

**NICOLLET COUNTY FEDERAL GRANT OR AWARD  
PROCUREMENT POLICY**

**1. PURPOSE**

The purpose of this policy is to ensure that goods and services purchased for the performance of a federal grant or award are obtained in a cost-effective manner and in compliance with federal regulations.

**2. SCOPE**

This policy applies to anyone (“Buyer”) authorized to procure, initiate, and/or approve purchases paid with federal funds (grant/award) at Nicollet County. This policy is also subject to the Nicollet County Procurement Policy.

**3. ETHICAL PRACTICES**

**A.** It is the policy of the County to operate in an ethical manner with respect to its employees and the public it serves. The Nicollet County Code of Ethics covers the receipt of gifts, favors, use of confidential information, conflicts of interest, outside employment, and acceptance of advantage. County employees and elected officials in a position to procure goods or services will abide by the County’s Code of Ethics found in the Nicollet County Employee Handbook and by State Statute.

**B.** An act of fraud is committed if an employee or elected official of the County negotiates a personal procurement by fraudulent use of a County Purchase Order/Claim Form or the purchasing capability of the County. Fraud also occurs if an employee claims a purchase is on behalf of Nicollet County when in fact the purchase was made solely for personal use. Fraud and personal procurement from the State Contract is an offense subject to prosecution and employee discipline. Willful violation of the County’s Procurement Policy may result in disciplinary action up to and including termination of employment. Violation of the County Procurement Policy could also void the purchase and the person who violated the policy could be personally liable for the cost.

**4. PURCHASING RESPONSIBILITIES**

The Buyer is responsible for determining whether a purchase is allowable under the terms of the federal grant or award and will ensure purchases are in accordance with this policy as well as the County’s purchasing policy. The Buyer will also serve as the final repository for purchase transaction records specific to federal funds for a minimum of three (3 years).

The County Administrator must approve any exceptions to this policy in writing.

## **5. PROCESS OVERVIEW**

To promote compliance with federal regulations, the County requires buyers to perform a cost/price analysis when making purchases under federal grants when over the Simplified Acquisition Threshold (\$250,000). For purchases under the Simplified Acquisition Threshold, the buyer should make a determination as to reasonableness of the cost, and are still subject to the remainder of this policy, process, and its procedures.

Before beginning vendor selection, buyers should be sure that they have a clear and accurate description of the requirements for the material, product, or service being acquired so that a fair and equitable comparison of price and/or cost can be made.

Buyers shall avoid purchasing unnecessary items. All vendor bids, proposals, and quotations must be evaluated on the basis of product quality, technical compliance with specifications, total cost, and the vendor's acceptance of the County's terms and conditions.

## PROCESS AND PROCEDURES:

**This is only a brief summary of guidelines that need to be followed when procuring Federal grants and awards. The governing body for these guidelines is the Code of Federal Regulations (CFR) and their respective sections (i.e. §200.XXX).**

Because grants may include purchases of product, staff or other services, **grants must be brought to the County Board for acceptance.** Grants not requiring Grant our Sub-Grant agreements may not require Board acceptance (for example: FEMA awards).

**It is the responsibility of the persons procuring Federal funds (Buyer) to refer to the CFR regulations with the electronic version outlined here: <http://www.ecfr.gov> Title 2 Subtitle A Chapter II Part 200 to ensure each type of procurement is following Federal regulations.**

Additional responsibilities occur when a Sub recipient is involved in carrying out part of a federal award program compared to a Contractor. The Buyer must determine if a vendor is a Contractor or a Sub recipient of Nicollet County before accepting any proposal.

### **A. Methods of Procurement Under a Federal Award (CFR §200.320)**

The county will use the following procurement methods.

1. Micro-Purchases \$1 - \$10,000: Acquisition of supplies and services which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act).
  - a. No quotations needed if the price is reasonable.
  - b. Equitable distributions among qualified suppliers.
  - c. Department head (or designee) signs invoices for processing.
2. Small Purchases \$10,001-\$250,000: Relatively simple and informal procurement methods for services, supplies or other property that is less than or equal to \$250,000.
  - a. Price or rate quotations must be solicited from at least two (2) qualified sources.
  - b. No cost or price analysis needed.
3. Sealed Bids: More than \$250,000. Publically solicited and a firm fixed price is awarded with a written contract to the bid that is the lowest responsible price.
  - a. Lowest responsible price is determined by looking at all factors in combination (time, quality, price,

- stability, reputation etc.) This is the preferred method for procuring construction.
- b. Request for bids must be solicited from at least two (2) qualified sources.
  - c. In order for sealed bidding to be feasible, the conditions in §200.320 paragraph (c)(1) should be present.
  - d. If sealed bids are used, the requirements of §200.320 paragraph (c)(2) apply.
4. Competitive Proposals: More than \$250,000. Generally used when conditions are not appropriate for the use of sealed bids.
    - a. Request for proposals must be solicited from at least two (2) qualified sources.
    - b. If this method is used, the conditions as stated in §200.320 paragraph (d) apply.
  5. Non-Competitive Proposals: Procurement through solicitation of a proposal from only one source. May only be used when one or more of the circumstances apply as stated in §200.320 paragraph (f).

**B. General Standards for Federal Procurement (CFR §200.318)**

When procuring property, goods, and/or services under a Federal award, the following procurement standards must be followed:

1. Ensure contractors are performing in accordance with the terms, conditions and specifications of their contracts. Contracts should only be awarded to responsible contractors who have the ability to perform successfully under the terms and conditions of the procurement.
2. To reduce costs, the use of value engineering clauses is encouraged for large projects, such as construction.
3. Consideration and analysis should be made to make the most economical approach of procurements. Avoid acquisition of unnecessary or duplicative items and analyze the value of a lease versus purchase when applicable.
4. Nicollet County is encouraged to enter into state and local intergovernmental agreements, agreements with other entities where appropriate, or use common or shared goods and services to promote a cost-effective use of shared services. Also, the use of Federal excess and surplus property in lieu of purchasing new is encouraged whenever feasible.
5. The following records must be maintained to detail the history of the procurement:

- a. reason for the method of procurement
  - b. selection of contract type
  - c. Contractor selection or rejection, along with bids or quotes.
  - d. basis for contract price
6. Time and materials type contract may be used only after it is determined there is no other suitable contract and if the contract includes a ceiling price that the contractor exceeds at its own risk. If this contract is used a high degree of oversight is required to ensure the contractor is using efficient methods and effective cost controls.
  7. Nicollet County is responsible for the settlement of all contractual and administrative issues arising out of the procurements, which include, but are not limited to: source evaluation, protests, disputes and claims.

### **C. Competition (CFR §200.319 and §200.321)**

Nicollet County must engage in full and open competition for all procurement transactions per federal regulations. Records that sufficiently detail the history of all procurements, including small purchases, must be kept on file by the Buyer.

Contractors that draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for procurements. Some other examples of situations include, but are not limited to:

1. Placing unreasonable requirements on firms for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonds;
3. Noncompetitive pricing practices and contracts;
4. Organizational conflicts of interest;
5. Specifying only a “brand name” instead of allowing “an equal” product to be offered; and
6. Any arbitrary action in the procurement process.

In addition, Nicollet County must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preferences, or for state licensing law [§200.319].

The Buyer must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises and labor surplus firms are used when possible [§200.321]. A directory of certified targeted groups is available on the State of Minnesota – Office of Procurement website:

<http://www.mmd.admin.state.mn.us/process/search/>. A list of persons, firms or products which are used in acquiring goods and services must be kept current and include enough sources to ensure open and free competition.

All procurements under a Federal award must ensure that all solicitations have the following:

1. Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured.
2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**D. Procurements of Recovered Materials (CFR §200.322)**

Nicollet County must comply with Section 6002 of the Solid Waste Disposal Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**E. Cost and Price Analysis (CFR §200.323)**

1. Every procurement action in excess of Simplified Acquisition Threshold (\$250,000), including contract modifications, must have a cost or price analysis. Nicollet County must make independent estimates before receiving bids or proposals.
2. Profit must be negotiated 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.
3. For information on costs or prices based on estimated costs for contracts, please refer to §200.400 which further defines cost principles.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**F. Suspension and Debarment (CFR §200.212 & §180.300)**

The Buyer will review all federal grant transactions and potential contractors to verify that purchases will not be made nor contracts awarded to contractors that are on the Debarment or Suspension list supplied by the Government. This list is available at – <https://www.sam.gov/SAM/> referred to as SAM, (formerly

EPLS.GOV). All results of searches will also be attached to the filed paperwork for verification of search.

All purchases will require the contractor to certify in writing that it has not been suspended or disbarred from doing business with any federal agency.

**G. Federal Awarding Agency or Pass-Through Entity Review (CFR §200.324)**

Nicollet County must make available, upon request from the Federal awarding agency or pass-through entity, technical specifications, pre-procurement review, and all other documents related to proposed procurements.

**H. Bonding Requirements (CFR §200.325)**

The buyer must determine that the Federal and Nicollet County interest is adequately protected.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, The minimum requirements must be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**I. Contract Provisions (CFR §200.326)**

The County will include the following provisions, as applicable, in contracts (including small purchases) with contractors and sub awards:

1. **Remedies:** All contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$250,000) shall contain contractual provisions or conditions that allow for

administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms.

2. **Termination:** All contracts in excess of \$10,000 shall contain suitable provisions for termination by the County, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated due to circumstances beyond the control of the contractor.
3. **Equal Employment Opportunity:** All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor."
4. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148):** When required by Federal program legislation, all construction contracts of more than \$2,000 awarded by the County and its sub recipients shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. It is the policy of the County to place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The County shall report all suspected or reported violations to the Federal awarding agency.
5. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333):** Where applicable, all contracts awarded by the County excess of \$100,000 for contracts that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or

mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. **Rights to Inventions Made Under a Contract or Agreement:** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the County in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
7. **Clean Air Act (42 U.S.C. 7401-7671q and the Federal Water Pollution Control Act (33 U.S.C. 1251 -1387), as amended:** Contracts and sub awards of amounts in excess of \$150,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. **Debarment and Suspension (E.O.s 12549 and 12689):** For all contracts, the County shall obtain from the contractor a certification that neither the contractor nor any of its principal employees or subcontractors is listed on the Excluded Parties List System in SAM.
9. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352):** For all contracts or Sub grants of \$100,000 or more, the County shall obtain from the contractor or sub-grantee a certification that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Likewise, since each tier provides such certifications to the tier above it, the County shall provide such certifications in all situations in which it acts as a sub-recipient of a sub-grant of \$100,000 or more.

**EFFECTIVE DATE: 2/26/19**

**REFERENCES: Code of Federal Regulations (CFR) Title 2 Part 200 Uniform Administrative Requirements**

# Appendix

## **COST AND PRICE ANALYSIS--AN EXPLANATION**

Some form of price or cost analysis should be performed in connection with every procurement action, regardless of whether the organization is a vendor or a sub recipient. The form and degree of analysis, however, are dependent on the particular subcontract or purchase, and the pricing situation. Determination of price reasonableness through price or cost analysis is required even though the procurement is source directed by the contracting officer of the sponsoring agency.

In some purchases, price analysis alone will be sufficient; in others, price analysis will be used to corroborate the conclusions arrived at through cost analysis. The form and degree of analysis are dependent on facts surrounding a particular subcontracting or purchasing situation. The scope of price analysis performed and the particular techniques used will depend on whether or not cost analysis is done, as well as on such factors as type of product or service, dollar value, purchase method, and extent of competition. The words “vendor” and “subcontractor” used herein are interchangeable.

It is important to remember that the information requested herein is based on Federal and State requirements.

**Price Analysis** is the process of deciding if the asking price for a product or service is fair and reasonable, without examining the specific cost and profit calculations the vendor used in arriving at the price. It is basically a process of comparing the price with known indicators of reasonableness.

When adequate price competition does not exist, some other form of analysis is required. Some reasons that could affect adequate price competition are: specifications are not definitive, tolerances are restrictive, or production capacity limits those eligible to bid.

Examples of other forms of price analysis information include:

- analysis of previous prices paid
- comparison of vendor’s price with the in-house estimate
- comparison of quotations or published price lists from multiple vendors
- comparisons with GSA prices

**Cost Analysis** is the element-by-element examination of the estimated or actual cost of contract performance to determine the probable cost to the vendor. The goal is to form an opinion on whether the proposed costs are in line with what reasonably economical and efficient performance should cost.

Cost or pricing data, which should be provided by the subcontractor, are the means for conducting cost analysis. Such data provide factual information about the costs that the subcontractor says may be incurred in performing the contract. Cost analysis should be performed in those situations where price analysis does not yield a fair and

reasonable price and where cost data are required in accordance with prime contract clauses.

Cost analysis techniques are used to break down a contractor's cost or pricing data so as to verify and evaluate each component. Some of the cost elements examined for necessity and reasonableness are materials costs, labor costs, equipment and overhead. These costs can be compared with actual costs previously incurred for similar work, the cost or pricing data received from other vendors, and dependent cost estimate breakdowns.