

Natural Gas Distribution Infrastructure Safety and Modernization Grant Program



Procurement Best Practices for Recipients



U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration

PHMSA: Your Safety is Our Mission



Procurement Topics

- 1) Your Role as a Grantee
- 2) Competition Requirements
- 3) Procurement Planning
- 4) Methods of Procurement
- 5) Contract Execution
- 6) Common Mistakes in Procurement
- 7) FAR Guidance



Your Role as a Grantee

- The 2 C.F.R. Part 200 Procurement Standards apply to all procurement transactions for the acquisition of property or services required under a federal award.
- You must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of Part 200. *See* 200.318.
- You must comply with competition requirements and accepted procurement methods. *See* 200.319 and 200.320.
- Other miscellaneous compliance requirements. *See* 200.321 through 200.327.



Preliminary Considerations

- Identify the need -- is the purchase necessary?
- Market research, write specifications, estimate cost
- Choose the procurement type
- Solicit bids or proposals (informal or formal)
- Allow sufficient time for submission
- Evaluate bids/proposals and select offeror
- Award the contract
- Manage and monitor the contract
- Document everything!



Documented Procurement Procedures

- Written standards of conduct covering individual and organizational conflicts of interest
- Avoid acquisition of unnecessary or duplicative items
- Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consider contractor integrity, compliance with public policy, record of past performance, contractor's financial and technical resources.
- Maintain records sufficient to detail the history of the procurement: rationale for method of procurement, selection of contract type, contractor selection or rejection and basis for the contract price



Competition Requirements

- The key competition requirements are found in 2 CFR 200.319 to 200.320.
- In all procurement actions, the general objectives are to:
 - Provide full and open competition for government-funded work
 - To guard against real and perceived favoritism and profiteering at taxpayer's expense by using an open and fair competitive bid process (when required)
 - To provide equal opportunities to participate in taxpayer-funded business



Procurement Planning

- Develop, document, and train staff on your own procurement policies and procedures conforming to 2 CFR 200.318.
- Figure Out Your Project Needs
 - Conduct Market Research – define the specific need
- Begin Your Project Solicitation
 - Select your procurement method
 - Select your contract type
 - Include the required contract provisions
 - Determine if bonding is required



Market Research

Techniques for conducting market research may include any or all the following:

- Contact individuals in the industry regarding market capabilities to meet requirements.
- Review the results of any recent market research done to meet similar or identical requirements.
- Publish formal requests for information on-line and in print, in appropriate technical or scientific journals or business publications.
- Participate in interactive, on-line communication among industry, acquisition personnel, and customers.
- Obtain source lists of similar items from other contracting activities or agencies, trade associations or other sources.



Market Research (Continued)

- Review electronic catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.
- Conduct interchange meetings pre-solicitation conferences to involve potential offerors early in the acquisition process.
- Review systems such as the System for Award Management, the Federal Procurement Data System, and the Small Business Administration's Dynamic Small Business Search.



Select Your Procurement Method

(2 CFR § 200.320)

Method	Aggregate Dollar Amount	Notes	Documentation Best Practices
Micro-Purchase	\$10,000	May be awarded without soliciting competitive quotations if price is reasonable.	Minimal documentation
Small Purchase	Up to \$250,000	Rate quotations from an adequate number of qualified sources.	No cost or price analysis required; document award decision.
Sealed Bids	>\$250,000	Appropriate where award will be made to the lowest bidder. Price is the only decision factor.	Public solicitation is required; document reasons for rejecting bids, if applicable.
Competitive Proposals	>\$250,000	Generally used when conditions are not appropriate for the use of sealed bids, or where award is made on the basis of factors other than price. Award made to offer that represents the “best value” to the Grantee.	Public solicitation is required; document evaluation process, scores, and “best value” decision.
Non-Competitive (Sole Source)	Available for procurements of any dollar amount	No competition in specific, limited circumstances	Documentation sufficient to show that circumstances are appropriate for non-competitive procurement.



Five Methods of Procurement (2 CFR § 200.320)

Non-Competitive Proposals

Micro-Purchase

Small Purchase

Competitive Sealed Bids

Competitive Proposals



Five Methods of Procurement (2 CFR § 200.320)

(Continued)

- **Informal procurement methods** – used for micro-purchases or small purchases when the annual value of the procurement for property or services does not exceed the applicable dollar thresholds. These are used to expedite the completion of transactions and minimize the associated administrative burden and cost for smaller purchases.
- **Formal procurement methods** - when the value of the procurement for property or services under an award exceeds the SAT (currently \$250,000), formal procurement methods are required. Formal procurement methods require documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with 2 CFR 200.320(c).



Simplified Acquisition Thresholds (SAT)

Simplified Acquisition Thresholds (SAT) - The Grantee is responsible for determining an appropriate simplified acquisition threshold based on internal policies and procedures, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the Federal Acquisition Regulation (FAR).



Micro-Purchase (2 CFR §200.320(a)(1))

- Default threshold is currently set by law at \$10,000.
- Can Be Less than \$10,000 if Grantee Prefers (More Stringent)
- Cannot Exceed \$10,000 except as described in 200.320(a)(1)(iv).
- Determine approximate cost in advance through informal market research:
 - Look at advertisements
 - Research on the internet
 - Your organization's previous purchases
 - Ask for non-binding estimates



Small Purchase (2 CFR §200.320(a)(2))

- For procurements higher than micro-purchase threshold up to \$250,000, currently the simplified acquisition threshold
- No public solicitation process is required
- Obtain price or rate quotes from an adequate number of qualified sources
- Document source selection/award decision



Sealed Bids (2 CFR § 200.320 (b)(1))

- **Procurement by Sealed Bids:**
 - Bids must be publicly solicited for a firm fixed-price contract (lump sum or unit price)
 - Awarded to the **responsive, responsible** bidder whose bid is the **lowest in price**.
 - Specifications must be defined in advance
 - Must advertise publicly
 - Allow adequate time for bidder response
 - Must publicly open bids



The Sealed Bid Process

Advertise Invitation for BID

Open Bids Publicly

Determine responsive and responsible bidder with the lowest bid

Execute Contract

Manage Contract



Competitive Proposals (2 CFR § 200.320 (b)(2))

- Competitive proposals are normally used when conditions are not suitable for sealed bidding (*e.g.*, specifications cannot be determined in advance or contractors will be evaluated on factors other than price)
- Must publicly advertise a Request for Proposals (RFP) or Request for Quotes (RFQ).
- There must be a written method for evaluation and selection of proposals included in the RFP. List all evaluation factors and their relative importance
- Selection is based on most advantageous offer, with price and other factors considered (best value tradeoff).
- The rationale for your award decision must be documented in writing.



The Competitive Proposal Process

Develop a Statement of Work (SOW)

Develop the Request for Proposals (RFP)

Solicit the RFP to an Adequate Number of Qualified Sources

Evaluate the Proposals

Award the Contract



Non-Competitive Procurement (Sole Source) (2 CFR § 200.320(b))

- **Noncompetitive procurement:** also known as Single-Source/Sole Source can only be awarded if one or more of the following circumstances apply:
 - 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;
 - PHMSA authorizes a noncompetitive procurement in response to a written request; or
 - After solicitation of a number of sources, competition is determined inadequate.



Justification for Non-Competitive Procurement

1. A brief description of the project and the product or service being procured, to include the expected procurement amount.
2. Explanation of why it is necessary to contract non-competitively
3. A description of and the results of any market survey or research conducted to help determine whether a full and open competition consistent with applicable law could be conducted (or, if no market survey or research was conducted, explain why not).
4. Non-Competitive procurement is prohibited unless authorized by DOT in writing.



Conflicts of Interest

Financial Conflicts of Interest: 2 CFR § 200.318(c)(1)

- No employee, officer, or agent [of a Grantee] may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.
- Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.



Conflicts of Interest (Continued)

Organizational Conflicts of Interest: 2 CFR § 200.318(c)(2)

- Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- 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.



Conflicts of Interest (Continued)

- The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
- You may set reasonable standards for situations in which the financial interest is not substantial, or when an unsolicited gift is of nominal value.
- Your conflicts-of-interest policy must provide for disciplinary actions for violations.



Select Your Contract Type

Fixed-price contracts

- Fixed-price contracts are contracts for a set product or service at a set price. The contractor gets the benefits of cost underruns, but also carries the risk for cost overruns. As provided at 2 CFR 200.320(b)(1), recipients must use fixed price contracts in sealed bid situations. Recipients may use fixed priced contracts in other situations as well.
- Example: You contract for the purchase of 100 reams of printer paper for a fixed price of \$1,000. If the contractor lucks out and is able to find printer paper at a cost of \$8 per ream, the contractor keeps the profit. If the contractor can only find printer paper at a cost of \$12 per ream, the contractor eats the loss. Either way, you pay \$1,000.



Select Your Contract Type

Cost-reimbursable contracts

- Buyer reimburses the seller for the seller's actual costs plus a fixed profit (fee). Grantees should only use a cost-reimbursement contract when the nature of the work makes it impractical to award a fixed price contract. Cost reimbursement contracts require both the contractor and the Grantee to have advanced accounting systems to accurately track costs. These contracts typically include a cap which the contractor exceeds at its own risk.
- Example: You contract for the construction of a building on a cost reimbursement basis with a fixed fee of \$5,000. You pay for the contractor's actual costs for labor hours and materials, meaning you get the benefits of cost underruns but remain responsible for cost overruns. When the job is complete, you pay the contractor the fixed fee of \$5,000 as the contractor's profit.



Select Your Contract Type (Continued)

Time and Materials Contracts

- A time-and-materials contract is one in which the contract price is the sum of the cost of materials plus fixed labor hours that are “loaded” with wages, overhead, and profit. Grantees may use time-and-materials contracts only in circumstances in which no other contract type is suitable. Because the contractor has no incentive to control costs, there must be a cap on the amount of the contract that the contractor exceeds at its own risk. 2 CFR 200.318(j).
- Example: You contract for the construction of a building on a time and materials basis. Because the contractor’s profit is built into its hourly rate, there is no negotiated fee, and the contractor makes more profit the longer the construction takes. You and the contractor agree to a cap of \$800,000. When the job is complete, you discover that the contractor’s total invoice for time and materials costs comes to \$900,000. Because the contractor did not receive your permission to exceed the cap, you are responsible for paying only \$800,000.



Select Your Contract Type (Continued)

“Cost Plus” Construction Contracts Prohibited

- “Cost plus” means that a percentage of construction contracts provide an incentive for the contractor to increase costs in order to increase profit.
- The Part 200 Procurement Standards prohibit this type of contract per 2 CFR 200.324(d).



Execution

- Award the Contract
 - Evaluate bids or proposals received
 - Check for conflicts of interest, contractor responsibility, and suspension/debarment (you can start at SAM.gov)
 - Conduct cost or price analysis, if applicable
- Maintain Oversight
 - Ensure contractors comply with contract terms
 - Confirm invoices are correct
 - Make sure goods and services are received



Federally Mandated Procurement Contract Provisions

- Each procurement contract must include the clauses required by Part 200.
- Required clauses are located 2 CFR 200.326 and Appendix II to 2 CFR 200 and include the following provisions related to:
 - Equal Employment Opportunity
 - Compliance with the Copeland “Anti-Kickback” Act
 - Compliance with the Contract Work Hours and Safety Standards Act
 - Clean Air Act and Federal Water Pollution Control Act
 - Debarment and Suspension
 - Byrd Anti-Lobbying Amendment
 - Procurement of Recovered Materials
 - Prohibition on Contracting for Covered Telecommunications Equipment or Services
 - Buy America



Federally Mandated Procurement Contract Provisions (Continued)

Federal Contract Clause	Citation	Applicability	Applicable to NGDISM Grant	Not Applicable
Remedies	2 C.F.R. Part 200, Appendix II(A)	All contracts in excess of \$250,000	✓	
Termination for Cause and Convenience	2 C.F.R. Part 200, Appendix II(B)	All contracts costing \$10,000	✓	
Equal Employment Opportunity	2 C.F.R. Part 200, Appendix II(C)	All contracts for construction or repair work	✓	
Davis-Bacon Act	2 C.F.R. Part 200, Appendix II(D)	All contracts for construction or repair work in excess of \$2,000		✓
Copeland Anti-Kickback Act	2 C.F.R. Part 200, Appendix II(D)	All contracts for construction or repair work in excess of \$2,000	✓	
Contract Work Hours and Safety Standards Act	2 C.F.R. Part 200, Appendix II(E)	All contracts in excess of \$100,000 for construction or repair work involving employment of mechanics or laborers (does not apply to purchase or service contracts)	✓	
Rights to inventions made under a contract or agreement	2 C.F.R. Part 200, Appendix II(F)	Award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a)		✓
Clean Air Act and Federal Water Pollution Control Act	2 C.F.R. Part 200, Appendix II(G)	All contracts in excess of \$150,000	✓	
Debarment and Suspension	2 C.F.R. Part 200, Appendix II(H)	All purchase contracts in excess of \$25,000	✓	
Byrd Anti-Lobbying Amendment	2 C.F.R. Part 200, Appendix II(I)	Contract provision required for all contracts regardless of cost; Certification Statement by contractor required for contracts \$100,000 or more	✓	



Bonding Requirements (2 CFR § 200.326)

- **Bonding Requirements:** Bonds are negotiable instruments required by federal and state law from construction contractors as a form of insurance.
 - Bonds are executed between contractors and surety companies to assure fulfillment of the contractor's obligations to a third party (*i.e.*, you).
 - Bonding is required for construction contracts exceeding small purchase limits (\$250,000)



Bonding Requirements (Continued)

- **Bid guarantee of 5% of bid price:**
 - Consists of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that, if selected for award, the bidder will enter into the contract.
 - Example: Contractor 1 bids a project for a city with a 5% bid bond. The bid is turned in at \$700,000. Contractor 2 is the second lowest bidder at \$1,000,000. After reviewing their bid, Contractor 1 realizes they made a mistake and left something out. Contractor 1 tells the city that they will not be entering into the contract. The city can then make a claim on the bid bond for \$35,000 ($\$700,000 \times 5\%$) to compensate them for having to rebid the project or go to the next bidder.



Bonding Requirements (Continued)

- **Performance bond for 100% of contract price**
 - Secures performance and fulfillment of all the contractor's obligations under the contract.
 - Example: A general contractor gets hired by a city to handle a large renovation project. The work contract stipulates the budget and timeline for the project; however, the project takes weeks longer than expected. Those delays could be costly to the city. The city files a claim against the bond for damages equal to the money lost due to the delay. If the investigation validates the claim, the surety compensates the city for the full amount of the claim, up to the bond limit, without delay.



Bonding Requirements (Continued)

- **Payment bond for 100% of contract price**
 - Secures payment as required by law to all persons supplying labor or material in the execution of the work provided for in the contract.
 - Example: Due to problems that arise during construction, the prime contractor does not pay the subcontractor or supplier within a reasonable timeframe. A claim can be made against the payment bond ensuring that subcontractors and suppliers are paid according to the terms laid out in their contracts.
- **Payment bonds versus performance bonds: what's the difference?**
 - A performance bond guarantees that all duties specified in the contract will be performed satisfactorily. If the work was not performed to specifications, surety will pay the claim and then recovery from the contractor. Payment bonds cover payment of workers and materials, and performance bonds ensure the work is done to specification pursuant to the contract's terms.



Small Businesses/MBE/WBE/Labor Surplus Area Firms (2 CFR § 200.321)

- Recipients should take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- Affirmative steps include:
 - Placing these types of firms on solicitation lists.
 - Assuring these types of firms are solicited, when possible.
 - Dividing larger requirements into smaller tasks to permit these types of firms to participate.
 - Establishing feasible delivery schedules to allow participation
 - Requiring prime contractors to consider these firms for subcontracts.
 - Using services and assistance of the U.S Small Business Administration (SBA) and the U.S Minority Business Development Agency (MBDA)



Contract Cost and Price (2 CFR § 200.324(a))

- For procurements over the simplified acquisition threshold (\$250,000), Grantee must perform a cost or price analysis.
- At minimum, must make independent estimates before receiving bids or proposals.
- Where there is no price competition (*e.g.*, sole source) or when awarding a cost reimbursement contract, must negotiate profit as a separate element.
- You must determine the method and depth of analysis based on the facts surrounding your situation. Factors to consider include:
 - The amount of the contract
 - The extent of competition



Contract Cost and Price (Continued)

- The types of goods or services and your experience in acquiring comparable items.
- Example: Comparison of previous purchase order and contract prices with current proposed price for the same or similar items. Both the validity of the comparison and the reasonableness of the previous price(s) have been established (include the referenced purchase orders/contracts, amounts, issuance dates, and how they are similar to the current purchase).



Debarment and Suspension

- Ensure that you do not award a contract to any organization or individual debarred or suspended from participation in Federal assistance programs.
- The names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority are on the System for Award Management. (The list was formerly known as the EPLS or Excluded Parties List System.)
- Verify that the person with whom you intend to do business is not excluded by searching their name in the [System for Award Management \(SAM\)](#) before you award a contract;
- PHMSA recommends that you search using the multiple names search function to ensure a thorough search.



Build America, Buy America (BABA) Requirements

Build America, Buy America. The Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917) apply to PHMSA funding obligated after May 14, 2022, for PHMSA funded infrastructure projects.

- [2 CFR Part 184](#): Final OMB guidance on BABA applies to Federal awards obligated on or after October 23, 2023.
- No NGDISM funding may be used for an infrastructure project unless all iron and steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to the infrastructure project are produced in the United States.
- The BABA preference requirement applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds.



Audit Requirements

Single or Program Audits:

- If you spend \$750,000 or more in a year in Federal funds, you must obtain a single or program-specific audit in accordance with the requirements of [2 CFR Part 200, Subpart F Audit Requirements](#).
- If you receive only one federal grant and elect to do a program specific audit, it is likely your auditor will review your purchasing practices under PHMSA's grant.
- If you elect to have your auditor conduct a single audit, the auditor may review your NGDISM grant purchases.

OIG Audits:

- DOT's PHMSA's Office of Inspector General may conduct an audit of your PHMSA grants. Auditors are likely to review your purchasing system as well as your purchases. These audits will be planned and performed in such a way as to build upon work performed by your entity's auditor.



Common Mistakes in Procurement

- Not making and documenting efforts to take all socioeconomic "affirmative" steps, particularly those described in 2 CFR 200.321
- Not including the required contract clauses as required by 2 CFR 200.326 and [Appendix II to 2 CFR 200](#)
- Awarding "cost-plus-percentage-of-cost" or "percentage-of-construction-cost" contracts
- Awarding a contract to contractors that have been suspended or debarred.
 - A contractor that has been suspended or disbarred by a federal agency cannot receive a federal award or contract. You can (and should) easily check to verify that a potential vendor has not been disbarred by checking the [System for Award Management](#).
- Not documenting all steps of a procurement action
 - You should be able to demonstrate, through documentation, what actions you took, why, and why a choice was reasonable.



Further Guidance in the FAR

- Although not mandatory for PHMSA Grantees, the Federal Acquisition Regulation (FAR) can be used as guidance or for more information on procurement requirements.
- FAR procedures go beyond what Part 200 requires. FAR procedures are fully compliant with Part 200 requirements (except for Buy America requirements).
- FAR text is available at [acquisition.gov](https://www.acquisition.gov).
- For more information:
 - FAR Part 3 – Improper Business Practices and Personal Conflicts of Interest
 - FAR Part 9 – Contractor Responsibility and Organizational Conflicts
 - FAR Part 10 – Market Research
 - FAR Part 14 – Sealed Bidding Procedures
 - FAR Part 15 – Competitive Proposal Procedures
 - FAR Part 16 – Contract Types
 - FAR Part 36 – Construction and A&E Contracts



Questions

For additional information or questions, contact the PHMSA BIL Grant team at:

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