

Summary of Key Elements of 2 CFR 200 – EDGAR

[https://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Implementing_Statutory_Changes_to_Micro-Purchase_and_the_Simplified_Acquisition_Thresholds_under_the_Education_Department_General_Administrative_Regulations_\(EDGAR\)/](https://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Implementing_Statutory_Changes_to_Micro-Purchase_and_the_Simplified_Acquisition_Thresholds_under_the_Education_Department_General_Administrative_Regulations_(EDGAR)/)

Implementing Statutory Changes to Micro-Purchase and the Simplified Acquisition Thresholds under the Education Department General Administrative Regulations (EDGAR)

\$10,000 Micro Purchase 2 cfr 200.67

\$50,000 TEC 44.031 Procurement Requirement

\$250,000 Simplified Acquisition Threshold Method

Please note that the threshold of \$10,000 must be considered in the aggregate over the entire period of applicable federal grants. Therefore, the cost of items purchased using the micro-purchase method is cumulative across the grant year and cannot exceed a total of \$10,000.

Procurement by small purchase procedures uses a relatively simple and informal method of procuring services, supplies, or other property that do not cost more than the simplified acquisition threshold. The small purchase procedures require price or rate quotations from an adequate number of qualified sources. Although EDGAR does not define how many price quotations are considered an adequate number, TEA recommends at least three price quotations.

- Blue Ball Under \$10,000 - Quote complies with – 200.423 and 200.67
- Green Ball - Under \$50,000 – 3 price quotes complies with 200.423 and 200.88
- Red Ball - \$50,000 and above – Cost Analysis complies with 200.423, 200.88, and 200.323

Thus, to avoid confusing, Procure it!

- (1) Get annual contracts and RFPs for use during the year

OR

- (2) Use Cooperative Purchasing – as long as they use EDGAR most restrictive requirements and letter of compliance is secured.

If not one 1 or 2, then get three quotes up to \$49,999.

If you are buying up to \$10,000, then one quote, BUT Keep track of that.

200.67 Micro Purchase - Blue Ball

1) Requirements

Is it reasonable?

Is it needed?

Is it allocable?

Is it documented?

2) *Is the amount under \$10,000?*

Then you only need one quote.

The Cost Analysis is the evaluation of the quote that meets your needs.

(3) Approval is usually at the program level and submitted for approval to Purchasing or Business. Most grantees have a form that identifies the requirements and the commitment

Small Purchase under the Simplified Acquisition Threshold under \$49,999 – Verde Ball

1) Requirements

Is it reasonable?

Is it needed?

Is it allocable?

Is it documented?

(2) Is the amount Above \$10,000?, but less than \$50,000

Then you only need three quotes.

*The Cost Analysis is the **evaluation of the quotes** that meets your needs.*

(3) Approval is usually at the program level and submitted for approval to Purchasing or Business. Most grantees have a form that identifies the requirements and the commitment

The amount is above \$250,000, you need to do the following: 2 cfr 200.88 Simplified Threshold Amount and 200.323 -Rojo Ball –

1) Requirements

Is it reasonable?

Is it needed?

Is it allocable?

Is it documented?

(2) Is the amount Above \$49,999?

Then you only need a procured RFP per the flowchart. You will need an independent estimate (BEFORE FORM) to see what the cost should be.

The Cost Analysis is the evaluation of the bids/proposal that meets your needs.

(3)Approval is usually at the program level and submitted for approval to Purchasing or Business. Most grantees have a form that identifies the requirements and the commitment

(4)Now you need to do an evaluation of the quotes, tabulation AND a Cost Analysis Form (AFTER FORM) to document your evaluation and assessment of the bid or proposal.

Other procurement requirements under 2 cfr.200 includes the following

- 200.28 Cost objective
- 200.61 Internal controls
- 200.74 Pass through entities
- 200.112 Conflict of Interest
- 200.212 Debarment
- 200.317 Procurement by states
- 200.318 General Procurement standards
- 200.319 Competition
- 200.320 Methods of procurement
- 200.323 Cost and Price Analysis
- 200.326 Contract provisions
- 200.415 required certifications
- 200.423 Allow ability
- 200.333 Retention of records

2 CFR 200.318

- (a) The non-Federal entity must **use its own** documented procurement procedures which reflect **applicable State, local,** and tribal laws and regulations, provided that the procurements **conform to applicable Federal law** and the standards identified in this part.
- (b) Non-Federal entities must maintain **oversight** to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- c)(1) The non-Federal entity must maintain **written standards of conduct** covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. **No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.** Such a conflict of interest would arise when the **employee, officer, or agent, any member of his or her immediate family, his or her partner,** or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of

monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of **nominal value**. The standards of conduct must provide for **disciplinary actions** to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

- (c)(2) If the non-Federal entity has a **parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe**, the non-Federal entity **must also maintain written standards of conduct** covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. **Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase**. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, **the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. (INTERLOCAL AGREEMENTS)**
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.



June 20, 2018

To Any Interested Party

Re: HCDE/Choice Partners' compliance with applicable laws

To whom it may concern:

Harris County Department of Education ("HCDE"), a county school district and local governmental entity, operates a cooperative purchasing program, Choice Partners. I am writing to certify that HCDE and its Choice Partners ("CP") division makes every effort to comply with all applicable laws, including the 2 CFR Part 200 or as identified for educational agencies (the Education Department General Administrative Regulations ("EDGAR") and all regulations applicable to procurements conducted on behalf of school nutrition programs, including the Buy American Act.

Because at the time of procurement, HCDE/Choice Partners is unable to determine which of its procurements/contracts will be used by CP members using federal funds, HCDE/Choice Partners competitively procures each and every contract awarded by HCDE/Choice Partners under Section 44.031 of the Texas Education Code and includes required 2 CFR Part 200 language for every procurement action. All procurement documents include 2 CFR Part 200 Certification Forms for future contracts, and vendors with existing contracts have received 2 CFR Part 200 Certification Forms to complete and return to Choice Partners. Additionally, Choice Partners' vendors must retain all financial records, supporting documents, and statistical records for a period of three years, and vendors must certify compliance with 2 CFR Part 200's record retention requirements at the time of the contract.

Similarly, Choice Partners makes every effort to ensure that its procurement documents and contracts comply with and include the provisions required by the Texas Department of Agriculture relating to school nutrition programs. The contractual terms and conditions included in HCDE/Choice Partners' procurement solicitations specifically mandate that HCDE/CP and the vendor comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including the Buy American Act, the Davis-Bacon Act, and other state and federal laws.

HCDE/Choice Partners maintains records detailing its procurement histories, such as records reflecting the rationale for the method of procurement, the selection of contract type, the contractor selection or rejection, and the basis for the contract price. Choice members may use these records to verify HCDE/Choice's compliance with applicable procurement rules.



Some procurement obligations, however, may be difficult to comply with at the cooperative level; as such, Choice members are advised to review the procurement requirements applicable to their specific purchase and ensure that all obligations have been satisfied. For example, Choice will provide its completed Independent Estimate Determination Form and Determination of Cost or Price

Reasonableness Form, completed pursuant to 2 CFR Part 200, to Choice members upon request, but Choice Partners recommends that when circumstances necessitate separate evaluation of lump-sum pricing, Choice members also conduct an independent evaluation of cost or price reasonableness tailored to the Choice member's specific purchases so that the Choice member can independently determine the reasonableness of the cost/price of the particular purchase.

HCDE and its Choice Partners division give the utmost care and importance to ensuring compliance with applicable laws, rules, and regulations. Should you have any questions regarding HCDE's compliance with applicable laws, please do not hesitate to contact me at jamezcua@hcde-texas.org or 713-696-1371.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Amezcua", written over a light blue circular background.

Jesus J. Amezcua, Ph.D., CPA, RTSBA
ASSISTANT SUPERINTENDENT/ BUSINESS SERVICES
HARRIS COUNTY DEPARTMENT OF EDUCATION

2 CFR 200.323 Cost Price Analysis

- (a) The non-Federal entity **must perform a cost or price analysis** in connection with every procurement action in excess of the Simplified Acquisition Threshold (**\$250,000**) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but **as a starting point**, the non-Federal entity must make **independent estimates before receiving bids or proposals**.
- (b) The non-Federal entity must 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. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) **Costs or prices** based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

2 CFR 200.403 Factors affecting allowability of costs.

- (a) Be necessary and reasonable – Documented by Grant Director with assistance from Purchasing Dept.
- (b) Conform to any limitations – Check by Grant Director with assistance from Business Office
- (c) Be consistent with policies and procedures that apply uniformly – Check by Grant Director with assistance from Business Office
- (d) Be accorded consistent treatment. – Check by Grant Director with assistance from Business Office
- (e) Be determined in accordance with generally accepted accounting principles (GAAP) – check by Business Office
- (f) Not be included as a cost or used to meet cost sharing — Check by Grant Director with assistance from Business Office
- (g) Be adequately documented. – Check by Grant Director with assistance from Business Office

COFAR Exceptions

Agencies

<u>Agency for International Development</u>	<u>Corporation for National and Community Service</u>	<u>Department of Agriculture</u>	<u>Department of Commerce*</u>
<u>Department Of Defense</u>	<u>Department Of Education</u>	<u>Department Of Energy</u>	<u>Department of Homeland Security*</u>
<u>Department Of Justice</u>	<u>Department Of Labor</u>	<u>Department of State</u>	<u>Department of The Interior</u>
<u>Department Of Transportation</u>	<u>Department of Treasury</u>	<u>Environmental Protection Agency</u>	<u>Gulf Coast Restoration Council*</u>
<u>Health and Human Services</u>	<u>Housing and Urban Development*</u>	<u>Institute of Museum and Library Services*</u>	<u>National Aeronautics and Space Administration</u>
<u>National Archives and Records Administration</u>	<u>National Endowment for Arts*</u>	<u>National Endowment for Humanities*</u>	<u>National Science Foundation</u>
<u>Office of the National Drug Control Policy*</u>	<u>Small Business Administration</u>	<u>Social Security Administration*</u>	<u>Veterans Affairs*</u>

*These agencies do not have exceptions relating to 2 CFR 200

Department of Agriculture

\$415.1 Competition in the awarding of discretionary grants and cooperative agreements.

\$416.1 Special Procurement Provisions

§415.1 Competition in the awarding of discretionary grants and cooperative agreements.

(a) **Standards for competition.** Except as provided in paragraph (d) of this section, awarding agencies shall enter into discretionary grants and cooperative agreements only after competition. An awarding agency's competitive award process shall adhere to the following standards:

- (1) Potential applicants must be invited to submit proposals through publications such as the Federal Register, OMB-designated governmentwide Web site as described in [2 CFR 200.203](#), professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation. In so doing, awarding agencies should consider the broadest dissemination of project solicitations in order to reach the highest number of potential applicants.
- (2) Proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth by the awarding agency. Reviewers should make written comments, as appropriate, on each application. Independent reviewers may be from the private sector, another agency, or within the awarding agency, as long as they do not include anyone who has approval authority for the applications being reviewed or anyone who might appear to have a conflict of interest in the role of reviewer of applications. A conflict of interest might arise when the reviewer or the reviewer's immediate family members have been associated with the applicant or applicant organization within the past two years as an owner, partner, officer, director, employee, or consultant; has any financial interest in the applicant or applicant organization; or is negotiating for, or has any arrangement, concerning prospective employment.
- (3) An unsolicited application, which is not unique and innovative, shall be competed under the project solicitation it comes closest to fitting. Awarding agency officials will determine the solicitation under which the application is to be evaluated. When the awarding agency official decides that the unsolicited application does not fall under a recent, current, or planned solicitation, a noncompetitive award may be made, if appropriate to do so under the criteria of this section. Otherwise, the application should be returned to the applicant.
- (b) Project solicitations. A project solicitation by the awarding agency shall include or reference the following, as appropriate:
 - (1) A description of the eligible activities which the awarding agency proposes to support and the program priorities;
 - (2) Eligible applicants;
 - (3) The dates and amounts of funds expected to be available for awards;
 - (4) Evaluation criteria and weights, if appropriate, assigned to each;
 - (5) Methods for evaluating and ranking applications;
 - (6) Name and address where proposals should be mailed or emailed and submission deadline(s);
 - (7) Any required forms and how to obtain them;
 - (8) Applicable cost principles and administrative requirements;
 - (9) Type of funding instrument intended to be used (grant or cooperative agreement); and
 - (10) The Catalog of Federal Domestic Assistance number and title.
- (c) Approval of applications. The final decision to award is at the discretion of the awarding/approving official in each agency. The awarding/approving official shall consider the ranking, comments, and recommendations from the independent review group, and any other

pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the award decision shall be handled by the awarding agency using existing agency appeal procedures or good administrative practice and sound business judgment.

(d) Exceptions. The awarding/approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program. Reasons for considering noncompetitive awards may include, but are not necessarily limited to, the following:

- (1) Nonmonetary awards of property or services;
 - (2) Awards of less than \$75,000;
 - (3) Awards to fund continuing work already started under a previous award;
 - (4) Awards which cannot be delayed due to an emergency or a substantial danger to health or safety;
 - (5) Awards when it is impracticable to secure competition; or
 - (6) Awards to fund unique and innovative unsolicited applications.
 - (7) State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.
3. Title 2 of the Code of Federal Regulations is being amended by adding Part 416 as follows:

CHAPTER IV Part 416—General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments

Authority: 5 U.S.C. 301.

Part 416 – General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments

§416.1 Special Procurement Provisions

(a) In order to ensure objective contractor performance and eliminate unfair competitive advantage, a prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, request for proposals, contract term and conditions or other documents for use by a State in conducting a procurement under the USDA entitlement programs specified in [2 CFR section 200.101\(e\)\(4\)](#) through (6) shall be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide States with specification information related to a State procurement under the USDA entitlement programs specified in 2 CFR section 200.101(e)(4) through (6) and still compete for the procurement if the State, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement. (b) Procurements by States under USDA entitlement programs specified in 2 CFR section 200.101(e)(4) through (6) shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences except as provided for in [2 CFR section 200.319\(b\)](#).