



Procurement Standards Guidance

The Office of Clean Energy Demonstrations (OCED) allows recipients and subrecipients to acquire a variety of available goods or services in connection with their award. Procurement transactions occur when recipients or subrecipients purchase property or services needed to carry out the federally funded project. When used correctly, procuring goods or services can help an organization implement a successful project or program.

What are the Procurement Standards?

The Federal procurement standards, found at [2 CFR Part 200 Subpart D - Procurement Standards](#) lay out the rules your organization must follow for the acquisition of property or services under a Federal award or subaward. These standards are designed to ensure that procurement activities are carried out in a fair, transparent, and efficient manner, promoting accountability and maximizing value for money. Requirements vary based on the type of your organization, as outlined in 2 CFR 200.317:

- ▶ **All recipients and subrecipients other than States and Indian Tribes** must follow the procurement requirements found at 2 CFR 200.318 through 2 CFR 200.327.
- ▶ **States and Indian Tribes** must follow the same policies and procedures they use for procurements with non-Federal funds.
 - » If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in 2 CFR 200.318 through 200.327.
 - » In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: 2 CFR 200.321, 200.322, 200.323, and 200.327.

What Methods of Procurement are Allowed?

There are three methods of procurement outlined in 2 CFR 200.320:

- ▶ **Informal procurement methods** (for micro-purchases and simplified acquisitions);
- ▶ **Formal procurement methods** (through sealed bids or proposals); and
- ▶ **Noncompetitive procurement methods.**

For any of these methods, your organization must maintain and use documented procurement procedures, consistent with 2 CFR 200.317, 200.318, and 200.319.

This guidance document does not supersede Federal laws and regulations. This OCED guidance document is for informational purposes only and is not a requirements document. If there are inconsistencies between this OCED guidance document and any specific program or project document, the specific OCED program or project document should be relied upon as it is the controlling document.

Informal procurement methods for small purchases

Informal procurement methods expedite the completion of transactions and minimize administrative burden when the value of the procurement transaction is **under the Simplified Acquisition Threshold (SAT)** of \$250,000.

Micro Purchases	Simplified Acquisitions
<p>Procurement transactions under \$10,000*</p> <p>* The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold (currently \$10,000), up to \$50,000, based on the requirements outlined in 2 CFR 200.320(a)(1)(iv).</p>	<p>Procurement transactions between \$10,000 to \$250,000</p>
<ul style="list-style-type: none"> ▪ May be awarded without soliciting competitive price or rate quotations, if the price is reasonable based on research, experience, purchase history, or other information. ▪ Purchase cards can be used for micro-purchases if procedures are documented and approved. 	<ul style="list-style-type: none"> ▪ Requires a price or rate quotation from an adequate number of qualified sources. ▪ No cost or price analysis needed.

As of October 1, 2020, the Federal Acquisition Regulations (FAR) micro-purchase threshold is \$10,000 and the Simplified Acquisition Threshold (SAT) is \$250,000. The current FAR thresholds are available at <https://www.acquisition.gov/far/2.101>.

Formal procurement methods

For procurement transactions **above the SAT** of \$250,000, recipients or subrecipients must use one of the following formal procurement methods:

<ul style="list-style-type: none"> ▪ A procurement method in which bids are publicly solicited through an invitation ▪ A firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder ▪ Bid must conform with all the material terms and conditions of the invitation for bids ▪ The winning bid is the lowest in price 	<ul style="list-style-type: none"> ▪ Require a price or rate quotation from an adequate number of qualified sources. ▪ No cost or price analysis is needed.
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Noncompetitive procurement methods

Noncompetitive procurement (formerly known as sole source) can only be awarded if one or more of the following specific circumstances apply:

- The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold.
- The procurement transaction can only be fulfilled by a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation.
- The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval
- After soliciting several sources, competition is determined inadequate.

What Factors Should I Keep in Mind for Compliant Procurement?

While not exhaustive, below are key considerations to ensure effective and compliant procurement practices:

- **Develop Clear Written Procedures:** To ensure compliance with Federal procurement standards, establish clear written procedures, including but not limited to:
 - » **Procurement Standards and Policies:** Develop and implement written procurement standards that align with applicable State, local, and tribal laws, as well as the standards identified in 2 CFR 200.317 through 200.327. See 2 CFR 200.318(a).
 - » **Standards of Conduct:** Maintain written standards that address conflicts of interest and govern the actions of employees involved in contract selection, award, and administration. See 2 CFR 200.318(c)(1).
 - » **Internal Controls:** Develop and maintain documented process and internal controls to check for organizational conflicts of interest with potential contractors. See 2 CFR 200.318(c)(2).
 - » **Avoiding Duplication:** Ensure procedures prevent the acquisition of unnecessary or duplicative items. See 2 CFR 200.318(d).
 - » **Procurement Transactions:** Maintain written procedures for procurement transactions, ensuring that all solicitations have a clear description of the technical requirements for the item or service being procured, along with any additional requirements for offerors and evaluation factors for bids or proposals. See 2 CFR 200.319(d).
- **Keep Detail Procurement Records:** The records should detail the history of each procurement transaction funded using OCED funds. The records must include, but are not limited to:
 - » The rationale for the procurement method,
 - » Contract type selection,
 - » Contractor selection or rejection, and
 - » The basis for the contract price. See 2 CFR 200.318(i).
- **Monitor Contracts and Handle Administrative Issues:** Oversee contractors to ensure they follow the contract terms and promptly address all contract and administrative issues. See 2 CFR 200.318(b) and (k).
- **Ensure Equitable and Competitive Procurement:** Contractors must be excluded from competing for procurements if they develop or draft grant applications or contract specifications. (See 2 CFR 200.319).
- **Ensure Contracts Include All Required Contract Provisions:** All applicable provisions are provided in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

- ▶ **Mitigate Conflict of Interest:** A conflict of interest occurs when an employee, officer, agent, board member, their immediate family, partner, or their current or prospective employing organization has a financial or personal interest in an entity considered for a contract (see 2 CFR 200.318(c)(1)). Clarify “family” and “partner” in your procedures, as federal regulations do not define these terms. To ensure compliance and understanding, implement employee training or require certifications on these relationships and their implications.
- ▶ **Award Contracts Only to Responsible Contractors:** Review potential contractors in the System for Award Management (SAM.gov), a system that validates the legitimacy and eligibility of applicants for Federal awards. See 2 CFR 200.318(h).
- ▶ **Be Cautious with Time and Materials Type Contract:** This type may be used only after confirming no other contract is suitable. If used, ensure a ceiling price is set that the contractor exceeds at their own risk. See 2 CFR 200.318(j).
- ▶ **Conduct Cost and Price Analysis:** Must be performed in connection with every procurement transaction in excess of the Simplified Acquisition Threshold (SAT), including contract modifications. See 2 CFR 200.324.
- ▶ Consider socioeconomic and domestic preferences:
 - » When possible, ensure that small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms are considered using the six means of consideration listed in 2 CFR 200.321.
 - » Provide a preference for purchasing goods and materials produced in the United States according to 2 CFR 200.322.
- ▶ **Meet bonding requirements:** For construction contracts, OCED or the pass-through entity may accept the recipient or subrecipient’s bonding policy and requirements if they determine that the Federal interest is adequately protected. See 2 CFR 200.326.

How Does This Apply to Your Award?

In the procurement of goods and services, the process is structured into a series of progressive steps, each accompanied by specific requirements, challenges, and considerations that must be navigated effectively. Understanding these steps is crucial for ensuring compliance and achieving successful outcomes. Below are the typical steps involved in the procurement process.

1. **Select the procurement method** (see options in *What Methods of Procurement are Allowed?*):

Choose an appropriate procurement method based on the goods or services and the economic environment. Generally, sealed bids are preferred for construction procurements when:

- » An adequate specification or purchase description is available.
- » At least two qualified bidders are willing to compete.
- » The procurement is suitable for a fixed-price contract, primarily evaluated on price.

Use the competitive proposal method when sealed bids are inappropriate (see 2 CFR 200.320(b)(2)).

2. Conduct the procurement transaction:

For example, a sealed bid (competitive procurement) may include the following steps and considerations:

- » **Conduct a cost or price analysis:** Gather preliminary cost data from a diverse range of sources, including vendor quotes, catalog and brochure prices, and trade publications.
- » **Draft the bid solicitation:** Ensure that solicitations do not compromise competition and that bidders have all the information they need to submit a qualified bid. The solicitations should identify all evaluation criteria used to identify qualified bidders and the weight of those criteria in the ranking process.
- » **Solicit bids:** For sealed bids and competitive proposals, solicitations must be publicized. Where possible, ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered as set forth in 2 CFR 200.321.
- » **Evaluate proposals and select the successful bidder:** when evaluating potential bidders:
 - Consider the prospective contractor's integrity, record of past performance, and financial and technical resources.
 - Determine whether the potential contractor has been debarred, suspended, or convicted of criminal violations under the Clean Air Act or other similar Federal statutes, in which case the contractor must be disqualified from consideration.

3. **Administer the contract:**

Once a contractor has been selected, effective contract administration is essential for ensuring that the procurement objectives are met, and the terms of the contract are adhered to. This stage involves a range of activities that ensure compliance, performance monitoring, and risk management:

- » Establish communication protocols
- » Monitor performance
- » Manage changes
- » Ensure compliance
- » Document everything
- » Conduct final evaluation