

Agency Name

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Introduction

(Agency name) receives funding from the Federal Government and the State, as well as other agencies. Local government contributors include city and county governments, (additions if needed). Therefore, (agency name) adopts procurement policies and procedures that are consistent with Federal regulations and the laws of South Dakota. These procedures apply to all procurements irrespective of the source of the funds. Specific requirements for procurements funded by the Federal Transit Administration (FTA) may also be identified.

The purpose of these policies is to set forth the procurement methods and establish standards for obtaining goods and services, equipment, including construction, professional, and Architectural/Engineering (“A/E”) services necessary for the operation of (agency name). This policy is to be used in conjunction with the SDDOT Subrecipient Manual Procurement Section along with the provided documents and Procurement Fact Sheet that can be found on the [SDDOT Transit Webpage](https://dot.sd.gov/transportation/public-transit/forms-publications) under forms and Polices.  The manual and documents will provide detailed information regarding the requirements and process. [2 CFR 200.319(d)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.319)

 (Agency name) will adhere to the below stated procurement standards.

The procurement policies are designed to address the following for (agency name):

1. Instill public confidence in the procurement process of subrecipient.
2. Ensure fair and equitable treatment for all vendors who seek to do business with a grant subrecipient.
3. Ensure maximum open and free competition in the expenditure of public funds.
4. Provide the safeguards to maintain a procurement system of quality and integrity.
5. Conflict of Interest - no employee, officer, or agent can participate in the selection of contract if he or she has a conflict of interest. [2 CFR 200.319 (b)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.319)
6. Gratuities, kickbacks, and contingent fees: No member of the groups listed under conflict-of-interest section shall solicit, demand, or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities, favors, etc.; except when the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value.
7. Contracts must include procedures that avoid unnecessary work or unnecessary purchases of supplies.
8. Subrecipients must have written procurement polices addressing requirements, standard of conduct, and processes. [2 CFR 300.318 (c)(1) & (2)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318)

The procurement process is ongoing throughout the fiscal year. During the budget process, the needs are identified for all goods that will be procured during the upcoming fiscal year (dates of fiscal year).

# Delegations

Except as otherwise provided in these procedures, all rights, powers, duties, and authorities relating to the procurement of supplies, equipment, services, and construction are vested in the (Agency or Department Head) or a designee.

1. The (Agency or Department Head) is specifically authorized to delegate approval authority to a designee.
2. The (governing body, individual, or agency) is specifically authorized to execute approval authorized at any level.
3. The (Agency or Department Head) is specifically authorized to execute approvals delegated to a designee.

# Responsibilities

The (Agency or Department Head) has authority to authorize contract actions. **Whenever the term “**(Agency or Department Head)**” shall appear in this document, the term shall also include authorized designee(s).** (The authority of the designees varies significantly depending on the value and type of procurement action.)

The (Agency or Department Head) is responsible for updating these procurement procedures on an as-needed basis.

The (Agency or Department Head) shall be authorized to enter administer and terminate contracts. However, the (Agency or Department Head) may bind (agency) only to the extent of the contracting authority delegated to the (Agency or Department Head).

The (Agency or Department Head) shall ensure a clear and accurate specification/scope of work is developed for all procurements.

The (Agency or Department Head) shall not enter into a contract unless all applicable requirements of Federal law, Federal regulations and circulars, South Dakota law, and all other applicable (agency) procedures (including approvals**)** have been met.

The (Agency or Department Head) shall ensure contractors receive impartial, fair, and equitable treatment in accordance with the policies specified per State and Federal rules and regulations.

The (Agency or Department Head) or his/her designee shall be the primary (agency) employee to determine that contract prices are fair and reasonable prior to signing the contract or any changes thereto.

The (Agency or Department Head) shall not make any purchases or enter into any contracts for an amount which exceeds his or her specifically delegated authority.

The (Agency or Department Head) and/or his/her designee is responsible for soliciting bids and proposals; for serving as the chairperson of pre-bid and pre-proposal conferences, qualification hearings and proposal evaluation meetings; for conducting contract negotiation sessions; for managing the non-technical aspects of post-award contract administration including negotiation of modifications, claims, and supplemental agreements.

The (Agency or Department Head) and/or his/her designee is also responsible for such tasks as writing, preparing**,** and assembling contract documents; obtaining necessary pre-solicitation approvals; advertising Request For Proposals (RFP) and Invitation For Bid (IFB), issuing amendments, obtaining post-bid opening approvals for award, conducting investigations of the proposed contractor's past performance, conducting consultant selection meetings for negotiated contracts and conducting negotiations, monitor the contractor's performance, and managing termination for default or convenience procedures whenever the need arises.

Normally, the (Agency or Department Head) approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the contractor for payment.

The (Agency or Department Head) shall ensure sufficient unencumbered funds are available for each contract.

The (Agency or Department Head) is also the person to whom reports of warranted equipment malfunctions, failures, or any problems with the contractor's performance are submitted, pursuant to the specific authority granted by the user department manager. The Executive Director becomes involved when and if the lapse constitutes a breach of contractor's civil or contractual responsibility.

Should the contractor fail to respond in a timely or adequate manner to rectify any problem, the (Agency or Department Head) will take necessary action to enforce (agency) rights under the contract. This may include withholding payment, imposing liquidated damages [FTA C 4220.1F IV.2.b.(6)(b) 1](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf), negotiation and recommending a settlement, terminating the contractor for default, or referring the matter for legal action.

The (position in charge of procurement policy decisions) is responsible for the administration of the procurement, which includes obtaining the required approval, if necessary, before initiating the procurement process.

Upon completion of the procurement process, a document requesting the vendor to supply the good or service, such as a purchase order and/or contract agreement must be issued by (position in charge of procurement policy decisions) prior to the execution of any contract, notice-to-proceed, or initiation of work.

# Submittal Requirement

The (Agency or Department Head) and/or his/her designee is responsible for submitting the required information stated below pertaining to a simplified acquisition procurement to SDDOT Transit staff for review prior to soliciting procurement.

SDDOT requires the following from subrecipients for simplified acquisition procurements.

Prior to solicitation, the subrecipient is required to submit to SDDOT Transit staff for review and approval the following:

* 1. Independent Cost Estimate (Also required when using off SDDOT Retainer List)
  2. Preliminary specifications
  3. Simplified acquisition procurement packet. (Also required when using off SDDOT Retainer List)
  4. RFP Evaluation Checklist
  5. Award documentation

Prior to award, the subrecipient is required to submit to SDDOT Transit staff for review and approval the following (Also required when using off SDDOT Retainer List)

1. Completed procurement checklist documenting process up to the award.
2. Summary of bids\proposals.
3. Signed certifications and clauses.
4. Recommendation of award.
5. Documentation of responsiveness and responsibility.
6. Price reasonableness analysis.
7. Price Analysis or Cost Analysis
8. Disadvantage Business Enterprise (DBE) forms – the only documentation there would be is if a DBE vendor has been identified for the project.
9. Plans (For construction projects)

# Standards of Conduct

There will be uniform and equitable application of the Standards of Conduct of (agency) involving all activities associated with the procurement of goods and services. This section defines responsibility to identify and prevent a real or apparent conflict of interest. [2 CFR 300.318 (c)(1)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318) and [2 CFR 300.318 (c)(2)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318)

# Conflict of Interest

(agency) will have a conflict-of-interest policies to ensure the following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they, or persons related to them, have a financial interest:

1. The employee, officer, agent, or board member.
2. Any member of his/her immediate family.
3. His or her partner; or
4. An organization that employs, or is about to employ, any of the above.
5. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unableor potentially unable, to render impartial assistance or advice to (agency); a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractorhas an unfair competitive advantage.

Members of the groups listed under conflict-of-interest section shall be subject to the conflict-of-interest laws of South Dakota. Anyone who violates the standards of the law shall be subject to penalties, sanctions, or other disciplinary actions provided for therein.  [2CFR 200.319 (b)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.319)

## Gratuities, Kickbacks, and Contingent Fees

No member of the groups listed under conflict-of-interest section shall solicit, demand, or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities, favors, etc.; except when the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by (agency), including possible dismissal.

## Confidential Information

No member of the groups listed under conflict-of-interest section shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by (agency), including possible dismissal.

## Organizational Conflict of Interest

Each entity that enters a contract with (agency) is required, prior to entering such contract, to inform (agency) of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities result in an unfair competitive advantage to the contractor or may impact the contractor’s objectivity in performing the contract work.

# Purchasing Policies

## Equal Employment Opportunity/Affirmative Action

All procurement documents issued by (agency) require all interested vendors to certify:

1. The vendor does not discriminate against any employee, or applicant for employment, because of race, religion, sex, age, creed, color, disability, or national origin.
2. The vendor is compliant with all Executive Orders and Federal, State, and local laws regarding fair employment practices and non-discrimination in employment; and
3. The the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

## Disadvantaged Business Enterprise

(agency) has determined that disadvantaged business enterprises, as defined in [DBE regulations 49 CFR Part 26](https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1) shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, all (agency) procurements funded with Federal funds may include, as appropriate, the use of DBE participation for the procurement of all classes of goods and services, as set forth in the (agency) Disadvantaged Business Enterprise (DBE) program.

## Open Competition Required

(agency) will conduct all procurement transactions in a manner providing full and open competition.

## Federal Clauses and Certifications

Keep in mind that all procurement methods could require some or all the Federal clauses and certifications.  Check the most current Federal clauses and certifications required each time you conduct procurement.

The Federal clauses and certifications are updated every year in October and can be found on the [FTA Clause Matrix September 2023](https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-procurement-faqs) from the Third Party Procurement FAQ page.  National RTAP has a web app [ProcurementPRO](https://www.nationalrtap.org/Technology-Tools/ProcurementPRO) that uses the project information to determine and list the required Federal clauses and certifications that must be included in the procurement documentation.

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## Buy America

(Agency name) will ensure the Buy America requirements for all the materials the contractor or bidder/proposer use are compliant with this requirement by including the Buy America Federal Clause in the specifications to be signed by the bidders/proposers.  Refer to the SDDOT Subrecipient Manual Procurement for guidance.

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## Davis Bacon

(Agency name) will ensure the Davis Bacon requirements are included in procurement and monitored throughout the project completion. Refer to the SDDOT Subrecipient Manual Procurement for guidance.

# Procurement Process

Refer to the SDDOT Subrecipient Manual Procurement section for the detailed process, requirements, tools to conduct a procurement.

# SD Thresholds

Note the SD thresholds are more restrictive than the federal established thresholds. SD Subrecipients must adhere to the below listed SD procurement thresholds.

|  |  |  |
| --- | --- | --- |
| Method | Threshold | Requirement |
| *Price Comparison* | Purchases less than $4,000 | Obtain prices to determine price can be proven as fair and reasonable. |
|  | | |
| *Micro Purchases* | Purchases between $4,000 and $49,999 | Require three quotes from three different vendors, when possible, to determine the best value and price. |
|  | | |
| *Simplified Acquisition* | Purchases that exceed $50,000 | Contracts or purchases for supplies or services must be advertised for bids. Requires an ICE prior to solicitation. |
| *Simplified Acquisition* | Professional Services $50,000  (Consultants, CPA, Insurance Broker\Agent, etc.) | Contracts or purchases for supplies or services must be advertised for proposals. Requires an ICE prior to solicitation. |

# DBE

SDDOT aspires construction projects to have DBE participation through race neutral measures. This means there is no goal on the project. For the DBE contracted work to be counted towards the transit overall DBE goal the entity must be a SDDOT certified DBE.

Through race neutral measures on a contract, entities are required to solicitate DBEs, and each bidder is encouraged to use DBE Contractors; however, no bidder will be required to furnish good faith efforts documentation.

[DBE regulations 49 CFR Part 26](https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1)

# Protest Procedures

[Section 200.318(k) of Title 2, Code of Federal Regulations](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318), and the Common Grant Rules assign responsibility to the Recipient, in accordance with the good administrative practice and sound business judgment, for resolving all contractual and administrative issues arising out of their third-party procurements, including, but not limited to, source evaluation, protests, disputes, and claims. FTA will not substitute its judgment for that of the Recipient unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

The recipient 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.

In conformance with FTA Circular 4220.1F, the Recipient shall in all instances disclose information regarding any protests to FTA and expeditiously notifying FTA of any protests when applicable. [FTA C 4220.1F Ch. VII, (1)(a)(2)(a).](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf) All protest decisions must be in writing. [FTA C 4220.1F Ch. VII, (1)(a)(1).](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf)

Any “Interested Party,” as defined in [FTA Circular 4220.1F](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf), who is aggrieved in connection with the solicitation or award of a contract associated with the FTA grant may protest to the (Enter Agency contact person, address, and email). The protest shall be submitted in writing within ten (10) business days after such aggrieved interested party knows, or should have known, of the facts giving rise thereto. Protests received after the ten-business-day period shall not be considered. The written protest shall include, as a minimum, the following:

A. The name and address of the protestor.

B. Appropriate identification of the procurement by bid, RFP, or award number.

C. A statement of the reasons for the protest; and,

D. Any available exhibits, evidence or documents substantiating the protest.

Recipient will respond, in detail, to each substantive issue raised in the protest by protestor. The Agency Director or Authorized person has the authority to make a final determination on the protest. The Agency Director or Authorized person determination will be final. A request for reconsideration of the decision regarding the protest may be allowed by the Director or Authorized person if data becomes available that was not previously known, or there has been an error of law or regulation. FTA will only entertain a protest that alleges (Enter Agency Name) failed to follow (Enter Agency Name) protest procedures, and the protest must be filed in accordance with [FTA Circular 4220.1F](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf).

# Contract Administration

Refer to FTA Best Practices Procurement and SDDOT Subrecipient Manual Procurement section, and [2CFR 200.318(b)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318) for details based on the procurement and contract type. It is required to retain the information indicated in the SDDOT Procurement History form as applicable in the procurement file according to retention requirements.

# Documentation of Procurement History

(Agency name) will maintain a list of bidders\proposers. [2CFR 200.318(i)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318)

# File Retention

The subrecipient is responsible to abide by the file retention requirements for procurement activity. See the SDDOT Subrecipient Manual Procurement section or further guidance.