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# FEDERAL GRANT COMPLIANCE Info Sheet

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## **Noncompetitive Procurement**

As a pass-through entity for Federal Education funds, the New Hampshire Department of Education (NHDOE) has prepared this **Noncompetitive Procurement Info Sheet** to assist Federal program subrecipients in the development and implementation of their procurement policies and procedures, specifically noncompetitive procurement, 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 **Noncompetitive Procurement Info Sheet** does not address Federal requirements specifically related to construction procurement contracts using Federal grant funds.

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### **Noncompetitive Procurement Overview**

There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one of more of the following circumstances apply (2 CFR 200.320(c)):

**1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold**

The micro-purchase threshold at this time is \$10,000 as established by the Federal Acquisition Regulations (FAR). Non-Federal entities may establish a threshold higher than the Federal threshold established in the FAR in accordance with 2 CFR 200. 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.

**2. The item is available only from a single source;**

For example, product compatibility with an existing item or a specific brand required i.e. Apple product.

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### **3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation**

In the case of an **exigency**, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the applicant, and use of competitive procurement proposals would prevent the urgent action required to address the situation.

In the case of an **emergency**, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

**Exigency Example:** A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with State and local law—wants to sole source with a contractor it has contracted with previously. The City can demonstrate that this constitutes an “exigent circumstance” because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.

**Emergency Example:** Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property and public health.

### **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**

A written request from the non-Federal entity needs to be submitted to the NHDOE through the Grants Management System (GMS), to their NHDOE Program contact. The written request should provide a detailed explanation of the scope of services and reasons as to why a noncompetitive procurement process should be permitted by the NHDOE. Authorization or denial of the request will be communicated back to the non-Federal entity from the NHDOE. The non-Federal entity cannot proceed with a noncompetitive proposal until they receive written authorization from the NHDOE.

### **5. After solicitation of a number of sources, competition is determined inadequate**

If the non-Federal entity completes a compliant competitive bid process but receives one or less qualifying bids, a noncompetitive procurement process may be used. The solicitation process will still need to be documented in writing and retained in accordance with the non-Federal entities Records Retention Policy and Procedure and in accordance with 2 CFR 200.334.

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## **Required Contract Elements**

As a subrecipient of Federal funds, your organization is responsible for the following, regardless if noncompetitive procurement is deemed acceptable,

- 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)]
- 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 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 acquisitions of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in 2 CFR 200.317 through 200.327 of this subpart. [2 CFR 200.318]
- 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)]

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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.**

### **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. This includes, but is not limited to, any records sufficient to detail the history of the procurement, the contract type, and the basis for the contract price.

### **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  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301  
603-271-3837 or 603-271-3808  
[federalcompliance@doe.nh.gov](mailto:federalcompliance@doe.nh.gov)

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