

The Department of Justice (DOJ) allows grantees to acquire a variety of available goods or services in connection with DOJ grants. Procurement transactions may happen when grant recipients or subrecipients seek to 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.

### Grant Financial Management Requirement

Under 2 CFR 200, States are required to follow their own state laws for procurements. State governments are also required to follow [2 CFR 200.322](#) and [2 CFR 200.326](#). All other nonfederal entities must follow the procurement requirements found at [2 CFR 200.318](#) through [2 CFR 200.327](#).

Grantees are required to keep records detailing the history of all procurements funded using DOJ grant funds. The records should include the following:

- ▶ Rationale for the method of procurement
- ▶ Selection of contract type
- ▶ Contractor selection and/or rejection process
- ▶ Basis for the contract prices

### Important Information to Know

General procurement requirements for recipients, other than states, are located in [2 CFR 200.318](#). The regulations require that procurement activities be performed in an equitable and competitive manner to promote equal treatment, efficiency, and economy in federal grant activities. To ensure objective contractor performance and eliminate an unfair competitive advantage, contractors should be excluded from competing for such procurements if they develop or draft grant applications or contract specifications,

requirements, statements of work, invitations for bids, and/or requests for proposals.

In addition, grantees should have an internal control or documented process to check for organizational conflict of interest with potential contractors. The Uniform Guidance, or 2 CFR 200, sets strict requirements around procurement and guarding against conflicts of interest that can occur when purchasing goods and services under federally funded grants and contracts. Grant recipients should know that when creating a conflict of interest policy, federal regulations do not define family or partner. It is the responsibility of the grant recipient to set out in its procedures, the circumstances that trigger a family or partner relationship. To ensure compliance and organization-wide understanding, recipients should consider holding employee trainings or require certifications from employees to demonstrate their knowledge of these relationships as it relates to conflicts.

Also, there must be a process in place ensuring that contracts are not awarded to contractors or individuals excluded from participation in federal programs. Grantees would do this by performing a review of potential contractors or individuals in the System for Award Management (SAM).

### Methods of Procurement

The methods of procurement that must be followed by grantees are outlined in [2 CFR 200.320](#). It states, "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." This section explains the three methods of procurement and provides examples.

## Informal

**Micro-purchases** may be awarded without soliciting competitive price or rate quotations, if the non-federal entity considers the price to be reasonable based on research, experience, purchase history, or other information and documents it files accordingly. Purchase cards can be used for micro-purchases, if procedures are documented and approved by the non-federal entity.

**Small purchase** procedures may be used for the acquisition of property or services for which the aggregate dollar amount is higher than the FAR micro-purchase threshold but does not exceed the simplified acquisition threshold. 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.

As of October 1, 2020, the FAR micro-purchase threshold is \$10,000 and the simplified acquisition threshold is \$250,000. Grantees can access the current FAR thresholds at <https://www.acquisition.gov/browse/index/far>.

## Formal

**Sealed bid** is 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.

During a competitive proposal procurement, 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.

## Noncompetitive

There are specific circumstances in which noncompetitive (formerly known as sole source) procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- ▶ The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.
- ▶ The item is available only from a single source.
- ▶ The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.
- ▶ The federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-federal entity.
- ▶ The competition is determined inadequate, after solicitation of a number of sources.

## How This Applies to Your Grant

Per [2 CFR 200.318 \(i\)](#), the grant recipient must have a sufficient procurement system that maintains records to detail the history of procurement. This includes, but is not limited to, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. When a grantee determines that procurement of goods or services is necessary, there are steps that must be followed.

- ▶ **Conduct a cost or price analysis**—the recipient can gather preliminary cost data from a diverse range of sources, including vendor quotes, catalog and brochure prices, and trade publications.
- ▶ **Select the procurement method** (see options above)—different procurement methods are appropriate for different goods or services and in different economic environments. Generally, sealed bid is the preferred method for construction procurements, assuming: an adequate specification or purchase description is available; at least two qualified bidders are willing and able to compete for the contract; and the procurement is suitable for a fixed-price contract and may be awarded principally on the basis of price. The competitive proposal method of procurement is used primarily in situations where sealed bids are inappropriate ([2 CFR 200.320\(d\)](#) provides details for nonfederal entities using this method).
- ▶ **Draft the bid solicitation**—bid solicitations must be designed to ensure that competition is not compromised, where applicable, 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. In addition, when possible, recipients should use small and minority-owned businesses, women’s business enterprises, and labor surplus area firms.
- ▶ **Evaluate proposals and select the successful bidder**—when evaluating potential bidders, recipients should consider the prospective contractor’s integrity, record of past performance, and financial and technical resources. In addition, the recipient must 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.
- ▶ **Negotiate the contract.**
- ▶ **Administer the contract**—[2 CFR 200.318](#) provides general procurement standards that all nonfederal entities must comply with.

In addition, when involved in procurement, grant recipients must:

- ▶ Use their own documented procurement procedures that include applicable state and local laws and regulations.
- ▶ Ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

- ▶ Maintain written standards of conduct covering conflicts of interest and governing the performance of employees engaged in the selection, award, and administration of contracts.
- ▶ Protect against acquisition of unnecessary or duplicative items.

## Resources

U.S. Department of Justice. (2017). Online Grants Financial Management Training. <https://www.ojp.gov/training/financial-management-training>

U.S. Department of Justice. (2017). DOJ Grants Financial Guide. <https://www.ojp.gov/DOJFinancialGuide>

*OJP TFSC offers resources on a variety of grants financial management topics, which can be found on our website at <https://www.ojp.gov/tfsc/resources>*

## About the OJP Territories Financial Support Center

**The Office of Justice Programs Territories Financial Support Center** (OJP TFSC) offers free resources, training, and technical assistance for grantees in the U.S. territories. OJP TFSC services focus on building financial management capacity and can be accessed by emailing [OJPTFSC@usdoj.gov](mailto:OJPTFSC@usdoj.gov) via our Virtual Support Center.



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