than full and open competition . . . provided the agency receives offers that satisfy the Government's expressed requirement from two or more responsible offerors; or
    - (C) The fair opportunity procedures [for task-order IDIQ] contracts . . . if placing an order under a multiple-award delivery-order contract; and
      - (ii) The contracting officer-
        - (A) Executes a determination and **findings (D&F) for the contract . . . that no other contract type authorized by this subpart is suitable**;
        - (B) Includes a **ceiling price** in the contract or order that the contractor exceeds at its own risk; and
        - (C) **Prior to increasing the ceiling price of a time-and-materials or labor-hour contract or order**, shall-
          - (1) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government;
          - (2) Document the decision in the contract or order file; and
          - (3) **When making a change that modifies the general scope [follow established procedures]** . . .
  - (2) Each D&F . . . **shall contain sufficient facts and rationale to justify that no other contract type authorized by this subpart is suitable**. At a minimum, the D&F shall-
    - (i) Include a **description of the market research** conducted . . .
    - (ii) Establish that it is **not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence**;
    - (iii) Establish that **the requirement has been structured to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts** (e.g., by limiting the value or length of the time-and-material/labor-hour contract or order; establishing fixed prices for portions of the requirement) on future acquisitions for the same or similar requirements; and
    - (iv) Describe **actions planned** to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts on future acquisitions for the same requirements.

# CONTRACTOR RESPONSIBILITY AND COMPLIANCE

## OECD, *Managing Risk* (2023)

- Diverse risks, e.g.
  - Compliance,
  - Sustainability
  - Operations.





Figure 2.2. The risk management cycle





**ICC**

**1. Standards and procedures**

✓

✓

✓

✓

**2. Knowledgeable leadership**

✓

✓

✓

**3. Exclude risky personnel**

✓

✓

✓

✓

**4. Training**

✓

✓

✓

✓

**Compliance**

**5. Monitor, evaluate, reporting hotline**

✓

✓

✓

✓

**6. Incentives and discipline**

✓

✓

✓

✓

**7. Adjust program to risk**

✓

✓

✓

✓

# General Procurement Standards, 2 CFR 200.318

- (h) The **non-Federal entity must award contracts only to responsible contractors** possessing 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 financial and technical resources**. See also § 200.214 [suspension/debarment].

# MPC on Responsibility (Qualification)

§3-401 Responsibility of Bidders and Offerors.

(1) **Determination of Nonresponsibility.** A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) **Right of Nondisclosure.** Confidential information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the Office of the Chief Procurement Officer or the Purchasing Agency without prior written consent by the bidder or offeror.

COMMENTARY: (1) To obtain true economy, **the [State] must minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance which would result in additional administrative costs. Subsection (1) recognizes that it is important that the bidder or offeror will be a responsible contractor – that the contractor has the financial ability, resources, skills, capability, and business integrity necessary to perform the contract.**

(2) **An inquiry is not required in every case. The extent to which a review or investigation should be conducted will depend on the value and size of the procurement, and the bidder's or offeror's past record of contract performance in the public and private sectors.** Since the information solicited from the bidder or offeror for such evaluation may be of a privileged or a proprietary nature, **Subsection (2) prohibits the disclosure of such information without the consent of the bidder or offeror.**

# Contractor Responsibility: FAR 9.104-1, General Standards

**To be determined responsible**, a prospective contractor must-

- (a) Have **adequate financial resources** to perform the contract, or the ability to obtain them (see 9.104-3(a));
- (b) Be **able to comply with the required or proposed delivery or performance schedule**, taking into consideration all existing commercial and governmental business commitments;
- (c) Have a **satisfactory performance record** (see 9.104-3 (b) and subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;
- (d) Have a **satisfactory record of integrity and business ethics** (for example, see subpart 42.15);
- (e) Have the **necessary organization, experience, accounting and operational controls, and technical skills**, or the ability to obtain them (including, as appropriate, such elements as **production control procedures, property control systems, quality assurance measures, and safety programs** applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See 9.104-3(a).)
- (f) Have the **necessary production, construction, and technical equipment and facilities**, or the ability to obtain them (see 9.104-3(a)); and
- (g) Be **otherwise qualified and eligible to receive an award under applicable laws and regulations** (see also inverted domestic corporation prohibition at 9.108).



# FAR 52.203-13

## Contractor Compliance Obligations

- **Code of business ethics and conduct**, published to performing employees within 30 days after award
- Exercise **due diligence to prevent and detect** criminal conduct
- Promote **culture of ethics and compliance**
- **Timely disclose to OIG and contracting officer**, in writing, (a) criminal fraud, conflict of interest, bribery or gratuity; or (b) False Claims Act violation. **Disclosure held confidential**, but may transfer to other federal agencies.
- None-small businesses must have **ongoing compliance program**:
  - **Training**, including to agents and subcontractors
  - **Internal control system**, with standards and to ensure prompt corrective measures
  - Assign responsibility at **sufficiently high** level, with adequate resources
  - **Exclude individual** as principal if due diligence would show engaged in conduct in conflict with contractor code
  - **Periodic reviews** of practices and controls
  - **Monitoring and auditing** to prevent criminal conduct
  - **Periodic evaluation**
  - **Periodic assessment** of risk of criminal conduct and appropriate steps to modify program
  - **Internal reporting** mechanism, such as **hotline**
  - **Disciplinary action for improper conduct** or for failing to take reasonable steps to prevent or detect
  - **Timely mandatory disclosures** (see above)
  - **Full cooperation** with any agencies responsible for audits, investigations or corrective actions

# ORGANIZATIONAL CONFLICTS OF INTEREST

# Organizational Conflicts of Interest (OCI)

- MPC is silent
- OMB guidance says:
  - “If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, **the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.**”

# Organizational Conflict of Interest

## Minn. Stat. Ann. § 16C.02

**Organizational conflict of interest.** “Organizational conflict of interest” means that because of existing or planned activities or because of relationships with other persons:

- (1) **the vendor is unable or potentially unable to render impartial assistance or advice** to the state;
- (2) the **vendor's objectivity** in performing the contract work is or might be otherwise impaired; or
- (3) the **vendor has an unfair advantage**.

# OCI Mitigation

- 1. Standards and procedures**
- 2. Knowledgeable leadership**
- 3. Exclude risky personnel**
- 4. Training**
- 5. Monitor, evaluate, reporting hotline**
- 6. Incentives and discipline**
- 7. Adjust program to risk**

# Preventing Organizational Conflicts of Interest in Federal Acquisition Act, Pub. L. 117-324 (2022)

Federal Acquisition Regulatory (FAR) Council to:

(1) to provide and update—

(A) definitions related to specific types of organizational conflicts of interest, **including unequal access to information, impaired objectivity, and biased ground rules.**

(B) **definitions, guidance, and illustrative examples** related to relationships of contractors with public, private, domestic, and foreign entities **that may cause contract support to be subject to potential organizational conflicts of interest**, including undue influence; and

(C) **illustrative examples** of situations related to the potential organizational conflicts of interest identified under this paragraph, **including an example of the awarding by a Federal regulatory agency of a contract for consulting services to a contractor if employees of the contractor performing work under such contract are permitted by the contractor to simultaneously perform work under a contract for a private sector client under the regulatory purview of such agency.**

(2) to **provide executive agencies with solicitation provisions and contract clauses** to avoid or mitigate organizational conflicts of interest, for agency use as needed, that **require contractors to disclose information relevant to potential organizational conflicts of interest and limit future contracting with respect to potential conflicts of interest** with the work to be performed under awarded contracts.

# Preventing Organizational Conflicts of Interest in Federal Acquisition Act (cont'd)

Federal Acquisition Regulatory (FAR) Council also to:

(3) to **allow executive agencies to tailor such solicitation provisions and contract clauses as necessary** to address risks associated with conflicts of interest and other considerations that may be unique to the executive agency.

(4) to **require executive agencies**—

(A) to **establish or update as needed agency conflict of interest procedures** to implement the revisions to the Federal Acquisition Regulation made under this section; and

(B) to periodically assess and update such procedures as needed to address agency-specific conflict of interest issues; and

(5) to **update the procedures** set forth in section 9.506 of the Federal Acquisition Regulation to **permit contracting officers to take into consideration professional standards and procedures** to prevent organizational conflicts of interest to which an offeror or contractor is subject.”

# BONDING REQUIREMENTS



# Bonding Requirements

## OMB Guidance

### § 200.326 Bonding requirements.

**For construction or facility improvement contracts** or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity 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 must be 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.
- (b) A **performance bond on the part of the contractor for 100 percent of the contract price.** A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A **payment bond on the part of the contractor for 100 percent of the contract price.** A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

# MPC on Bonding

§5-301 Bid Security. (1) Requirement for Bid Security. **Bid security shall be required for all competitive sealed bidding for construction contracts in a design-bid build procurement** when the price is estimated by the Procurement Officer to exceed [\$100,000] [an amount established by regulation]. . . . [State]. . . .

(2) Amount of Security. **Bid security shall be in an amount equal to at least [5%] of the amount of the bid.**

(3) Rejection of Bids for Noncompliance with Bid Security Requirements. When the Invitation for Bids requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

§5-302 Contract Performance and Payment Bonds. (1) When Required – Amounts. **When a construction, design-build, design build-operate-maintain, or design-build-finance-operate-maintain contract is awarded in excess of [\$100,000], the following bonds or security shall be delivered to the [State]** and shall become binding on the parties upon the execution of the contract:

(a) **a performance bond satisfactory to the [State]**, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the [State], **in an amount equal to 100% of the portion of the contract price . . .**

(b) **a payment bond satisfactory to the [State]**, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the [State], **for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance.**

COMMENTARY: The intent is to continue the requirement expressed in the 1979 version of the Code that surety bonds be provided to secure the faithful performance of construction associated with infrastructure facilities, as well as the faithful payment of suppliers and subcontractors, irrespective of project delivery method. . . .

# Thursday's (Final) Session

## 6-8 pm Eastern

- **Thursday, July 27: Looking Beyond the OMB Grants Guidance:**  
Cybersecurity in State and Local Contracting – Special guests: Brandon Hancock & Jakub Berkowicz (GW Law, JD candidates) and Jessica Kashary (StateRAMP)

# Conclusion