



OMB UNIFORM GUIDANCE

PROCUREMENT STANDARDS

NEW REQUIREMENTS AND BEST
PRACTICES FOR COMPLIANCE

August 31, 2015

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Objectives

Understand:

- OMB Guidance for Procurement Standards
- Best Practices for Compliance

Overview of the Uniform Guidance

Overview

Uniform Administrative Requirements, Cost Principles, and Administrative Requirements for Federal Awards (2 CFR Part 200)

- Issued by the OMB on December 26, 2013 to consolidate existing federal regulations into one place for grantors and grant recipients
- For non-federal agencies, administrative requirements and cost principles apply to **new grant awards and additional (incremental) funding** made on or after **December 26, 2014**

Overview

- For compliance with new procurement standards only, the federal government is providing a grace period of one full fiscal year after the effective date of the Uniform Guidance for Federal Awards
 - e.g. the City's first full fiscal year is FY 2015/16
 - For future fiscal years, all non-Federal entities will be required to comply fully with the Uniform Guidance.
- The non-federal entity must document whether it is in compliance with the old or new standard.

Overview

Subpart

- A: Acronyms and Definitions
- B: General Provisions
- C: Pre-Federal Award Requirements and Contents of Federal Awards
- D: Post-Federal Award Requirements
- E: Cost Principles
- F: Audit Requirements
- 12 Appendices

Old Circular

All

All

All

A-110 and A-102

A-21, A-87, A-122

A-133

Overview

- All OMB guidance for federal awards streamlined in Title 2 of CFR, Subtitle A, Chapter II, Part 200
- How to Access the UG
 - Electronic Code of Federal Regulations (e-CFR) version
 - PDF version of the Federal Register Notice in its entirety
- How to access COFAR documents and Webcasts
 - Visit <https://cfo.gov/COFAR> for resources

Overview

Major Changes

- “Must” has been defined to mean “required”
- “Should” means best practice
- New provisions covering conflict of interest with parent, affiliate, or subsidiary organizations
- Procurement records must be maintained to sufficiently detail the history of the procurement

Procurement Requirements

2 CFR SECTION 200.317-326



Major Procurement Requirements

- Procurement by States (§200.317)
- General Procurement Standards (§200.318)
- Competition (§200.319)
- Methods of Procurement (§200.320)
- Contracting with small and minority-owned business (§200.321)
- Contract cost and price (§200.323)
- Federal awarding agency or pass-through entity review (§200.324)

Procurement by States (§200.317)

- A state must follow the same policies and procedures it uses for procurements from its non-Federal funds when procuring property and services under a Federal award.
- Must comply with §200.322 - Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 – Contract Provisions.
- All other non-Federal entities, including sub-recipients of a state, will follow §200.318 – General procurement standards through §200.326 – Contract provisions.

General Procurement Standards (§200.318)

Non-Federal entities must:

- Use its own documented procurement procedures provided that they conform to applicable Federal law (including general procurement standards), State and local laws and regulations.
- Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contract or purchase orders.
- Maintain written standards of conduct covering conflicts of interest and governing the performance of employee engaged in the procurement process; including (i) selection, (ii) award, (iii) and administration of contracts.

General Procurement Standards (§200.318) (cont'd)

Non-Federal entities must: (cont'd)

- Maintain written standards of conduct:
 - covering organizational conflicts of interest for relationships with parent, affiliate, or subsidiary organizations that are not a state, local governments, or Indian tribe.
 - The standards of conduct must include disciplinary actions for employees, officers, or agents of the non-Federal entity in the event of violation.
- Avoid acquisition of unnecessary or duplicative items.
- Make efforts to use Federal excess and surplus property in lieu of purchasing new equipment and property to reduce project costs.

General Procurement Standards (§200.318) (cont'd)

Non-Federal entities must: (cont'd)

- Make efforts to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
- Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
- **Maintain records sufficient to detail the history of procurement**; including, but not limited to: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

General Procurement Standards

(§200.318) (cont'd)

- Non-Federal entities may use time and materials contracts only after the determination was made that no other contract is suitable.
 - Must set a ceiling price
 - Awarding entity must assert a high degree over oversight
- Non-Federal entities must be responsible, have good administrative practice, and sound business judgment for the settlement of all contractual and administrative issues arising out of procurement.

Competition (§200.319)

- All procurement transactions must be conducted in a manner providing full and open competition.
- To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.

Competition (§200.319) (cont'd)

- Restrictive competition situations can be considered as:
 - 1) Placing unreasonable requirements on firms in order 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.

Competition (§200.319) (cont'd)

- No state or local geographical preferences in the evaluation of bids or proposals, except when applicable Federal statutes expressly mandate or encourage geographical preference.
- Must have written procurement procedures for transactions that
 - (i) incorporate a clear and accurate description of the technical requirements for the material, product, or service and
 - (ii) identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- All prequalified lists of persons, firms, or products which are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and free competition.

Methods of Procurement (§200.320)

- Must use one of 5 procurement methods
- Less formal methods OK if under the Federal “Simplified Acquisition Threshold” of \$150,000
- Methods of Procurement to be followed
 1. Procurement by Micro Purchase
 2. Procurement by Small Purchase Procedures
 3. Procurement of Sealed bids (formal advertising)
 4. Procurement by Competitive Proposal
 5. Procurement by Noncompetitive Proposal

Methods of Procurement (§200.320) (cont'd)

1. Procurement by Micro Purchase
 - Aggregate dollar amount of supplies or services does not exceed \$3,000;
 - Should distribute micro-purchases evenly among qualified supplies;
 - May be awarded without soliciting competitive quotes if the price is reasonable; and
 - Noncompetitive contracts to consultants that are on retainer contracts.

Methods of Procurement (§200.320) (cont'd)

2. Procurement by Small Purchase Procedures
 - Procedures are simple and informal for supplies and services (or other property) that do not exceed the Simplified Acquisition Threshold (\$150,000); and
 - If small purchase procedures are used, price or rate quotes must be obtained from an adequate number of qualified sources.
 - COFAR webcast on 10/24/2014 clarifies that “more than one” is considered adequate

Methods of Procurement (§200.320) (cont'd)

Practical Consideration – Purchasing Cards

- Micro Purchase threshold = \$3,000
- Small Purchase threshold = up to \$150,000

- Threshold for purchasing cards are commonly set at \$5,000.
 - P-card purchases above \$3,000 will require documentation of price quotes
 - Consider federal requirement when developing new policies

Methods of Procurement (§200.320) (cont'd)

Practical Consideration – state or local requirements

- Small Purchase threshold = up to \$150,000
- Local procurement policies may impose more restrictive requirements for purchases below \$150,000

Methods of Procurement (§200.320) (cont'd)

3. Procurement by Sealed bids (formal advertising)
 - o Publicly solicited bids and a firm fixed price contract is awarded at the lowest price.
 - o Preferred method for procuring construction, under specified conditions.

Methods of Procurement (§200.320) (cont'd)

4. Procurement by Competitive Proposal (“Request for Proposal”)
 - o Conducted with more than one source submitting an offer;
 - o Either fixed price or cost-reimbursement type contract is awarded;
 - o Used when conditions of sealed bids are not appropriate;

Methods of Procurement (§200.320) (cont'd)

4. Procurement by Competitive Proposal (cont'd)

- o Requirements are:

- a) Requests for proposals must be publicized and identify all evaluation factors and relative importance;
- b) Proposals must be solicited from an “adequate” number of qualified sources;
- c) Written method for conducting technical evaluations of the proposals and selecting recipients is mandatory;
- d) Contracts must be awarded to the entity whose proposal is most advantageous; and
- e) The selection method, where price is not used as a selection factor, can only be used in procurement of architectural/engineering professional services.

Methods of Procurement (§200.320) (cont'd)

5. Procurement by Noncompetitive Proposal

- Procurement through the solicitation of a proposal from only one source; and
- May be used when one or more of the following apply:
 - a) The item is available from a sole source only;
 - b) Public emergency will not allow a delay resulting from competitive solicitation;
 - c) Noncompetitive proposals are authorized in response to a written request from the non-Federal entity; and
 - d) The competition is considered inadequate after a soliciting a number of sources.

Contracting with small and minority-owned business (§200.321)

- Non-Federal entities must take necessary actions to ensure that minority and women-owned businesses, and labor surplus area firms are used when possible.
- Affirmative steps include:
 - Including qualified small, minority, and women-owned businesses on solicitation lists;
 - Small, minority, and women-owned businesses are solicited whenever they are potential sources;
 - Dividing total requirements into smaller tasks to permit maximum participation by small, minority, and women-owned businesses;

Contracting with small and minority-owned business (§200.321)

- Affirmative steps include: (cont'd)
 - Establish delivery schedules that encourage the participation from small, minority, and women-owned businesses;
 - Using the services and assistance of SBA and the Minority Business Development Agency of the Department of Commerce; and
 - Requiring the prime contractor to select a subcontractor based on the affirmative steps listed above.

Contract cost and price (§200.323)

- The non-Federal entity must:
 - Perform cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (including modifications).
 - Negotiate profit separately, as an element of price, for each contract that does not have competition.
 - Costs and prices are only allowable to the extent that they are incurred based on estimates and included as part of negotiated prices under the OMB Cost Principles Subpart (E)

Federal awarding agency or pass-through entity review (§200.324)

- The non-Federal entity must make available to the Federal agency or pass-through entity:
 - Technical specifications on proposed procurements; and
 - Pre-procurement review: procurement documents, such as, requests for proposals or invitations for bids or independent cost estimates.
- The non-Federal entity is exempt from the pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement system compliance with the standards of this Part.

Contract provisions (§200.326)

- Must include all applicable provisions in Appendix II to Part 200 – *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*
 1. Contracts over the simplified acquisition threshold (currently \$150,000) – address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate
 2. Contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement

Contract provisions (§200.326) (cont'd)

- Must include all applicable provisions in Appendix II (cont'd)
 3. Equal Employment Opportunity
 - Apply to all “federally assisted construction contract”
 4. Davis-Bacon Act
 - Apply to all prime construction contracts in excess of \$2,000
 5. Contract Work Hours and Safety Standards Act
 - Apply to all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers
 - Wages and overtime computed using a standard 40-hour work week

Contract provisions (§200.326) (cont'd)

- Must include all applicable provisions in Appendix II (cont'd)
 - 6. Rights to Inventions Made Under a Contract or Agreement
 - Apply when the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement”
 - 7. Clean Air Act and the Federal Water Pollution Control Act
 - Apply to Contracts and subgrants of amounts in excess of \$150,000

Contract provisions (§200.326) (cont'd)

- Must include all applicable provisions in Appendix II (cont'd)
 - 8. Debarment and Suspension
 - A contract award must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM.gov)
 - 9. Byrd Anti-Lobbying Amendment
 - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification

Procurement and Indirect Costs

Q: Does the Uniform Guidance procurement standards apply to procurements made for indirect costs (for example: would a non-Federal entity need to follow them when hiring a plumber to fix a broken pipe in the headquarters building?)

A: No. The Uniform Guidance procurement standards do not apply to procurements made in indirect cost areas. They apply to procurements for goods and services that are directly charged to a Federal award.

Best Practices for Compliance

Best Practices for Compliance

- Maintain adequate descriptions of the system including policies, procedures, and purchasing practices that comply with applicable laws, regulations, and contract terms and conditions;
- Mitigate against conflicts of interest;
- Ensure applicable flow down clauses and terms and conditions are included in the contracts, as required to execute the requirements of the award;
- Clearly define lines of authority and responsibility within the system;

Best Practices for Compliance

- Ensure procurements are based on authorized requisitions;
- Define contractor evaluation criteria and methods for determining source selection;
- Perform timely cost/price analysis and technical evaluations to determine cost/price is fair and reasonable;
- Maintain documentation which details the complete and accurate history of the purchase transaction to support method, contractor selected/basis of awards, and reasonableness of cost/price.

Best Practices for Compliance

- Implement strong contractor monitoring and management of controls;
- Ensures effective and efficient procurement of required quality supplies and services at reasonable cost/price from responsible and reliable sources; and
- Address adequate competition.

Questions?