**STATE OF MAINE**

**Department of Education**

*Office of School and Student Supports*



**RFA# 202305111**

**Comprehensive Electronic Health Record Pilot**

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| **Grant Coordinator** | *All communication regarding the RFA must be made through the RFA Coordinator identified below*.  **Name:** Emily Poland **Title:** School Nurse Consultant  **Contact Information:** [Emily.Poland@Maine.gov](mailto:Emily.Poland@Maine.gov) |
| **Submitted Questions Due** | *All questions must be received by the RFA Coordinator identified above by:*  **Date:** Thursday, June 15th, 2023, no later than 11:59 p.m., local time |
| **Application**  **Submission** | *Proposals must be received by the Division of Procurement Services by:*  **Submission Deadline:** Wednesday, July 12th, 2023, no later than 11:59 p.m., local time.  *Proposals must be submitted electronically to the following address:*  **Electronic (e-mail) Submission Address:** [Proposals@maine.gov](mailto:Proposals@maine.gov) |

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**1. APPLICATION DETAILS AND INSTRUCTIONS**

1. **Purpose and Background**

Through this application, the State of Maine Department of Education (Department) will provide funding to public school systems as defined in Part B, Eligibility, to adopt a comprehensive electronic health record (EHR) system during fiscal year (FY) 2023-2024. The funding must be used for EHR systems that are utilized by all schools within the school system.

In reviewing applications for these funds, the Department will prioritize school systems:

* That do not currently utilize an electronic health record in a comprehensive manner that includes both nursing and behavioral health services; and
* Where at least 40 percent of the students are economically disadvantaged pursuant to section [15672, subsection 3](https://legislature.maine.gov/legis/statutes/20-A/title20-Asec15672.html).

If any funds remain, applicants with less than 40 percent of students who are economically disadvantaged will then be considered.

Under this grant, school systems must select a comprehensive EHR that will have the capacity to do all of the following:

* Be a documentation platform for nursing services, mental health services, social work;
* Synchronize demographic data from school information system;
* Interact with the state immunization system (ImmPact);
* Easily sync or communicate with a billing system for MaineCare;
* Have record portability for access to be transferred from one school to another within the same school system;
* Have a uniform system of documentation for health issues to allow for easily created aggregate reporting to the Department of Education;
* Have referral management for various screenings, for example, hearing/vision screenings;
* Have medication inventory and administration records;
* Meet industry standards for privacy and confidentiality;
* Provide 24/7 support to users;
* Provide training and technical assistance to users;
* Comply with Federal Section 508 Standards (Revised): accessibility requirements for information and communication technology (ICT) covered by Section 508 of the Rehabilitation Act of 1973;
* Comply with the Federal [NIST 800-53(4)](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fnvd.nist.gov%2F800-53%2FRev4&data=02%7C01%7CHazel.Stevenson%40maine.gov%7C744f0a876dc2474f3a4608d81e935da3%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637292965564111286&sdata=1DkxKeWWpJSUuHBy2JGxAuGGRigsFI%2FynsOxWr0HE7E%3D&reserved=0) Security and Privacy controls

1. **General Provisions**
2. From the time this RFA is issued until award notification is made, all contact with the State regarding this RFA must be made through the RFA Coordinator identified on the cover page of this RFA. No other person/State employee is empowered to make binding statements regarding this RFA. Violation of this provision may lead to disqualification from the application process, at the State’s discretion.
3. The Applicant shall take careful note that in evaluating its application submitted in response to this RFA the Department will consider materials provided in the application and internal Departmental information of previous contract history, if any, with the Applicant. The Department also reserves the right to consider other reliable references and publicly available information in evaluating the Applicant’s experience and capabilities.
4. All submissions in response to this RFA will be public records, available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) ([1 M.R.S. § 401](http://www.mainelegislature.org/legis/statutes/1/title1sec401.html) et seq.).
5. The Department, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals received in response to the RFA.
6. All applicable laws, whether or not herein contained, shall be included by this reference. It shall be the Applicant’s responsibility to determine the applicability and requirements of any such laws and to abide by them.
7. Cooperate with any Maine Department of Education monitoring policies and/or procedures with regards to the allowable expenditures.
8. Comply with all reporting requirements at such time, in such manner, and containing such information as the Maine Department of Education, the U.S. Department of Education, Inspector General and/or any other agency, commission, or Department may reasonably require.
9. Assure that all Uniformed Grant Guidance ([Addendum A](#_Uniform_Guidance:_eCFR)) protocols for procurement will be followed.
10. **Eligibility to Submit Application**

## In order to be considered for grant funding under this application process, applicants must be either:

## A SAU as defined under as defined under [20-A M.R.S.A Section 1](https://legislature.maine.gov/statutes/20-A/title20-Asec1.html), Subsection 26; or

## A publicly supported secondary school as defined under [20-A M.R.S.A Section 1](https://legislature.maine.gov/statutes/20-A/title20-Asec1.html), Subsection 23-B, B; or

## the Education in the Unorganized Territory (EUT) under [20-A M.R.S.A Chapter 119](https://legislature.maine.gov/statutes/20-A/title20-Ach119sec0.html);

1. **Expectations of the Awarded Organizations**

Applicant must identify one EHR Champion, a leader and point of contact that will have knowledge of the uses of the EHR and participate in a monthly Community of Practice virtual meeting during FY 2023-2024.

Awarded applicants must:

* increase awareness and practice of billing MaineCare for services
* submit all the required reports to the Department in accordance with the timelines established in Table 1.

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| --- | --- |
| **Table 1 - Required Reports Timelines** | |
| Report Description | Due Date |
| 1. Collect an expanded set of aggregated data to DOE to support evaluation efforts. | Quarterly |
| 1. Bill for at least one medically necessary service for which they have not previously billed. | Before 06/30/2024 |
| 1. Report to DOE the revenue received through billing. | 08/30/2024 |
| 1. Provide a sustainability plan to continue using the EHR system following the grant period. | 08/30/2024 |

1. **Awards**

For FY 2023-2024, the Department plans to award up to 100 grants, each with a value of up to $6,000 for the purposes outlined in this RFA. This allotment will include a $1,000 stipend for the school system’s designated EHR Champion. Over the course of the FY, this individual will actively participate in the Department’s evaluation of this pilot and a Community of Practice with other EHR Champions.

Successful applicants for this FY 2023-2024 award will be selected based on eligibility to submit and the team consensus scoring process listed in this RFA.

Programming must be completed by June 30, 2024. Final invoices are due by August 30, 2024. Invoice submittal directions and expectations will be provided in the award contracts.

1. **Appeal of Contract Awards**

Any person aggrieved by the award decision that results from this Request for Applications may appeal the decision to the Director of the Bureau of General Services in the manner prescribed in 5 MRSA § 1825-E and 18-554 Code of Maine Rules, Chapter 120 (found here: [Chapter 120](https://www.maine.gov/dafs/bbm/procurementservices/policies-procedures/chapter-120)).  The appeal must be in writing and filed with the Director of the Bureau of General Services, 9 State House Station, Augusta, Maine, 04333-0009 within 15 calendar days of receipt of notification of contract award.

**2. KEY PROCESS EVENTS**

1. **Submitting Questions**

Any questions must be submitted by e-mail to the Grant Coordinator identified on the [Grant RFPs and RFAs webpage](https://www.maine.gov/dafs/bbm/procurementservices/vendors/grants) by **Thursday, June 15th, 2023**, at 11:59 p.m. local time. Submitted Questions must include the subject line: **“RFA#** **202305111 Questions”.** The Department assumes no liability for assuring accurate/complete/on time e-mail transmission and receipt.

1. **Question & Answer Summary**

Responses to all questions will be compiled in writing and posted on the following website: [Grant RFPs and RFAs](https://www.maine.gov/dafs/bbm/procurementservices/vendors/grants). It is the responsibility of all interested parties to go to this website to obtain a copy of the Question & Answer Summary. Only those answers issued in writing on this website will be considered binding.

1. **Amendments to the Request for Applications**

All amendments (if any) released in regard to this Request for Applications will be posted on the following website: [Grant RFPs and RFAs](https://www.maine.gov/dafs/bbm/procurementservices/vendors/grants). It is the responsibility of all interested parties to go to this website to obtain amendments. Only those amendments posted on this website are considered binding.

1. **Application Submission**
   1. **Applications Due**: Applications must be received no later than **Wednesday, July 12th, 2023,** 11:59 p.m. local time. Applications received after the 11:59 p.m. deadline will be ineligible for award consideration for that annual application enrollment period.
   2. **Submission Instructions**: Applications are to be submitted to the State of Maine Division of Procurement Services, via email, to [Proposals@maine.gov](mailto:Proposals@maine.gov).
      1. Only applications received by e-mail will be considered. The Department assumes no liability for assuring accurate/complete e-mail transmission and receipts.
      2. E-mails containing links to file sharing sites or online file repositories will not be accepted as submissions. Only e-mail applications that have the actual requested files attached will be accepted.
      3. Encrypted e-mails received which require opening attachments and logging into a proprietary system will not be accepted as submissions. Please check with your organization’s Information Technology team to ensure that your security settings will not encrypt your proposal submission.
      4. File size limits are 25MB per e-mail. Applicants may submit files separately across multiple e-mails, as necessary, due to file size concerns. All e-mails and files must be received by the due date and time listed above.
      5. Applicants are to insert the following into the subject line of their email submission: **“RFA# 202305111 Application Submission – [Applicant’s Name]”**.
      6. Applications are to be submitted as a single, typed, PDF or WORD file and must include pages 10-14 of this RFA document.
   3. **APPLICATION EVALUATION AND SELECTION**
2. **Scoring Weights:** The score will be based on a 100-point scale and will measure the degree to which each application meets the following criteria.

|  |  |
| --- | --- |
| Scoring Criteria | Maximum Points Available |
| Criteria 1 -Eligibility to Apply | Pass/Fail |
| Criteria 2 -EHR System Requirement | Pass/Fail |
| Criteria 3 -Prioritization Points | 10 points |
| Criteria 4 -EHR Selection | 65 points |
| Criteria 5 -Budget & Budget Narrative | 25 points |
| Total Points | 100 points |

B**. Scoring Process:** The Grant Review Team will use a consensus approach to evaluate and score all sections listed above. Members of the review team will not score those sections individually but, instead, will arrive at a consensus as to the assignment of points for each of those sections.

C. Regarding the proposed funds requested and the proposed work, the Grant Review Team will consider the degree to which the project represents a good return for the investment (money, time) as well as whether the project work and cost estimates (tasks & budget) are reasonable for the expected outcomes, along with the amount and quality of proposed matching funds or services.

**APPLICATION COVER PAGE**

***Handwritten applications will not be accepted.***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Applicant’s Organization Name: | | Click or tap here to enter text. | | |
| Tel: | Click or tap here to enter text. | | E-mail: | Click or tap here to enter text. |
| Headquarters’ Street Address: | | Click or tap here to enter text. | | |
| Headquarters’ City/State/Zip | | Click or tap here to enter text. | | |
|  | | | | |
| Point of Contact for Application (Name and Title) | | Click or tap here to enter text. | | |
| Tel: | Click or tap here to enter text. | | E-mail: | Click or tap here to enter text. |
| Headquarters’ Street Address: | | Click or tap here to enter text. | | |
| Headquarters’ City/State/Zip | | Click or tap here to enter text. | | |
| Dollar Amount of Application: | | Click or tap here to enter text. | | |

* No personnel currently employed by the Department or any other State agency participated, either directly or indirectly, in any activities relating to the preparation of the Applicant’s application.
* No attempt has been made, or will be made, by the Applicant to induce any other person or firm to submit or not to submit an application.
* The above-named organization is the legal entity entering into the resulting agreement with the Department should they be awarded a contract.
* The undersigned is authorized to enter contractual obligations on behalf of the above-named organization.

*To the best of my knowledge, all information provided in the enclosed application, both programmatic and financial, is complete and accurate at the time of submission.*

|  |  |
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| **Name (Print):** Click or tap here to enter text. | **Title:** Click or tap here to enter text. |
| **Authorized Signature:** | **Date:** Click or tap here to enter text. |

**DEBARMENT, PERFORMANCE and NON-COLLUSION CERTIFICATION**

|  |  |
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| Applicant’s Organization Name: | Click or tap here to enter text. |

*By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this proposal:*

1. *Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
2. *Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
   1. *Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or contract.*
   2. *Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.*
3. *Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification.*
4. *Have not within a three (3) year period preceding this proposal had one or more federal, state, or local government transactions terminated for cause or default*.
5. *Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

Failure to provide this certification may result in the disqualification of the Applicant’s application, at the discretion of the Department.

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| --- | --- |
| **Name (Print):** Click or tap here to enter text. | **Title:** Click or tap here to enter text. |
| **Authorized Signature:** | **Date:** Click or tap here to enter text. |

**APPLICATION**

The Applicant is asked to be brief and concise in providing written information required in the application.

|  |  |  |  |  |  |
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| **Criteria 1: Eligibility**  Check the box to attest the Applicant meets one of the eligibility requirements: | | | | | |
| ☐ a SAU as defined under as defined under [20-A M.R.S.A Section 1](https://legislature.maine.gov/statutes/20-A/title20-Asec1.html), Subsection 26; or☐ a publicly supported secondary school as defined under [20-A M.R.S.A Section 1](https://legislature.maine.gov/statutes/20-A/title20-Asec1.html), Subsection 23-B, B; or☐ the Education in the Unorganized Territory (EUT) under [20-A M.R.S.A Chapter 119](https://legislature.maine.gov/statutes/20-A/title20-Ach119sec0.html) | | | | | |
| **Criteria 2: EHR System Requirement** Check the box to attest the EHR system will meet the requirement: | | | | | |
| ☐ all schools within the school system will utilize the grant funded EHR system | | | | | |
| **Criteria 3: Prioritization Points**  The Department will prioritize applications from school systems: | | | | | |
| ☐ The school system does not currently utilize an electronic health record in a comprehensive manner that includes both nursing and behavioral health services (5 points).  ☐ The school system currently utilizes an electronic health record in a comprehensive manner that includes both nursing and behavioral health services (0 points).  ☐ At least 40 percent of the students in the school system are economically disadvantaged, pursuant to [section 15675, subsection 2](https://legislature.maine.gov/statutes/20-A/title20-Asec15675.html) (5 points).  ☐ <40% of the students in the school system are economically disadvantaged (0 points). | | | | | |
| List the primary point of contact that will be the school system’s EHR Champion for the duration of the pilot. This person will have knowledge of the uses of the EHR and participate in a monthly Community of Practice virtual meeting during FY 2023-2024. | | | | | |
| Name | | Title | | Phone Number | Email Address |
| Click or tap here to enter text. | | Click or tap here to enter text. | | Click or tap here to enter text. | Click or tap here to enter text. |
| **Criteria 4: EHR Selection**  **Applicants will select their preferred EHR based on the criteria listed in Section A and address the following questions. (Two pages maximum.)** | | | | | |
| 4.A. What is the current documentation system used by nursing services, mental health services, social work, etc.? | | | | | |
| Click or tap here to enter text. | | | | | |
| 4.B. How will selection as a grantee improve the coordination, integration, and enhancement of the health services listed? | | | | | |
| Click or tap here to enter text. | | | | | |
| 4.C. Identify selected EHR and provide a brief overview of its features. | | | | | |
| Click or tap here to enter text. | | | | | |
| 4.D. Discuss interoperability with school information system (SIS) and state immunization registry (ImmPact). | | | | | |
| Click or tap here to enter text. | | | | | |
| 4.E. Discuss the ability for Medicaid (MaineCare) billing within the system selected  Identify EHR. | | | | | |
| Click or tap here to enter text. | | | | | |
| 4.F. Identify EHR Champion with commitment to participate in Community of Practice. | | | | | |
| Click or tap here to enter text. | | | | | |
| 4.G. Discuss the sustainability plan to maintain the EHR beyond the first year. | | | | | |
| Click or tap here to enter text. | | | | | |
| **Criteria 5: Budget**  5. A. Please provide an outline of costs for EHR for all schools and users (nurse, social worker, counselor, etc.) within the school system. | | | | | |
| Budget Category | Amount Requested | | Explanation of expense | | | |
| Click or tap here to enter text. | Click or tap here to enter text. | | Click or tap here to enter text. | | | |
| Click or tap here to enter text. | Click or tap here to enter text. | | Click or tap here to enter text. | | | |
| TOTAL REQUEST | Click or tap here to enter text. | |  | | | |
| 5.B. Budget Narrative  Please provide a detailed explanation of your anticipated grant-supported expenses in each of the above budget categories. (One page maximum.) | | | | | | |
| Click or tap here to enter text. | | | | | | |
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**Addendum A – Agency Uniform Guidance**

## 

## Uniform Guidance: [eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1)

## § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/link/plaw/115/public/232), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](https://www.govinfo.gov/link/plaw/115/public/232), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See [Public Law 115-232](https://www.govinfo.gov/link/plaw/115/public/232), section 889 for additional information.

(d) See also [§ 200.471](https://www.ecfr.gov/current/title-2/section-200.471).

**§ 200.318 General procurement standards.**

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](https://www.ecfr.gov/current/title-2/section-200.317) through [200.327](https://www.ecfr.gov/current/title-2/section-200.327).

(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.

(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. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(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.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](https://www.ecfr.gov/current/title-2/section-200.214).

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[[85 FR 49543](https://www.federalregister.gov/citation/85-FR-49543), Aug. 13, 2020, as amended at [86 FR 10440](https://www.federalregister.gov/citation/86-FR-10440), Feb. 22, 2021]

**§ 200.319 Competition.**

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](https://www.ecfr.gov/current/title-2/section-200.320).

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) 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

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity 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 preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320(c)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(c)).

**§ 200.320 Methods of procurement to be followed.**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](https://www.ecfr.gov/current/title-2/section-200.317), [200.318](https://www.ecfr.gov/current/title-2/section-200.318), and [200.319](https://www.ecfr.gov/current/title-2/section-200.319) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) ***Informal procurement methods.*** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT),* as defined in [§ 200.1](https://www.ecfr.gov/current/title-2/section-200.1), or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) ***Micro-purchases*** -

(i) ***Distribution.*** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in [§ 200.1](https://www.ecfr.gov/current/title-2/section-200.1)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) ***Micro-purchase awards.*** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) ***Micro-purchase thresholds.*** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs (a)(1)(iv)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(iv)) and [(v)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(v)) of this section.

(iv) ***Non-Federal entity increase to the micro-purchase threshold up to $50,000.*** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](https://www.ecfr.gov/current/title-2/section-200.334). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](https://www.ecfr.gov/current/title-2/section-200.520) for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) ***Non-Federal entity increase to the micro-purchase threshold over $50,000.*** Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph (a)(1)(iv)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(iv)) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) ***Small purchases*** -

(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) ***Formal procurement methods.*** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](https://www.ecfr.gov/current/title-2/section-200.319) or [paragraph (c)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(c)) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids.*** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) ***Proposals.*** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror 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 in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) ***Noncompetitive procurement.*** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph (a)(1)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

**§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs (b)(1)](https://www.ecfr.gov/current/title-2/section-200.321#p-200.321(b)(1)) through [(5)](https://www.ecfr.gov/current/title-2/section-200.321#p-200.321(b)(5)) of this section.

**§ 200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**§ 200.323 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](https://www.ecfr.gov/current/title-40/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.

**§ 200.324 Contract cost and price.**

(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 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 of this part](https://www.ecfr.gov/current/title-2/part-200/subpart-E). 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.

**§ 200.325 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in [paragraph (b)](https://www.ecfr.gov/current/title-2/section-200.325#p-200.325(b)) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

**§ 200.326 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (2022 $250,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) 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.

(b) 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 requirements under such contract.

(c) 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.

**§ 200.327 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.