

Procurement Standards

- ✓ **Follow procurement procedures that reflect state and local laws and regulations and conform to federal law and the standards in 34 CFR § 80.36:**

Grantees must follow their own procurement procedures that reflect applicable State and local laws and regulations, provided the procurements conform to applicable federal law and the standards in 34 CFR § 80.36. The requirements in section 80.36 establish minimum procurement standards for grantees. Grantee procurement procedures may be more rigorous than these standards, but not less rigorous. [\[34 CFR § 80.36\(b\)\(1\)\]](#)

- ✓ **Develop and implement a [Contract Administration System](#) for contracts and purchase orders:** Before contracts are made, a grantee must have a structure in place to ensure [contractors](#)² perform in accordance with the terms, conditions, and specifications of each contract or purchase order. [\[34 CFR § 80.36\(b\)\(2\)\]](#)

- ✓ **Develop and follow a Conflict of Interest Policy:** Grantees must develop and maintain a written code of standards of conduct governing employees involved in awarding and administering contracts. It should ensure no employee, officer, or agent of the grantee participates in selecting, awarding, or administering a contract if a conflict of interest, real or apparent, is involved. To the extent permitted by State and local law or regulations, the standards of conduct must include penalties, sanctions, or other disciplinary actions for violations.

The policy must ensure no employee, officer or agent, nor any immediate family member, partner, or an organization that employs or is about to employ any of these individuals has a financial or other interest in the firm or individual awarded the contract. Additionally, none of these individuals can personally benefit from the contract or even appear to benefit.

The grantee's officers, employees, and agents cannot request or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or individuals involved in sub-agreements. Grantees may set a minimum amount where the financial interest is not considered substantial or the gift is an unsolicited item of nominal intrinsic value.

[\[34 CFR § 80.36\(b\)\(3\)\]](#)

Contract administration also includes monitoring the contractual relationship, addressing related problems, incorporating necessary changes or modifications in the contract, ensuring both parties meet or exceed each other's expectations, and interacting with the contractor to achieve the contract's objective(s).

² In this document, "contractor" or "vendor" may mean either a firm or an individual. All requirements that refer to contractors also apply to subcontractors.

- ✓ **Make awards only to responsible contractors:** The individual or firm awarded the contract must be able to perform successfully under the terms and conditions of the contract or purchases.

Consideration will be given to:

- Contractor's integrity; and
- Contractor's compliance with public policy; and
- Contractor's record of past performance; and
- Contractor's financial resources and technical capabilities.

[\[34 CFR § 80.36\(b\)\(8\)\]](#)

- ✓ **Before entering into a covered transaction, verify neither the contractor nor its principals are excluded or disqualified from transactions by a Federal department or agency under [Executive Order 12549, "Debarment and Suspension."](#)**

Do this by:

- Checking the Excluded Parties List (EPLS) at www.epls.gov; or
- [Collecting a certification](#) from the party; or
- Adding a clause or condition to the transaction with the party.

[\[34 CFR 85.300\]](#)

Only certain transactions are covered. Threshold and tier requirements for covered transactions are found in the Appendix to 34 CFR Part 85. Knowingly contracting with an excluded party may lead to disallowing the costs, termination of the transaction, issuing a stop work order, suspension, or debarment. [\[34 CFR 85.325\]](#)

- ✓ **Maintain records of the history of a procurement:** The grantee must maintain records sufficient to detail the significant history of a procurement, including purchases and contracts of all types and in all price ranges. The significant history will vary depending on the method of procurement. These records will include, but are not necessarily limited to the following:

- The rationale for the procurement method (e.g., sealed bids or competitive proposals)
- Selection of contract type (e.g., fixed contracts, time and material contracts)
- Contractor selection or rejection
- The basis for the contract price

[\[34 CFR § 80.36\(b\)\(9\)\]](#)

Review the [Procurement Records Checklist](#) for a full list of recommended procurement documentation.

- ✓ **Develop and follow cost-efficient procurement procedures:** Purchasing decisions should be based on the most economical approach. Grantees must have procedures in place to review proposed procurements to avoid unnecessary or duplicative purchases. [\[34 CFR § 80.36\(b\)\(4\)\]](#)
- ✓ **Avoid time and material type contracts:** Use [time and material type contracts](#) only after determining no other type of contract is suitable. The determination should be documented in the procurement history. Grantees will use time and material type contracts only if the contract includes a ceiling price that the contractor exceeds at its own risk. [\[34 CFR § 80.36\(b\)\(10\)\]](#)
- ✓ **Develop and follow protest procedures to resolve disputes:** Grantees must have protest procedures to handle and resolve procurement disputes. The grantee alone is responsible, in accordance with good administrative practice and sound business judgment, for settling all contractual and administrative issues arising out of procurements. The issues include but are not limited to [source evaluations](#), evaluating potential vendors, protests, disputes, and claims.

The responsibility to resolve procurement disputes cannot be passed on to WDPI or federal agencies. However, grantees must disclose information about any procurement protests or disputes to the WDPI. Before pursuing a protest with the U.S. Department of Education, a protestor has to use all the procedures of the grantee and the WDPI to resolve the dispute(s).

In order to be more cost efficient, grantees are encouraged to consider –

- Entering into intergovernmental agreements for purchasing common goods and services. [\[34 CFR § 80.36\(b\)\(5\)\]](#)
- Consolidating or breaking out procurements to get a more economical purchase. [\[34 CFR § 80.36\(b\)\(4\)\]](#)
- Analyzing lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. [\[34 CFR § 80.36\(b\)\(4\)\]](#)
- Using **[federal excess and surplus property](#)** instead of purchasing new equipment and property whenever it is feasible and it reduces costs. [\[34 CFR § 80.36\(b\)\(6\)\]](#)
- Using **[value engineering clauses](#)** in contracts for construction projects of sufficient size to offer reasonable opportunities to reduce costs. Value engineering is a systemic and creative analysis of each contract item or task to ensure its essential function is provided at the overall lower cost. [\[34 CFR § 80.36\(b\)\(7\)\]](#)

Reviews of protest by the U.S. Department of Education are limited to:

- Violations of federal laws or regulations and the procurement standards in 34 CFR § 80.36; and
- Violation of the grantee's protest procedures for failing to review the protest.

The procurement standards do not relieve the grantee of any contractual responsibilities under its contracts. Violations of law must be reported to the local, state, or federal authorities.

[\[34 CFR § 80.36\(b\)\(11\); 34 CFR § 80.36\(b\)\(12\)\]](#)