

# Kennebec Estuary Land Trust Procedure 223

Version 0 Approved by the Governance Committee 10/10/24

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## Procedures for Procurement of Goods and Services Using Federal Funds– For Grants Received Prior to 10/1/2024

### 1. Introduction

#### 1.1 Purpose:

The purpose of this procedure is to ensure that the Kennebec Estuary Land Trust (KELT) follows the procurement methods outlined in the Code of Federal Regulations (CFR) (Ref. 12.1) along with KELT's Procurement Policy (Ref. 12.2) when carrying out procurement for goods and services that will be paid for with federal funds for grants received prior to 10/1/2024. As such, this document will identify relevant sections of the CFR prior to the 10/1/2024 revision that describe procurement procedures when using federal funds and will include quotes from the CFR.

#### 1.2 Responsible Committee:

The responsible committee is the Governance Committee, which operates under a responsibilities and functions description, Ref. 12.3, approved by the Committee. In summary, its duties are oversight of the Board, general administration, accreditation, by-laws, personnel, business conduct, and organization development.

#### 1.3 Ensuring Procedure Accuracy:

The CFR is periodically updated over time, and the current CFR language applicable to grants received prior to 10/1/2024 shall supersede any CFR quotes included in this document. A large CFR update is occurring on 10/1/2024. Federal projects awarded before that date shall use the procedures outlined in this document. Federal projects awarded after that date shall use KELT's, "Procedures for Procurement of Goods and Services Using Federal Funds – For Grants Received After 10/1/2024" (Ref. 12.4).

#### 1.4 Review of Procedure:

The CFR is periodically reviewed by federal agency staff and updated to comply with federal regulations. KELT Staff or Board will annually check the CFR for revisions to determine whether any updates are relevant to this Procedure. Any needed updates that are identified will be incorporated into an updated version of this document that will be brought before the Governance Committee for approval. The following two places will be checked for updates:

- 1) List of CFR Sections Affected: <https://www.govinfo.gov/app/collection/lssa>  
Title 2: Grants and Agreements, the section of the CFR relevant to this procedure, is annually updated by January 1. The January version for the new year will be checked during KELT's annual review.
- 2) CRF Parts Affected from the Federal Register: <https://www.govinfo.gov/app/cfrparts/month>  
Rules published by the Federal Register throughout the year may affect the CFR. The timespan from January 1 to the date that KELT's annual review occurs will be searched to determine whether any new final rules have been published that affect the sections of the CFR cited in this document.

### 2. Finances

Documentation of financial agreements, expenditures, and receipts shall be carried out using the methods identified in KELT's Recordkeeping Policy (Ref. 12.5), KELT's Policy for Financial and Asset Management (Ref. 12.6), and KELT's Internal Controls Procedure (Ref. 12.7), and KELT's Vendor Decision Form (Ref. 12.8). KELT will budget for staff time as well as contract time to complete required financial documentation.

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## 3. Following Federal Procurement Standards (2 CFR 200.317)

(<https://www.ecfr.gov/current/title-2/section-200.317>)

“When procuring property and services under a Federal award,” “...All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.”

## 4. General Procurement Standards (2 CFR 200.318)

(<https://www.ecfr.gov/current/title-2/section-200.318>)

4.1 Several aspects of the CFR General Procurement Standards are addressed in KELT’s Procurement Policy (Ref. 12.2). Relevant sections include: having and using “documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section (2 CFR 200.318.a),” maintaining “written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts (2 CFR 200.318.c1),” and awarding “contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement (2 CFR 200.318.h).”

4.2 Oversight: “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 (2 CFR 200.318.b).”

### 4.3 Cost Effectiveness:

4.3.1 State and local intergovernmental agreements or inter-entity agreements are encouraged for common or shared goods and services (2 CFR 200.318.e)

4.3.2 KELT shall not buy unnecessary or duplicative items and shall consider leasing, using federal surplus property, consolidating or breaking out procurements, or other ways to obtain a more economical purchase (2 CFR 200.318.d, 2 CFR 200.318.f)

4.3.3 KELT “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 (2 CFR 200.318.j).”

4.4 Records: KELT “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 (2 CFR 200.318.i).”

4.4.1 Information about rationale for the method of procurement, selection of contract type, and contractor selection or rejection shall be documented in KELT’s Vendor Decision Form (Ref. 12.8).

4.4.2 KELT will maintain documentation of the basis of the contract price for the selected vendor, which shall be filed with the KELT Vendor Decision Form (Ref. 12.8).

## 5. Competition (2 CFR 200.319)

(<https://www.ecfr.gov/current/title-2/section-200.319>)

Procurement for goods and services shall follow the guidelines below to provide for full and open competition:

5.1 “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 (2 CFR 200.319.b).”

5.2 The following 7 situations should be avoided because they are restrictive of competition:

(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;

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- (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.” (2 CFR 200.319.b)

5.3 **Location:** Location shall not be used to evaluate bids or proposals unless a federal statute mandates or encourages it. Location may be used to evaluate architectural and engineering services, provided there are enough qualified firms within the location preference area to enable competition (2 CFR 200.319.c).

5.4 **Procurement solicitations should:**

5.4.1 “Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.”... “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.” (2 CFR 200.319.d1)

5.4.2 “Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals (2 CFR 200.319.d2).”

5.5 **Prequalified Lists:** KELT must ensure that all prequalified lists, “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 (2 CFR 200.319.e).”

## 6. Methods of Procurement to be Followed (2 CFR 200.320)

(<https://www.ecfr.gov/current/title-2/section-200.320>)

6.1 **Simplified Acquisition Threshold:** The definition of the Simplified Acquisition Threshold can be found in: (2 CFR 200.1) <https://www.ecfr.gov/current/title-2/section-200.1>. The value of the SAT can be found in: (48 CFR Part 2 Subpart 2.1) <https://www.ecfr.gov/current/title-48/part-2/subpart-2.1>. It is currently \$250,000.

6.2 **Informal Procurement Methods:** These methods can be used when the goods or services procured cost less than the Simplified Acquisition Threshold.

6.2.1 **Micro Purchases:**

This method may be used when the cost of the good or service does not exceed the micro-purchase threshold.

1) **Definition of the Federal threshold:** (48 CFR Part 2 Subpart 2.1)

<https://www.ecfr.gov/current/title-48/part-2/subpart-2.1>.

- Typically \$10,000
- \$2,000 for construction of public buildings and public works of the Government or the District of Columbia
- \$2,500 for a service employee (an individual not employed in a bona fide executive, administrative, or professional capacity)
- \$20,000 for response to an emergency or major disaster

2) **Non-federal entity increase to the micro-purchase threshold up to \$50,000**

- “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” that includes “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 for the most recent audit” (must have two years of single audits completed - requirements outlined in 2 CFR

200.520 (<https://www.ecfr.gov/current/title-2/section-200.520>)); or

“(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks;” 2 CFR 200.320(a)(1)(iv)

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- 3) 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 supporting documentation described in 2) above 2 CFR 200.320(a)(1)(v)
- 4) Guidance:
  - “To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.” 2 CFR 200.320(a)(1)(i)
  - “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” 2 CFR 200.320(a)(1)(ii)
  - “may use purchase cards” 2 CFR 200.320(a)(1)(ii)

## 6.2.2 Small Purchases:

This method may be used when the cost of the good or service costs more than the micro-purchase threshold, less than the Simplified Acquisition Threshold (2 CFR 200.320(a)(2)(i))

- 1) Guidance:
  - “price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.”

## 6.3 Formal Procurement Methods

These methods shall be used when the cost of the good or service procured is greater than the simplified acquisition threshold. These methods may be used when cost of the good or service procured is less than the Simplified Acquisition Threshold. (2 CFR 200.320(b))

Formal Procurement Methods require: following documented procedures & public advertising

- 6.3.1 **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.” (2 CFR 200.320(b)(1))
  - 1) This is the preferred method for procuring construction.
  - 2) The following conditions are required for sealed bids to be used:
    - “A complete, adequate, and realistic specification or purchase description is available” (2 CFR 200.320(b)(1)(i)(A))
    - “Two or more responsible bidders are willing and able to compete effectively for the business” (2 CFR 200.320(b)(1)(i)(B))
    - “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.” (2 CFR 200.320(b)(1)(i)(C))
  - 3) Sealed bid procedure requirements:
    - “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” (2 CFR 200.320(b)(1)(ii)(A))
    - “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” (2 CFR 200.320(b)(1)(ii)(B))
    - “All bids will be opened at the time and place prescribed in the invitation for bids” (2 CFR 200.320(b)(1)(ii)(C))
    - “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

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be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of” (2 CFR 200.320(b)(1)(ii)(D))

- “Any or all bids may be rejected if there is a sound documented reason” (2 CFR 200.320(b)(1)(ii)(E))

6.3.2 **Proposals:** “A procurement method in which either a fixed price or cost-reimbursement type contract is awarded.” This is used when conditions are not appropriate for sealed bids. (2 CFR 200.320(b)(2))

1) Proposal procedure requirements:

- “Requests for proposals must be publicized and identify all evaluation factors and their relative importance” (2 CFR 200.320(b)(2)(i))
- “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” (2 CFR 200.320(b)(2)(i))
- “The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections” (2 CFR 200.320(b)(2)(ii))
- “Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered” (2 CFR 200.320(b)(2)(iii))

2) Architectural/engineering (A/E) professional services (2 CFR 200.320(b)(2)(iv))

- Qualifications-based procurement may be used for A/E 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.”

## 6.4 Noncompetitive Procurement

“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;
- (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.” (2 CFR 200.320(c))

## 7. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR 200.321)

(<https://www.ecfr.gov/current/title-2/section-200.321>)

7.1 To ensure these businesses are used when possible, steps must include:

- 1) Placing these businesses on solicitation lists
- 2) Assuring they are solicited when available
- 3) When feasible, dividing the project/item into smaller tasks/quantities
- 4) When feasible, setting up a timeline that encourages participation by these groups
- 5) When appropriate, using assistance from the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
- 6) If the Vendor will subcontract any of the work, ensuring that the Vendor takes steps 1-5 above, as described in (2 CFR 200.321.b)

## 8. Domestic preferences for procurements (2 CFR 200.322)

(<https://www.ecfr.gov/current/title-2/section-200.322>)

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8.1 “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.” (2 CFR 200.322.a)

8.1.1 Further details are provided in (2 CFR 200.322.b) and in (2 CFR Part 184)  
<https://www.ecfr.gov/current/title-2/part-184>

## 9. Contract Cost and Price (2 CFR 200.324)

(<https://www.ecfr.gov/current/title-2/section-200.324>)

9.1 **Estimates Prior to Bids:** Cost and price analysis, including but not limited to independent estimates before receiving bids or proposals, must be made before every procurement above the Simplified Acquisition Threshold including contract modifications. (2 CFR 200.324.a)

9.2 **Profit Negotiation:** “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.” (2 CFR 200.324.b)

9.3 **Allowable Costs:** The list of allowable costs is included in: (2 CFR Part 200 Subpart E)  
<https://www.ecfr.gov/current/title-2/part-200/subpart-E>

9.4 “The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.” (2 CFR 200.324.d)

## 10. Federal awarding agency or pass-through entity review (2 CFR 200.325)

(<https://www.ecfr.gov/current/title-2/section-200.325>)

10.1 The Federal awarding agency or pass-through entity may request a review of the technical specifications for procurement (2 CFR 200.325.a)

10.2 “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” any of the following occur:

(1) Procurement procedures or operation fails to comply with procurement standards

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and:

a) It will be awarded without competition or only one bid or offer is received in response to a solicitation;

b) It specifies a “brand name” product; or

c) It is to be awarded to other than the apparent low bidder under a sealed bid procurement

(5) “A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.” (2 CFR 200.325.b)

## 11. Contract Provisions (2 CFR 200.327)

(<https://www.ecfr.gov/current/title-2/section-200.327>)

KELT’s “contracts must contain the applicable provisions described in appendix II to this part.”

(Appendix II to Part 200, Title 2) <https://www.ecfr.gov/current/title-2/part-200/appendix-Appendix II to Part 200>

## 12. References:

12.1 Code of Federal Regulations (CFR)

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- 12.2 KELT Policy 221: Procurement Policy
- 12.3 KELT Function 228: Governance Committee Responsibilities and Functions
- 12.4 KELT Procedure 224: Procedures for Procurement of Goods and Services Using Federal Funds – For Grants Received After 10/1/2024
- 12.5 KELT Policy 210: Recordkeeping Policy
- 12.6 KELT Policy 119: Policy for Financial and Asset Management
- 12.7 KELT Procedure 108: Internal Controls Procedure
- 12.8 KELT Form 221: Vendor Decision Form

## 13. Revisions:

### 13.1 History:

Rev #	Date	Section and Paragraph Number	Description of revision
0	10/10/2024	All	Initial Issue

### 13.2 Approval Authority:

Rev #	Meeting Date	Committee	Meeting Secretary	Comment
0	10/10/2024	Governance Committee		Approved by the Committee

## 14. Document Information

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