

# Procurement Using Federal Funds and Property Management

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BASED ON THE GUIDANCE UNDER  
THE EDUCATION DEPARTMENT'S  
GENERAL ADMINISTRATIVE  
REGULATIONS (EDGAR)

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# Introduction

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## Introduction

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- **What is procurement?**
  - The complete process of obtaining goods and services (purchasing)
  - **Purchasing Process**
    - × Requesting
    - × Receiving
    - × Paying
  - **General Rule:** A good purchasing system ensures that goods or services are obtained in a way that **maximizes the value** of funds
  - **EDGAR 34 CFR Section 80.36**  
[http://edocket.access.gpo.gov/cfr\\_2010/julqtr/pdf/34cfr80.36.pdf](http://edocket.access.gpo.gov/cfr_2010/julqtr/pdf/34cfr80.36.pdf)

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- **Procurement Technical Assistance guidance available at**  
[http://sped.dpi.wi.gov/sped\\_grt\\_disc#procurement](http://sped.dpi.wi.gov/sped_grt_disc#procurement)
- **List of documents**
  - Procurement Technical Assistance Guide
  - Glossary of Terms
  - Outline of Provisions for IDEA-Funded Contracts
  - Procurement Method Decision Tree
  - Procurement Records Checklist
  - Wisconsin Statutes Addressing Procurement

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- **What is the purpose of this technical assistance guide?**

- To ensure agencies are correctly applying federal procurement regulations when using **federal** funds to purchase goods & services
- Focus on IDEA funds

- **Why is it being disseminated now?**

- Identified as a priority from U.S. Dept. of Education, Office of Risk Management Services for WI DPI

- **Who should use this guide?**

- Agencies receiving federal sub-grants awarded by WI DPI such as CESAs, LEAs, and IHES

- **Why is this important?**

- Audits, Complaints, IDEA Discretionary Grant Contracts

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- **Qualifications and Caveats**

- Help agencies understand federal regulations & develop purchasing policies and procedures
- Common sense regulations
- Questions are encouraged! We'll send on to U.S. Dept. of Education
- **Not** a complete, exhaustive review of all topics related to purchasing and contracts. Do not take this as legal advice.

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# Procurement System

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## Procurement System: Procurement Procedures



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- Your purchasing system should comply with local, state, and federal procurement laws & regulations
- Federal regulations establish **minimum** purchasing standards. Your purchasing system may be more rigorous than the federal standard, but not less.
- See **Wisconsin Statutes Addressing Procurement**

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## Procurement System: Contract Administration System

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- Develop a **Contract Administration System** for contracts and purchase orders, which should include:
  - Monitoring the contractual relationship
  - Addressing related problems
  - Incorporating necessary changes or modifications in the contract
  - Ensuring both parties meet or exceed each other's expectations
  - Interacting with the contractor to achieve the contract's objectives

**\*System Assures Performance\***

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## Procurement System: Conflict of Interest Policy

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- **Develop and follow a Conflict of Interest Policy**
  - **Written** code of standards of conduct
  - Employees involved in awarding and administering contracts
  - Penalties, sanctions, or disciplinary actions for violations
  - No personal benefit, no financial interest

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## Procurement System: Responsible Contractors

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- **Make awards only to responsible contractors**
  - Contractor must be able to perform successfully

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## Procurement System: Debarment and suspension

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- **Verify vendor is not debarred or suspended**
- **Before** signing a contract or making a purchase by:
  - Checking the Excluded Parties List (EPLS) at [www.epls.gov](http://www.epls.gov) (this link now directs you to **SAM**, or System for Award Management)
  - Collecting a certification;
  - Adding a clause or condition to the contract
- **Not verifying the vendor status may result in a single audit finding.**

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## Procurement System: Records

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- **Maintain records of all purchases**

- “Significant History”
- All types of purchases & all price ranges
- Types of records
- See **Procurement Records Checklist** for a more complete list

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## Procurement System: Cost Efficiency

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- **Develop and follow cost-efficient purchasing procedures**

- Most economical approach
- Avoid duplication & unnecessary purchases
- Recommended ways to increase cost efficiency

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## Procurement System: Common Types of Contracts

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1. **Firm Fixed Price Contract:** A set price is established for the services performed. Price cannot be exceeded.
2. **Cost Reimbursement Contract:** Allowable costs are reimbursed as described in the terms of the contract. An estimate of contractor costs is provided and a ceiling is established that the contractor may not exceed.
3. **Time and Material Contract:** Purchasing of goods or services based on the number of hours at a fixed hourly rate + cost of materials. A ceiling should be established that the contractor may not exceed.
4. **Actual Cost Plus Percentage of Costs Contract:** An agreement on a construction project in which the contractor is provided a specified percentage profit over and above the actual costs of construction.
5. **Retainer Fee/Contract:** Fee paid in advance to obtain services of contractor whenever required during a set time period.

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## Procurement System: Time & Materials Contracts

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- **Avoid time and material type contracts**

- **DEFINITION:** Involves acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates and actual cost for materials.
- Should be used **ONLY** when it is not possible to accurately estimate the extent or duration of the work or to anticipate costs with confidence
- Use only after determining no other type of contract is suitable
- Use only if the contract includes a ceiling price that the contractor exceeds at its own risk

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## Procurement System: Protest Procedures

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- **Develop and follow protest procedures to resolve disputes**

- Grantee is responsible for settling issues
- Disclose protest information to WI DPI & U.S. DOE upon request

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## Procurement System: Competition

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- **Provide full and open competition in all purchasing decisions**

- Applies to all purchases – contracts and purchase orders
- Examples of situations that restrict competition and should be avoided
- All steps in process must be **reasonable and justifiable**

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## Procurement System: Competition

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- **Situations that restrict competition and should be avoided:**

- placing unreasonable requirements on firm to qualify them to do business;
- requiring unnecessary experience and excessive bonding;
- noncompetitive pricing practices between firms or between affiliated companies;
- noncompetitive awards to consultants that are on retainer contracts;
- organizational conflicts of interest.

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## Procurement System: Geographical Preference

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- **Do not make purchasing decisions based on geographical preference unless federal law explicitly requires or encourages it**

- Do not give preference to in-state or local contractors
- Grantees must require contractors to hold appropriate state licenses
- Exception for Architectural and Engineering services

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## Procurement System: Written Selection Procedures

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- **Develop and follow written selection procedures for procurement transactions**
  - Procedures should ensure all solicitations (e.g. requests for proposals, invitations to bid) follow these requirements:  
  
For example -
    - ✦ Provide a clear and accurate description of good/service
    - ✦ Description should not unduly restrict competition
  - Solicitations must identify requirements and evaluation criteria

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## Procurement System: Updated Vendor List

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- **Ensure all vendor lists are current and inclusive**
  - Ensure your agency's list of pre-qualified vendors is kept up to date
  - List must include enough qualified sources to ensure maximum open and free competition

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## Procurement System: Small and Minority Firms, Women's Businesses and Labor Surplus Area Firms

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- **Ensure small and minority firms, women's businesses, and labor surplus area firms are used when possible.** Make a reasonable effort to include these types of businesses in formal solicitations and for small purchases.
- **Resources to identify firms:**
  - ✦ **Minority Firms and Women's Businesses**
    - U.S. Department of Commerce  
Minority Business Development Agency  
Business Locator (must create a free account)  
[www.mbda.gov](http://www.mbda.gov)
    - [State of Wisconsin, Minority Business Directory](#)
  - ✦ **Labor Surplus Area** means a geographical area (city or county) identified by the U.S. Department of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus. Firms located in these areas are considered "Labor Surplus Area Firms." [www.doleta.gov/programs/lisa.cfm](http://www.doleta.gov/programs/lisa.cfm)

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## Procurement System: Faith-based Organizations

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- **Do not discriminate for or against a private organization because of the organization's religious affiliation**
- **Ensure separation of religious activities from grant-funded activities. Cannot use federal funds for religious activities.**

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# Methods of Procurement

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## Methods of Procurement

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### • Four methods:

- Small Purchase Procedures
- Sealed Bids
- Competitive Proposals
- Non-Competitive Proposals



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## Methods of Procurement

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- Remember... these methods and thresholds encompass **federal requirements** only
- Your agency may have procedures in place to conform with local and state regulations that are stricter than these federal requirements

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## Methods of Procurement: Small Purchase Procedures

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### • Small Purchase Procedures

- Simple and informal
- Method to obtain goods & services that do not cost more than the **simplified acquisition threshold**
- Threshold set by federal law at **\$100,000**
- Get price or rate quotations from multiple sources

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## Methods of Procurement: Sealed bids

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### • Sealed bids

- Formal process
- Public solicitation of bids
- **Award contract primarily on the basis of price**
- “Firm-Fixed-Price Contract” awarded
- Preferred method for construction
- Follow required process in federal regulations

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## Methods of Procurement: Sealed bids

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### • Use Sealed bids when:

- a complete, adequate, and realistic description of the good or service being procured is available;
- two or more responsible bidders are willing and able to compete effectively for the business;
- the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made primarily on the basis of price.

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## Methods of Procurement: Sealed bids

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### • Sealed Bid Requirements:

- Publicly advertise invitation for bids
- Solicit bids from an adequate number of suppliers and provide sufficient time
- Publicly open all bids at time and place stated in invitation
- Ensure invitation includes all specifications, attachments, and defines the items or services
- Award a “firm-fixed-price contract” in writing to the lowest responsible bidder
- Consider factors such as discounts, transportation costs, and life cycle costs
- Any bid may be rejected if there is a sound documented reason

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## Methods of Procurement: Competitive Proposals

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### • Competitive Proposals

- Formal
- Used when purchase decision cannot be made primarily on basis of price
- Public solicitation of proposals (RFP)
- *Fixed-price contract* or *cost-reimbursement-type contract* awarded
- Use for architectural/engineering (A/E) professional services
- Follow required process in federal regulations

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## Methods of Procurement: Competitive Proposals

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### • Competitive Proposal Process:

- Publicize requests for proposal (RFPs)
- Identify in the RFP all criteria used to evaluate proposals as well as the criteria's relative importance
- Honor any response to publicized RFPs to the maximum extend practical
- Solicit proposals from an adequate number of qualified sources.
- Have a method to conduct technical evaluations of the proposals and for selecting awardees
- Make an award to the responsible vendor whose proposal is most advantageous to the process. Consider price and other factors

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## Methods of Procurement: Non-Competitive Proposals (Sole Source)

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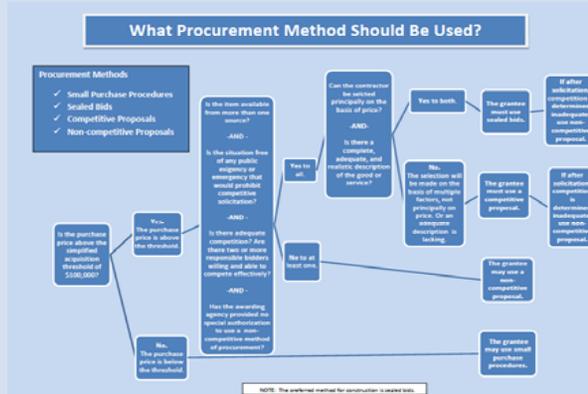
### • Non-Competitive Proposals

- Solicit a proposal from **only one source**
- Last resort, least preferred method
- One of the following circumstances must apply:
  - ✦ Availability
  - ✦ Timeliness
  - ✦ Authorization
  - ✦ Inadequate Competition
- Grantee must perform a **cost analysis**

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## Procurement Method

See [Procurement Method Decision Tree](#)



## Contract Cost and Price

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## Contract Cost and Price

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- **Perform a cost analysis or price analysis for every procurement**

- Applies to **every** procurement
- Includes changes to contracts or change orders
- Method and degree of analysis depends on situation
- As a starting point, make independent estimates to determine a reasonable price **before** receiving bids or proposals

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## Contract Cost and Price

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- **Price Analysis**

- Used to determine the reasonableness of the proposed price. This can be established on the basis of the catalogue or market price. If the price is set by law or regulation, this analysis can be used to establish reasonableness.
  - ✦ Catalog or market price
  - ✦ Price set by law or regulation

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## Contract Cost and Price

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- **Cost Analysis**

- Verifies proposed cost data, projects of cost data changes, and the evaluation of the specific elements of cost and profits. Determines if cost elements are:
  - ✦ Allowable
  - ✦ Allocable
  - ✦ Reasonable

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## Contract Cost and Price: Cost Analysis

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- **Perform a cost analysis in the following circumstances:**

- When the contractor is required to submit the components of the estimated cost, such as labor, materials, overhead, and profit. (e.g. for professional, consulting, and architectural engineering services contracts)
- When adequate price competition is lacking
- For sole source procurements (non-competitive)
- For any contract modifications or changes

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## Contract Cost and Price: Allowable Costs

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- Ensure grant funds are only used for allowable costs under the appropriate set of federal cost principles
  - ✦ To be allowable, all costs, including contractor fees and profit, must be **necessary, reasonable, and allocable** to the federal program
  - ✦ All costs must comply with applicable cost principles

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## Contract Cost and Price: Allowable Costs, Cost Principles

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For each kind of organization, there is a set of federal cost principles for determining allowable costs.

For contracts with –

- State, local, or Indian Tribes: [OMB Circular A-87](#)

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## Contract Cost and Price: Allowable Costs

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- Example of Allowable, Allocable, Reasonable
  - ✦ The LEA is looking to host a large state-wide common core curriculum conference. The LEA has solicited proposals from various meeting sites to determine the location of the conference.
    - Facility Rental
    - Food
    - Beverages

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## Contract Cost and Price: Allowable Costs

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- Allowable (under A-87)
  - ✦ Facility Rental
  - ✦ Food
  - ✦ Beverages
    - Water, Soda, Coffee
    - Water, Soda, Coffee, Alcohol

**Allowable**  
**Not Allowable**

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## Contract Cost and Price: Allowable Costs

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- **Allocable** (Under Specific Grant)  
(Common Core Curriculum Conference)

- ✦ Facility Rental
- ✦ Food
- ✦ Beverages
  - Curriculum Funds
  - IDEA CEIS Funds

**Allowable**  
**Not Allowable**

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## Contract Cost and Price: Allowable Costs

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- **Reasonable** (Under Specific Grant)

- ✦ Facility Rental
- ✦ Food
- ✦ Beverages
  - Most Cost Effective Bid that Meets Specifications
  - Least Cost Effective Bid that Meets Specifications

**Allowable**  
**Not Allowable**

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## Contract Cost and Price: Negotiate Profit Separately

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- **Negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.**

- ✦ When establishing a fair and reasonable profit, consider the following:
  - Complexity of the work
  - Risk borne by the contractor
  - Amount of sub-contracting
  - Contractor's record of past performance, and
  - Industry profit rates in the surrounding area for similar work

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## Contract Cost and Price: Methods of Contracting

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- Cost analysis and price analysis will look different for the four methods of procurement.
- The technical assistance guide provides ...
  - ✦ Recommendations for each method
  - ✦ Recommendations for how to perform a price analysis and cost analysis

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# Contract Provisions

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## Contract Provisions

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- **Ensure all required provisions are included in contracts**
  - See [Outline of provisions for IDEA-funded contracts](#)
- The following provisions should be addressed, as applicable, in CESA and LEA contracts funded wholly or in part by IDEA grants.
- Not intended to be a comprehensive list of all provisions for such contracts.
- Not just an attachment!

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## Contract Provisions: DPI Recommendations

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- **Developing standard contracts:**
  - When CESAs contract with LEAs, any contract involving federal IDEA funds must include these provisions, no matter which agency develops the contract.

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## Contract Provisions: in Detail

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- Personal Services
- Invoices and Statements
- Breach and Termination
- Equal Employment Opportunity
- Copeland “Anti-Kickback” Act
- Davis Bacon Act
- Contract Work Hours and Safety Standards
- Environmental Protection
- Allowable Costs
- Patent Rights
- Copyright and Rights in Data
- Contractor Records
- Lobbying
- Debarred and Suspended Parties
- Publications
- Religious Activities and Religious Discrimination
- Pupil Records

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# Procurement Review

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## Procurement Review

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- WI DPI is authorized to request information about your agency's procurement policies and procedures, as well as information about any specific procurement
- Why would DPI want to review your agency's purchasing procedures and/or specific purchase information?
  - Audit findings
  - Complaints
  - IDEA Discretionary Grants, contract review

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# Recommendations

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## Common procurement weaknesses to avoid: Recommended Guidance

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### Examples:

- Not keeping adequate records
- No price or cost analysis
- Not following your agency's own procurement procedures.
- Not checking the Excluded Parties List System for debarred and suspended vendors.
- **More examples found in guide...**

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## Questions About Procurement?

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- We invite questions to be submitted to Claudia Kessel, Grants Specialist, Special Education Team, at 608-250-2584 or at [claudia.kessel@dpi.wi.gov](mailto:claudia.kessel@dpi.wi.gov)

