

Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
Workforce Programs

Workforce Innovation and Opportunity Act (WIOA)
State Compliance Policy (SCP)

Policy Number: 3.9

Originating Office: Department of Employment, Training and Rehabilitation (DETR);
Workforce Programs

Subject: Procurement

Issued: November 2009 (WIA); Approved by GWDB Executive Committee, November 9, 2022;
Ratified by GWDB, December 7, 2022

Purpose: Provide guidance on procurement procedures to be used for Workforce Innovation and Opportunity Act (WIOA) funded activities.

State Imposed Requirements: This directive may contain some state-imposed requirements. These requirements are printed in ***bold, italicized*** type.

Authorities/References/Appendices: Workforce Innovation and Opportunity Act (P.L. 113-128), Sec. 134; WIOA Sec. 184; Nevada Revised Statute (NRS) Chapter 333; Nevada Administrative Code (NAC) Chapter 333.

APPENDIX I: 2 CFR §200.1; OMB Uniform Guidance 2 CFR Part 200; parts §200.317-§200.327

APPENDIX II: 20 CFR §683.200; 20 CFR §683.205; 20 CFR §683.210; 20 CFR §683.215; 20 CFR §683.220; 20 CFR §683.235; §683.250; 20 CFR §683.295

APPENDIX III: 29 CFR §97.36

ACTION REQUIRED: Upon issuance bring this guidance to the attention of all WIOA service providers, Local Workforce Development Board ('Local Board') members and any other concerned parties. Any Local Board policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

Background: WIOA was enacted in 2014 replacing the Workforce Investment Act (WIA). Additionally, the Office of Management and Budget (OMB) circulars regulating Federally funded activities were revised and incorporated into the Code of Federal Regulations (CFR). Because of these developments, this State Compliance Policy 3.9 (Procurement) has been revised to address

regulatory changes.

Policy and Procedure: WIOA Sec. 184(a)(3)(A) requires each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this title, to comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget (OMB). OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations.

I. Requirements:

The provisions of this policy apply to all administrative entities in their role as pass-through entities that award:

- Subawards to subrecipients to carry out part of the local WIOA Title I program; and
- Contracts to contractors for purchasing goods or services needed to carry out WIOA Title I programs.

A. Cost-reimbursement Only [WIOA Sec. 184(a)(3)(B)].

Procurement transactions under this title between local boards and units of state or local governments shall be conducted on a cost-reimbursement basis only. (See section V. below)

B. General Procurement Standards (2 CFR §200.318).

The Local Boards will use documented procurement procedures that reflect federal regulations, the Nevada Revised Statutes (NRS) and the Nevada Department of Employment, Training and Rehabilitation's (DETR) policies provided that the procurements are required to conform to applicable law and standards identified in 2 CFR Parts § 200.318 through § 200.327, NRS Chapter 333, and the Nevada State Administrative Manual.

The Local Boards will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specification of their contracts or purchase orders.

The Local Boards will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Considerations will be given to such matters, including but not limited to:

- Contractor integrity
- Compliance with public policy
- Record of past performance
- Financial and technical resources

The Local Boards will maintain records sufficient to detail the history of procurement. These records will include, but are not limited to:

- Rationale for the method of procurement
- Selection of contract type
- Basis for contractor selection or rejection
- Basis for contract price

C. Procurement Standards of Ethical Conduct

The Local Boards shall adhere to the following ethical standards of conduct throughout the procurement process:

- Prior to engaging in any procurement, including the drafting of procurement documentation, all potential conflicts of interest in the procurement, management, and oversight of the use of goods or services must be identified and addressed.
- Until any solicitation is released to the public, it must be kept confidential to ensure that no individual or entity that will compete has an unfair advantage.
- No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal or State award if he or she has a real, perceived, or potential conflict of interest.
- Conflicts of interest must be disclosed in writing when known in advance or announced to the voting body. The party must excuse themselves from any further discussion and/or vote on the matter in question.
- Current and former public officials and employees are prohibited from disclosing or using confidential information acquired in the course of official duties as public officials or employees.

II. Methods of Procurement (2 CFR § 200.320)

The methods of procurement prescribed above in 2 CFR Parts 200 and 29 CFR §97.36 apply to all procurement conducted by the Local Boards and their subrecipients. This procurement includes, but is not limited to, the acquisition of administrative or program equipment, supplies, and professional services (e.g., individual legal, accounting, and personnel services contracts). Procurement must be documented in accordance with the state grantee and subrecipient written policies/procedures and all procurements must be documented as required in 2 CFR §200.320(2)(i).

- A.** The Local Boards shall use one of the following methods of procurement, depending upon the nature of the goods and services to be secured, and the terms and conditions contained within this policy. The Local Boards shall have the sole discretion to choose whichever procurement method is applicable and/or appropriate for the goods or services being secured:

- **Micro Purchases:** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. To the extent possible, local boards must distribute micro-purchases equitably among qualified third parties. Micro-purchases may be awarded without soliciting competitive quotations if the local board considers the price to be reasonable.
- **Small Purchases:** The small purchase procedure is the relatively simple and informal procurement method for securing services that do not cost more than the Simplified Acquisition Threshold. If small purchase procedure is used, price or rate quotations must be obtained from an adequate number of qualified third parties.
- **Sealed Bid (formal advertising):** Under the sealed bid procedure, bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the third party whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

Under sealed bid procedures, bids are publicly solicited from at least three known suppliers, and the procurement is awarded to the lowest bidder, resulting in a firm fixed price (lump sum or unit price) contract. In order for this process to be feasible, three conditions must be met: 1) complete and realistic specification of required goods and services is available and part of solicitation; 2) there are at least two responsible bidders; and 3) the procurement may be made principally on the basis of price. A firm fixed price contract may be awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price [2 CFR §200.319]. Any or all bids may be rejected if there is a documented reason.

- This method is generally used for purchases from vendors for commodity-type goods/services, which are widely available in the marketplace. e.g., computer equipment, furniture, vehicles.
- All solicitations including sealed bids must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured including quantities; identify all requirements which the offerors must fulfill; and all other factors to be used in evaluating bids or proposals. The selected bidder will generally be the bidder with the lowest price, if all the technical requirements of the solicitation are met. All bids must be publicly opened at the time and place prescribed in the invitation for bids [20 CFR §200.320(c)].
- All cost proposals/budget documentation submitted with the RFP application must be sealed separately and not reviewed until the RFP evaluation committee has ranked the top proposals.
- Documentation must include, at a minimum:
 - A copy of the formally advertised invitation for bid;

- The vendors receiving invitation for bids by request and through a qualified bidders' list;
 - The publication notice(s);
 - All bids received;
 - A statement in the file detailing the reasons for rejecting the lowest bid;
 - Certification regarding lobbying, which is required for making or entering into a federally funded RFP transaction imposed by section 1352, U.S. Code; and
 - Evaluation sheets must be standard and maintained with each procurement documentation file.
- **Competitive Proposal¹:** The technique of the competitive proposal is normally conducted with more than one provider submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. Competitive proposals are used when there is more than one prospective bidder, the lowest price is not necessarily the determining factor for award, and either a fixed price or cost reimbursement agreement will be awarded. The competitive proposal method also meets the standards for “full and open competition” and is appropriate when the agency seeking goods or services is looking for a variety of methods that may be employed to achieve the results called for in the Request For Proposal (RFP). Often the evaluation factors will focus on approach, program design, innovation, coordination, and experience [20 CFR §200.320(d)].
 - This method is generally used when the nature of the goods/services to be acquired cannot be defined at the level of completeness and precision required by the sealed bid method; and specifically, when factors other than price are important in the selection decision. The most common instrument for procuring these types of services is the RFP.
 - For each RFP, the Local Board shall publish:
 - The name and location of the entity requesting proposals;
 - Where and how the RFP specifications can be obtained;
 - The date and time not later than which responses must be received by the requesting entity; and
 - The date and time that the responses will be opened.
 - A Local Board shall give reasonable notice of all RFPs for the proposed purchases of goods and services when utilizing WIOA Title I funds.
 - Local Boards shall, without limitation:
 - Publish the RFP notice in at least one newspaper of general circulation in the respective local workforce investment area;
 - Post the RFP notice on their respective website.

¹ Citation for subsection (d) in 20 CFR § 200.320 has been removed in the most recent CFR revision. The State has reached out to DOL for guidance on how to cite Competitive Proposals.

- Send notification of the RFP to an established list of interested parties; and
- Ensure that copies of the complete RFP package are available to the public at the respective Local Board's office.
- Local Boards may also provide notice of the RFP to local and/or state purchasing entities, as appropriate.
- All cost proposals/budget documentation submitted with the RFP application must be sealed separately and not reviewed until the RFP evaluation committee has ranked the top proposals.
- The RFP must contain the specifications that provide a clear, accurate, and common description of the technical requirements for the material, product, goods, or service to be procured, and all requirements must be identified which the offerors must fulfill as well as all other factors and their relative weight or importance to be used in evaluating the bids or proposals.
- At a minimum, the RFP file must contain:
 - A copy of the solicitation package;
 - A copy of the public notification;
 - A bidders' list to which notices were mailed;
 - A list of all organizations/entities that received the RFP;
 - An agenda and minutes of a bidders' conference, if held;
 - Written responses to all clarifying questions received outside of the bidders' conference;
 - A copy of each proposal received;
 - A determination of demonstrated performance;
 - Rating and scoring sheets completed in the evaluation process;
 - Written documentation that clarifies instances when an evaluation team member's score(s) varies significantly from those received from other team members.
 - Documentation of the rationale for selection and funding of any offeror, which did not receive the highest score/ranking in the evaluation process;
 - Documentation regarding negotiation for each contract;
 - A completed price analysis for each selected bidder, and a cost analysis when required;
 - Certification regarding lobbying, which is required for

- making or entering into a federally funded RFP transaction imposed by section 1352, U.S. Code;
 - A copy of any submitted grievances and the resolution of each; and
 - Evaluation sheets must be standard and maintained with each procurement documentation file.
- **Noncompetitive (Sole Source) Proposal:** The noncompetitive (sole source) proposal method is procurement through solicitation of a proposal from only one party. Noncompetitive procurement may be used only when:
 - The item is available only from a single source;
 - Public exigency or emergency will not permit a delay resulting from competitive solicitation;
 - The U.S. Department of Labor Employment and Training Administration or DETR expressly authorizes noncompetitive proposals in response to a written request from the administrative entity;
 - After solicitation of a number of sources, competition is determined inadequate; or
 - There are an insufficient number of eligible youth providers or Eligible Training Providers in the local area, which is determined according to local procurement policies and procedures.

This method is the solicitation of a proposal from a single source, or, after solicitation of a number (more than one) of sources, competition is determined inadequate to fulfill the requirements of the funding agency [29 CFR §97.36(d)(4)].

- Recipients and subrecipients must minimize the use of sole source procurement to the extent practicable, but in every case, the use of sole source procurement must be justified and documented.
- Such procurement may only be used when the award of a contract is infeasible under small purchase policies/procedures, sealed bid, or competitive proposals with the exception of on-the-job training and customized training and if one of the following circumstances applies:
 - The item or service is available only from a single source;
 - The public exigency or emergency need for the item or service does not permit a delay resulting from competitive solicitation; or
 - After solicitation of a number of sources, competition is determined inadequate.
- The file documentation for this method must include:

- A description of the specific circumstances supporting the sole source procurement and the results of any negotiations with the subrecipient/ vendor;
 - The cost analysis or other means of verifying the reasonableness of the price;
 - A determination of demonstrated effectiveness of a provider or vendor who provides educational, training, employment or supportive services to participants.
- **Commercially Available Off-the-Shelf (COTS) Items or Off-the-Shelf Training:** Defined as a training package sold or traded to the general public in the course of normal business operations, at prices based on established catalog or market prices.
 - To be considered as sold to the general public, the package must be regularly sold in sufficient quantities to constitute a real commercial market that must include buyers other than WIOA programs.
 - The package must include performance criteria pertaining to the delivery of the package, which may include participant attainment of knowledge, skills, or employment.
 - For the product to be unmodified, it must be sold to the general public in the same condition that it is sold to the state grantee or subrecipients. If the product is altered or customized in order to meet the specific training needs of WIOA, it is not a commercially available or off-the-shelf product. The Local Boards and subrecipients may negotiate a price that is below the cost paid by the public and/or a different rate or method of payment may be accepted. This would be acceptable, and the package would still be considered unmodified. However, the addition of training, services, or provider performance would be considered modifications.
 - A catalog price is one that is published in a catalog, price list, schedule, or other form regularly maintained by a supplier and is published or made available for inspection by buyers.

B. *In conformance with Nevada Revised Statutes (NRS) Chapter 333 and Nevada Administrative Code Chapter 333, and as prescribed in WIOA, OMB Uniform Guidance and the corresponding Federal regulations contained herein, Local Boards must apply the following procurement methods:*

- ***\$0 - \$4,999.99: Micro Purchase process: No formal procurement process is required. Price analysis applies, see Section VI of this policy.***
- ***\$5,000.00 - \$49,999.99: Informal Small Purchase process. Obtain at least three (3) pricing quotes (e.g., from bidders and/or via public sources such***

as catalogs or the internet). Price analysis applies, see Section VI of this policy.

- *\$50,000.00 - \$99,999.99: Formal Small Purchase process. Obtain at least three (3) written pricing quotes from bidders. Price analysis applies, see Section VI of this policy.*
- *\$100,00.00 +: Advertised Competitive or Sealed Bid process must be used (e.g., Request for Proposal/RFP or Request for Bid/RFB). Consultation with DETR required regarding purchase prior to procurement process. Price analysis applies, see Section VI of this policy.*

III. Conflict of Interest:

- A.** A member of the State Governor's Workforce Development Board (GWDB), Local Boards (LWDBs), Local Elected Officials Consortium or employees thereof, or any standing committee must neither cast a vote on, nor participate in, any decision-making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family [2 CFR §200.318(c); 20 CFR §683.200(c)(5)(i)].

Note: Neither membership on the State Board (GWDB), the Local Board (LWDB), Local Elected Officials Consortium, or the any standing committee, nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict-of-interest provisions [20 CFR §683.200(c)(5)(ii)].

- B.** A public officer or employee cannot participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest [NRS 281.481(3); 2 CFR §200.112].
- C.** Subgrantees must maintain a written code or written Standards of Conduct which will govern the performance of its officers, employees, or agents in contracting with or procuring supplies, equipment, construction, or services with WIOA funds. These standards must provide that no officer, employee, or agent (including Local Board members) will [2 CFR §200.112]:
1. Solicit or accept gratuities, favors, or anything of monetary value from suppliers or potential suppliers, including subcontractors' contracts; or
 2. Participate in the selection, award, or administration of a procurement supported by WIOA funds where, to the individual's knowledge, any of the following has a financial or other interest in any organization which may be considered for award were:
 - a. The officer, employer, or agent;
 - b. Any member of his or her immediate family;
 - c. His or her business partner; or
 - d. A person or organization, which employs, or is about to employ, any of

the above, has a financial, or other interest in the firm or organization selected for award.

- D.** To the extent permitted by state and local law or regulations, subgrantees standards must provide for penalties, sanctions, or other disciplinary actions (such as suspension, termination, or civil action to recover money damages) to be applied for contract related violations of law or established standards of conduct by Local Board officers, employees or agents, or by contractors or their agents [2 CFR §200.338].

IV. Procurement Systems and Policies/Procedures:

The Local Board and their subrecipients must use procurement systems and policies/procedures, which reflect applicable Federal and State laws, rules, and regulations to the extent that systems and policies/procedures do not conflict with NRS, the WIOA regulations, or this policy.

A. Written Policies/Procedures

Local Board and subrecipients must have written policies/procedures for procurement transactions that ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured including quantities, and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. The policies/procedures must include the following [2 CFR §200.318(a)]:

1. Identify who is authorized to issue solicitations, and who is an authorized signatory for what types of goods/services and in what dollar amounts.
2. Specify and describe the alternative forms of procurement that are allowable and the appropriate conditions for use of each. Policies/procedures must be developed to identify the specific circumstances under which a noncompetitive procurement method can be used, and a description of the elements and policies/procedures that will comprise a competitive procurement process.
3. Specify how the procurement history will be recorded and, at a minimum, the record must contain the rationale for the method of procurement, the selection of the agreement type, awardee selection or rejection, and the basis for the agreement price.
4. Include a resolution process to resolve disputes relating to procurement.
5. Include methods for recording receipt of bids and for dealing with late or nonresponsive bids.

- B.** All written policies/procedures for procurement activities must be made available to the public.

V. Transactions Between Units of Local Government:

Procurement transactions between units of state or local governments and other entities

organized principally as the administrative entity for Local Boards or sub state areas must be conducted on a cost reimbursement basis. No provision for profit is allowed [WIOA Sec. 194 (7); 20 CFR §683.295(c)].

VI. Price and/or Cost Price Analysis [2 CFR §200.323(a)]:

A. Introduction:

Procurement must include an appropriate analysis of the reasonableness of cost and price. A price and/or cost analysis must be performed in connection with every procurement action, including contract modifications with a monetary impact. The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation, but at a minimum, the awarding agency must make independent estimates before receiving bids or proposals.

B. Price Analysis is the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit of the offeror whose price is being evaluated. The sole purpose of price analysis is to determine if the final price is fair and reasonable.

1. All recipients and subrecipients are required to perform a price analysis for every procurement, including contract modifications.
2. Recommended process for comparisons is:
 - a. Comparison of prices of competing offers and selecting best price;
 - b. Comparison of prior quotes and contracts for the same or similar requirements taking into account inflation;
 - c. Comparison of offers to parametric estimates or benchmarks, e.g., dollars per square foot or cost per instructional hour;
 - d. Comparison with competitive published price lists and published market price; and/or
 - e. Comparison of offers to an independent agency estimate.

Note: The lowest price is not necessarily the best price since factors other than the final price must be considered, e.g., demonstrated performance. Local Boards and their subrecipients must ensure that the offeror is capable of performing the work at the level of effort and with the quality required to satisfy the contract and that the proposal addressed all the questions in the RFP.

C. Cost Analysis is the review and evaluation, element by element, of the cost estimate supporting a proposal for the purpose of pricing a contract. Unlike price analysis, which is required for every procurement, cost analysis is required when price analysis alone is not sufficient to determine that a price is fair and reasonable for a product or service. It is usually required when price competition is weak or where there is only one offeror. For all non-competitive procurement actions, a cost analysis is required.

1. Prior to undertaking a cost analysis, a decision must be reached to determine if the scope of services required justifies a cost analysis. It may end up

costing more time and money analyzing a contract than the contract is worth.

2. A cost analysis must be conducted when:
 - a. The offeror is required to submit the elements of the estimated cost;
 - b. When adequate price competition is lacking; and
 - c. For sole source procurement, including contract modification or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
3. Cost analysis differs from price analysis in the level of review conducted. Cost analysis segregates the total price into various cost elements (line items in detailed budgets). These are then individually assessed.
4. Cost analysis process must include the following:
 - a. Verification of the cost or pricing data and evaluation of cost elements, including necessity and reasonableness;
 - b. Comparison of proposed costs for individual cost elements with actual costs previously incurred by the same offerors, previous cost estimates from the same or other offerors for the same or similar items, other cost estimates received in response to the request, and independent contracting agency cost estimates;
 - c. Verification that the offerors' cost submissions are in accordance with cost principles of allowability/allocability;
 - d. Determination that the cost or pricing data, which are necessary to make the proposal accurate, complete, and current, have been submitted;
 - e. Verification that any indirect costs are not duplicated by proposed direct charges and that rates have been appropriately approved. Where there is no approved rate, the offerors must submit a cost allocation plan identifying costs that will be designated as indirect and how they will be allocated to the contract; and
 - f. Verification that if subcontractors are to be used, those services are clearly identified, described, and justified in the cost proposal.

VII. Appeals Process

The appeals process prescribed in 20 CFR §683.600 is specific and related to participant grievances and complaints and other areas noted specifically in 20 CFR §683.630. In addition Nevada Revised Statute [\(NRS\) 333.370](#) and Nevada Administrative Code [\(NAC\) 333.170](#) on procurement aids in the State's appeal process for procurement.

A. If a non-Federal entity appeals the procurement process for the acquisition of goods and/or services, the appeals process is as follows:

1. ***A business or vendor who responds to a Request for Proposal or responds to an informal solicitation shall have the right to file a written appeal to the LWDB, no longer than 11 business days of the notice of award announcement.***

2. *Grounds for an appeal may be filed on either the solicitation process and/or the contract award.*
3. *The written appeal must include the following information:*
 - a. *The name, address and contact information of the appellant;*
 - b. *RFP and/or solicitation number;*
 - c. *Reference of policy, procedure and/or regulation allegedly violated;*
 - d. *Justification statement for the appeal; and,*
 - e. *Supporting documentation for the validity of the appeal.*
4. *The LWDB and/or LEOs shall evaluate and determine the validity of the appeal. The LWDB and/or LEOs may choose to suspend the awarded contract pending resolution, while the appeal is undergoing evaluation.*
5. *LWDB and/or LEOs may dismiss an appeal if concerns outside the grounds for an appeal are disclosed. Allegations must be truthful and related to the procurement process. Credible evidence and supporting documentation must be provided; failure to submit supporting evidence may result in a dismissal.*
6. *LWDB and/or LEOs will issue an appropriate resolution when it is determined the appeal is of sufficient merit. No further action is necessary if the matter is resolved. If the matter is not resolved, a formal hearing shall occur.*
7. *A formal hearing request shall be submitted within 20 business days after the informal meeting occurs and must detail reasons why the appellant believes the appealed issues should be resolved by a formal hearing. The formal hearing protest must be reviewed and determined sufficient for a formal hearing to be scheduled. A written notification will be sent to the appellant at least seven (7) days prior to the scheduled hearing date providing the date, time and location for said hearing.*
8. *Formal determination on the appeal shall be issued by the LWDB within a timely manner that best fits the appealing situation, but no more than 30 business days from the hearing date.*

- B. If a non-Federal entity appeals a One-Stop Operator's procurement process and/or award, the appeals process outlined in VII A above will be used. (2 CFR § 200.318 (k))

The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of **all contractual and administrative issues arising out of procurements**. These issues include, but are not limited to, **source evaluation, protests, disputes, and claims**. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a federal

concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

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VIII. Definitions (2 CFR §200.1, inclusive)

Contract (2 CFR §200.22): A legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal Award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or sub-award.

(2 CFR §200.330(b)): A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor (see 200.22 Contract). Characteristics indicative of a procurement contract relationship between the non-Federal entity and a contractor include when the non-Federal entity receiving the Federal funds:

- 1) Provides the goods and services within normal business operations;
- 2) Provides similar goods or services to many different purchasers;
- 3) Normally operates in a competitive environment;
- 4) Provides goods or services that are ancillary to the operation of the Federal program;
- and
- 5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

Contractor (2 CFR §200.23): An entity that receives a contract as defined in "Contract", above.

Disallowed Cost (2 CFR §200.1): Those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Federal Award (2 CFR §200.38): Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

- (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability; or
- (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability.
- (b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of §200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal Awarding Agency (2 CFR §200.37): The Federal agency that provides a Federal Award directly to a non-Federal entity.

Grant Agreement (2 CFR §200.51): A legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use:

(b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

Micro-purchase (2 CFR § 200.1): A purchase of supplies or services using the simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non- Procurement Policy Page 11 of 12 Effective October 15, 2015, Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and costs. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

Micro-purchase Threshold (2 CFR § 200.320): The dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see §200.320). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.

UPDATE: Per OMB M-18-18 issued on June 20, 2018, the threshold for **Micro-purchases** increased to \$10,000.00. *Refer to section II.B. of this policy for State Threshold guidance.*

Non-Federal Entity (2 CFR §2900): A state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Office of Management and Budget (OMB): The Executive Office of the President, Office of Management and Budget.

Pass-through Entity (2 CFR §200.74): A Non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Simplified Acquisition Threshold (2 CFR §200.88): The dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

UPDATE: Per OMB M-18-18 issued on June 20, 2018, the **Simplified Acquisition Threshold** increased to \$250,000.00. *Refer to section II.B. of this policy for State Threshold guidance.*

Small Purchases (2 CFR §200.320): The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

Subaward (2 CFR §200.1): An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the passthrough entity considers a contract.

Subrecipient (2 CFR §200.1): A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient, characteristics of which support the classification of the non-Federal entity as a subrecipient and include when the non-Federal entity:

- 1) Determines who is eligible to receive what Federal assistance;
- 2) Has its performance measured in relation to whether objectives of a Federal program are met;
- 3) Has responsibility for programmatic decision making;
- 4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

5) In accordance with its agreement, uses the Federal funds to carry out program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity. (2 CFR §200.331(a))