



FACT SHEET

PROCUREMENT



BUDGET & GRANTS MANAGEMENT

As a pass-through entity for Federal Education funds, the Nebraska Department of Education (NDE) has prepared this **Procurement Fact Sheet** to assist Federal program subrecipients in the development and implementation of their construction projects as they relate to the use of Federal funds.

This information is being provided by the NDE as general compliance guidance only. Subrecipients of Federal funds should refer to the full text of the regulation provided when undertaking construction projects supported through federal funds. Please note that this **Procurement Fact Sheet** does not address Federal requirements specifically related construction procurement contracts using Federal grant funds.

This document is not a substitute for the advice of your own attorney and/or law firm licensed to practice law in the state of Nebraska. In reading and applying Federal law, we recommend that you seek and obtain the advice of counsel with questions of application, interpretation, and/or to ensure that use of this information is appropriate to your particular situation.

Methods of Procurement

[2 CFR 200.319\(a\)](#) states “all procurement transactions must be conducted in a manner providing *full and open competition* consistent with the standards of this section.”

In general, [2 CFR 200.320](#) outlines five methods of procurement: micro-purchases, small purchases, sealed bids, competitive proposals, and noncompetitive (sole source) proposals.

Purchase Type	Characteristics & Requirements
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Below simplified acquisition threshold of \$250,000

Micro-purchase	<ul style="list-style-type: none"> Under the micro-purchase threshold (currently \$10,000 aggregate) No bid or quote process required if you consider the price to be reasonable. No cost or price analysis required Should be distributed among a range of qualified vendors
Small Purchases	<ul style="list-style-type: none"> Under the simplified acquisition threshold (currently \$250,000) Price or rate quotes required from an adequate number of sources Should be distributed among a range of qualified vendors

Above simplified acquisition threshold of \$250,000

Sealed Bids	<ul style="list-style-type: none"> Bids must be publicly solicited Two or more bidders are willing and able to compete and qualified to do the work Complete, adequate, and realistic specification or purchase description is available Firm fixed-price contract is feasible, a bidder can be selected bas on price
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Competitive Proposals	<ul style="list-style-type: none"> • Requires request-for-proposal process and solicitation of an adequate number of bidders • Written method of evaluation, considering price as well as other factors advantageous to the program
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Above micro-purchase threshold

Noncompetitive Proposals	<p>Falls into one or more of these four circumstances:</p> <ul style="list-style-type: none"> • Item available only from a single source • Public exigency or emergency won't permit a delay resulting from competitive solicitation • Expressly authorized by the awarding agency or pass-through entity • Competition is determined to be inadequate after solicitation
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Required Contract Elements

As a subrecipient of Federal funds your organization is responsible for the following,

- Have a written procedure for procurement transactions. [[2 CFR 200.319\(d\)](#)]
- Assure that minority business, women's business enterprises, and labor surplus area firms are used when possible. [[2 CFR 200.321](#)]
- Include an Anti-Lobbying clause for all contracts. For contracts exceeding \$100,000 require bidders to submit an Anti-Lobbying Certification. [[2 CFR 200, Appendix II\(I\)](#)]
- Include a Suspension and Debarment clause for contracts of any value. [[2 CFR 200, Appendix II\(H\)](#)]
- If the contract amount exceeds \$10,000, it must address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement. [[2 CFR 200, Appendix II\(B\)](#)]
- If the contract amount exceeds \$250,000, it must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for sanctions and penalties. [[2 CFR 200, Appendix II\(A\)](#)]
- If the contract amount exceeds \$150,000, it must include clauses addressing the Clean Air Act and the Federal Water Pollution Control Act. [[2 CFR 200, Appendix II\(G\)](#)]
- Maintain contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. [[2 CFR 200.318\(b\)](#)]
- Must have written standards of conduct covering conflicts of interest and governing the actions of the employees engaged in the selection, award and administration of contracts. [[2 CFR 200.318\(c\)\(1\)](#)]
- Must keep records sufficient to detail the history of the procurement, including, but not limited to, records documenting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. [[2 CFR 200.318\(i\)](#)]
- If the contract amount (including contract modifications) exceeds \$250,000, you must perform a cost or price analysis. [[2 CFR 200.324\(a\)](#)]



- For a contract in which there is no price competition and in all cases where cost analysis is performed you must negotiate profit as a separate element of the price for each. [[2 CFR 200.324\(b\)](#)]

The above are some of the sections of 2 CFR 200 which relate to procurement. The above information is not all-inclusive, nor is it a complete list of Federal law or regulations related to procurement. As a subrecipient of Federal funds, your organization is solely responsible for meeting all applicable Federal procurement regulations.

Lastly, the subrecipient organization may impose more stringent procurement policies and/or procedures than those required by 2 CFR 200 if they so choose.

Definitions

[2 CFR 200.1 Contract.](#)

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward.

[2 CFR 200.1 Contractor.](#)

Contractor means an entity that receives a contract as defined in 2 CFR 200.22 Contract.

[2 CFR 200.1 Micro-purchase.](#)

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

[2 CFR 200.1 Simplified acquisition threshold.](#)

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. (Also see definition of §200.67 Micro-purchase.)



Federal Compliance Monitoring

As part of the NDE's annual Federal Compliance Monitoring program, staff from the Office of Budget & Grants Management will review procurements that used Federal Funds. The Grant Compliance Auditors will use the requirements of 2 CFR 200 and other applicable Federal Codes and requirements when completing such reviews.

Technical Assistance

Please feel free to contact the Grants Compliance staff should you have any questions relative to the contents of this document.

Tom Goeschel

Director of Grants Compliance
Office of Budget & Grants Management
500 S. 84th St., 2nd Floor
Lincoln, NE 68510-2611
P: (402) 890-8912
E: tom.goeschel@nebraska.gov

Merci Suarez

Grants Compliance Specialist
Office of Budget & Grants Management
500 S. 84th St., 2nd Floor
Lincoln, NE 68510-2611
P: (402) 937-3241
E: merci.suarez@nebraska.gov

This document is not a substitute for the advice of your own attorney and/or law firm licensed to practice law in the state of Nebraska. In reading and applying Federal law, the NDE recommends LEAs seek and obtain the advice of counsel with questions of application, interpretation, and/or to ensure that use of this information is appropriate to your particular situation.

