

Uniform Guidance

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Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards go into effect December 26, 2014

- Replaces OMB A-110, A-133, A-21 and many more.
- New awards or additional funding to existing awards on or after December 26.



Uniform Guidance

Outline of Uniform Guidance

- Subpart A – Definitions

<https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards#h-12>

- Subpart B – General Provisions
- Subpart C – Pre-Award
- Subpart D – Post Award
- Subpart E – Cost Principles
- Subpart - Audit Requirements
- Appendices I – XI



Definitions:

Changes

- Contractor vs. vendor – only contractor
- Should – Best Practices
- Must – Required
- Sub recipient vs contractor

Subpart D, Post Award - Procurement

200.317-326 - Procurement Standards

- significantly different from Circular A-110 and potentially creates **new administrative burden**



§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. Ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions.



Subpart D, Post Award - Procurement

200.90 – *State* means any state of the United States... and any agency or instrumentality thereof exclusive of local governments.



Procurement Standards

200.318 – General procurement standards

(a) The non-Federal entity **MUST** maintain records sufficient to detail the history of procurement

What will be considered sufficient?

Documented purchasing procedures – reflecting applicable state and local laws and regs

(b) Maintains oversight to ensure contract performance to t&c's and specs

(c)(1) Maintain written standards of conduct – conflict of interest with those employees engaged in selection, award and administration of contracts – no real or apparent conflict



Procurement Standards Cont'd

(c)(1) May not solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts – may have set standards for non-solicited items of specified not to exceed value.

(c)(1) Standards MUST provide for disciplinary actions to be applied for violations of standards of conduct. (review and modify your policy & regs)

(2) Organizational Conflict of Interest Statement

– If part of the system, the parent organization MUST also maintain written standards of conduct covering organizational conflict of interest.



Procurement Standards Cont'd

(d) MUST avoid acquisition of duplicative items or unnecessary items.

consideration of :

- smaller purchase or combining purchases
- analysis of Lease vs. Buy alternatives

To determine most economical approach

(e) Encouraged to use Federal Excess and Surplus property when feasible

(f) Value engineering is encouraged in construction projects

(g) Detailed procurement records –

Rational for the method of procurement

Selection of contract type

Contractor selection or rejection

Basis for contract price

T&M contracts only if no other contract is feasible



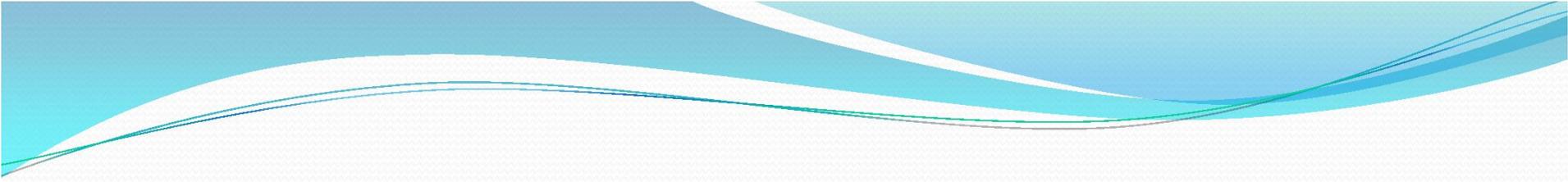
Procurement Standards Cont'd

(h) Responsibility for good administrative practices and sound business judgment for settlement of all contractual and administrative agreements.

Transactions **MUST** be conducted in a manner providing for full and open competition

Fairness: Contractors who assist or develop the specs **MUST** be excluded from competing

Cannot use State Preferences in evaluation criteria such as HUB in determining an award



Procurement Standards Cont'd

200.319 – Competition

- (a) All procurement ... in a manner providing full and open competition consistent with the standards of this section ...
- (b) The non-Federal entity **MUST** conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences ...
- (c) The non-Federal entity **MUST** have written procedures for procurement transactions. These procedures **MUST** ensure ...
- (d) The non-Federal entity **MUST** ensure that all prequalified lists of persons, firms, or products ... are current and include enough qualified sources to ensure maximum open and free competition ...



Procurement Standards Cont'd

200.320 Methods of procurement to be followed.

The non-Federal entity MUST use one of the following methods of procurement.

- (a) micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act).
 - distribute micro-purchases equitably among qualified suppliers.
 - may be awarded without soliciting competitive quotations if we consider price reasonable.



Procurement Standards Cont'd

(b) Procurement by small purchase procedures.

- “ relatively simple and informal procurement methods for securing services, supplies/equipment under the Simplified Acquisition Threshold (currently \$150,000).
- “ price or rate quotations **MUST** be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal public advertising). Preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.



Procurement Standards Cont'd

- (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (i) Adequate, and realistic specification or purchase description is available;
 - (ii) Two or more responsible bidders available; and
 - (iii) The procurement lends itself to a firm fixed price contract and the selection can be made principally on the basis of price.

- (d) Procurement by competitive proposals.
 - either a fixed price or cost-reimbursement type contract is awarded.
 - generally used when conditions are not appropriate for the use of sealed bids.



Procurement Standards Cont'd

(e) Procurement by noncompetitive proposals. Procurement from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;



Procurement Standards Cont'd

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

What is your per-transaction P-card threshold? What impact does this have on the States' various disadvantaged business laws?



Procurement Standards Cont'd

200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The non-Federal entity MUST take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps MUST include:
 - (1) Add them on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;



Procurement Standards Cont'd

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation;

(4) Establishing delivery schedules, where the requirement permits and encourages participation;

(5) Using the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the DOC; and

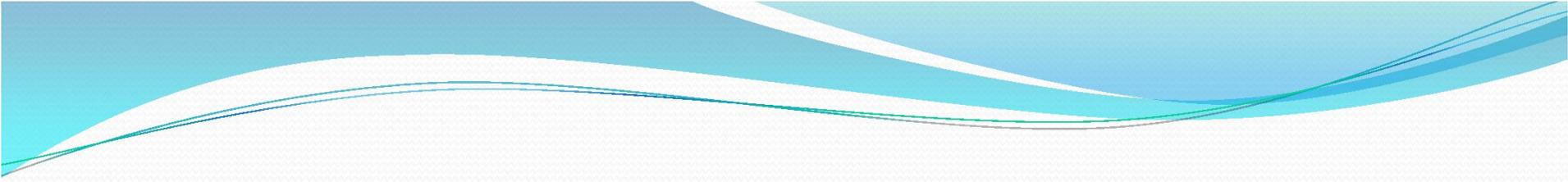
(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps.



Procurement Standards Cont'd

200.322 Procurement of recovered materials.

- “ A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors **MUST** comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. This includes procuring only items designated in the EPA guidelines of the at 40 CFR Part 247 that contain;
 - highest percentage of recovered materials practicable,
 - consistent with maintaining a satisfactory level of competition, when purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000;
 - procuring solid waste management services in a manner that maximizes energy and resource recovery; and
 - establishing an affirmative procurement program for procurement of the recovered materials.



Procurement Standards Cont'd

200.323 Contract cost and price.

(a) The non-Federal entity MUST perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications.

-degree of analysis is dependent on the facts surrounding the particular procurement situation, as a starting point, the non Federal entity MUST make independent estimates before receiving bids or proposals.



Procurement Standards Cont'd

(b) The non-Federal entity **MUST** negotiate profit as a separate element of the price if no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration for work complexity **MUST** be given, the risk borne by the contractor, the contractor's investment, the amount of Subcontracting, record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this Part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting **MUST NOT** be used.



Procurement Standards Cont'd

200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity **MUST** make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements when they believe such review is needed. Review will take place prior to the time the specification is incorporated into a solicitation document.

(b) Non-Federal entity **MUST** make available upon request, for the Federal awarding agency or pass-through entity all pre-procurement review & procurement documents, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this Part; (cost principles)



Procurement Standards Cont'd

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under an IFB procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the amount by more than the Simplified Acquisition Threshold.



Procurement Standards Cont'd

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass through entity determines that its procurement systems comply with the standards of this Part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews **MUST** occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

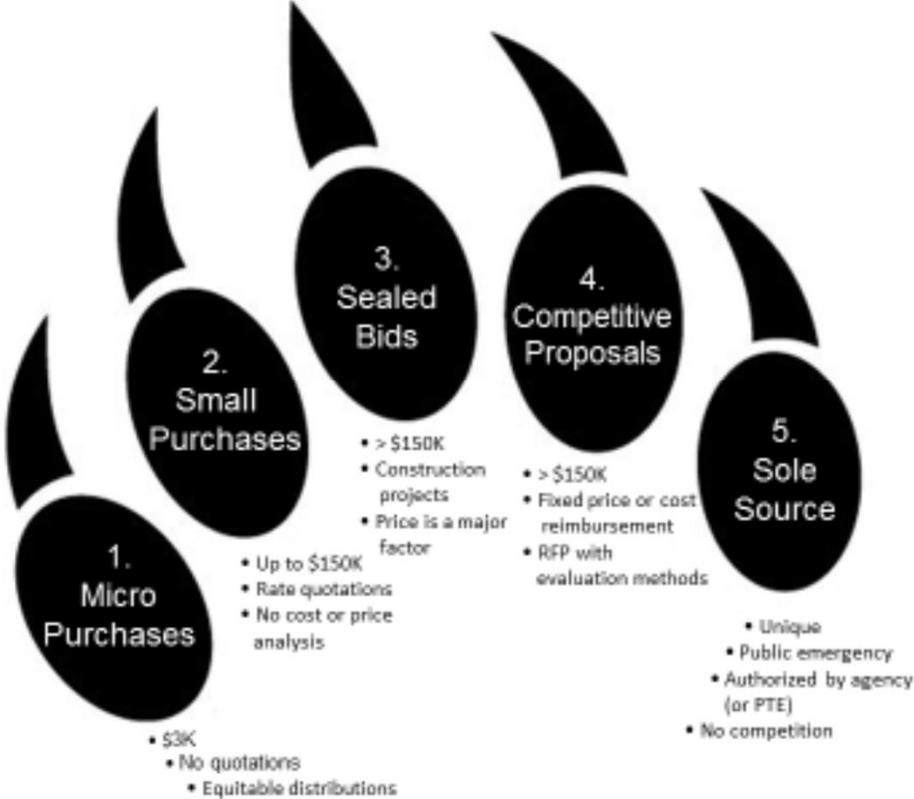


Procurement Standards Cont'd

(2) The non-Federal entity may self certify its procurement system but this does not remove the right to survey by the awarding agency. Under a self certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity **MUST** cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

Procurement Standards Cont'd

Procurement "Claw" (Section 200.320)



Procurement Standards Cont'd

Procurement "Claw" (Sections 200.317-326)

