

Procurement Beyond the Simplified Acquisition Threshold (SAT)

As a pass-through entity for Federal Education funds, the New Hampshire Department of Education (NHDOE) has prepared this **Procurement Beyond the Simplified Acquisition Threshold 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 Beyond the Simplified Acquisition Threshold Fact Sheet** differs from the **Procurement Fact Sheet**. This document addresses Federal requirements specifically related to procurement contracts over the Simplified Acquisition Threshold established in the FAR (Federal Acquisition Regulation) currently set at \$250,000.

Formal Procurement Methods

2 CFR 200.320 (b) states “when the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with 200.319 or paragraph (c) of this section [2 CFR 200.320].”

The following are formal methods which must be used for procurement of property or services above the SAT:

2 CFR 200.320 (b) *Formal procurement methods.*

When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) **Sealed bids.** A procurement method in which bids are publicly solicited and 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 bids method is the preferred method for procuring construction, if the conditions.

(i) In order 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.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(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) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(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.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror 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 through A/E firms that are a potential source to perform the proposed effort.

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 200.318(a)]
- Assure that minority business, women's business enterprises, and labor surplus area firms are used when possible. [2 CFR 200.321]
- Assure there is domestic preferences for the purchase, acquisition, or use of goods, products, or materials produced in the United States. [2 CFR 200.322]
- A cost or price analysis in connection with every procurement action in excess of the SAT, including contract modifications, must be performed. [2 CFR 200.324]
- 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)]
- For construction or facility improvement contracts or subcontracts exceeding the SAT, the non-Federal entity must meet the bonding requirements of 2 CFR 200.326.
- The non-Federal entity's contract must contain the application provisions [2 CFR 200.327]:
 - Contracts for more than the SAT 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. [2 CFR 200, Appendix II (A)]
 - Address termination for cause and for conveniences by the non-Federal entity including the manner by which it will be effected and the basis for settlement. [2 CFR 200, Appendix II (B)]
 - Equal Employment Opportunity. [2 CFR 200, Appendix II (C)]
 - Davis Bacon Act. [2 CFR 200, Appendix II (D)]
 - Contract Work Hours and Safety Standards Act. [2 CFR 200, Appendix II (E)]
 - Rights to Inventions Made Under a Contract or Agreement. [2 CFR 200, Appendix II (F)]
 - Clean Air Act and the Federal Water Pollution Control Act. [2 CFR 200, Appendix II (G)]
 - Debarment and Suspension. [2 CFR 200, Appendix II (H)]
 - Byrd Anti-Lobbying Amendment. [2 CFR 200, Appendix II (I)]

- 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)]

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 means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see 200.331. (see also the definition of *Subaward* in this section).

Contractor means an entity that receives a contract as defined in 2 CFR 200.1 of this section.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see §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 FAR at 48 CFR part 2, 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, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply.

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.

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