



**pennsylvania**  
DEPARTMENT OF EDUCATION

# The (Pro) Cure to Federal Procurement Compliance

PAFPC Conference – April 15, 2024

# Agenda

1. Planning Phase
2. Procurement Execution Phase
3. Contract Oversight and Record Management Phase
4. Questions?

# Topic of Review: Planning

- 1. Planning**
2. Procurement Execution
3. Contract Oversight and Record Management

# Educating Stakeholders: What Are the Rules?

When it comes to procurement, LEAs should consider the federal, state, and local requirements:

- **USDE**

- 2 CFR 200 – Code of Federal Regulations
- Procurement Standards outlined in § 200.317 - § 200.327
- Grant-specific guidance (CARES Act, CRRSAA, ARP Act)

- **PDE**

- PA Bulletin
- PDE website provides more specific guidance
- Introduces threshold differences for goods vs services

- **LEAs**

- Adopted policies

# Federal Requirements At A Glance

	Requirement Category	Summary of Requirements
§ 200.317	Procurement by States	State purchases made with Federal funds <b>should follow same policies &amp; procedures as non-federally funded</b> purchases
§ 200.318	General procurement standards	<b>Documented</b> procurement <b>procedures</b> , written <b>standards of conducts</b> for <b>conflict of interest</b> , and <b>avoid duplicative &amp; unnecessary</b> purchases
§ 200.319	Competition	<b>Open</b> and <b>free</b> competition, <b>exclusion</b> of involved contractors, <b>clear</b> description of requirements
§ 200.320	Methods of procurement to be followed	<b>Review</b> procurement <b>thresholds</b> and establish micro-purchase threshold
§ 200.321	Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (MWBE)	Taking affirmative steps to <b>have MWBE used when possible</b>
§ 200.322	Domestic preferences for procurements	As applicable by law, provide <b>preference</b> for <b>US made</b> goods, products or materials
§ 200.323	Procurement of recovered materials	Procuring only items that contain <b>high percentage</b> of <b>recovery materials</b> practicable
§ 200.324	Contract cost and price	<b>Perform cost/price</b> analysis in connection with procurement actions <b>over the Simplified Acquisition Threshold (SAT)</b> . Method and degree of analysis depends on facts surrounding the purchase.
§ 200.325	Federal awarding agency or pass through entity review	<b>Preparing</b> documents for <b>review by pass-through</b> entity or Federal awarding agency
§ 200.326	Bonding requirements	In <b>construction</b> or facility improvement contracts over <b>Simplified Acquisition Threshold (SAT)</b> , provide bonding policy.
§ 200.327	Contract provisions	The entity's <b>contracts</b> should <b>contain</b> the <b>applicable provisions</b> described in appendix II of 2 CFR 200

# State Thresholds At A Glance

Method	Goods/Supplies	Services	Requirements
<b>Micro-Purchase</b> (No quotes required)	Note: Use more restrictive \$0 Federal threshold instead of no state requirements under \$11,800	<b>Less than \$10,000</b> Note: Use more restrictive \$10,000 Federal threshold instead of state exemption for services	<ul style="list-style-type: none"> <li>consider price to be fair</li> <li>distribute equitably among suppliers to the extent practical</li> </ul>
<b>Small Purchase Procedures</b> (Relatively simple and informal)	<b>\$10,000 - \$23,200</b> Note: Use more restrictive \$10,000 Federal threshold instead of \$23,200 state threshold	<b>\$10,000 - \$249,999</b> Note: 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>\$23,200 or more</b> Note: Use more restrictive \$23,200 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: 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)	Applicable <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 unfit</li> </ul>	Applicable <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 unfit</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>

# Procurement Requirements

Steps you should take before executing the procurement

- **Procurement Policies and Procurement**
  - Procurement policies and procedures should be well-documented and followed. These procedures should be consistent with State, local and tribal laws and regulations.
- **Preventing Conflict of Interest**
  - There should be written standards covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. The standards of conduct should provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.
- **Avoiding Unnecessary Purchases**
  - Procedures should avoid the purchase/lease of unnecessary or duplicative items. Consider breaking up or consolidating purchases for better pricing and where applicable, compare leasing vs purchasing for a more economical purchase.

# Topic of Review: Procurement Execution

1. Planning

**2. Procurement Execution**

3. Contract Oversight and Record Management



# Operating Within Your Threshold

The first step to procurement execution is understanding which procurement method aligns with your purchase.

- **Micro-Purchase**
  - When the purchase is for goods or services and is under \$10,000
- **Small Purchase**
  - When the purchase is greater than \$10,000 and less than:
    - \$23,200 for goods
    - \$250,000 for services
- **Sealed Bids**
  - When the purchase is for goods and \$23,200 or more.
- **Competitive Proposal**
  - When the purchase is for services and is greater than \$250,000
- **Noncompetitive Procurement**
  - This method should be used only as a last resort and is only applicable in certain circumstances (to be discussed in an upcoming slide)

# Micro-Purchases and Small Procedures

Here's what you need to know when using informal procurement methods

- **Micro-Purchase – Goods and services below \$10,000**
  - May be awarded without soliciting competitive price or rate quotations if LEA considers the price to be fair based on research, experience, purchase history or other information and documents it files accordingly.
- **Small Purchase – Goods between \$10,000 and \$23,200 and Services between \$10,000 and \$249,999.**
  - Price or rate quotations should be obtained from an acceptable number of qualified sources.
  - Acceptable number = 3 quotes (per state requirements)

<b>What Documentation is Needed?</b>	<b>Micro-Purchase</b>	<b>Small-Purchase</b>
Purchase Order	Yes	Yes
Invoice	Yes	Yes
Proof of Payment (Bank Statement or Cancelled Check)	Yes	Yes
At least 3 Price or Rate Quotations	No	Yes


# Sealed Bids and Competitive Proposals

Here's what you need to know when using formal procurement methods

- **Sealed Bids – Required for purchases of goods \$23,200 or more**
  - Two or more bids are publicly solicited, and a firm fixed-price contract is awarded to the responsible bidder whose bid, conforming with the terms and conditions of the invitation for bids, is the lowest in price.
- **Competitive Proposals – Required for purchases of services greater than \$250,000**
  - Proposals should be solicited from an acceptable number of qualified offerors and either a fixed price or cost-reimbursement type contract is awarded to the most responsible offeror with the most advantageous proposal. Price is a factor, but not the *sole factor* considered.

What Documentation is Needed?	Sealed Bid	Competitive Proposals
Purchase Order, Invoice, and Proof of Payment	Yes	Yes
Bid Advertisement	Yes	Yes
Publicly Solicited Bids	Yes	Yes
Solicitation	Yes	Yes
Bid Tabulation	Yes	Yes
Firm Fixed Price Contract	Yes	Yes
Cost Reimbursement Contract	No	Yes
Cost Price Analysis (if > SAT → \$250K)	Yes	Yes

# Noncompetitive Proposals

The noncompetitive procurement method is a **LAST** resort and should **ONLY** be used if one or more of these five (5) circumstances apply: 

*(c) Noncompetitive procurement.* There are specific circumstances in when noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
2. The item is available only from a single source;
3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
4. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
5. After solicitation of a number of sources, competition is determined inadequate.

If this method is the LAST option, here's some leading practices to guide you to do it right:

- Include a direct reference to 2 CFR 200.320 (c)
- Applicable use of the selected noncompetitive procurement situation
- Vendor and type of service/good are described
- Written justification that supports the appropriate use selected
- Signature and date indicating drafting at time of procurement

# Documentation Requirements Summary

What Documentation is Needed?	Micro-Purchase	Small Purchase	Sealed Bids	Competitive Proposals
Purchase Order, Invoice, and Proof of Payment ( <i>Bank Statement or Cancelled Check</i> )	Yes	Yes	Yes	Yes
At least 3 Price or Rate Quotations	No	Yes	No	No
Bid Advertisement	No	No	Yes	Yes
Publicly Solicited Bids	No	No	Yes	Yes
Solicitation	No	No	Yes	Yes
Bid Tabulation	No	No	Yes	Yes
Firm Fixed Price Contract	No	No	Yes	Yes
Cost Reimbursement Contract	No	No	No	Yes
Cost Price Analysis ( <i>if &gt; SAT → \$250K</i> )	No	No	Yes	Yes
Noncompetitive Procurement Justification	Allowable	⚠	⚠	⚠

# Case Study

Situation: The Pennsylvania Local Education Agency is in search of 1,000 laptops.

- Quantity Needed: 1,000
- Per Unit Cost: \$300.00
- Total Expected Cost: \$300,000.00

## Case Facts:

- S.A.T. Crossed
- Per Unit Under \$10,000
- Item Is A Good

Question #1: What procurement method should we follow?

Answer: Sealed Bid Method

Question #2: What documentation is obtained and retained?

Answer:

- Firm Fixed Price Contract
- Bid Tabulation
- Bidder Responses
- Public Bid Solicitation
- Cost Price Analysis
- PO
- Invoice
- Proof of Payment

# Minority Women Business Enterprise Solicitation

- During procurement execution, you must follow these six (6) affirmative steps to solicit MWBEs:
  1. Include them on solicitation lists
  2. Reach out when they are potential sources
  3. Divide requirements when possible
  4. Create schedules to encourage participation
  5. Reach out to organizations for information
  6. Make sure your contractors are taking the same steps

# Full and Open Competition

## What to include in solicitations:

- Requesting entity name
- Clear and accurate description of technical requirements for the material, good or service
- Minimum essential characteristics and standards
- Statement of quality of material, product, or service to be procured
- All factors of bid evaluation
- Submission deadline
- Contact information

## What to avoid:

- 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
- **Arbitrary action** during procurement
- **Including geographic preferences** for bidders (except for A/E)



# Topic of Review: Contract Oversight and Record Management

1. Planning
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# Contract Provisions

- 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
- Debarment & Suspension\*
  - Contracts and subawards
- Rights to Inventions
  - Contracts with small businesses or nonprofits regarding experimental or research work
- Byrd Anti-Lobbying
  - Contracts exceeding \$100K
- Recovered Materials
  - Contracts and subawards
- Telecommunications & Video Surveillance
  - Contracts and subawards
- Clean Air Act & Federal Water Pollution Control Act
  - Contracts & subgrants greater than \$150K
- 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.

# Contract Oversight

Now that you have the right provisions in your contract, what's next?

- **Maintain Oversight**
  - LEAs must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- **More Oversight for Time & Materials Contracts**
  - A higher degree of oversight must be maintained for time and materials contracts to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

# Proper Document Storage

If you do not have the files readily available...you didn't do it!

Per P.S. 524, records must be kept for at least seven years

As specific grant guidelines may require records to be held longer, please adhere to the grant guidelines.

## Leading Practices:

- Digital records (as opposed to paper) work great as they are not easily lost or damaged
- Documentation should be organized by grant program
- Documentation should be EASILY retrievable in cases of audits and/or monitoring

## Specific supporting documentation to be retained includes, but is not limited to:

- Financial Management
  - Purchase Order
  - Invoice
  - Proof of Payment
- Procurement and Contract Documentation
  - Cost Price Analysis
  - Bid Advertisement
  - Bid Evaluation
  - Bidder Responses
  - Contract with Applicable Federal Provisions
- Contract Oversight Documentation
- Minority and Women Owned Business Solicitation
- Quotes/Cost Estimate
- Non-competitive procurement justification form

# Contact/Mission

For more information on The (Pro) Cure to Federal Procurement Compliance, please visit PDE's website at the [PA Department of Education](#).

*The mission of the Department of Education is to ensure that every learner has access to a world-class education system that academically prepares children and adults to succeed as productive citizens. Further, the Department seeks to establish a culture that is committed to improving opportunities throughout the commonwealth by ensuring that technical support, resources, and optimal learning environments are available for all students, whether children or adults.*