



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

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



45 approval prior to goods, services, or construction procurements being awarded. The justification
46 for non-competitive selection will be based on unique qualifications, special circumstances, or
47 similar conditions.

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

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

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

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

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68 **VIII. Procurement Thresholds and Procedures**
69 Procurement thresholds and general procedures are as follows. Expenditure thresholds reference
70 the intended total expenditure amount over the duration of the procurement. For example, a
71 procurement that is intended to cover five years at \$30,000 per year ($\$30,000/\text{year} \times 5 \text{ years} =$
72 $\$150,000$) would be subject to the procedures for purchases of \$50,000 or greater. Further
73 procedural detail may be established by the ED.

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

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



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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.



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\$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.



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

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

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

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

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

- 192 1. a member of the ED’s staff
193 2. a member or alternate of the GC
194 3. the chair or vice chair of the related advisory committee, or
195 4. any other person approved by the GC.

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198 **X. Selection Process**

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

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

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218 **Debriefing of Unsuccessful Contractors**

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

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

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231 **Protest Procedures**

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

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

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

- 245 • A matter of bias, discrimination, or conflict of interest on the part of an evaluator.
- 246 • Non-compliance with procedures described in the solicitation document or with the
- 247 Program’s Procurement Policy.

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

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

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257 The final determination of the protest shall:

- 258 • Find the protest lacking in merit and uphold the Proposal Selection Panel’s action; or
- 259 • Find only technical or harmless errors in the solicitation process and determine the Proposal
- 260 Selection Panel to be in substantial compliance and reject the protest; or
- 261 • Find merit in the protest and provide the GC options which may include:



- 262 - Correct the errors and re-evaluate all proposals; or
- 263 - Reissue the solicitation document and begin a new process; or
- 264 - Make other determinations and pursue other courses of action as appropriate.

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266 **XI. Contracting Thresholds and Procedures**

267 A. Contract Thresholds

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

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278 **Less than \$10,000:**

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

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283 **\$10,000 or greater, but less than \$25,000:**

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

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290 **\$25,000 or greater, but less than \$500,000:**

- 291 • Written contract required.
- 292 • Contracts approved by the FC or GC.
- 293 • Goods: No standard contract; case by case.
- 294 • Professional Services: Utilize professional services contract.
- 295 • Construction: Utilize construction contract for projects \$25,000 or greater, but less
296 than \$500,000.

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298 **\$500,000 or greater:**

- 299 • Written contract required.
 - 300 • Contracts approved by the FC or GC.
 - 301 • Professional Services: Utilize professional services contract.
 - 302 • Construction: Utilize construction contract for projects \$500,000 or greater.
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304 In some situations, it may be appropriate to utilize a contract template provided by a vendor,
305 consultant, or contractor. In those situations, the contract must adhere to the requirements in
306 Section XII below and be approved by the FC.

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308 **B. Contract Procedures**

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

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

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

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

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

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

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336 **Formats:**

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- 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.

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- 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.