Federal Uniform Guidance Procurement Requirements
2022 Spring A&A
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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
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Uniform Guidance Revisions

Certain Revisions Effective August 13, 2020
Remaining Revisions Effective November 12, 2020

Agencies Must Adopt Revised Regulations

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

No Findings for Early Implementation

Written Policy and Procedure Updates

Grants Under New UG
Grants Under Old UG
Uniform Guidance Revisions

Subpart D: Procurement

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

Procurement Requirements

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

- 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
Procurement Requirements - States

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

2 CFR 200.317

Procurement Requirements - States

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

2 CFR 200.317

Procurement Requirements – General Procurement Standards

Must Have and Use Documented Procurement Procedures

Must Establish and Maintain Internal Controls

2 CFR 200.318(a)
**Procurement Requirements – General Procurement Standards**

**Must Maintain Contractor Oversight**
- Terms, Conditions, and Specifications of Contracts / Purchase Orders
- Onsite Inspections

2 CFR 200.318(b)(1)

**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

2 CFR 200.318(c)

**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)
**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.

**Procurement Requirements – General Procurement Standards**

**Breaking Out Procurements?**
- To obtain more economical purchase or meet 2 CFR 200.321: ALLOWABLE.
- To avoid procurement requirements: NOT ALLOWABLE.

**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
County X Broke Up Purchases to Separate Procurement Actions

Awarded Vegetative Debris Removal to Contractor A
Awarded Construction / Demo Removal to Contractor B

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

Yes – breaking up the procurement resulted in most economic purchase overall.
Procurement Requirements – General Procurement Standards

Scenario: City of X requires four generators to keep airport running during power outages. City of X procures eight generators using Federal funds. Is procuring eight generators in compliance with Federal procurement standards?

No – prohibition on procuring unnecessary or duplicative items.

2 CFR 200.318(d)

Procurement Requirements – General Procurement Standards

Scenario: City of X requires four generators to keep airport running during power outages. City of X procures eight generators using Federal funds. Is procuring eight generators in compliance with Federal procurement standards?

No – prohibition on procuring unnecessary or duplicative items.

2 CFR 200.318(d)

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)
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(j)

Procurement Requirements – General Procurement Standards

Encouraged To

Use Federal Excess and Surplus Property | Use Value Engineering Clauses

2 CFR 200.318(f)-(g)

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)
Procurement Requirements – General Procurement Standards

Time and Materials Type Contract
Only If:
• No Other Contract Suitable
• Contract Includes Ceiling Price

2 CFR 200.318(j)

Procurement Requirements – General Procurement Standards

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

2 CFR 200.318(k)

Procurement Requirements – Competition

Contracts Involved in Procurement Cannot Compete for Such Procurement

Full and Open Competition

No Restriction of Competition

2 CFR 200.319(a)-(b)
Procurement Requirements – Competition

Unreasonable Requirements to Qualify

Unnecessary Experience / Excessive Bonding

Noncompetitive Pricing Practices

Noncompetitive Contracts to Consultants on Retainer

Restrictive Situations

2 CFR 200.319(b)

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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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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 200.320(c)

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Procurement Requirements – Methods

Informal
- Micro Purchases
- Small Purchases
- Sealed Bids
- Proposals

Formal
- Sealed Bids
- Proposals

Non-Competitive

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

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

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Procurement Requirements – Informal

Micro-Purchase Threshold $10,000

With Annual Self-Certification, Increase Up to $50,000

With Cognizant Agency Approval, Increase Above $50,000

2 CFR 200.320(a)(3)

Justification for Threshold

Includes Supporting Documentation (Low-Risk Auditee Most Recent Audit, Annual Internal Risk Assessment, or Higher Threshold Consistent with State Law)

2 CFR 200.320(a)(3)

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)
**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)

**Procurement Requirements – Formal**

*Sealed Bids*
- Publicly 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)

**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)(3)
**Procurement Requirements – Formal**

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

2 CFR 200.320(b)(2)

**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(c)(2)

**Procurement Requirements – Non-Competitive**

- Does Not Exceed Micro-Purchase Threshold
- Single Source
- One or More Apply
- Inadequate Competition
- Authorized by Federal Awarding Agency or Pass-Through Entity
- Public Exigency or Emergency

2 CFR 200.320(c)(2)
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)

Procurement Requirements – Procurement Claw

2 CFR Frequently Asked Questions (cfo.gov)
Procurement Requirements

- Labor Surplus Area Firms
- Small and Minority Businesses
- Women's Business Enterprises

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
Procurement Requirements

Suspension and Debarment

2 CFR 200.214

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

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
Procurement Requirements

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2 CFR 200.326 -.327

2 CFR 200.318(a)
2 CFR 200.318(c)
2 CFR 200.319-.320
2 CFR 200.320

Bonding Requirements

Contract Provisions

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

Written Policy and Procedure Requirements

Documented Procurement Procedures

Written Standards of Conduct: Employee and Organizational Conflicts of Interest

Written Procedures for Procurement Transactions

Written Method for Conducting Technical Evaluations of Proposals and Making Selections

2 CFR 200.326
Procurement Resources

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

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