

Procurement of Property and Services

Based on Education Department General Administrative Regulations (EDGAR)



Wisconsin Department of Public Instruction
Special Education Team

A Technical Assistance Guide for Individuals with Disabilities Education Act (IDEA) Grantees

Important qualifications for using this guide:

This guide has been provided to Wisconsin school districts and Cooperative Educational Service Agencies (CESAs) to assist them in developing and implementing procurement policies and procedures related to the use of IDEA funds that conform to EDGAR Section 80.36 (34 CFR § 80.36). It is not intended to be a complete or exhaustive review of all topics related to purchasing and contracts, and it is not to be construed as providing legal advice.

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Introduction

What is procurement?

Procurement is the complete process of obtaining goods and services, including preparing and processing a requisition, receiving goods or services, and payment. The procurement process includes any kind of purchase and entails using purchase orders and contracts. A good procurement system ensures that goods or services are obtained through a process that maximizes the value of the funds.

Recipients of federal funds, such as funds received under the Individuals with Disabilities Education Act (IDEA), must ensure that their procurement process complies with specific minimum thresholds outlined in the Education Department General Administrative Regulations (EDGAR).

Who should use this guide?

This document should be used by recipients of IDEA sub-grants awarded by the Wisconsin Department of Public Instruction (WDPI), including Cooperative Educational Service Agencies (CESAs), school districts, independent (2r) charter schools, and institutions of higher education (IHEs). These recipients are referred to throughout this document as *grantees*.¹

Where are the U.S. Department of Education’s minimum requirements for procurement with federal grant funds located? EDGAR Section 80.36 ([34 CFR § 80.36](#)) establishes minimum procurement requirements for grantees regarding:

- Procurement standards;
- Competition;
- Methods of procurement;
- Contract cost and price;
- Procurement review;
- Certification of Procurement Policies and Procedures
- Contract provisions;
- Bonding requirements;
- Contracting with small and minority firms, women’s businesses, labor surplus area firms; and
- Contracting with faith-based organizations.

Definitions

Definitions for highlighted and underlined terms in this guide may be found in the supplementary [Glossary of Terms](#).

¹For the purposes of this document, “grantee” refers to an agency, such as a school district or CESA that receives a sub-award from the Wisconsin Department of Public Instruction. Note that in 34 CFR § 80.36, these agencies are described as “sub-grantees.”

Procurement Standards

- ✓ **Follow procurement procedures that reflect state and local laws and regulations and conform to federal law and the standards in 34 CFR § 80.36:**

Grantees must follow their own procurement procedures that reflect applicable State and local laws and regulations, provided the procurements conform to applicable federal law and the standards in 34 CFR § 80.36. The requirements in section 80.36 establish minimum procurement standards for grantees. Grantee procurement procedures may be more rigorous than these standards, but not less rigorous. [\[34 CFR § 80.36\(b\)\(1\)\]](#)

- ✓ **Develop and implement a [Contract Administration System](#) for contracts and purchase orders:** Before contracts are made, a grantee must have a structure in place to ensure [contractors](#)² perform in accordance with the terms, conditions, and specifications of each contract or purchase order. [\[34 CFR § 80.36\(b\)\(2\)\]](#)

- ✓ **Develop and follow a Conflict of Interest Policy:** Grantees must develop and maintain a written code of standards of conduct governing employees involved in awarding and administering contracts. It should ensure no employee, officer, or agent of the grantee participates in selecting, awarding, or administering a contract if a conflict of interest, real or apparent, is involved. To the extent permitted by State and local law or regulations, the standards of conduct must include penalties, sanctions, or other disciplinary actions for violations.

The policy must ensure no employee, officer or agent, nor any immediate family member, partner, or an organization that employs or is about to employ any of these individuals has a financial or other interest in the firm or individual awarded the contract. Additionally, none of these individuals can personally benefit from the contract or even appear to benefit.

The grantee's officers, employees, and agents cannot request or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or individuals involved in sub-agreements. Grantees may set a minimum amount where the financial interest is not considered substantial or the gift is an unsolicited item of nominal intrinsic value.

[\[34 CFR § 80.36\(b\)\(3\)\]](#)

Contract administration also includes 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, and interacting with the contractor to achieve the contract's objective(s).

² In this document, "contractor" or "vendor" may mean either a firm or an individual. All requirements that refer to contractors also apply to subcontractors.

- ✓ **Make awards only to responsible contractors:** The individual or firm awarded the contract must be able to perform successfully under the terms and conditions of the contract or purchases.

Consideration will be given to:

- Contractor's integrity; and
- Contractor's compliance with public policy; and
- Contractor's record of past performance; and
- Contractor's financial resources and technical capabilities.

[\[34 CFR § 80.36\(b\)\(8\)\]](#)

- ✓ **Before entering into a covered transaction, verify neither the contractor nor its principals are excluded or disqualified from transactions by a Federal department or agency under [Executive Order 12549, "Debarment and Suspension."](#)**

Do this by:

- Checking the Excluded Parties List (EPLS) at www.epls.gov; or
- [Collecting a certification](#) from the party; or
- Adding a clause or condition to the transaction with the party.

[\[34 CFR 85.300\]](#)

Only certain transactions are covered. Threshold and tier requirements for covered transactions are found in the Appendix to 34 CFR Part 85. Knowingly contracting with an excluded party may lead to disallowing the costs, termination of the transaction, issuing a stop work order, suspension, or debarment. [\[34 CFR 85.325\]](#)

- ✓ **Maintain records of the history of a procurement:** The grantee must maintain records sufficient to detail the significant history of a procurement, including purchases and contracts of all types and in all price ranges. The significant history will vary depending on the method of procurement. These records will include, but are not necessarily limited to the following:

- The rationale for the procurement method (e.g., sealed bids or competitive proposals)
- Selection of contract type (e.g., fixed contracts, time and material contracts)
- Contractor selection or rejection
- The basis for the contract price

[\[34 CFR § 80.36\(b\)\(9\)\]](#)

Review the [Procurement Records Checklist](#) for a full list of recommended procurement documentation.

- ✓ **Develop and follow cost-efficient procurement procedures:** Purchasing decisions should be based on the most economical approach. Grantees must have procedures in place to review proposed procurements to avoid unnecessary or duplicative purchases. [\[34 CFR § 80.36\(b\)\(4\)\]](#)
- ✓ **Avoid time and material type contracts:** Use [time and material type contracts](#) only after determining no other type of contract is suitable. The determination should be documented in the procurement history. Grantees will use time and material type contracts only if the contract includes a ceiling price that the contractor exceeds at its own risk. [\[34 CFR § 80.36\(b\)\(10\)\]](#)
- ✓ **Develop and follow protest procedures to resolve disputes:** Grantees must have protest procedures to handle and resolve procurement disputes. The grantee alone is responsible, in accordance with good administrative practice and sound business judgment, for settling all contractual and administrative issues arising out of procurements. The issues include but are not limited to [source evaluations](#), evaluating potential vendors, protests, disputes, and claims.

The responsibility to resolve procurement disputes cannot be passed on to WDPI or federal agencies. However, grantees must disclose information about any procurement protests or disputes to the WDPI. Before pursuing a protest with the U.S. Department of Education, a protestor has to use all the procedures of the grantee and the WDPI to resolve the dispute(s).

In order to be more cost efficient, grantees are encouraged to consider –

- Entering into intergovernmental agreements for purchasing common goods and services. [\[34 CFR § 80.36\(b\)\(5\)\]](#)
- Consolidating or breaking out procurements to get a more economical purchase. [\[34 CFR § 80.36\(b\)\(4\)\]](#)
- Analyzing lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. [\[34 CFR § 80.36\(b\)\(4\)\]](#)
- Using **federal excess and surplus property** instead of purchasing new equipment and property whenever it is feasible and it reduces costs. [\[34 CFR § 80.36\(b\)\(6\)\]](#)
- Using **value engineering clauses** in contracts for construction projects of sufficient size to offer reasonable opportunities to reduce costs. Value engineering is a systemic and creative analysis of each contract item or task to ensure its essential function is provided at the overall lower cost. [\[34 CFR § 80.36\(b\)\(7\)\]](#)

Reviews of protest by the U.S. Department of Education are limited to:

- Violations of federal laws or regulations and the procurement standards in 34 CFR § 80.36; and
- Violation of the grantee's protest procedures for failing to review the protest.

The procurement standards do not relieve the grantee of any contractual responsibilities under its contracts. Violations of law must be reported to the local, state, or federal authorities.

[\[34 CFR § 80.36\(b\)\(11\); 34 CFR § 80.36\(b\)\(12\)\]](#)

Competition

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

All procurements (contracts, purchase orders) must be managed in a way that provides full and open competition consistent with the federal procurement standards in 34 CFR 80.36.

The following are examples of situations that restrict competition and should be avoided:

- Placing unreasonable requirements on firms to qualify them to do business; and
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies (e.g. price fixing);
- Noncompetitive awards to consultants that are on [retainer contracts](#);
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process. All steps in the process need to be reasonable and justifiable.

[\[34 CFR § 80.36\(c\)\(1\)\]](#)

✓ **Do not make procurement decisions based on geographical preference unless federal law explicitly requires or encourages it:** In evaluating bids or proposals, do not give preference to in-state or local potential contractors, unless federal law explicitly requires or encourages a geographic preference. In addition, grantees must require potential contractors to hold appropriate state licenses. When contracting architectural and engineering services geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms to compete for the project, given the project’s nature and size.

[\[34 CFR § 80.36\(c\)\(2\)\]](#)

✓ **Develop and follow written selection procedures for procurement transactions:** These procedures will ensure all solicitations (e.g. requests for proposals, invitations to bid) follow the requirements below:

- The request must include a clear and accurate description of the technical requirements for the material, product, or service being procured.
 - The description shall not contain features which unduly restrict competition in competitive procurements.
 - The description may include a qualitative statement about the material, product, or service.
 - When necessary, the description must include the minimum essential characteristics and standards required for the product or service to satisfy its intended use.

- If possible, too much detail about the product specifications should be avoided.
- When it's impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other important requirements of the procurement. The specific features of the named brand that must be met should be clearly stated.
- The grantee must ensure that all solicitations identify all requirements the potential contractor must meet and all factors used to evaluate the bid or proposal. For example, the grantee's request for proposals should inform the vendor of any license requirements necessary to perform the service or provide a product as part of the contract.

[\[34 CFR § 80.36\(c\)\(3\)\]](#)

- ✓ **Ensure all vendor lists are current and inclusive:** If a list of pre-qualified vendors is maintained, this list must be kept current and include enough qualified sources to ensure maximum open and free competition. Grantees cannot prevent potential bidders or proposers from qualifying during the solicitation period.

[\[34 CFR § 80.36\(c\)\(4\)\]](#)

Methods of Procurement

There are four methods by which grantees may procure goods and services with federal grant funds: 1) small purchase procedures; 2) sealed bids; 3) competitive proposals' and 4) non-competitive proposals. [\[34 CFR § 80.36\(d\)\]](#) Review the [Procurement Method Decision Tree](#) as a quick reference to determine which procurement method should be used.

1.) Small Purchase Procedures

Small purchase procedures are relatively simple and informal methods for obtaining services, supplies, or other property that do not cost more than the **simplified acquisition threshold fixed at 41 U.S.C. 403(11)**. This threshold is currently set by the federal law at **\$100,000**. If these procedures are used, the grantee must obtain price or rate quotations from an adequate number of qualified sources. [\[34 CFR § 80.36\(d\)\(1\)\]](#)

2.) Sealed Bids

This procurement method involves publicly soliciting bids and awarding a [firm-fixed-price contract \(lump sum or unit price\)](#) to the responsible bidder whose bid is the lowest in price and complies with the terms and conditions of the invitation for bids. Generally, this method is the preferred method for procuring construction if it is feasible.

✓ Use sealed bids when feasible. They are feasible 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; and
- 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.

✓ When using sealed bids, follow the required process:

- Publicly advertise the invitation for bids;
- Solicit bids from an adequate number of known suppliers, and provide sufficient time before the date set for opening the bids;
- Publicly open all bids at the time and place stated in the invitation for bids;
- Ensure the invitation for bids includes all specifications, relevant attachments, and defines the items or services so the bidder may properly respond;
- Award a [firm-fixed-price contract](#) in writing to the lowest responsive and responsible bidder
- Consider factors such as discounts, transportation costs, and life cycle costs specified in the bidding documents when determining which bid is the lowest . Only consider payment discounts if the grantee usually takes advantage of such discounts; and
- Any or all bids may be rejected if there is a sound documented reason.

[\[34 CFR § 80.36\(d\)\(2\)\]](#)

3.) Procurement by Competitive (Negotiated) Proposals

This formal method is used when conditions are not appropriate for sealed bids, e.g., when the procurement decision can't be made primarily on the basis of price. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a [fixed price contract](#) or a [cost reimbursement type contract](#) is awarded. Generally, it is used when conditions are not appropriate for sealed bids.

[\[34 CFR § 80.36\(d\)\(3\)\]](#)

For the competitive proposal method of procurement, a request for proposals (RFP) is publicized and more than one source submits an offer. Various methods may be used to evaluate proposals. One way to evaluate proposals involves convening a panel of technical experts to review the proposals, and then either-

- The contract is awarded; or
- A competitive range is determined based on the technical evaluation results. Discussions or negotiations are held with the potential contractors in the competitive range, and they are given an opportunity to submit final proposals. Then a contract is awarded based on an evaluation of final proposals.

Grantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services where competitors' qualifications are evaluated and the most qualified is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used to procure A/E professional services, not to purchase other types of services through A/E firms. [34 CFR § 80.36(d)(3)]

✓ **When using competitive proposals, follow the required process:**

- Publicize requests for proposals (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 extent practical;
- Solicit proposals from an adequate number of qualified sources;
- Have a method to conduct technical evaluations of the proposals and for selecting awardees; and
- Make an award to the responsible proposer whose proposal is most advantageous to the program. Consider price and other factors considered.

[\[34 CFR § 80.36\(d\)\(3\)\]](#)

4.) Non-Competitive Proposals (Sole Source)

This method involves soliciting a proposal from only one source, or after requesting bids or proposals from a number of sources, competition is determined to be inadequate. It may be used only when awarding a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals and **one** of the following circumstances applies:

- The item is available only from a single source; or
 - There can be no delay from a competitive procurement process because of an emergency or public exigency. Public exigency exists when circumstances require urgent action, such as threats to health and safety. Poor planning does not constitute public exigency; or
 - DPI specifically authorizes noncompetitive proposals; or
 - After soliciting bids or proposals from a number of sources, competition is determined inadequate. This determination must be documented in the procurement history.
- ✓ **Perform a cost analysis for a non-competitive proposal:** A grantee must perform a cost analysis, (i.e., verifying the proposed cost data, the projections of the data if the cost data may change over time, and the evaluation of the specific elements of costs and profits), for a non-competitive proposal. [\[34 CFR § 80.36\(d\)\(4\)\]](#)

Contract Cost and Price

- ✓ **Perform a cost analysis or price analysis for every procurement:** Grantees must perform a cost or price analysis for every procurement, including changes to contracts or change orders. The method and degree of analysis depends on the situation. As a starting point, make independent estimates to determine a reasonable price before receiving bids or proposals. The independent estimate may be developed by grantee staff or by an independent expert.

- ✓ **Perform a cost analysis in the following circumstances:**
 - When the contractor is required to submit the components of the estimated total cost, such as labor, materials, overhead, and profit (e.g., for professional, consulting, and architectural engineering services contracts).
 - When adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of catalog or market prices of commercial products or services sold in substantial quantities to the general public or set by law or regulation.
 - For sole-source procurements, (e.g., noncompetitive proposal procurement method) and when negotiating a contract after a sealed bid procurement fails to produce more than one bidder, and it is determined rebidding would not produce additional bids.
 - For any contract modifications or [change orders](#), if the modification changes the work authorized under the contract and changes the price or total estimated cost, either upwards or downwards.

A [price analysis](#) is used to determine the reasonableness of the proposed price. The reasonableness of the proposed price 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.

A [cost analysis](#) verifies proposed cost data, projections of cost data changes, and the evaluation of the specific elements of costs and profits. It is used to determine whether the elements that make up the total estimated cost of a contract are allowable, allocable, and reasonable.

How do cost analysis and price analysis apply to the different procurement methods?

- **Small Purchases.** For routine, commercial type purchases, comparing price or rate quotes obtained from an adequate number of qualified vendors is sufficient price analysis. If the small purchase is for professional or technical services, or the grantee needs to evaluate other factors than price, then at least a limited cost analysis is appropriate. In either case, the grantee's analysis should include comparing the proposed prices to past prices it has paid for the same or similar items or services.
- **Sealed Bids.** This is the preferred method for contracting for supplies, equipment and construction. Normally, the competitive pricing forces of the marketplace determine the reasonableness of the low price obtained through sealed bidding. Nevertheless, the grantee should always compare its own independent cost estimate to the low competitive bid received. In the event they are significantly different, the grantee will need to examine each to verify that either its own estimate or the market price is valid. Otherwise, no further price or cost analysis is required under sealed bidding.
- **Competitive (Negotiated) Proposals.** To determine the reasonableness of proposed costs, cost breakdowns must be obtained from the potential contractors showing all the elements of their proposed total costs. A cost analysis must be performed for each proposal. All proposed costs contained in each potential contractor's price must be analyzed.
- **Noncompetitive Proposals.** No competition is intended, and usually, there is no market to help set the price or estimated cost. Since there is no price competition to tell the grantee if the price or estimated cost is reasonable, the grantee must obtain a breakdown of the proposed costs and perform a cost analysis.

- ✓ **Observe the requirements for when a cost analysis must be performed, and use a price analysis to determine the reasonableness of the proposed contract price in all cases where a cost analysis is not required.**

[\[34 CFR § 80.36 \(f\)\(1\)\]](#)

- ✓ **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, the following should be considered:

- Complexity of the work to be performed;
- The risk borne by the contractor;
- The contractor's investment;
- The amount of subcontracting;
- The contractor's record of past performance; and
- Industry profit rates in the surrounding geographical area for similar work.

[\[34 CFR § 80.36 \(f\)\(2\)\]](#)

- ✓ **Ensure grant funds are only used for allowable costs under the appropriate set of federal cost principles**

Grant funds may only be used for the allowable contractors' costs of contractors. To be allowable, all costs including contractor fees and profit must be necessary, reasonable, and allocable to the federal program, and comply with applicable cost principles.

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

- State, local, or Indian tribal governments use [White House Office of Management and Budget \(OMB\) Circular A-87](#).
- Private nonprofit organizations other than an institution of higher education, a hospital, or an organization named in OMB Circular A-122 as not subject to OMB Circular A-122 use [OMB Circular A-122](#).
- Educational institutions use [OMB Circular A-21](#).
- For-profit organizations, other than hospitals, use [48 CFR § 31.2, Contracts with Commercial Organizations](#).

[\[34 CFR § 80.36 \(f\)\(3\)\]](#), [\[34 CFR § 80.22\]](#)

- ✓ **Observe limitations on methods of contracting**

The [cost plus a percentage of cost method](#) and the [percentage of construction cost method](#) of contracting are prohibited. [\[34 CFR § 80.36\(f\)\(4\)\]](#)

How do I perform a price analysis?

Use as many of the following techniques as applicable and appropriate:

- Compare competitive prices received in response to the solicitation to one another. This assumes the grantee receives a large enough number of competitively priced offers from the current marketplace.
- Compare proposed prices with prices under existing contracts and with prices proposed in the past for the same or similar items/services. Factor in any market changes (e.g., commodity price changes) or other influences (e.g., inflation).
- Apply rough yardsticks (e.g., dollars per pound, per square foot, per hour, etc.) to compare prices and highlight significant inconsistencies that warrant additional pricing inquiry.
- Compare competitive price lists, published catalog or market prices of commodities and products, similar indices and discount or rebate arrangements.
- Compare proposed prices with your independent (in-house) cost estimates.

How do I perform a cost analysis?

Verify the accuracy of the cost and pricing information submitted, and evaluate:

- The reasonableness of the proposed costs, including allowances for contingencies. To be considered reasonable, proposed costs must meet three tests. The costs must be:
 - *Allowable*. The cost must be allowable under applicable cost principles. (See page 13)
 - *Allocable*. The costs are logically related to, or required in the performance of the contract.
 - *Reasonable*. This term is generally defined as what a prudent person would pay in a competitive marketplace. A cost can be allowable and allocable, and still not be what a prudent person would pay (e.g., first class airfare for a proposed contractor).
- The necessity for proposed cost items. Technical personnel (e.g., architect, information systems specialist, etc.) should review the proposed direct cost elements to determine their necessity to perform the contract and reasonableness (e.g., in comparison to market rates). A cost may be allowable under the cost principles and allocable to the type of work to be performed, but still not be necessary for the specific contract.
- Application of audited or pre-negotiated by indirect cost (e.g., overhead) rates, labor and fringe benefit rates, or other factors.
- Effect of the potential contractor's current practices on future costs. Does the contractor have a track record of completing contracts at or under cost? Does the contractor overrun costs?
- The projection of the potential contractor's cost trends. Is there any indication the contractor's costs are likely to increase or decrease over the life of the contract?

Compare costs proposed by the contractor with –

- Actual costs previously incurred by the same contractor for the same or similar work. If it is a repetitive type of work or service, how much has it cost in the past. Apply any appropriate inflation factors for past work.
- Actual costs of the same or similar work performed by other contractors.
- Previous cost estimates from the potential contractor or others for the same or similar items.
- The methods proposed by the potential contractor with the requirements of the solicitation. Do the costs reflect the technical approach proposed and the work required?
- The grantee's independent cost estimate either created by grantee staff or for the grantee by an independent architect, engineer, appraiser, etc.
- Verify the costs submitted by the potential contractor comply with the appropriate set of cost principles. (See page 13)

Prior-Approval for Purchases of Equipment with IDEA funds

- ✓ **IDEA funds may be used for the acquisition of equipment if it is determined that the program would be improved by allowing funds to be used for such purposes.**
[\[34CRF § 300.718\(a\)\]](#)
- ✓ **LEAs must obtain DPI’s prior approval to use IDEA funds for such equipment purchases.**
[\[OMB Circular A-87 – Appendix B to Part 225: Selected Items of Cost – § 15\(b\)\(1\)\]](#)
- ✓ **For purposes of these prior approval requirements, “equipment” is defined to mean an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000.**
[\[OMB Circular A-87 – Appendix B to Part 225- Selected Items of Cost – § 15\(a\)\(2\)\]](#)

Procurement Review

- ✓ **Upon request , provide the WDPI with information related to specific procurements, including proposed procurements and past solicitations**
 - The WDPI may review technical specifications of proposed procurements. If the WDPI determines the review is necessary, the grantee must make this information available to the WDPI. The review generally takes place prior to incorporating specifications into a solicitation.
 - The review may also take place after the solicitation has been developed. The WDPI may review such a solicitation and its specifications. Generally, such a review is limited to the technical aspects of the proposed purchase.

[\[34 CFR § 80.36\(g\)\(1\)\]](#)

Upon request, grantees must make available to the WDPI pre-award procurement documents (e.g., requests for proposals, invitations for bids, independent cost estimates, etc.)

[\[34 CFR § 80.36\(g\)\(2\)\]](#)

Contract Provisions

- ✓ **Ensure all required provisions are included in contracts.**

Grantee contracts must contain relevant applicable provisions described below, contained in the [Outline of Provisions for IDEA-Funded Contracts](#).

[\[34 CFR § 80.36\(i\)\(1-13\)\]](#)

- ✓ **Federal agencies are permitted to require contract provisions reflecting approved changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.**

[\[34 CFR § 80.36\(i\)\]](#)

Bonding Requirements

- ✓ **Comply with the federal and State of Wisconsin bonding requirements for construction or facility improvement contracts and State of Wisconsin requirements for public improvement and public work contracts:**

Bid Bond:

For construction or facility improvement contracts with a cost above the federal simplified acquisition threshold, which is currently set at \$100,000 (*See* 41 USC §403(11) where the simplified acquisition threshold is fixed), the grantee should obtain a bid guarantee from each bidder equivalent to at least five percent of the price of the bid.

[\[34 CFR § 80.36\(h\)\]](#)

Performance Bond:

Under State and federal law, the contractor must execute a performance bond for 100 percent of the contract price if the contract price exceeds the simplified acquisition threshold.

[\[34 CFR § 80.36\(h\)\(2\)\]](#)

Payment Bond:

Under State and federal law, the contractor must execute a payment bond for 100 percent of the contract price if the contract price exceeds the simplified acquisition threshold.

[\[34 CFR § 80.36\(h\)\(3\)\]](#)

Neither the invitation for bids nor the person with the power to approve the prime contractor's bond may require the bond be furnished by a specified surety company, agent, or broker. The bond must be approved by the school district president and for any other public board by its presiding officer. No assignment, modification, or change of the contract or resulting change in work, or extension of time for contract completion may release the sureties on the bond.

[\[§779.14\(1m\)\(e\), Wis. Stats.\]](#)

Small and Minority Firms, Women's Businesses and Labor Surplus Area Firms

- ✓ **Take all necessary affirmative steps to assure small and minority firms, women's business enterprises, and labor surplus area firms are used when possible.**

Affirmative steps include the following:

- Placing qualified small and minority firms and women's business enterprises on solicitation lists;
- Assuring small and minority firms and women's business enterprises are solicited whenever they are potential sources;
- Dividing total purchase requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority firms and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority firms and women's business enterprises;
- Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontractors are to be used, to take these same affirmative steps.

[\[34 CFR § 80.36\(e\)\]](#)

Faith-based Organizations

- ✓ **Do not discriminate for or against a private organization because of the organization's religious character or affiliation:** A faith-based organization is eligible to contract with grantees on the same basis as any other eligible private organization. In selecting goods and services providers, grantees cannot discriminate for or against a private organization because of that organization's religious character or affiliation.
[\[34 CFR § 80.36\(j\)\(1\)\]](#)

- ✓ **When contracting with faith-based organizations, observe required limitations on use of federal funds:** Generally, a faith-based organization that contracts with a grantee may not use the funds to pay for religious worship, instruction, or proselytization or equipment or supplies to be used for these activities. The only exception to this requirement permits such use of funds if the faith-based organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program and provided the organization otherwise satisfies program requirements.
[\[34 CFR § 80.36\(j\)\(2\)\]](#)

- ✓ **Ensure separation of religious activities from grant-funded activities:** A private organization that engages in inherently religious activities, (e.g., religious worship, instruction, or proselytization), must offer those services at a separate time or location from any programs or services supported by a contract with the grantee. Participation in any inherently religious activities by the beneficiaries of the program supported by the contract must be voluntary, unless the faith-based organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program and provided the organization otherwise satisfies program requirements.
[\[34 CFR § 80.36\(j\)\(3\)\]](#)

- ✓ **Allow contracted faith-based organizations to retain their autonomy:** A faith-based organization that contracts with a grantee may retain its independence, autonomy, right of expression, religious character, and authority over its governance.
A faith-based organization may, among other things:
 - Retain religious terms in its name;
 - Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;
 - Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;
 - Select its board members and otherwise govern itself on a religious basis; and
 - Include religious references in its mission statement and other chartering or governing documents.[\[34 CFR § 80.36\(j\)\(4\)\]](#)

- ✓ **Ensure regulations related to religious discrimination are observed**
 - A private organization that contracts with a grantee cannot discriminate against a beneficiary or prospective beneficiary in the provision of program services on the basis of religion or religious belief.
[\[34 CFR § 80.36\(j\)\(5\)\]](#)
 - When a faith-based organization contracts with a grantee, the organization is still exempt from the federal prohibition on employment discrimination on the basis of religion, in section [702\(a\) of the Civil Rights Act of 1964 \[42 U.S.C. 2000e-1\]](#).
[\[34 CFR § 80.36\(j\)\(6\)\]](#)

Common Procurement Weaknesses

- *Missing justifications.* The procurement record should include justifications for using a sole-source contract, using brand name descriptions, or using contract types other than fixed-price and cost reimbursement contracts.
- *Incomplete procurement history.* A record of the events leading up to the award is required to demonstrate procedures were properly followed.
- *No evidence of competition.* The record should show evidence of the procurement method that was followed, including evidence of oral or written price quotes.
- *No price or cost analysis.* There should be evidence the contractor's proposal was evaluated for reasonableness, allocability, and allowability, and that issues with vendor costs were addressed prior to making the award.
- *Missing approvals.* Internal controls should require reviews and approvals at various stages of the procurement process. The record should include evidence of the reviews and approvals.
- *Failing to follow the established procurement procedures.*
- *Failing to check the Excluded Parties List System for debarred and suspended vendors.* A grantee cannot do business with any party debarred, suspended, or otherwise excluded from doing business with the federal government. (See 34 CFR § 80.35)
- *Separating single purchases into separate transactions to avoid competition thresholds.*
- *Commitments made to vendors by unauthorized individuals.* The failure of personnel to use requisitions and purchase orders prior to ordering goods and services limits management's ability to properly plan and coordinate the procurement of goods and services, exercise timely budgetary control, and prevent unauthorized purchases. Circumventing the procurement process also increases the risk of fraud, waste, and abuse.
- *Failing to segregate procurement duties.* Procurement duties (e.g., obtaining quotes, selecting the vendor, authorizing payment) should be distributed among grantee staff to reduce the risk of fraud and abuse.

Final Checklist

Procurement Standards

- ✓ Follow procurement procedures that reflect State and local laws and regulations and conform to federal laws and regulations and the standards in 34 CFR § 80.36
- ✓ Develop and implement a contract administration system for contracts and purchase orders
- ✓ Develop and follow a Conflict of Interest policy
- ✓ Make awards only to responsible contractors
- ✓ Before doing business with a vendor or contractor, verify that entity is not debarred or suspended
- ✓ Maintain records of the history of a procurement
- ✓ Develop and follow cost-efficient procurement procedures
- ✓ Avoid time and material type contracts
- ✓ Develop and follow protest procedures to resolve disputes

Competition

- ✓ Provide full and open competition in all purchasing decisions
- ✓ Do not make procurement decisions based on geographical preference unless federal law explicitly requires or encourages it
- ✓ Develop and follow written selection procedures for procurement transactions
- ✓ Ensure all vendor lists are current and inclusive

Method of Procurement

- ✓ Choose the appropriate method of procurement
 - Small Purchase Procedures
 - Sealed Bids
 - Competitive Proposals
 - Non-competitive proposals
- ✓ Use sealed bids when feasible
- ✓ When using sealed bids, follow the required process
- ✓ When using competitive proposals, follow the required process
- ✓ Perform a cost analysis for a non-competitive proposal

Contract Cost and Price

- ✓ Perform a cost analysis or price analysis for every procurement
- ✓ Observe the requirements for when a cost analysis must be performed, and use a price analysis to determine the reasonableness of the proposed contract price in all cases where a cost analysis is not required
- ✓ 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

Final Checklist

Contract Cost and Price (continued)

- ✓ Ensure funds are used only for allowable costs under the appropriate set of federal cost principles
- ✓ Observe limitations for methods of contracting

Purchase of Equipment with IDEA Funds

- ✓ IDEA funds may be used for the acquisition of equipment if determined appropriate
- ✓ Obtain pre-approval from DPI for purchases of equipment

Procurement Review

- ✓ Upon request, provide DPI with information related to specific procurements, including proposed procurements and past solicitations

Contract Provisions

- ✓ Ensure all required provisions are included in contracts and purchase orders

Bonding Requirements

- ✓ Comply with bonding requirements for construction or facility improvement contracts with a cost above the simplified acquisition threshold

Contracting with Minority Firms, Women's Businesses and Labor Surplus Area Firms

- ✓ Take all necessary affirmative steps to assure minority firms, women's businesses, and labor surplus area firms are used when possible

Contracting with Faith-Based Organizations

- ✓ Do not discriminate for or against a private organization because of the organization's religious character or affiliation
- ✓ When contracting with faith-based organizations, observe required limitations on use of federal funds
- ✓ Ensure separation of religious activities from grant-funded activities
- ✓ Allow contracted faith-based organizations to retain autonomy
- ✓ Ensure regulations related to religious discrimination when contracting with a faith-based organization