

Competition

✓ **Provide full and open competition in all purchasing decisions**

All procurements (contracts, purchase orders) must be managed in a way that provides full and open competition consistent with the federal procurement standards in 34 CFR 80.36.

The following are examples of situations that restrict competition and should be avoided:

- Placing unreasonable requirements on firms to qualify them to do business; and
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies (e.g. price fixing);
- Noncompetitive awards 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 and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process. All steps in the process need to be reasonable and justifiable.

[\[34 CFR § 80.36\(c\)\(1\)\]](#)

✓ **Do not make procurement decisions based on geographical preference unless federal law explicitly requires or encourages it:** In evaluating bids or proposals, do not give preference to in-state or local potential contractors, unless federal law explicitly requires or encourages a geographic preference. In addition, grantees must require potential contractors to hold appropriate state licenses. When contracting architectural and engineering services geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms to compete for the project, given the project’s nature and size.

[\[34 CFR § 80.36\(c\)\(2\)\]](#)

✓ **Develop and follow written selection procedures for procurement transactions:** These procedures will ensure all solicitations (e.g. requests for proposals, invitations to bid) follow the requirements below:

- The request must include a clear and accurate description of the technical requirements for the material, product, or service being procured.
 - The description shall not contain features which unduly restrict competition in competitive procurements.
 - The description may include a qualitative statement about the material, product, or service.
 - When necessary, the description must include the minimum essential characteristics and standards required for the product or service to satisfy its intended use.

- If possible, too much detail about the product specifications should be avoided.
- When it's impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other important requirements of the procurement. The specific features of the named brand that must be met should be clearly stated.
- The grantee must ensure that all solicitations identify all requirements the potential contractor must meet and all factors used to evaluate the bid or proposal. For example, the grantee's request for proposals should inform the vendor of any license requirements necessary to perform the service or provide a product as part of the contract.

[\[34 CFR § 80.36\(c\)\(3\)\]](#)

- ✓ **Ensure all vendor lists are current and inclusive:** If a list of pre-qualified vendors is maintained, this list must be kept current and include enough qualified sources to ensure maximum open and free competition. Grantees cannot prevent potential bidders or proposers from qualifying during the solicitation period.

[\[34 CFR § 80.36\(c\)\(4\)\]](#)