

Procurement

As a pass-through entity for Federal Education funds, the New Hampshire Department of Education (NHDOE) has prepared this **Procurement Fact Sheet** to assist Federal program subrecipients in the development and implementation of their procurement policies and procedures as they relate to the use of Federal funds.

This information is being provided by the NHDOE as general compliance guidance only. Subrecipients of Federal funds should refer to the full text of the regulations which can be found at <https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-part200/content-detail.html> when developing and implementing policies and procedures concerning procurement using Federal funds. Please note that this **Procurement Fact Sheet** does not address Federal requirements specifically related to construction procurement contracts using Federal grant funds.

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 |
|--|---|
| 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 |

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| | |
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| | <ul style="list-style-type: none"> • Complete, adequate, and realistic specification or purchase description is available • Firm fixed-price contract is feasible, a bidder can be selected based on price |
| 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 |

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 |
|---------------------------------|---|

Required Contract Elements

As a non-Federal entity recipient 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 effected 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)]

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- 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)]
- As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisitions, or use of goods, products, or materials produced in the United States [2 CFR 200.322 (a)].

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 non-Federal entity recipient of Federal funds, your organization is solely responsible for meeting all applicable Federal procurement regulations.

Lastly, the non-Federal entity 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 means, for the purpose of Federal financial assistance, a legal instrument by which a recipient of subrecipient purchases property or services needed to carry out the project or program under a Federal award.

Contractor means an entity that receives a contract as defined in 2 CFR 200.1 (Contract).

Micro-purchase means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-Federal entity's small purchases as defined in 2 CFR 200.320.

Non-Federal entity means a state, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or a **subrecipient**.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see 2 CFR 200.320). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the Federal Acquisition Regulation (FAR) at 48 CFR subpart 2.1.

The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However,

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in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR subpart 2.1) for the simplified acquisition threshold.

Federal Compliance Monitoring

As part of the NHDOE's annual Federal Compliance Monitoring program, staff from the NHDOE's Bureau of Federal Compliance will review procurements that used Federal Funds. The Bureau of Federal Compliance 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 Bureau of Federal Compliance staff should you have any questions relative to the contents of this document or procurement requirements for Federal funds.

Bureau of Federal Compliance
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603-271-3837 or 603-271-3808
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