

Book	Policy Manual
Section	EDGAR Revisions - January 2021
Title	EDGAR Revisions - January 2021 Revised PROCUREMENT - FEDERAL GRANTS/FUNDS
Code	po6325
Status	1) Reading and Review
Adopted	July 12, 2016
Last Revised	December 16, 2020
Last Reviewed	February 26, 2021

6325 - PROCUREMENT - FEDERAL GRANTS/FUNDS

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or Educational Service Center matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, Governing Board policies, and administrative procedures.

The Superintendent shall ~~have and use~~ ~~maintain~~ a procurement and contract administration system in accordance with the USDOE requirements (2 C.F.R. 200.317-.326), including affirmative steps for small and minority businesses and women's business enterprises, for the administration and management of Federal grants and Federally-funded programs. The Center shall maintain ~~oversight-a contract administration system~~ that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of the Center's documented general purchasing Policy 6320 and AG 6320A.

All Center employees, officers, and agents who have purchasing authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of contracts as established in Policy 1130, Policy 3113 and Policy 4113 - Conflict of Interest.

The Center will avoid acquisition of unnecessary or duplicative items. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase and, where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

To foster greater economy and efficiency, the Center may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

Competition

All procurement transactions for the acquisition of property or services required under a Federal award paid for from Federal funds or Center matching funds shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgment. In order to promote objective contractor performance and eliminate unfair competitive advantage, the Center shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competition for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- A. unreasonable requirements on firms in order for them to qualify to do business
- B. unnecessary experience and excessive bonding requirements
- C. noncompetitive pricing practices between firms or between affiliated companies
- D. noncompetitive contracts to consultants that are on retainer contracts

E. organizational conflicts of interest

F. specification of only a "brand name" product instead of allowing for an "or equal" product to be offered and describing the performance or other relevant requirements of the procurement

G. any arbitrary action in the procurement process

Further, the Center does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless 1) an applicable Federal statute expressly mandates or encourages a geographic preference; or 2) the Center is contracting for architectural and engineering services, in which case geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

To the extent that the Center uses a pre-qualified list of persons, firms or products to acquire goods and services that are subject to this policy, the pre-qualified list includes enough qualified sources as to ensure maximum open and free competition. The Center allows vendors to apply for consideration to be placed on the list continuously. ~~{insert frequency. See Drafting Note}~~

~~[Drafting Note: The Center shall allow vendors not on the pre-qualified list to apply for placement on the list periodically. The Center may determine how frequently the pre-qualified list becomes open for new vendors or whether it is open continuously.]~~

The Center shall require 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 provide maximum open and free competition. The Center shall not preclude potential bidders from qualifying during the solicitation period.

Solicitation Language (Purchasing Procedures)

The Center shall have written procurement procedures that require that all solicitations made pursuant to this policy incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it shall conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated; and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.

The Board will not approve any expenditure for an unauthorized purchase or contract.

Procurement Methods

The Center shall have and use documented procedures, consistent with the standards described above, for ~~utilize~~ the following methods of procurement:

A. Informal Procurement Methods

When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold, or a lower threshold established by the State, formal procurement methods are not required. The Center may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the simplified acquisition threshold include:

1. ~~(-) Micro-purchases~~

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$ 10,000 ~~{not to exceed \$10,000}~~. To the maximum extent practicable, the Center ~~should~~ shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if the Superintendent considers the price to be reasonable based on research, experience, purchase history or other relevant information and documents are filed accordingly. The Center shall maintain ~~The Center maintains~~ evidence of this reasonableness in the records of all purchases made by this method.

[X.] Unless otherwise defined by State or local law, Centers are responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of the risk, and its documented procurement procedures. The micro-purchase threshold used by the Center shall be authorized or not prohibited under State, local, or tribal laws or regulations. A Center which is qualified as a low-risk auditee for the most recent audit (C.F.R. 200.520) may increase the micro-purchase threshold up to \$50,000. An eligible Center may self-certify the increased micro-purchase threshold on an annual basis after completing the annual internal institutional risk assessment to identify, mitigate, and manage financial risks. The self-certification, in accordance with C.F.R. 200.334, must include a justification, clear identification of the threshold, and supporting documentation of the qualifications listed above. ~~DRAFTING NOTE: The Federal regulation allows for a \$50,000 threshold. While this authority is allowed for an entity qualified as a low-risk auditee, Neola does not suggest its use due to the complexity and subjectivity of the mechanism.~~}]

2. ~~(-)~~ **Small Purchases**

~~Small purchase procedures provide for relatively simple and informal procurement methods for securing services, supplies, and other property that does not exceed the competitive bid.~~ Small purchases include 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 of \$50,000 ~~{not to exceed \$250,000}~~. Small purchase procedures require that price or rate quotations shall be obtained from ~~(x)~~ two (2) ~~(-) an adequate number of~~ ~~[END OF OPTION]~~ qualified sources. ~~{Drafting Note: Unless the pass-through entity or State law defines the number of quotes required, the Center may define in policy how many quotations are adequate. The number must be greater than one (1).}~~

Centers are responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures which must not exceed the threshold established in the Federal Acquisition Regulations (FAR). When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

B. **Formal Procurement Methods**

When the value of the procurement for property or services under a Federal award exceeds the simplified acquisition threshold, or a lower threshold established by the State, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement method can be used in accordance with the standards on competition in 200.319 or non-competitive procurement. The formal methods of procurement are:

1. ~~(-)~~ **Sealed Bids**

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which amounts to more than \$ 50,000 ~~{the lesser of the established Small Purchase threshold or \$250,000}~~ and when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility the cost of which will exceed \$50,000.

In order for sealed bidding to be feasible, the following conditions shall be present:

- a. a complete, adequate, and realistic specification or purchase description is available;
- b. two (2) 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.

When sealed bids are used, the following requirements apply:

- a. Bids shall be solicited in accordance with the provisions of State law and Policy 6320. Bids shall be solicited from ~~(X)~~ two (2) ~~(-) an adequate number of~~ qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised. The invitation for bids will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.
- b. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.
- c. A firm fixed price contract award will be made in writing to the lowest responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in

determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.

d. The Board reserves the right to reject any or all bids for sound documented reason.

2. ~~(-) Competitive Proposals~~

~~Procurement by competitive proposal, normally conducted with more than one source submitting an offer, is Procurement by proposals is a 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 or in the case of a recognized exception to the sealed bid method. [Drafting Note: Federal law does not require a competitive proposal unless the procurement is for over \$250,000. The State/Center may set a lower threshold for sealed bids and competitive proposals. Ohio law requires sealed bids when the Board seeks to build, repair, enlarge, improve, or demolish a school building/facility if the cost will exceed \$50,000 (see Policy 6320).]~~

If this method is used, the following requirements apply:

- a. Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
- b. Proposals shall be solicited from **(X) two (2)** ~~(-) an adequate number of~~ sources.
- c. The Center shall use its written method for conducting technical evaluations of the proposals received and for selecting recipients.
- d. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The Center may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor 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 though A/E firms are a potential source to perform the proposed effort.

3. ~~(-) Noncompetitive Procurement Proposals~~

Procurement by noncompetitive proposals allows for solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. micro-purchases
- b. the item is available only from a single source
- c. the public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation
- d. the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Center
- e. after solicitation of a number of sources, competition is determined to be inadequate

4. **(X) Noncompetitive Purchases Through Educational Service Centers (ESCs)**

Under State law, the Board may enter into a contract with an educational service center (ESC) that authorizes the ESC to make purchases for supplies, materials, equipment, and services or the delivery of services on the Center's behalf.

These contracts promote operational efficiency and cost savings, and further enhance the educational experience for our students. Purchases made through such contracts are exempt from competitive bidding. ~~[DRAFTING NOTE: this provision applies to 3313.843, 3313.844, and 3313.845 contracts. A Center with student enrollment of less than 16k must enter into a contract with an ESC in accordance with 3313.843.]~~

The Center may apply for approval from ODE to use a noncompetitive purchasing method to procure personnel-based services from an ESC only when the following criteria are met:

- a. the ESC posts a list of all services it provides including costs of these services on its website;
- b. the ESC has been designated as "high performing" by the Ohio Department of Education, and
- c. ODE as the passthrough state entity has determined that the ESC was substantially in compliance with all audit rules and guideline during the most recent audit conducted by the Auditor of State

The Treasurer/CFO will submit an application and any required documentation to ODE on the designated form requesting approval for use of a noncompetitive purchasing method for personnel services. Purchases will not be made until the application is approved. Notice of approval will be maintained by the Treasurer/CFO.

Domestic Preference for Procurement

As appropriate and to the extent consistent with law, the Center shall, to the extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Such requirements shall be included in all subawards including all contracts and purchase orders for work or products under the Federal award.

Contract/Price Analysis

The Center shall perform a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the Center shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, the Center shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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.

Time and Materials Contracts

The Center uses a time and materials type contract only 1) after a determination that no other contract is suitable; and 2) if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the Center is the sum of the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, the Center sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the Center shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Suspension and Debarment

The Center will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the Center and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the Center shall consider such factors as 1) contractor integrity; 2) compliance with public policy; 3) record of past performance; and 4) financial and technical resources.

The Superintendent shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. The Center is subject to and shall abide by the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. Part 180.

Suspension is an action taken by the Center that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 C.F.R. Chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 C.F.R. Part 180 Subpart G)

Debarment is an action taken by the Superintendent to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 C.F.R. Chapter 1). A person so excluded is debarred. (2 C.F.R. Part 180 Subpart H)

The Center shall not subcontract with or award subgrants to any person or company who is debarred or suspended. For contracts over \$25,000, the Center shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors at www.sam.gov; collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 C.F.R. Part 180 Subpart C)

Bid Protest

The Center maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request For Proposals (RFPs) or the individual bid specifications package, for resolution. Bid protests shall be filed in writing with the Superintendent within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Superintendent shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

Maintenance of Procurement Records

The Center ~~shall maintain~~**maintains** records sufficient to detail the history of all procurements. 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 (including a cost or price analysis).

2 C.F.R. 200.317 - .326, Appendix II to Part 200

2 C.F.R. 200.520

R.C. 3313.843 - 3313.846

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Legal

2 C.F.R. 200.317 - .326, Appendix II to Part 200

2 C.F.R. 200.520

R.C. 3313.843 - 3313.846