

Kennebec Estuary Land Trust Procedure 224

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

Procedures for Procurement of Goods and Services Using Federal Funds – For Grants Received After 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. 13.1) along with KELT's Procurement Policy (Ref. 13.2) when carrying out procurement for goods and services that will be paid for with federal funds for grants received after 10/1/2024. As such, this document will identify relevant sections of the CFR 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. 13.3, 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 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 KELT's, "Procedures for Procurement of Goods and Services Using Federal Funds – For Grants Received Prior to 10/1/2024" (Ref. 13.4). Federal projects awarded after that date shall use the procedures outlined in this document.

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. 13.5), KELT's Policy for Financial and Asset Management (Ref. 13.6), and KELT's Internal Controls Procedure (Ref. 13.7), and KELT's Vendor Decision Form (Ref. 13.8). 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.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-citation-200.317>)

“When conducting procurement transactions under a Federal award,” “...All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in §§ 200.318 through 200.327.”

4. General Procurement Standards (2 CFR 200.318)

(<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-200.318>)

- 4.1 Several aspects of the CFR General Procurement Standards are addressed in KELT’s Procurement Policy (Ref. 13.2). Relevant sections include: having and using “documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §§ 200.317 through 200.327 (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 that possess the ability to perform successfully under the terms and conditions of a proposed contract (2 CFR 200.318.h).”
- 4.2 **Conflicts of Interest:** “An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value(2 CFR 200.318.c1).”
- 4.3 **Oversight:** “Recipients and subrecipients 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).”
- 4.4 **Cost Effectiveness:**
 - 4.4.1 State and local intergovernmental agreements or inter-entity agreements are encouraged for common or shared goods and services (2 CFR 200.318.e)
 - 4.4.2 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)
 - 4.4.3 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).”
- 4.5 **Records:** KELT “must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price. (2 CFR 200.318.i).”
 - 4.5.1 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. 13.8).
 - 4.5.2 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. 13.8).
- 4.6 **Not Prohibited by Procurement Standards:** (2 CFR 200.318.l) if consistent with federal laws and guidance and the federal funding program:

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- 4.6.1 Hiring preferences for high poverty, high unemployment, and disadvantaged communities in an area no smaller than Sagadahoc County. (2 CFR 200.318.l.ii)
- 4.6.2 Hiring preferences or goals for individuals with barriers to employment, including women and people from underserved communities. (2 CFR 200.318.l.iii)
- 4.6.3 “Using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits” (2 CFR 200.318.l.iv)
- 4.6.4 “Offering employees of a predecessor contractor rights of first refusal under a new contract.” (2 CFR 200.318.l.v)
- 4.6.5 “Developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections.” (2 CFR 200.319.f)

5. Competition (2 CFR 200.319)

(<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-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 must be excluded from competing on those 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 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.” (2 CFR 200.319.b)
- 5.3 Procurement solicitations should:
 - 5.3.1 “Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured.”... “When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated.” (2 CFR 200.319.d2)
 - 5.3.2 “Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.” (2 CFR 200.319.d3).”
- 5.4 **Prequalified Lists:** KELT must ensure that all prequalified lists, “are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. The recipient or subrecipient 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.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-200.320>)

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6.1 **Simplified Acquisition Threshold:** The definition of the Simplified Acquisition Threshold can be found in: (2 CFR 200.1) <https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-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 do not exceed the Simplified Acquisition Threshold.

6.2.1 Micro Purchases:

This method may be used when the procurement transaction 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) Recipient or subrecipient increase to the micro-purchase threshold up to \$50,000

- “The recipient or subrecipient may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity 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))

3) Recipient or subrecipient 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 recipient or subrecipient must submit a request with the supporting documentation described in 2) above (2 CFR 200.320(a)(1)(v))

4) Guidance:

- “To the extent practicable, the recipient or subrecipient 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 recipient or subrecipient considers the price reasonable based on research, experience, purchase history or other information; and maintains documents to support its conclusion.” (2 CFR 200.320(a)(1)(ii))
- “Purchase cards may be used” (2 CFR 200.320(a)(1)(ii))

6.2.2 Simplified Acquisitions:

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. Unless specified by the Federal agency, the recipient or

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subrecipient may exercise judgment in determining what number is adequate.”

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: public notice

- 6.3.1 **Sealed Bids:** “A procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and 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 have been identified as 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 based on 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 with sufficient response time prior to the date set for opening the bids.” (2 CFR 200.320(b)(1)(ii)(A))
 - “The invitation for bids must define the items or services with specific information, including any required specifications, 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 is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.” (2 CFR 200.320(b)(1)(ii)(D))
 - “The recipient or subrecipient must document and provide a justification for all bids it rejects.” (2 CFR 200.320(b)(1)(ii)(E))
- 6.3.2 **Proposals:** “This procurement method may result in either a fixed-price or cost-reimbursement contract.” This is used when conditions are not appropriate for sealed bids. (2 CFR 200.320(b)(2))
- 1) Proposal procedure requirements:
 - “Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified.” (2 CFR 200.320(b)(2)(i))
 - “Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.” (2 CFR 200.320(b)(2)(i))
 - “The recipient or subrecipient must have written procedures for conducting technical evaluations 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 recipient or subrecipient considering price and other factors” (2 CFR 200.320(b)(2)(iii))
 - 2) Architectural/engineering (A/E) professional services (2 CFR 200.320(b)(2)(iv))

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- Qualifications-based procurement may be used for A/E services, “whereby the offeror’s qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services.”

6.4 Noncompetitive Procurement

“The noncompetitive procurement method may only be used if one of the following circumstances applies:

- (1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold;
- (2) The procurement transaction can only be fulfilled by a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
- (4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or
- (5) After soliciting several sources, competition is determined inadequate.” (2 CFR 200.320(c))

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

(<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-200.321>)

7.1 To ensure these businesses are considered when possible, steps should include:

- 1) Placing these businesses on solicitation lists
- 2) Soliciting them when they are deemed eligible as potential sources
- 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 organizations such as 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.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-200.322>)

8.1 “The recipient or subrecipient should, to the greatest extent practicable and consistent with law, 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, contracts, and purchase orders under Federal awards.” (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. Procurement of Recovered Materials (2 CFR 200.323)

(<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-200.323>)

“The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

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This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.” (2 CFR 200.323.b)

- More details can be found in: Executive Order 14057, section 101, Policy.
(<https://www.federalregister.gov/documents/2021/12/13/2021-27114/catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability>)

10. Contract Cost and Price (2 CFR 200.324)

(<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-200.324>)

- 10.1 **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)
- 10.2 **Allowable Costs:** The list of allowable costs is included in: (2 CFR Part 200 Subpart E)
(<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-citation-200.400>)
- 10.3 “The recipient or subrecipient must not use the “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting.” (2 CFR 200.324.c)

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

(<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-reference-200.325>)

- 11.1 The Federal agency or pass-through entity may review the technical specifications of proposed procurements (2 CFR 200.325.a)
 - “The recipient or subrecipient must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity.”
 - See (2 CFR 200.325.a) for more information about timing of this review.
- 11.2 “When requested, the recipient or subrecipient must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) to the Federal agency or pass-through entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:” (2 CFR 200.325.b)
 - (1) Procurement procedures or operation fails to comply with procurement standards in this part
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and:
 - a) It “is to be awarded without competition, or only one bid is expected to be received in response to a solicitation;”
 - b) It “specifies a “brand name” product;” or
 - c) “A sealed bid procurement is to be awarded to an entity other than the apparent low bidder”
 - (5) “A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.”

12. Contract Provisions (2 CFR 200.327)

(<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance#sectno-citation-200.327>)

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

(Appendix II to Part 200, Title 2) ([https://www.ecfr.gov/current/title-2/part-200/appendix-Appendix II to Part 200](https://www.ecfr.gov/current/title-2/part-200/appendix-Appendix%20II%20to%20Part%20200))

13. References:

- 13.1 Code of Federal Regulations (CFR)

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- 13.2 KELT Policy 221: Procurement Policy
- 13.3 KELT Function 228: Governance Committee Responsibilities and Functions
- 13.4 KELT Procedure 224: Procedures for Procurement of Goods and Services Using Federal Funds – For Grants Received Prior to 10/1/2024
- 13.5 KELT Policy 210: Recordkeeping Policy
- 13.6 KELT Policy 119: Policy for Financial and Asset Management
- 13.7 KELT Procedure 108: Internal Controls Procedure
- 13.8 KELT Form 221: Vendor Decision Form

14. Revisions:

14.1 History:

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

14.2 Approval Authority:

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

15. Document Information

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