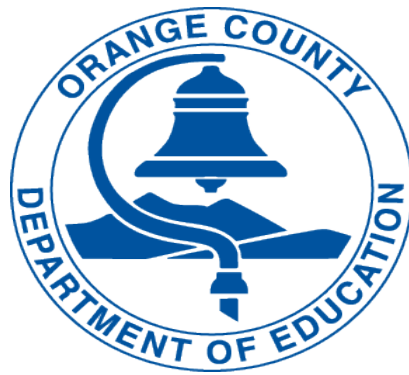


Orange County Department of Education

PURCHASING/CONTRACTS DEPARTMENT



PURCHASES USING FEDERAL FUNDS

PROCUREMENT OF GOODS AND SERVICES WITH FEDERAL FUNDS
POLICIES AND PROCEDURES

The Office of Management and Budget (OMB) issued Title 2 U.S. Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) in December, 2017 applicable to state and local governments, American Indian tribes, higher education institutions and not-for-profit organizations for all federal awards or funding increments to existing awards made on or after December 26, 2014.

School districts, county offices or local education agencies (nonfederal entity) must have documented procurement procedures which reflect applicable federal, state, and local rules (2 CFR 200.318[a]). These key items must be followed in Procurement standards (200.318 and 200.319):

- **Competition** – A nonfederal entity must provide for full and open competition in procuring goods and services. This means situations must be avoided that may prevent competition, such as placing unreasonable requirements on firms to qualify noncompetitive pricing practices between firms or affiliated companies or specifying only a “brand name”.
- **Documented Policies** – A nonfederal entity must document procurement procedures and policies. If procedures aren't currently documented, nonfederal entities must make this a priority. If policies already are documented, entities should review those policies and ensure they incorporate and follow applicable regulations. These procedures must ensure all solicitations clearly and accurately describe the requirements of the goods or services to be procured and identify all requirements that bidders must fulfill and the factors used in evaluating bids. In addition, if policies include a prequalified list of persons, firms or products used in procuring goods and services, the list should be current and include enough qualified sources to ensure open competition.
- **Oversight** - A nonfederal entity must monitor contractors to ensure they perform in accordance with the terms, conditions and specifications of their contracts or purchase orders. This requirement supplements a similar requirement in which contracts only are awarded to those that use funds responsibly and in accordance with the agreement's terms.
- **Conflicts of interest** - A nonfederal entity must have written policies about conduct of its employees involved in the selection, award and administration of contracts. These policies must cover both organizational and personal conflict of interest to prevent unfair or noncompetitive awards being provided. These policies also must include disciplinary actions for any violations of the conflict-of-interest standards.
- **Necessary purchases** - A nonfederal entity must avoid unnecessary or duplicative purchases. To this end, an entity should consider the most efficient and effective approach to purchases, *e.g.*, bulk purchasing, lease versus purchase, agreements for use of common or shared goods and services, use of federal excess and surplus property as opposed to purchasing new equipment, etc.
- **Use of state, local or tribal geographical preferences** - Unless federal statutes specifically mandate or encourage geographical preference, a nonfederal entity must prohibit using statutorily or

administratively imposed state, local or tribal geographical preferences when conducting procurements.

- **Records** – A nonfederal entity must maintain documentation to support the history of the procurement, *i.e.*, rationalization for method used, contractor selection or rejection, basis for contract price, etc.

After considering the general requirements for procurement, Uniform Guidance specifically outlines these five (5) allowable methods (§200.320):

- **Micro-Purchases** - This method is for purchases in which the **aggregate** dollar amount doesn't exceed the micro-purchase threshold-currently \$3,500, adjusted periodically for inflation, or \$2,000 for construction subject to the Wage Rate Requirements. Purchases may be made without cost or price analysis or soliciting any quotes or bids if the nonfederal entity considers the price to be reasonable. Under this method, the entity is encouraged to distribute these purchases among qualified suppliers. For example, when purchasing supplies, a nonfederal entity might consider rotating purchases between vendors that offer similar rates. When applying the micro-purchase threshold, a nonfederal entity should note the threshold applies to the **aggregate** purchase amount rather than the cost of individual items. For instance, if a purchase is made for multiple kinds of office supplies (computer paper, pens, pencils, ink cartridges, etc.) and the total price is \$5,000, this method would not be applicable, because the threshold must be applied to the overall purchase total and not the price of individual types of supply items purchased.
- **Small purchase** - This method is for purchases above the micro-purchase threshold but below the Simplified Acquisition Threshold (SAT) as defined by the Federal Acquisition Regulation-currently \$150,000, adjusted periodically for inflation. Price or rate quotations **must** be obtained from more than one (1) qualified source. This doesn't mean formal bids and solicitations for quotes must be made-these procedures are meant to be simple and informal. Quotes may be obtained from a variety of simple sources, *e.g.*, internet search, vendor price listing, verbal quotes, etc. Similar to the micro-purchase method, no cost or price analysis is required. As with the micro-purchase examples, if a nonfederal entity purchases a variety of office supplies that total \$5,000, this would require consideration for quotes. A nonfederal entity may compare pricing based on an internet search between a local supply store versus a national chain and select a vendor based on these quotes.
- **Sealed bids (formal advertising)** - This method is for purchases greater than the SAT. Bids are publicly solicited, and a firm fixed-price contract is awarded to a **responsible** bidder who has the lowest price and conforms to all the material terms and conditions of the invitation for bid. Price is a significant factor in this method and generally is the preferred method for procuring construction. This method is used if bids may be solicited from an adequate number of suppliers (two or more), a complete and realistic specification or purchase description is available, the purchase results in a firm fixed-price contract and the selection may be made based on price. A

cost and price analysis must be performed for these purchases, and the entity must make independent estimates before receiving bids or proposals.

- **Competitive proposals-requests for proposal (RFP)** - This method is for purchases greater than the SAT in situations where sealed bids aren't appropriate. This may be the case when price isn't the only factor in awarding a contract. In general, this results in a fixed-price or cost-reimbursement type contract. Under this method, the following requirements apply:
 - RFPs must be publicized and identify all evaluation factors and their relative importance
 - Proposals must be solicited from an adequate number of qualified sources
 - The entity must have a written method for evaluating and selecting recipients
 - Contracts must be awarded to a responsible firm

Similar to sealed bids, a cost and price analysis must be performed for these purchases.

- **Noncompetitive proposals** - This method results in solicitation from a sole source and may be used if one or more of the following conditions apply:
 - Item is available from only one source
 - Public emergency won't permit a delay resulting from competitive solicitation
 - Awarding agency authorizes noncompetitive proposals in response to a written request from the nonfederal entity
 - After soliciting a number of sources, competition is determined to be inadequate

Sole-source purchases are applicable at any level when one of the aforementioned criteria is met.

With any of the above methods, the procurement standards also emphasize contracting with small and minority businesses, women's business enterprises and labor surplus area firms (§200.321). A nonfederal entity **must** use these firms when possible. Methods for inclusion include placing these businesses on the vendor list, soliciting pricing from them when they're potential sources, breaking up projects or orders into smaller tasks to permit participation by these firms or requiring contractors to follow these guidelines for subcontracts.

Regardless of what method is used and decision made, documentation of the procurement must be kept, *e.g.*, maintaining printouts of internet searches for quotes or documenting in a memo the reasons for acceptance or rejection of bidders in sealed bids or competitive proposals.

The nonfederal entity's grants manual should include information on the following:

- Responsibility for Purchasing
- Procurement Methods
- Contract Cost or Price analysis

- Full and Open Competition
- Federal Procurement System Standards
- Conflict of Interest
- Contract Administration

1. Responsibility for Purchasing

County Superintendent for the Orange County Superintendent of Schools has the responsibility and authority to initiate purchases, processing contracts, and purchase orders.

2. Procurement Methods

According to the UGG, the type of purchase procedures required depends on the cost of the items being purchased (2 CFR 200.320). There are three categories of procurement: informal procurement (items and/or services below the annual bid threshold), formal procurement (sealed bids or proposals for contracts above the bid threshold), and noncompetitive procurement (sole source). Nonfederal entities must meet baseline requirements for procurements by micro-purchases, small- purchase procedures, sealed bids, competitive proposals, and procurement by noncompetitive proposals.

While the federal rules in 2 CFR 200.320 provide a basic structure for each procurement method, the nonfederal entity must have documented procurement policies which provide detail on the process by which all purchases are made. In addition to these rules, sub-recipients must also follow both state and local procurement rules. State and local procurement rules are often stricter than federal requirements. Accordingly, this section should be revised to account for the appropriate thresholds and purchasing procedures within each threshold amount in accordance with any state and local procurement rules. For example, the California Public Contract Code (PCC) Section 20111(a) requires school district governing boards to competitively bid and award any contracts involving an expenditure of more than \$50,000, adjusted for inflation, to the lowest responsible bidder. The State Superintendent of Public Instruction is required to annually adjust the \$50,000 amount specified in PCC Section 20111. The Annual Adjustment to Bid Threshold for Contracts Awarded by School Districts letter is published on the Purchasing/Contracts Department website, as well as located on the CDE website at www.cde.ca.gov/fg/ac/co.

Certain public projects as defined in PCC, such as construction or reconstruction of publicly owned facilities, have a lower bid threshold of \$15,000 that is not adjusted for inflation.

Because California's PCC establishes a lower threshold for small purchase procedures than the federal simplified acquisition threshold (\$250,000), LEAs need to comply with the lower threshold set by state law. All applicable adjustments set by regulatory bodies will be complied with. The micro-purchase threshold was increased from \$3,500 to \$10,000 as a result of a June 2018 memorandum issued by the OMB. Nonfederal entities are authorized to request a micro-purchase threshold higher than \$10,000 based on certain conditions that include a requirement to maintain records for a threshold up to \$50,000 and a formal approval process by the federal government for a threshold above \$50,000 (2 CFR 200.320[a][1]). Orange County Department of Education has not applied for such increased micro-purchase threshold.

Purchasing procedures and formal bidding processes are memorialized in OCDE's Policies and Procedures manual published on OCDE website.

3. Supplementary Texts

While the California PCC provides that nonfederal entities may purchase supplementary textbooks, library books, instructional computer software packages, and other specified items without taking estimates or advertising for bids, the federal procurement regulations do not provide a similar exception to competitive purchasing requirements for these items. The Orange County Department of Education will competitively bid for such items when using federal funds if the cost exceeds \$250,000.00.

4. Contract Cost or Price Analysis

The Orange County Department of Education will perform a cost or price analysis in connection with every procurement action supported with federal funds in excess of \$250,000, including contract modifications (2 CFR 200.324[a]). Furthermore, Orange County Department of Education will negotiate profit as a separate element of price when performing a cost analysis and for each contract where there is no price competition (i.e., sole source).

5. Full and Open Competition

All procurement transactions using federal funds must be conducted in a manner providing full and open competition consistent with 2 CFR 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, 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.

6. Federal Procurement Systems Standards

This section includes general procurement standards as identified in 2 CFR 200.318, including:

- Avoiding acquisition of unnecessary or duplicative items
- Use of intergovernmental agreements
- Use of federal excess and surplus property
- Suspension and debarment
 - o A nonfederal entity should only award contracts with federal funds to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. A nonfederal entity may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000, an LEA verifies that the vendor with whom the LEA intends to do business is not excluded or disqualified (2 CFR Part 200, Appendix II[1] and 2 CFR 180.220 and 180.300). The Purchasing/Contracts Manager will check the excluded parties lists on SAM.gov. before assigning to Buyer to process requisitions using federal funds.

7. Conflict of Interest

Pursuant to 2 CFR 200.318[c][1], the Orange County Department of Education Conflict of Interest policy. The Purchasing department utilizes a Conflict of Interest form for all vendors and maintains such form in each respective vendor file.

For purposes of federal procurement, a conflict of interest arises when any of the following has a financial or other interest in the firm selected for award:

Employee, officer, or agent participating in the selection, award, and administration of the contract

Any member of that person's immediate family

That person's partner

An organization that employs, or is about to employ, any of the above or has a financial interest in the firm selected for award (2 CFR 200.318[c][1])

8. Contract Administration

Requisitioning department staff is responsible for ensuring that contractors perform in accordance with the terms, conditions, and specification of their contracts or purchase orders (2 CFR 200.318[b]). This responsibility will be separate and apart from the Purchasing/Contracts Department which finalizes purchase orders or contracts.

9. Inventory and Property Management

Pursuant to 2 CFR 200.313(d) provide the procedures for managing equipment.

Property Classifications

This section should include all relevant property definitions and ensure that property classifications are in accordance with state and local law. Specifically, the section should identify:

- Equipment (2 CFR 200.1): Tangible personal property (including information technology systems) having a useful life of more than one year and per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the nonfederal entity for financial statement purposes, or \$5,000
- Supplies (2 CFR 200.1): All tangible personal property other than that described in the definition of equipment in this section; a computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the nonfederal entity for financial statement purposes and \$5,000, regardless of the length of its useful life
- Computing devices (2 CFR 200.1): Machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or peripherals) for printing, transmitting and receiving, or storing electronic information

The CSAM Procedure 770—Distinguishing between supplies and equipment, describes the differences between whether an item should be classified as a supply or an equipment. The determination is made based on the length of time the item is serviceable and on its contribution to the overall value of the physical assets of the nonfederal entity. For example, supplies are

constantly consumed and replaced without substantially increasing the value of the physical assets of the nonfederal entity. Equipment has relatively permanent value and substantially increases the value of the physical assets of the nonfederal entity.

The Uniform Guidance defines equipment as tangible personal property having a useful life of more than one year and an acquisition cost of at least \$5,000. California Education Code Section 35168 requires nonfederal entities to maintain records that properly account for equipment whose market value exceeds \$500. To meet this requirement, the nonfederal entity must keep records containing the following information about the item: description, name, identification number, cost, date of acquisition, location of use, and time and mode of disposal. A reasonable estimate of the original cost may be used if the actual original cost is unknown.

This document supplements the existing Federal Requirement stated in OCDE's Policies and Procedures, administrative regulations, and guidelines published on the Orange County Department of Education's website.