



Department of Transportation

Division of Secretariat

Office of Air, Rail & Transit

Procurement Fact Sheet

December 2018

General

The purpose of this fact sheet is to help applicants of different grants who are monitored by The South Dakota Department of Transportation, Office of Air, Rail and Transit (SDDOT) understand procurement regulations. All the contained information derives from Federal and State procurement laws. It is important to note that Federal and State procurement laws can differ, and to ensure applicants are following both laws the guidance below is based on the most restrictive regulation.

Procurement Standards

- *Oversight*: all applicants must oversee their contractor's work to ensure compliance with the contract provisions.
- *Necessity*: contracts must include procedures that avoid unnecessary work or unnecessary purchases of supplies.
- *Standards of conduct*: applicants must maintain written standards of conduct that govern the employees engaged in contractor selection.
- *Conflict of interest*: no employee, officer, or agent can participate in the selection of contract if he or she has a conflict of interest.
- *Gifts*: no employee, officer, or agent can accept a gift or favor from a contractor.
- *Award to responsible contractors*: contracts may only be awarded to responsible contractors that can successfully perform the work with integrity.
- Conducting geographical preference when procuring services is prohibited.
- Applicants may use a pre-qualified list of contractors as long as competitive procurement was used to establish those contractors.

Levels of Purchase

Depending on the purchased amount, different rules apply. This section outlines thresholds an applicant must know before establishing procurement methods. It is also important to note that if your entity has more restrictive thresholds; those purchase levels must be used.

- *Price Comparison*: Purchases less than \$4,000 may be awarded without soliciting competitive bids provided the price can be proven as fair and reasonable.
- *Micro Purchases*: Purchases between \$4,000 and \$24,999 for supplies and services need three quotes from three different vendors when possible and must be in the best interest of that agency.
- *Simplified Acquisition*: Purchases that exceed \$25,000
 - Public improvement contracts of \$50,000 or more must be advertised for bids or proposals.
 - Contracts or purchases \$25,000 or more must use a sealed bidding procurement process. Additionally, procurement actions exceeding \$25,000 applicants must perform a cost analysis. The cost analysis method can be different depending on the type of work, but a good starting point is to make an estimate of what the work may be before receiving bids from contractors. Applicants must also negotiate profit as a separate element when cost analysis' is performed. For these types of projects applicants must also ensure the project is adequately protected through bonding.

* Note: No purchases may be artificially divided to avoid the levels of purchase rules.

Methods of Competitive Procurement

- *Request for Proposal/Competitive Proposal*: Conducted with more than one source submitting an offer, and either a fixed price or cost- reimbursement type of contract is awarded.
 - Must be publicized and solicited from an adequate number of qualified sources
 - Must have in writing the reason for choosing the received selected recipient

Please note the above information is designed to act as a summary of **2 CFR Part 200, SDCL 5-18A, FTA Circular 4220.1F and OMB Memo M-18-18**. It is not intended to be legal advice and should not be relied upon as legal advice. Individuals are advised to consult their own attorney regarding any questions pertaining to this material. For any additional questions regarding procurement and contracting; please contact Air, Rail and Transit Staff at (605) 773-3574.

- *Sealed bids/Invitation to bid*: Publicly solicited, firm fixed price contract is awarded to the responsible bidder. (Preferred method)
 - Two or more bidders are willing and able to compete for business
 - The selection of the successful bidder can be made based on price
 - Bids must be publicly advertised

Non-Competitive Procurement

There are limited circumstances when non-competitive procurement is allowed. Noncompetitive procurement is when proposals are obtained from only one source and can be used only when one or more of the following apply.

- *Inadequate competition*: after the solicitation of a number of sources, competition is determined inadequate.
- *One source*: the item is available only from a single source. Advertising within entity territorial borders does not justify single/sole source procurement.
- *Emergency*: an emergency will not permit a delay resulting from competitive solicitation.
- *Awarding agency approval*: FTA or SDDOT authorizes noncompetitive proposals in response to a written request from the applicant.

If non-competitive procurement does apply, applicants must perform a cost analysis. The cost analysis method can be different depending on the type of work, but a good starting point is to make an estimate of what the work may cost before entering into a contract. Applicants must also negotiate profit as a separate element when a cost analysis' is performed.

Contract Types

Before choosing a contractor, applicants must ensure the contractor has not been debarred or suspended from Federal grant dollars. To do this, applicants can simply go to <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf> and use the search engine. Below are the different types of contracts, please note NOT all contracts are suitable for use in conjunction with a Federal grant.

- *Lump sum*: contract for work within a prescribed boundary with a clearly defined scope and price.
- *Unit price*: contract for work done on an item-by-item basis with cost determined per unit.
- *Cost plus fixed fee*: either a lump sum or unit price contract with a fixed contractor fee added into the price.
- Following emergency situations, entities may enter into a *time and materials* contract. These are not ideal contracts to enter into; however, certain circumstances are necessary after determining that no other type of contract is suitable. For these contracts, entities must establish a ceiling price for the contractor not to exceed and provide great oversight to decrease the opportunity of abuse by a contractor.
- *Cost plus percentage of cost* is a type of contract in which a payment is a predetermined percentage rate, the rate is applied to actual performance costs, the contractor's entitlement is uncertain at the time contracting or the contractor's entitlement increases with increased performance costs. These types of contracts are NOT allowed.

Disadvantaged Businesses Enterprise (DBE) Vendors

All applicants must take affirmative steps to assure DBE vendors are used. The best way to locate these types of entities is through the SDDOT webpage <http://www.sddot.com/business/contractors/dbe/forms/default.aspx>. Furthermore, applicants must take these steps (when feasible) to try to include minority businesses:

- Placing these firms on solicitation lists.
- Solicit such firms if they are potential sources.
- Dividing tasks into smaller quantities when possible.
- Establish delivery schedules encouraging participation of such firms.

Maintaining Records

Upon grant acceptance or closure, FTA or SDDOT may ask you for your entities' procurement records. All applicants need to maintain the following information in the event of an audit:

- Rationale for the method of procurement
- Prices, or quotes
- Copy of procurement documents
- Selection of contract type
- Federal certifications
- Contractor selection or rejection
- The basis for the contract type

- Pre-Award and Post Award Documentation (Required if Buy America applies)
- Signed copy of complete contract
- Orders
- Signed amendments
- Correspondence
- Approvals or disapprovals of contract deliveries
- Request for waivers or deviations and the associated responses
- Documentation regarding settlement of claims and disputes
- Documentation regarding stop work or suspension of work orders
- Contract closeout documentation

Consequences of Noncompliance

FTA or the State may take any number of enforcement remedies in the case of a noncompliant procurement. They include.

- Temporarily withhold payments pending correction of the deficiency.
- Disallow all or part of the cost of the activity or action not in compliance
- Suspend or terminate the Federal award
- Withhold further awards for the program
- Take other remedies that may be legally available