



New Hampshire

# Department of Education

## Procurement Checklist

### *Compliance with 2 CFR Part 200*

This Checklist was created by the NHDOE to provide additional guidance surrounding procurement. This Checklist should be used as a guide to review each procurement and resulting contract that is, or may be, funded in whole or in part used Federal funds. Successful completion and utilization of this Checklist helps to ensure compliance with the procurement standards and audit requirements for 2 CFR 200.317 through 200.327 and the standards of the government-wide Uniform Administrative Requirements. Complete information can be found in 2 CFR Part 200.

Each standard below is followed by check boxes for “Yes”, “No”, “Not Applicable”, “Compliant”, or “Not Compliant”. The red font is used to indicate the response which, if checked, indicates the procurement/contract does not comply with the federal requirements under 2 CFR Part 200 and the Uniform Administrative Requirements.

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### Section 1. General Requirements

a. The non-Federal entity must *have and use* documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity’s documented procurement standards identified in 2 CFR 200.317 through 200.327 of this subpart [2 CFR 200.318 (a)].

COMPLIANT       **NOT COMPLIANT**

i. Does this procurement *comply* with the above mentioned documented procurement procedures?

YES       **NO**

b. The non-Federal entity must maintain 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)].

COMPLIANT       **NOT COMPLIANT**

c. The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contract [2 CFR 200.318 (c)(1)].

COMPLIANT       **NOT COMPLIANT**

i. Does any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award have an actual or apparent conflict of interest?

YES  NO

ii. Has any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontractors?

YES  NO

d. The non-Federal entity’s procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternative, and any other appropriate analysis to determine the most economical approach [2 CFR 200.318 (d)].

COMPLIANT  NOT COMPLIANT

e. The non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services [2 CFR 200.318 (e)]? Was this considered?

YES  NO  NOT APPLICABLE

f. The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs [2 CFR 200.318 (f)]. Was this considered?

YES  NO  NOT APPLICABLE

g. The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions [2 CFR 200.318 (g)]. Was this considered?

YES  NO  NOT APPLICABLE

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 [2 CFR 200.318 (h)].

COMPLIANT  NOT COMPLIANT

i. **The non-Federal entity must maintain records sufficient to detail the history of procurement.** These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

COMPLIANT  NOT COMPLIANT

j. Is the contract a time-and-materials or time-and-equipment contract [2 CFR 200.318 (j)(1)]?

YES  NO

i. If yes, was a determination that no other contract is suitable?

YES  NO

ii. If yes, does the contract include a ceiling price that the contractor exceeds at its own risk?

YES       NO

iii. If yes, does the non-Federal entity have in place a procedure(s) to assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls [2 CFR 200.318 (j)(2)]?

YES       NO

k. The non-Federal entity alone must 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 [2 CFR 200.318 (k)].

COMPLIANT       NOT COMPLIANT

## Section 2. Competition

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 [2 CFR 200.319 (a)]. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contracts that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

COMPLIANT  NOT COMPLIANT

Some of the situations considered to be restrictive of competition include but are not limited to [2 CFR 200.319 (b)]:

i. Placing unreasonable requirement on firms in order for them to qualify to do business?

YES  NO

ii. Requiring unnecessary experience and excessive bonding?

YES  NO

iii. Noncompetitive pricing between firms or between affiliated companies?

YES  NO

iv. Noncompetitive contracts to consultants that are on retainer contracts?

YES  NO

v. Organizational conflicts of interest?

YES  NO

vi. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement?

YES  NO

vii. Any arbitrary action in the procurement process?

YES  NO

b. The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference [2 CFR 200.319 (c)].

COMPLIANT  NOT COMPLIANT

c. The non-Federal entity must have written procedures for procurement transactions [2 CFR 200.319 (d)].

COMPLIANT  NOT COMPLIANT

**These procedures must ensure that all solicitations:**

i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain feature which unduly restrict competition [2 CFR 200.319 (d)(1)].

YES       NO

ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals [2 CFR 200.319 (d)(2)].

YES       NO

d. 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 [2 CFR 200.319 (e)].

COMPLIANT       NOT COMPLIANT

### Section 3. Method of Procurement

a. The non-Federal entity must **have and use** documented procurement procedures, consistent with the standards of this section and 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award [2 CFR 200.320].

COMPLIANT       **NOT COMPLIANT**

*Confirm which method was used below and that compliance standards have been met.*

Check if Micro-purchase is your procurement method:

i. **Micro-purchases** (the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. The established threshold in the Federal Acquisition Regulations (FAR) is currently \$10,000. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. Non-Federal entities may establish a threshold higher than the FAR [2 CFR 200.320 (1)]).

1. Acquisition of supplies or services does not exceed the micro-purchase threshold?

**YES**       NO

2. The non-Federal entity (please provide name of authorized person(s): \_\_\_\_\_) considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly.

COMPLIANT       **NOT COMPLIANT**       NOT APPLICABLE

ii. **Small purchases** (the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold (SAT). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity. The non-Federal entity is responsible for determining an appropriate SAT based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR (the current SAT threshold established in the FAR is \$250,000)[2 CFR 200.320 (2)].

1. Acquisition of supplies or services does not exceed the simplified acquisition threshold?

**YES**       NO

2. Were price or rate quotations obtained from at least three qualified sources?

YES       **NO**

iii. **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 material terms and conditions of the invitation for bids, is the lowest price [2 CFR 200.320 (b)(1)]. The following conditions must be met:

1. A complete, adequate, and realistic specification or purchase description is available.

YES       **NO**

2. Two or more responsible bidders are willing and able to compete effectively for the business.

YES       **NO**

Check if small purchase is your procurement method:

Check if sealed bids is your procurement method:

3. 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.

YES  NO

*If all of the above are met, then a sealed bid may be used. The following requirements apply:*

1. 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 [2 CFR 200.320 (1)(ii)(A)];

YES  NO

2. 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 [2 CFR 200.320 (1)(ii)(B)];

YES  NO

3. 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 [2 CFR 200.320 (1)(ii)(C)];

YES  NO

4. 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 [2 CFR 200.320 (1)(ii)(D)]; and

YES  NO

5. Any or all bids may be rejected if there is a sound documented reason [2 CFR 200.320 (1)(ii)(E)].

YES  NO  NOT APPLICABLE

iv. **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 [2 CFR 200.320 (b)(2)].

*Proposals are awarded in accordance with the following requirements:*

1. 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 [2 CFR 200.320 (b)(2)(i)];

YES  NO

2. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections [2 CFR 200.320 (b)(2)(ii)];

YES  NO

3. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered [2 CFR 200.320 (b)(2)(iii)]; and

Check if proposals is your procurement method:

YES  NO

4. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offerors qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation [2 CFR 200.320 (b)(2)(iv)].

YES  NO  NOT APPLICABLE

v. **Noncompetitive procurement** (there are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply [2 CFR 200.320 (c)]);

**Do one of the following circumstances apply (if yes, please select from the five circumstances)?**

YES  NO

1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold [2 CFR 200.320 (c)(1)];

YES  NOT APPLICABLE

2. The item is available only from a single source [2 CFR 200.320 (c)(2)];

YES  NOT APPLICABLE

3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation [2 CFR 200.320 (c)(3)];

YES  NOT APPLICABLE

4. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity [2 CFR 200.320 (c)(4)]; or

YES  NOT APPLICABLE

5. After solicitation of a number of sources, competition is determined inadequate [2 CFR 200.320 (c)(5)].

YES  NOT APPLICABLE

**Check if non-competitive is your procurement method:**



## Section 4. Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms

a. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible (*if not possible, documentation must be provided for each instance of impossibility*).

### b. Affirmative steps must include:

i. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists [2 CFR 200.321 (b)(1)];

YES       NO       NOT APPLICABLE

ii. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources [2 CFR 200.321 (b)(2)];

YES       NO       NOT APPLICABLE

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises [2 CFR 200.321 (b)(3)];

YES       NO       NOT APPLICABLE

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises [2 CFR 200.321 (b)(4)];

YES       NO       NOT APPLICABLE

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce [2 CFR 200.321 (b)(5)]; and

YES       NO       NOT APPLICABLE

vi. Requiring the prime contractors, if subcontracts are to be let, to take the affirmative steps listed above [2 CFR 200.321 (b)(6)].

YES       NO       NOT APPLICABLE

## Section 5. Domestic Preferences for Procurements

a. 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, acquisition, of 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 including all contracts and purchase orders for work or products under this award [2 CFR 200.322 (a)].

COMPLIANT       NOT COMPLIANT

b. For the purposes of this section [2 CFR 200.322 (b)]:

1. “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.
2. “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 poly-vinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## Section 6. 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 SAT (currently \$250,000) 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* [2 CFR 200.324 (a)].

COMPLIANT     **NOT COMPLIANT**     NOT APPLICABLE

b. The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work [2 CFR 200.324 (b)].

COMPLIANT     **NOT COMPLIANT**     NOT APPLICABLE

c. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles [2 CFR 200.324 (c)].

COMPLIANT     **NOT COMPLIANT**     NOT APPLICABLE

d. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used [2 CFR 200.324 (d)].

COMPLIANT     **NOT COMPLIANT**     NOT APPLICABLE

**Section 7. Bonding requirements (if applicable- for construction or facility improvement contracts or subcontracts exceeding the SAT)**

**Applicable?** YES  (continue with section) NO  (move on to Section 8)

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* [2 CFR 200.326]:

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 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 [2 CFR 200.326 (a)].

YES  NO  NOT APPLICABLE

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 [2 CFR 200.326 (b)].

YES  NO  NOT APPLICABLE

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 [2 CFR 200.326 (c)].

YES  NO  NOT APPLICABLE

## Section 8. Contract provisions

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable [Appendix II to Part 200].

a. Contracts for more than the SAT (currently \$250,000), 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. 1907, 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 [Appendix II to Part 200 (A)].

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

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 [Appendix II to Part 200 (B)].

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

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 [Appendix II to Part 200 (C)].”

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

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”) [Appendix II to Part 200 (D)].

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

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) [Appendix II to Part 200 (E)].

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

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 implanting regulations issues by the awarding agency [Appendix II to Part 200 (F)].

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

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 New Hampshire. 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.

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 regulation 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) [Appendix II to Part 200 (G)].

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

h. Debarment and Suspension (Executive Order 12549 and 12689) - A contract award 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 [Appendix II to Part 200 (H)].”

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

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 [Appendix II to Part 200 (I)].

COMPLIANT  NOT COMPLIANT  NOT APPLICABLE

**-END OF CHECKLIST-**