



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Procurement Policy
Updated Effective July 1, ~~2021~~2023

Office of the Executive Director
Kearney, Nebraska

I. Introduction

This directive establishes policy regarding procurement and contracting to be applied and overseen by the Executive Director (ED) and staff in coordination with Nebraska Community Foundation (NCF). The policy is intended to provide a clearly-defined and efficient process for obtaining the goods, services, and construction required to meet the goals of the Platte River Recovery Implementation Program (Program) while maintaining appropriate oversight from the Governance Committee (GC) and Finance Committee (FC). As referenced below, it is intended to ensure sound business practice and compliance with laws and policy of the United States of America and the States of Colorado, Nebraska, and Wyoming.

II. Authorities

A Memorandum of Understanding among the States of Colorado, Nebraska, and Wyoming; Nebraska Community Foundation; and the Bureau of Reclamation, Department of the Interior establishes a finance management and administrative support process for NCF to assist the Program as the Financial Management Entity (FME). Funds for the Program are provided by the Department of Interior (pursuant to a cooperative agreement with NCF) and the states of Colorado and Wyoming. This policy is designed to further the purposes of each jurisdiction's procurement laws and to comply with Title 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

III. Exceptions

The Program document states that land may be acquired through a willing buyer/willing seller process with prices and terms established by negotiation. The procedures provided in this directive do not apply to land acquisition.

In addition to land, water may be acquired for Program purposes. Similar to land, the acquisition of water is to be accomplished through a negotiation process. The procedures provided in this directive do not apply to water acquisition.

Retention of special advisors to the ED of a technical or legal nature is exempt from the procurement procedures provided in this directive. Special advisors are not exempt from contracting procedures in this directive.

IV. Full and Open Competition

With rare exceptions, procurement of goods, services, and construction will be the result of a competitive marketplace. When goods, services, and construction are obtained in a manner other than a competitive process, a written justification for this deviation will be provided to the GC for approval prior to goods, services, or construction procurements being awarded. The justification for non-competitive selection will be based on unique qualifications, special circumstances, or similar conditions.

**V. Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms**

The Program is committed to the inclusion of small and minority businesses, women’s businesses, and labor surplus area firms in its procurement practices and will take all necessary affirmative steps to assure that such firms are used, whenever possible.

VI. Conflict of Interest

Offerors on a project will be required to address whether or not any potential conflict of interest exists between that project and any of their past or on-going projects, including any projects currently being conducted for the Program.

VII. Suspension and Debarment

Prior to entering into a contract or other agreement to procure goods or services in a covered transaction (generally, a transaction expected to equal or exceed \$25,000), assurance will be obtained that the contracting entity and its principals are not suspended or debarred from receiving federal funds. This will be done by one or more of the following processes: (1) review of the active and inactive exclusions in <https://www.sam.gov/>, (2) collecting a certification from the entity, or (3) adding a clause to the covered transaction.

VIII. Procurement Thresholds and Procedures

Procurement thresholds and general procedures are as follows. Expenditure thresholds reference the intended total expenditure amount over the duration of the procurement. For example, a procurement that is intended to cover five years at \$30,000 per year ($\$30,000/\text{year} \times 5 \text{ years} = \$150,000$) would be subject to the procedures for purchases of \$50,000 or greater. Further procedural detail may be established by the ED.

The ED may solicit proposals for goods, services, or construction costing less than \$25,000 without FC approval if the costs of the goods and services are within the budget approved by the GC. Solicitations for proposals or bids for goods, services, or construction costing \$25,000 or more must be approved in accordance with the GC Approval Process for Procurement specified herein.

All Thresholds: Authorization of budgets lies with the FC and the GC as described in the Program Document and summarized subsequently in this document. Authority and responsibility for procurements contained within an authorized budget rests with the ED. Input from various Program Committees will be solicited as described below or as otherwise deemed appropriate by the ED. In addition to the monetary thresholds described below, guidance from the GC pertaining to requests in areas of particular sensitivity may result in variances from the procedures described. Personnel directly reporting to the ED are authorized to make acquisitions of less than \$10,000. Personnel so authorized may not disburse more than \$10,000 to any one entity in a single year.

Less than \$10,000:

- Need for proposed item or service is documented.
- Quotes will be acquired by phone or in writing.
- Award may be to low quote or most qualified providing the best value.

\$10,000 or greater, but less than \$25,000:

- Need for proposed item or service is documented.



- Requirement will be advertised on Program website for five business days.
- Quotes will be provided in writing by providers.
- Award may be to the low quote or most qualified providing the best value.

\$25,000 or greater, but less than \$50,000:

- Requirement is documented in detail – specifications, units, delivery schedule, level of expertise, qualifications of personnel, and other specific requirements are clearly defined.
- Requirement will be advertised on Program website for a minimum of 15 days and a maximum of 30 days, based on discretion of ED. Notice of requirements may also be advertised in regional and/or local newspapers, based on discretion of ED, for up to three days with initial publication at least two weeks prior to offer closing date.
- Quotes, bid packages, or proposals to be provided in writing as requested.
- Pre-offer meeting may be held up to one week prior to offer closing date.
- Submittals will be reviewed for determination of responsiveness and acceptability.
- In the case of proposals:
 - Offers will be reviewed and where necessary, ranked by three or more subject matter experts. The selection of the subject matter experts will be based on knowledge and expertise of the project at issue. The panel of subject matter experts will be assembled with input from the appropriate Program committees. The GC will always be solicited for input on the composition of the panel proposed.
 - An interview of the offerors with the subject matter experts and ED may or may not be required, as determined by the subject matter experts and the ED.
 - Award is to highest ranking offer where consideration may be given to fee as part of the selection process. Negotiation of scope and fee will occur subsequent to selection.
- In the case of a bid or quote:
 - A public bid opening will be held.
 - Award is to lowest cost bidder who can meet the requirements of the bid solicitation.

\$50,000 or greater:

- Requirement is documented in detail – specifications, units, delivery schedule, level of expertise, qualifications of personnel, and other specific requirements are clearly defined.
- For procurements, including contract modifications, over the Simplified Acquisition Threshold as set forth in 41 U.S.C. Section 134 (\$250,000 as of August 31, 2020), a cost or price analysis will be performed prior to receiving bids or proposals.
- Requirement will be advertised on Program website for a minimum of 21 days and a maximum of 45 days, based on the discretion of the ED. Notice of requirements will also be advertised in regional and/or local newspapers for up to three days with initial publication at least three weeks prior to offer due date.
- Quotes, bid packages or proposals to be provided in writing as requested.
- Pre-offer meeting may be held up to two weeks prior to bids/proposals due date.
- Submittals will be reviewed for determination of responsiveness and acceptability.
- In the case of proposals:



- Offers will be reviewed and where necessary, ranked by three or more subject matter experts using a pre-determined evaluation system. The selection of the subject matter experts will be based on knowledge and expertise of the project at issue. The panel of subject matter experts will be assembled with input from the appropriate Program Committees. The GC will always be solicited for input on the composition of the panel proposed.
- An interview of the offerors by the subject matter experts and ED may be required, as determined by the subject matter experts and the ED.
- Award is to highest ranking offer where consideration may be given to fee as part of the selection process. Negotiation of scope and fee will occur subsequent to selection.
- In the case of a bid:
 - Conduct a public bid/proposal opening.
 - Award is to lowest cost bidder who can meet the technical requirements of the bid solicitation.

IX. Governance Committee Approval Process for Procurement

A. At each GC meeting, the ED will report the goods/services/construction procurements exceeding \$25,000 that will be sought during the interim until the next GC meeting. The report will include the budget item under which the work will be performed and the estimated procurement cost. If the request is in an area of particular sensitivity, guidance from the GC may result in variances from the procedures described in terms of strictly monetary thresholds in the policy described previously in this document. If the estimated cost exceeds the budget for the item, the increased budget must be approved by the GC before the selection process can be initiated. The members of the GC may offer representatives to review the requests for proposal (RFPs) and/or serve on the selection team.

B. The ED will draft all RFPs and seek comments from the related advisory committee(s) and representatives offered by the GC members.

C. The final drafts of the RFPs with the updated cost estimates will be submitted to the FC.

If the RFP is for a single-year service and cost estimates do not exceed the budget for the related work item, the FC may authorize the initiation of the selection process. If the cost estimates exceed the budget for the related work item, the selection process must be delayed until the GC has the opportunity to approve or reject a budget increase.

All RFPs proposing multi-year services must be reviewed by the FC and approved by the GC, even if the existing budget includes funds for the first year's activities. This is necessary as multi-year contracts affect future budgets, and future budgets are the responsibility of the GC.

D. The ED will ensure the selection process progresses as outlined previously in this Policy. For those requests requiring a selection panel, the ED will organize a selection team that includes representatives from the related advisory committee and representatives offered by the GC. The ED may chair the selection team or designate as chair:

1. a member of the ED's staff
2. a member or alternate of the GC



3. the chair or vice chair of the related advisory committee, or
4. any other person approved by the GC.

X. Selection Process

When Program services are sought through the RFP process, written submittals and interviews, if considered necessary, will be utilized in selecting the winning proposal. The Proposal Selection Panel will have a minimum of two weeks after the proposal submission deadline to review and rank submitted proposals in accordance with scoring guidelines developed by ED Office staff. Proposal scores will be compiled by ED Office staff and the Proposal Selection Team will then discuss the rankings to determine if interviews are necessary, and if so which contractors to interview. Interviews may be written, via conference call, or face-to-face depending on the situation. Information from the proposal, from interviews, and from internal Program discussions will be used to determine the successful contractor. Commitments made by a contractor at the interview, if any, will be considered binding.

After completing the evaluation of all proposals and, if deemed necessary, interviews, the Proposal Selection Panel will tentatively select the contractor that is most advantageous to the Program, with price and other factors considered. A final award, however, will be contingent upon successful negotiation of a contract. If the Program is unable to negotiate a mutually satisfactory contract with its first choice, it may, at its sole discretion, negotiate with its secondary choices or cancel and reissue a new RFP.

Debriefing of Unsuccessful Contractors

Contractors whose proposals have not been selected for further consideration will be notified via e-mail. Only contractors who have submitted a proposal under the criteria established by this solicitation document may protest the rejection of a proposal and request a debriefing with the ED and staff. The request for a debriefing must be received by the RFP point of contact within three (3) business days after the Notification of Unsuccessful Proposal Letter is e-mailed to the contractor. The debriefing must be held within three (3) business days of the request.

Debriefing discussions will be limited to a critique of the contractor's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. The debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

Protest Procedures

This procedure is available to contractors who submit a response to RFP solicitation documents and have participated in a debriefing conference. Upon completing the debriefing conference, the contractor is allowed three (3) business days to file a protest of the solicitation with the RFP point of contact. Protests may be submitted by e-mail. Contractors protesting a contractor selection must adhere to the following procedure, which constitutes the sole administrative remedy available to bidders:

All protests must be in writing and signed by the protesting contractor's authorized agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested must also be included.

Only protests alleging one or more of the following shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of an evaluator.



- Non-compliance with procedures described in the solicitation document or with the Program's Procurement Policy.

Protests will be rejected for lack of merit if they only challenge an evaluator's professional judgment on the quality of the proposal, or the Program's assessment of its own needs or requirements.

Upon receipt of a protest, a protest review will be held. The ED will consider the record and all facts available and issue a decision within five (5) business days of receipt of protest unless additional time is required, in which case the protesting party will be notified by the Program.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the Proposal Selection Panel's action; or
- Find only technical or harmless errors in the solicitation process and determine the Proposal Selection Panel to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the GC options which may include:
 - Correct the errors and re-evaluate all proposals; or
 - Reissue the solicitation document and begin a new process; or
 - Make other determinations and pursue other courses of action as appropriate.

XI. Contracting Thresholds and Procedures

A. Contract Thresholds

All Thresholds: Authorization of contracts lies with the FC and the GC as described in the Program Document and summarized subsequently in this document. If the draft contract is included in the procurement solicitation approved by the FC or GC and the contract price is within the work item budget, the ED can finalize the contract and submit it to the FME, as well as issue notice to proceed to the contractor. If the draft contract is not included in the procurement solicitation, the FC must approve the contract before it can be finalized and submitted to the FME for execution. If the contract price exceeds the work item budget, it must be approved by the GC before it can be finalized and submitted to the FME for execution.

Less than \$10,000:

- No written contract required.
- Acceptance of quote may be verbal or in writing, but must be documented in accordance with EDO practices.

\$10,000 or greater, but less than \$25,000:

- Written contract required.
- Contracts approved by ED.
- Goods: No standard contract; case by case.
- Professional Services: Utilize professional services contract.
- Construction: Utilize construction contract for projects less than \$25,000.

\$25,000 or greater, but less than \$500,000:

- Written contract required.
- Contracts approved by the FC or GC.



- Goods: No standard contract; case by case.
- Professional Services: Utilize professional services contract.
- Construction: Utilize construction contract for projects \$25,000 or greater, but less than \$500,000.

\$500,000 or greater:

- Written contract required.
- Contracts approved by the FC or GC.
- Professional Services: Utilize professional services contract.
- Construction: Utilize construction contract for projects \$500,000 or greater.

In some situations, it may be appropriate to utilize a contract template provided by a vendor, consultant, or contractor. In those situations, the contract must adhere to the requirements in Section XII below and be approved by the FC.

B. Contract Procedures

After selection of the consultant/contractor, the ED will prepare the draft contract including, as a minimum: general provisions, scope of work, contract amount and schedule. If the form of contract was not approved as part of the solicitation, it will be submitted to the FC for review.

If the contract meets the standards of the Program procurement policy, the contract is for a single-year service, and the contract amount is within the budget for the work item, the FC can authorize the ED to finalize the contract and submit it to the FME for execution, as well as issue the notice to proceed to the consultant/contractor. If the contract amount exceeds the budget for the cost item, the finalization of the contract must be delayed until the GC has the opportunity to approve or reject a budget increase.

If the contract meets the standards of the Program procurement policy, the FC can authorize the ED to finalize multi-year contracts if the RFP was approved by the GC and the proposed contract amount is within the budget for the first year's activities.

Multi-year contracts will specify that each year's work activities and contract amount must be approved in writing before the consultant can proceed on that year's assignments. In order to streamline this process, the FC can authorize the ED to issue the written notice to proceed if the budget approved by the GC for that year's work activity is not exceeded. If revisions are needed to the budget, those revisions must be approved by the GC.

XII. Types of Contracts and Agreements for Procurement of Goods, Services, and Construction

The following types of procurement formats/strategies will be employed, but they may be adjusted or modified for a specific procurement to ensure the approach is the most appropriate method to fill the need.



Formats:

- Firm Fixed Price Contract
 - Lump-Sum basis – The total requirement has a fixed price for satisfactory delivery or complete performance. Progress payments can be made based on completion of predetermined deliverable milestones and percentage of contract amount for each.
 - Firm Fixed Price basis – Contractor provides rates for each unit of work and an estimate for the project as a whole. Progress payments are based on measured units of work that have been completed. Methods and responsibilities for measurement are specified in the contract.
 - Lump-sum basis preferred except when large quantities of work are involved or estimated quantities may change significantly during the project.
- Time and Materials Contract – Used when a determination is made that no other contract format is suitable; typically for labor intensive requirements where the hours needed may depend upon variables not clarified until the work has started; services are based upon direct labor hours at a specified fixed hourly rate and materials at cost (including a material handling fee). The agreement will provide for a “not to exceed” ceiling price that the contractor exceeds at its own risk. Progress payments are based on elapsed time for services rendered during the agreed upon period.

Strategies:

- Specific Project Contract – A contract developed for a specific project wherein the terms, conditions, scope, budget, schedule, and contract form are specified.
- Indefinite Delivery/Indefinite Quantity (ID/IQ) Term Contract – A multiple award contract for specified line items through which delivery orders can be negotiated and issued over a three-to-five-year period. There would be a guaranteed earnings level established for the contract.
- Blanket Purchase Agreement (BPA) – An agreement for specific line items with a provider who is intermittently called upon for those goods or services; terms and conditions are negotiated up front and any orders against the BPA must comply.
- Grant/Cooperative Agreement – An agreement with a non-profit or public entity which shares interest in the Program’s goals to provide services which benefit the interests of both parties. This is the only instrument where funds can be advanced prior to the work.

Content:

- Contracts will include and will require contractors to include in all sub-contracts, the applicable provisions described in 2 C.F.R. Part 200, Appendix II.

XIII. Compliance with “Made in America Laws”

All contracts which including-e infrastructure will comply with the Buy America provisions of the Infrastructure Investments and Jobs Act of November 15, 2021 (Public Law 117-58) which are applicable to federal financial assistance awards, and in general will incorporate Buy America preference terms and conditions stipulating that iron and steel, manufactured products, and construction materials (except



357 cement and cementitious materials) used in the project will be produced in the United States. This
358 preference only applies to articles, materials and supplies that are consumed in, incorporated into, or
359 affixed to an infrastructure project. It does apply to tools, equipment, and supplies brought to and
360 subsequently removed from the site upon completion of the project. Nor does the preference apply to
361 equipment and furnishings that are used at or within the project but are not an integral part of the
362 structure or permanently affixed to the project. Full terms and conditions text is attached as Appendix A.



Appendix A

BUY AMERICA DOMESTIC PROCUREMENT PREFERENCE [Public Law 117-58, Sec. 70911-70917 of IIJA]

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Waivers

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:



1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at: www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to www.doi.gov/grants/buyamerica and are subject to public comment periods of no less than 15 days.

Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.



Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

Questions pertaining to waivers should be directed to the financial assistance awarding officer.

Definitions

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.