

Federal Uniform Guidance Procurement Requirements

2022 Spring A&A

Presented By:
Amanda Slioham, Quality Assurance & Technical Specialist
Center for Audit Excellence

A Few Important Disclaimers...

- The federal guidance is constantly evolving. The information in this training may change over time. Local governments should diligently monitor federal and state guidance for updates and changes.
- AOS must maintain independence under *Generally Accepted Government Auditing Standards*.
- This training is intended to serve as a practical reference, it is not intended to be, nor does it provide or constitute legal advice.
- Local governments should work closely with legal counsel on significant legal questions; AOS will defer to well-reasoned opinions during an audit.

Agenda

Uniform Guidance Revisions

Procurement Requirements

Written Policy and Procedure Requirements

Uniform Guidance Revisions

Agencies Must Adopt Revised Regulations

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Uniform Guidance Revisions

Agencies Who Have NOT Adopted Revisions

- Department of Defense
- Department of Energy
- Department of Health and Human Services
- Department of the Interior
- Department of Transportation

Late Adopters

- Department of Labor
April 27, 2021
- Small Business Administration
April 26, 2021

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Uniform Guidance Revisions

No Findings for Early Implementation

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Uniform Guidance Revisions

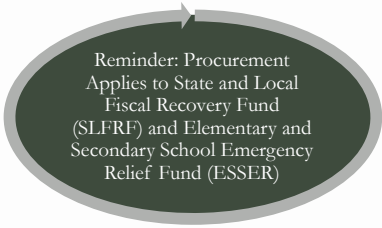
Subpart D
Procurement

- 200.318 Must have and use documented procurement procedures.
- Remaining changes covered in Procurement slides

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Procurement Requirements



Reminder: Procurement Applies to State and Local Fiscal Recovery Fund (SLFRF) and Elementary and Secondary School Emergency Relief Fund (ESSER)

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Procurement Requirements

- 2 CFR 200.317 Procurement by States
- 2 CFR 200.318 - .327 General Procurement Standards (Local Governments)
- 2 CFR 200 Other Uniform Guidance Requirements, Including Single Audit
- Applicable Federal Terms and Conditions
- State / Local Laws and Regulations

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Procurement Requirements - States



Must Follow Same Policies and Procedures for Procurement from Non-Federal Funds

2 CFR 200.317

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Procurement Requirements - States



Must ~~Follow~~ Significantly Less Stringent than Local Government Requirements from Non-Federal Funds

2 CFR 200.317

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Procurement Requirements – General Procurement Standards

Must Have and Use Documented Procurement Procedures

Must Establish and Maintain Internal Controls

2 CFR 200.318(a)
2 CFR 200.303

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Procurement Requirements – General Procurement Standards

Must Maintain Contractor Oversight

Terms, Conditions, and Specifications of Contracts / Purchase Orders

Onsite Inspections

2 CFR 200.318(b)

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Procurement Requirements – General Procurement Standards

Must Maintain Written Standards of Conduct Covering Conflicts of Interest

- Govern Actions of Employees Involved in Selection, Award, and Administration of Contracts
- Must Provide for Disciplinary Actions

Must Maintain Written Standards of Conduct Covering Organizational Conflicts of Interest

- If non-Federal entity has a parent, Affiliate, or subsidiary organization that is not a State, local government, or tribe

2 CFR 200.318(c)

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Procurement Requirements – General Procurement Standards

Must Avoid Unnecessary/Duplicative Items



- Most Efficient and Effective Approach to Purchases
- Consider Lease Versus Purchase Analysis, Bulk Purchase, Agreements for Use of Common or Shared Goods and Services, Federal Excess and Surplus Property, etc.

2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards



Must Avoid Unnecessary/Duplicative Items

- Must have documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements to support competition.

2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards

Governments should prepare an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine and support their rationale for the most economical approach.

Breaking Out Procurements?

To obtain more economical purchase or meet 2 CFR 200.321:
ALLOWABLE

To avoid procurement requirements: **NOT ALLOWABLE**

2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards

Scenario: County X Solicited and Received Quotes from 3 Debris Removal Contractors

Contractor A:
Lowest Bid for Vegetative Debris

Contractor B Lowest Bid for Construction / Demo Debris

Contractor C:
Lowest Combined Bid, Higher Unit Cost

2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards

County X Broke Up Purchases to Separate Procurement Actions

Awarded Vegetative Debris Removal to Contractor A

Awarded Construction / Demo Removal to Contractor B

2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards

Is County X breaking up their procurement in compliance with Federal procurement standards?

2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards

Is County X breaking up their procurement in compliance with Federal procurement standards?

Yes – breaking up the procurement resulted in most economic purchase overall.

2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards

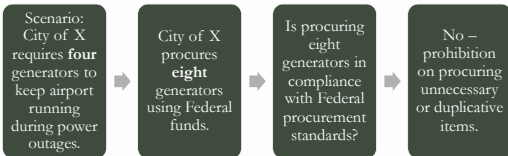


2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards



2 CFR 200.318(d)

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Procurement Requirements – General Procurement Standards

Encouraged: State and Local Intergovernmental / Inter-Entity Agreements

- Strategic Sourcing, Shared Services, Similar Arrangements
- Caution: All Procurement Standards Still Apply
- Procurement Rules applicable to states differ from those applicable to local governments sometimes limiting a local government's ability to use a state cooperative purchasing program.

2 CFR 200.318(e)

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Procurement Requirements – General Procurement Standards

Encouraged: State and Local Intergovernmental / Inter-Entity Agreements

- Full and open competition must be maintained.
- Local governments wishing to utilize intergovernmental agreements, etc. must be able to demonstrate that the procurements complied with all applicable federal procurement under grant rules before undertaking.

2 CFR 200.318(c)

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Procurement Requirements – General Procurement Standards

Encouraged To

Use Federal Excess and Surplus Property

Use Value Engineering Clauses

2 CFR 200.318(f)-(g)

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Procurement Requirements – General Procurement Standards

Must Award Contracts to Responsible Contractors

- Consider Integrity, Compliance with Public Policy, Record of Past Performance, Financial / Technical Resources

Must Maintain Procurement Records

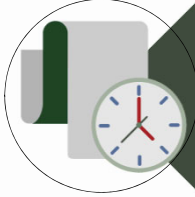
- Rationale for Method of Procurement, Selection of Contract Type, Contractor Selection/Rejection, Basis for Contract Price

2 CFR 200.318(h)-(i)

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Procurement Requirements – General Procurement Standards



Time and Materials Type Contract
Only If:

- No Other Contract Suitable
- Contract Includes Ceiling Price

2 CFR 200.318(g)

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Procurement Requirements – General Procurement Standards

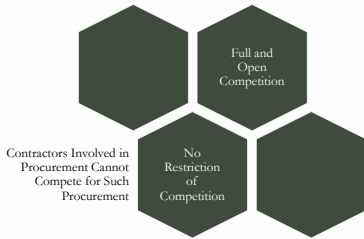
Must be Responsible for Settlement of All Contractual and Administrative Issues Arising Out of Procurements

2 CFR 200.318(h)

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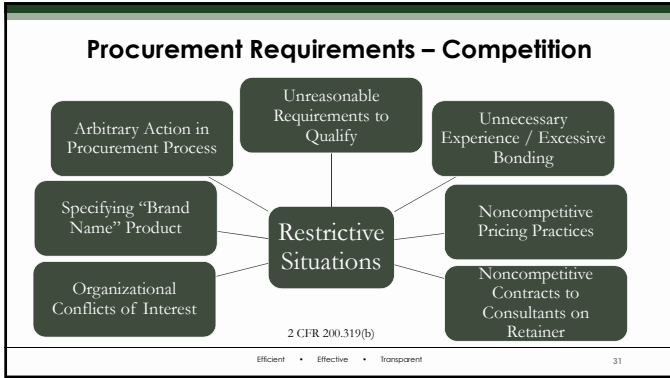
Procurement Requirements – Competition



2 CFR 200.319(a)-(b)

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Procurement Requirements – Competition

Must Prohibit Geographical Preferences

- Unless Federal Statutes Expressly Mandate/Encourage Geographical Preference
- Full and open competition Federal Procurement Rules prevail when state laws impose geographic boundaries.

Must Have Written Procedures Addressing Solicitations

- Must Incorporate Clear and Accurate Description of Technical Requirements
- Identify Requirements Offerors Must Fulfill and Other Evaluation Factors

2 CFR 200.319(c)-(d)

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Procurement Requirements – Competition

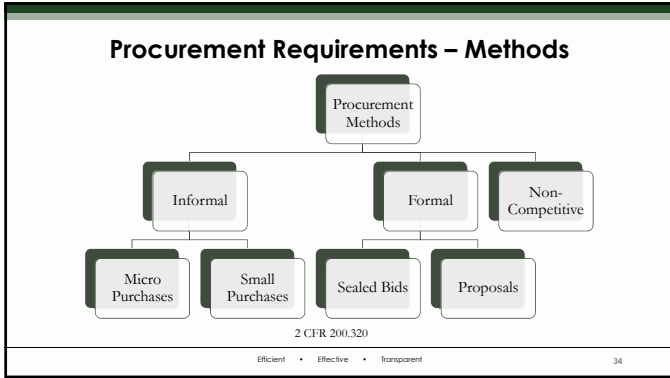
If Prequalified Lists of Persons, Firms, Products Used, Must:

- Be Current
- Ensure Maximum Open and Free Competition

Noncompetitive Procurements Only In Accordance with 2 CFR 200.320(c)

2 CFR 200.319(e)-(f)

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Procurement Requirements – Informal

Micro Purchase

- May be awarded without competitive rate quotes if price considered reasonable
- Based on **documented** research, experience, purchase history, or other information
- Prudent Person Test

2 CFR 200.320(a)(1)

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Procurement Requirements – Informal

Micro Purchase

- Distributed equitably among qualified suppliers
- Purchase cards may be used with approved, written procedures
- Threshold determined and documented by non-Federal entity

2 CFR 200.320(a)(1)

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Procurement Requirements – Informal

2 CFR 200.320(a)(1)

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Procurement Requirements – Informal Annual Self Certification

2 CFR 200.320(a)(1)

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Procurement Requirements – Informal

Small Purchase

- Aggregate dollar amount greater than micro-purchase threshold, less than simplified acquisition threshold (discussed on next slide).
- Must obtain and **document** price or rate quotations from adequate number of qualified sources.

2 CFR 200.320(a)(2)

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Procurement Requirements – Informal

Simplified Acquisition Threshold (SAT)

- Determined by non-Federal entity based on internal controls, risk evaluation, and documented procurement procedures.
- Cannot exceed \$250,000 threshold established in the FAR.
- Must perform cost or price analysis in connection with every procurement action in excess of the SAT, including contract modifications

2 CFR 200.320(a)(2)

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Procurement Requirements – Formal

Sealed Bids

- Publically Solicited
- Firm, fixed-price contract awarded to responsible bidder with lowest price
- Preferred method for procuring construction if conditions in 2 CFR 200.320(b)(1) are met

2 CFR 200.320(b)(1)

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Procurement Requirements – Formal

Sealed Bid Requirements

- Solicited from Adequate Number of Qualified Sources
 - Sufficient Response Time
 - Publically Advertised
- Invitation Must Define Terms / Services
- Opened Publically at Prescribed Place / Time
- Award Firm, Fixed Price Contract to Lowest Responsive and Responsible Bidder

2 CFR 200.320(b)(1)

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Procurement Requirements – Formal

Proposals

- Conditions not appropriate for sealed bids
- Either fixed-price or cost-reimbursement contract awarded

2 CFR 200.320(b)(2)

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Procurement Requirements – Formal

Proposal Requirements

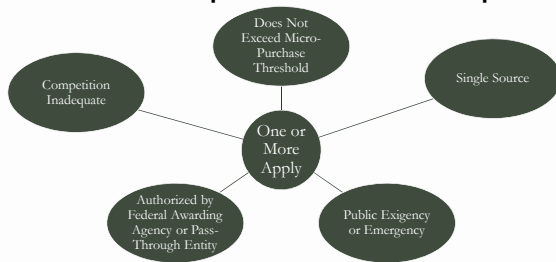
- Publicized
- Identify Evaluation Factors
- Solicited from Adequate Number of Qualified Offerors
- Written Evaluation and Selection Method
- Award Contract to Responsible, Most Advantageous Offeror
- Special Consideration: Architectural / Engineering Professional Services

2 CFR 200.320(b)(2)

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Procurement Requirements – Non-Competitive



2 CFR 200.320(c)

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Procurement Requirements – Non-Competitive

Describe Emergency or Exigent Circumstances	Write Description of Goods / Services	Estimate Dollar Amount
Describe Known Conflicts of Interest	Define and Justify Time Period	Transition to Competitively Bid

2 CFR 200.320(c)

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Procurement Requirements – Procurement Claw

General Standards:

- A. Documented Policies
- B. Necessary
- C. Full & Open Competition
- D. Conflict of Interest
- E. Documentation
 - i. Cost & Price Analysis
 - ii. Vendor Selection

2 CFR Frequently Asked Questions (efogov)

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Procurement Requirements – Procurement Claw

2 CFR Frequently Asked Questions (efogov)

- 1. Micro Purchases**
 - \$10K
 - \$10K - with approval
 - No quotations
 - Available distributions
- 2. Small Purchases**
 - \$10 to \$250K
 - No cost or price analysis
 - \$250K - Construction projects
 - PFI or a single factor
- 3. Sealed Bids**
 - \$250K
 - Fixed price or cost reimbursement
 - RFP with evaluation methods
- 4. Competitive Proposals**
 - \$250K
 - Fixed price or cost reimbursement
 - RFP with evaluation methods
- 5. Sole Source**
 - Unique
 - Public emergency
 - Authorized by agency (or PFI)
 - No competition
 - Micro Purchases

2 CFR Frequently Asked Questions (efogov)

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Procurement Requirements



2 CFR 200.321

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Procurement Requirements



Domestic Preferences



Recovered Materials

2 CFR 200.322-.323

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Procurement Requirements



Prohibition on Telecom / Video Surveillance Services or Equipment



Never Contract with the Enemy

2 CFR 200.216 and .215

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Procurement Requirements

Suspension
and
Debarment

2 CFR 200.214

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Procurement Requirements – Contract Cost

Cost or Price Analysis if Over SAT	Profit As Separate Element
Restrictions on Estimates	Cost Plus Method NOT Allowable

2 CFR 200.324

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Procurement Requirements – Reviews

Must Make Available to Federal Awarding Agency or Pass-Through Entity (PTE) Upon Request:

- Technical Specifications on Proposed Procurements
- Procurement Documents for Pre-Procurement Review Under Certain Circumstances

May be Exempt from Pre Procurement Review If:

- Procurement System Certified by Federal Awarding Agency or PTE
- Procurement System Self-Certified

2 CFR 200.325

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Procurement Requirements

Bonding
Requirements

Contract
Provisions

2 CFR 200.326 -327

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Procurement Requirements

Remember: Most Restrictive Laws and Regulations Apply (Federal, State, Local)

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Written Policy and Procedure Requirements

- Documented Procurement Procedures
2 CFR 200.318(a)
- Written Standards of Conduct: Employee and Organizational Conflicts of Interest
2 CFR 200.318(e)
- Written Procedures for Procurement Transactions
2 CFR 200.319-320
- Written Method for Conducting Technical Evaluations of Proposals and Making Selections
2 CFR 200.320

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Procurement Resources

www.ohioauditor.gov
COVID-19 Webpage: Guidance For Clients

[Federal Uniform Guidance Procurement Requirements & ARPA Update \(new 12/9/2021\)](#)
[Top-10 Procurement Under Grants Mistakes \(new 12/9/2021\)](#)
[Avoiding the Top-10 Procurement Under Grants Mistakes \(new 12/9/2021\)](#)
[Procurement Claw \(pdf\)](#)

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OHIO AUDITOR OF STATE
KEITH FABER

Amanda Stidham, CPA, CFE
Quality Assurance and Technical Specialist
Center for Audit Excellence
AMStidham@ohioauditor.gov



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