



**pennsylvania**  
DEPARTMENT OF EDUCATION

# Procurement

# Introduction to Procurement

## DEFINITION

### **What is procurement?**

The act of purchasing goods or services from an external organization.

## DESIRED OUTCOMES

### **To become more cost effective**

Supporting cost reasonableness of purchases through price comparisons such as quotes or bids

### **To promote fair and open competition in procurements**

Shopping on the open market provides more vendors the opportunity compete for your business, which may result in an increased quality and/or decreased price of the goods or services being purchased

# Applicable Federal Procurement Guidance

2 CFR 200.318–327 procurement requirements apply to non-federal entities using federal funds. While you should familiarize yourself with these, we will cover the more complex areas highlighted in blue.

Reference	Title	What You Need to Know
§ 200.318	<u>General procurement standards.</u>	General guidance for non-federal entities, including but not limited to adhering to federal, state, and local procurement requirements, maintaining contractor oversight, having written standards governing conflicts of interest.
§ 200.319	<u>Competition.</u>	Procurements must provide for full and open competition.
§ 200.320	<u>Methods of procurement to be followed.</u>	Outlines the thresholds, applicability, and requirements for each procurement method: informal (micro purchases and small purchases), formal (sealed bids and proposals), and noncompetitive.
§ 200.321	<u>Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.</u>	Take the necessary Minority and Women-Owned Business Enterprises (WBE) affirmative steps.
§ 200.322	<u>Domestic preferences for procurements.</u>	Provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.
§ 200.323	<u>Procurement of recovered materials.</u>	Comply with section 6002 of the Solid Waste Disposal Act.
§ 200.324	<u>Contract cost and price.</u>	Perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (SAT = \$250,000).
§ 200.325	<u>Federal awarding agency or pass-through entity review.</u>	Make procurement documentation available at the request of the Federal awarding agency or pass-through entity.
§ 200.326	<u>Bonding requirements.</u>	Minimum bonding requirements for construction or facility improvement (sub)contracts exceeding the SAT.
§ 200.327	<u>Contract provisions.</u>	Provisions required for contracts.

# General Procurement Standards

Here are some key requirements from 2 CFR 200.318 that all non-Federal entities must follow:

Must have and use documented procurement procedures, **consistent with State, local, and tribal laws and regulations and the standards of this section** (2 CFR 200.317 -> 200.327).

Must **maintain oversight** to make sure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

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 contracts.

Must **award contracts only to responsible contractors** possessing the ability to perform successfully under the terms and conditions of a proposed procurement

This means **the most stringent** of Federal, state, and local procurement rules must be followed.

Must **avoid acquisition of unnecessary or duplicative** items.

Must **maintain records** sufficient to detail the **history of procurement.**

May use a **time-and-materials** type contract **only** after a determination that **no other contract is suitable** and if the contract includes a **ceiling price.**

Must be responsible for the **settlement of all contractual and administrative issues** arising out of procurements.

# Procurement Matrix

Most stringent of Federal (2 CFR 200.318 and 200.320) and state thresholds (PA Bulletin)

Note: Local procurement policies would also apply!



Method	Goods/Supplies	Services	Requirements
<b>Micro-Purchase</b> (No quotes required)	<b>Less than \$10,000</b> Note: Must use more restrictive \$0 Federal threshold instead of no state requirements under \$11,800	<b>Less than \$10,000</b> Note: Must use more restrictive \$10,000 Federal threshold instead of state exemption for services	<ul style="list-style-type: none"> <li>Consider price to be reasonable</li> <li>Distribute equitably among suppliers to the extent practical</li> </ul>
<b>Small Purchase Procedures</b> (Relatively simple and informal)	<b>\$10,000 - \$22,500</b> Note: Must use more restrictive \$10,000 Federal threshold instead of \$22,500 state threshold	<b>\$10,000 - \$249,999</b> Note: Must use more restrictive \$10,000 Federal threshold instead of state exemption for services	<ul style="list-style-type: none"> <li>Obtain/document price or rate <b>quotations</b> from a reasonable number of qualified sources (at least three per 24 PS 8.807.1)</li> <li>Written or documented quotes</li> </ul>
<b>Sealed Bids</b> (Formal advertising)	<b>\$22,500 or more</b> Note: Must use more restrictive \$22,500 state threshold instead of \$250,000 Federal threshold	N/A	<ul style="list-style-type: none"> <li>Bids are publicly solicited</li> <li>Firm fixed price contract awarded to the responsible bidder lowest in price</li> <li>Cost / price analysis for purchases in excess of the Simplified Acquisition Threshold (SAT) (\$250,000)</li> </ul>
<b>Competitive Proposals</b> (Formal Request for Proposals (RFPs))	N/A	<b>\$250,000 or more</b> Note: Must use more restrictive \$250,000 Federal threshold instead of state exemption for services	<ul style="list-style-type: none"> <li>Bids are publicly solicited</li> <li>Price is not used a sole selection factor</li> <li>Fixed price or cost-reimbursement type contract is awarded</li> <li>Cost or price analysis for purchases in excess of the SAT (\$250,000)</li> </ul>
<b>Non-Competitive Proposals</b> (Sole Source)	Appropriate <b>only</b> when one of these circumstances apply: <ul style="list-style-type: none"> <li>Available only from a single source (sole source)</li> <li>Public emergency</li> <li>After soliciting a number of sources, competition is deemed inadequate</li> </ul>		<ul style="list-style-type: none"> <li>Solicitation from only one source</li> <li>Used only when qualifying circumstances apply</li> <li>Fixed price or cost-reimbursement type contract is awarded</li> </ul>

# Goods vs. Services

Competitive procurements thresholds are different for goods vs. services. How do I know which one applies my purchase?

## GOODS

**TANGIBLE ITEMS PURCHASED FROM AN OUTSIDE ENTITY**

### EXAMPLES

- Facemasks
- Computers
- Hand sanitizers
- Floor scrubbers
- Vehicles
- Books

### Object Codes

- 600s
- 800s

## SERVICES

**TASKS PERFORMED BY AN OUTSIDE ENTITY**

### EXAMPLES

- Heating, Ventilation, and Air Conditioning (HVAC) installation or remodeling
- Transportation
- Tutoring support
- Counselor support

### Object Codes

- 300s
- 400s
- 500s

# Cooperative Purchasing Networks

Can I use cooperative purchase networks for Federal grant purchases?

**Yes, BUT you are responsible for:**

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Following the **most stringent of federal, state, and local** procurement requirements

Understanding the **procurement method used** by the cooperative purchasing network and making sure it aligns to the most stringent threshold

Requesting and **retaining documentation to demonstrate the full history of procurement**, including but not limited to: bid tabulation, proof of public advertisements, rationale for procurement method, vendor selection/rejection justification, cost/price analysis, and contract

# Non-Competitive Procurement

When is sole source method allowed?

Per 2 CFR 200.320(c), in order for sole source to be allowable it must A) be documented and B) apply to one of the following situations:

The aggregate dollar amount **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

After solicitation from several sources, **competition is deemed inadequate**

## **DOCUMENTATION REQUIREMENT:**

A written justification must be developed and archived by the LEA at the time of procurement when using this procurement method

Formal or informal **competitive procurement is preferred** when purchases exceed the micro-purchase threshold. The above non-competitive procurement reasons should be used on an exception-basis.

A **SAM** registration and cross checking for debarment is required for **government** contracts and to receive grants.

## What is SAM.gov?

The U.S. Government's System for Award Management (SAM.gov) is a free website that allows **businesses and government entities to register** on in order to **do business with the U.S. Government.**

## Why must I use it?

To **reduce risk** of awarding contracts to debarred or suspended vendors in accordance with 2 CFR 200.214. **Debarred or suspended** vendors are excluded from doing business with the Federal government. Any payment for goods or services to excluded vendors is subject to **claw back provisions.**

## How do I check an entity's status on SAM.gov?

Login to SAM.gov using your Login.gov credentials and **use the search tab** to run the entity's name against the database. Information that will appear regarding the entity include: registration status, Unique Entity Identification (UEI), debarment/suspension (if applicable), and other important entity information.

**Here's  
what you  
need to  
know  
about  
SAM.gov**

## How much does it cost me to register on SAM.gov?

Registering your entity on SAM.gov is **FREE.** Since entities receiving Federal funds are required to have an active registration, there is no cost associated with this website. **Beware of third-party vendors offering to register your entity in SAM.Gov.** Registering is quick and easy.

# Full And Open Competition

Guidance on how to help make sure you are fairly, and openly competing procurements made using Federal funding, per 2 CFR 200.319 (a-c)

## What are the rules?

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- 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**.
- In order to maintain objective contractor performance and **eliminate unfair competitive advantage**, contractors 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.

## What actions are considered restrictive of competition?

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- Placing **unreasonable requirements** on firms in order for them to qualify to do business
- Requiring **unnecessary experience** and **excessive bonding**
- Noncompetitive pricing practices** between firms or between affiliated companies
- Noncompetitive contracts** to consultants that are on retainer contracts
- Organizational **conflicts of interest**
- Specifying **only a “brand name”** product instead of allowing “an equal” product to be offered
- Any **arbitrary action** in the procurement process
- Use of **geographic preferences** in evaluation of bids

# Soliciting MWBEs

What must we do to comply with requirements?

Per 2 CFR 200.321(b), you must follow these 6 affirmative steps:

**Include them on solicitation lists**

**1**

Placing qualified small and minority businesses and women's business enterprises **on solicitation lists**; You can find qualifying business [here](#)

**Reach out to them when they are potential sources**

**2**

Assuring that small and minority businesses, and women's business enterprises **are solicited** whenever they are potential sources

**Divide requirements when possible**

**3**

**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

**Create schedules to encourage participation**

**4**

**Establishing delivery schedules**, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises

**Reach out to organizations that can help**

**5**

**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

**Make sure your contractors are taking the same steps**

**6**

**Requiring** the prime **contractor**, if subcontracts are to be let, **to take the affirmative steps** listed in paragraphs (b)(1) through (5) of this section

## **Suggested resources for locating MWBE firms:**

- ✓ Access the [PA Dept. of General Services Supplier Search Database](#) which contains a list of Small Businesses, Small Diverse Businesses, and Veteran Business Enterprises
- ✓ Reach out to your local Intermediate Unit (IU) to see if they maintain a list

# Contract Cost and Price

Additional requirements that apply to procurements exceeding the SAT (\$250,000),  
per 2 CFR 200.324

## Cost or price analysis

Perform a cost or price analysis in connection with **every procurement action in excess of the SAT** including contract modifications. **Must be performed before receiving bids or proposals.**

## Negotiate profit as a separate element of price

Negotiate **profit as a separate element of the price** for each contract in which there is no price competition and, in cases, where cost analysis is performed

## Cost plus percentage of cost contracts prohibited

The cost plus a percentage of cost and percentage of construction cost methods of contracting **must not be used**

### COST VS. PRICE

- **Cost** is the expense incurred for making a product or service that is sold by a company.
- **Price** is the amount a customer is willing to pay for a product or service.

# Contract Provisions

There's a lot of them, as outlined in 2 CFR 200.327 & Appendix II. What are they and when are they needed?

## Remedies for Contract Breach

Contracts greater than SAT

## Termination for Cause & Convenience

Contracts greater than \$10K

## Equal Employment Opportunity

Construction contracts

## Davis-Bacon Act

Prime construction contracts greater than \$2K (more to come on the next slide)

## Contract Work Hours & Safety Standards Act

Contracts greater than \$10K that involve employment of mechanics or laborers

## Telecommunications & Video Surveillance

Contracts and subawards

## Rights to Inventions

Contracts with small businesses or nonprofits regarding experimental or research work

## Clean Air Act & Federal Water Pollution Control Act

Contracts & subgrants greater than \$150K

## Debarment & Suspension

Contracts and subawards

## Byrd Anti-Lobbying

Contracts exceeding \$100K

## Recovered Materials

Contracts and subawards

## Domestic Preferences

Contracts and subawards

**Note:** The LEA should perform debarment & suspension checks in sam.gov **prior to contract award!** Failure to do so could result in loss of funding if the vendor is debarred or suspended.

# Davis-Bacon Act

Per 40 U.S.C. 3141, the Davis-Bacon Act (DBA) is a federal law that established the requirement for paying the local prevailing wages on **federally funded contracts in excess of \$2,000 for the construction, alteration, and/or repair**, including painting and decorating, of public buildings or public works

## What steps must LEAs follow to comply with the DBA?

- ✓ Determine prevailing wage and incorporate into solicitation (can be found on [SAM.gov](http://SAM.gov))
- ✓ Include provisions for compliance with the Davis-Bacon Act in the solicitation and contract
- ✓ Include a provision for compliance with Anti-Copeland Kickback Act in the solicitation and contract
- ✓ Monitor contractor's weekly payrolls and compare against wage determinations to confirm that wages and fringes are being paid in accordance with prevailing wages
- ✓ Conduct and document on-site wage verification interviews
- ✓ Report suspected or reported violations to the Federal awarding agency

## ...what about contractors?

- ✓ Display Davis-Bacon poster and wage determination in a conspicuous place at the construction site
- ✓ Pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination
- ✓ Pay wages not less than once a week
- ✓ Submit weekly certified payrolls to LEA within 7 days after the regular payment date of the payroll period

**Contractor not complying?** Consider withholding payment to the contractor until invoice is amended to align with prevailing wages.

# Common Observations and How to Address Them

<b>OBSERVATION</b>	<b>No Quotes</b>
<b>REGULATORY GUIDANCE</b>	<b>2 CFR 200.320(a)(2)(i)</b>
<b>RISK</b>	Failure to follow required procurement procedures could result in claw-backs or loss of Subrecipient funding.
<b>RECOMMENDED ACTION</b>	<p>Consider removing costs that were improperly procured from grant expenditures. OR Determine if the situation met any of the allowable noncompetitive reasons per 2 CFR 200.320(c). If so, document that in a sole source justification memo and archive in files. OR Locate publicly available cost data of similar goods/services and archive in files to establish cost reasonableness retroactively. Develop a memo comparing market cost against price paid to determine if price was reasonable.</p>
<b>NEXT STEP</b>	Train staff on the importance of obtaining three price or rate quotations for supplies and service procurements exceeding State and Federal procurement thresholds. Implement controls to confirm that an effective procurement method is used based on expected cost. Confirm quotes are written and retained in files.

# Common Observations and How to Address Them 2

OBSERVATION	No Competitive Procurement
REGULATORY GUIDANCE	2 CFR 200.318(i)
RISK	Procurement of contracts that don't have required 2 CFR terms and conditions procured using Federal funds could result in claw-backs or loss of Subrecipient funding.
RECOMMENDED ACTION	Consider removing costs that were improperly procured from grant expenditures. OR Determine if the situation met any of the allowable noncompetitive reasons per 2 CFR 200.320(c). If so, document that in a sole source justification memo and archive in files. OR Locate publicly available cost data of similar goods/services and archive in files to establish cost reasonableness retroactively. Develop a memo comparing market cost against price paid to determine if price was reasonable.
NEXT STEP	Train staff on the importance of following competitive procurement requirements for procurements exceeding State/Federal procurement thresholds. Implement controls to confirm that an effective procurement method is used based on expected cost. Confirm full history of procurement is retained in files, including bid tabulation, public advertisement, RFP, etc.

# Common Observations and How to Address Them 3

<b>OBSERVATION</b>	<b>No Contract Terms and Conditions</b>
<b>REGULATORY GUIDANCE</b>	<b>2 CFR 200.327</b>
<b>RISK</b>	Failure to follow required procurement procedures could result in claw-backs or loss of Subrecipient funding.
<b>RECOMMENDED ACTION</b>	Work with vendors to create a contract amendment to include required Federal terms and conditions and archive amendment in files.
<b>NEXT STEP</b>	<p>Train staff on required provisions. Request in the initial RFP and public advertisement that contracts are to require the terms and conditions set forth in 2 CFR 200.327 where applicable.</p> <p>Implement steps to check contracts to confirm that these terms and conditions are being mentioned.</p>

# Common Observations and How to Address Them 4

OBSERVATION	No UEI Registration in SAM.gov
REGULATORY GUIDANCE	2 CFR Part 25
RISK	Failure to register the organization with SAM.gov and obtain a UEI could result in claw-backs or loss of funding.
RECOMMENDED ACTION	Take immediate action to register your district in SAM.gov and archive evidence of that in files.  OR  If you have reason to believe you are registered, but monitors were unable to find your registration publicly, it could be because your settings are set to “private”. Call the SAM.gov helpdesk for guidance on how to set setting to “public”.
NEXT STEP	Determine responsible party for registering your district in SAM.gov and renew annually.  Create an annual reminder to be sure your registration is renewed on time each year.

# Common Observations and How to Address Them 5

<b>OBSERVATION</b>	<b>No Cost Price Analysis</b>
<b>REGULATORY GUIDANCE</b>	<b>2 CFR 200.324(a)</b>
<b>RISK</b>	Failure to perform a cost or price analysis could result in claw-backs or loss of the Subrecipient funding.
<b>RECOMMENDED ACTION</b>	Locate publicly available cost data of similar goods/services and archive in files to establish an independent cost analysis retroactively. Develop a memo comparing market cost against price paid to determine if price was reasonable and retain in files.
<b>NEXT STEP</b>	Implement procedures to conduct and document a cost price analysis for any procurements over the simplified acquisition threshold (SAT), which is currently \$250,000, prior to bidding.

# Common Observations and How to Address Them 6

<b>OBSERVATION</b>	<b>No MWBE Solicitation</b>
<b>REGULATORY GUIDANCE</b>	<b>2 CFR 200.321(a)</b>
<b>RISK</b>	Failure to take affirmative steps to solicit and use MWE businesses when possible could result in claw-backs or loss of the Subrecipient's funding.
<b>RECOMMENDED ACTION</b>	Work with your procurement team to determine if any vendors you've requested bids or quotes from in the past qualify as MWBEs. If they do, save the outreach attempts in procurement files.
<b>NEXT STEP</b>	Train staff on affirmative steps and develop a MWBE checklist that is built into procurement processes to make sure those steps are followed with future competitive procurements. Reach out to your IU and/or look online for a complete list of MWBE in your area.

# Common Observations and How to Address Them 7

<b>OBSERVATION</b>	<b>No Formal Written Agreement</b>
<b>REGULATORY GUIDANCE</b>	<b>2 CFR 200.403(g)</b>
<b>RISK</b>	Failure to follow adequately document cost could result in deobligation or loss of The Subrecipient funding.
<b>RECOMMENDED ACTION</b>	<p>Work with existing vendors to develop formal written contracts and/or purchase orders in lieu of a formal written contract for existing verbal arrangements.</p> <p>Consider removing costs that were improperly procured from grant expenditures.</p>
<b>NEXT STEP</b>	Obtain formal written agreements for procurements that are competitively bid and archive in files.

# Common Observations and How to Address Them 8

<b>OBSERVATION</b>	<b>No Non-Competitive Procurement Justifications</b>
<b>REGULATORY GUIDANCE</b>	<b>2 CFR 200.318(i)</b>
<b>RISK</b>	Failure to follow required procurement procedures could result in claw-backs or loss of Subrecipient funding.
<b>RECOMMENDED ACTION</b>	Determine if the situation met any of the allowable noncompetitive reasons per 2 CFR 200.320(c). If so, document that in a sole source justification memo and archive in files. If not, consider removing costs that were improperly procured from grant expenditures.
<b>NEXT STEP</b>	Create your own justification letter for procurement's where one or more conditions set forth in 2 CFR 200.320(c) are met. Implement procedures to create justification for the need of noncompetitive procurement procedures at the time of procurement.

# Common Observations and How to Address Them 9

OBSERVATION	No Debarment Check
<b>REGULATORY GUIDANCE</b>	<b>2 CFR 200.214</b>
<b>RISK</b>	Failure to perform checks before awarding contracts could result in claw-backs or loss of funding should the contractor(s) be barred or suspended.
<b>RECOMMENDED ACTION</b>	Perform debarment and suspension checks for vendors to make sure they are not actively excluded from doing business with the Federal government. Maintain proof of debarment checks in your procurement files.  If any vendors are debarred or suspended, consider removing the costs paid to those vendors from grant expenditures.
<b>NEXT STEP</b>	Implement a procurement control to perform debarment and suspension checks for vendors and contractors on SAM.gov prior to contract award to confirm they are not excluded from doing business with the Federal government. Maintain proof of debarment checks in your procurement files.

# Question 1

What is the PA competitive procurement threshold for goods/supplies for 2023?

- a) \$22,500 \*
- b) \$10,000
- c) \$21,900
- d) \$52,000

# Question 2

What is **not** one of the reasons for bypassing competitive procurement?

- a) Only available from a single source
- b) Providing services rather than goods/supplies \*
- c) Inadequate competition
- d) Public exigency or emergency situation
- e) Does not exceed micro-purchase threshold

# Question 3

What documentation is needed for a service procurement totaling over \$10,000 but under \$250,000?

- a) Cost Price Analysis
- b) Bid Tabulation
- c) Contracts
- d) Three Documented Price/Rate Quotations \*

# Question 4

Which of the following is **not** one of the affirmative steps to solicit MWBEs?

- a) Placing MWBEs on solicitation lists
- b) Dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
- c) Publicly advertise the solicitation so there is fair and open competition for MWBEs
- d) Design the purchase to be over the Micro Purchase Threshold \*

# Question 5

Where do I check to see if my contractor is suspended or debarred?

- a) <http://www.education.pa.gov>
- b) <https://oese.ed.gov>
- c) <https://sam.gov> \*
- d) [www.crookedcontractor.com](http://www.crookedcontractor.com)

# Contact/Mission

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