



Final Transcript

HUD-US DEPT OF HOUSING & URBAN DEVELOPMENT: Overview of Procurement Policies and Procedures

November 14, 2017/2:00 p.m. EST

SPEAKERS

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PRESENTATION

Moderator Ladies and gentlemen, thank you for standing by. Welcome to the Overview of Procurement Policies and Procedures conference call. At this time, all participants are in a listen-only mode. Later, we will conduct a question and answer session; instructions will be given at that time.

[Operator instructions]. As a reminder, this conference is being recorded.

Now, I'd like to turn the conference over to Petergay Bryan. Please go ahead.

Petergay Hello, everyone. This is Petergay Bryan. I am one of the audit managers here at Booth Management Consulting. We have been contracted by HUD to provide agencies who receive federal funds with technical assistance, conduct action plan and training sessions, as well as financial reviews of the housing counseling grant that you receive from HUD.

Today, we're going to be talking about procurement and the policies and procedures and the changes that were affected by the Uniform Grant Guidance.

But before we get into the training I wanted to go over the logistics of today's webinar. As the announcer said, audio is being recorded and the playback number along with any presentation handouts and the transcript will be available on SharePoint.

Ginger Petergay, may I just make a correction? The presentation handouts and the transcripts are going to be on OHC's page on HUD Exchange.

Petergay Thank you, Ginger. The handouts were sent out to you all prior to today's webinar. But if you check on your control panel there's a section that says "Handouts," and if you open that section you will see the

document that you're able to download and read along as we go through the PowerPoint presentation.

At the end of today's session, within 24 to 48 hours, you're going to receive a thank you email, and this will pretty much be your Certificate of Training, so please print that and keep it for your records.

I will open the session for questions at the end of today's session, and the operator will give you instructions on how you can pose your questions or make comments.

If you have questions during the presentation, however, if you look on your control panel, there is a section that says "Questions." You can type your questions there, and we do have personnel from Booth Management Consulting who will be responding to your questions as they come in.

Again, please mute all of your phone lines during the call. If you need to pose a question, you'll press star six, which will mute or unmute your phone during the presentation. We're about to begin the presentation here.

Today we're going to talk about—the first thing we'll do is some definitions as prescribed by the Uniform Guidance. We'll talk about how the new rules and regulations apply to you as recipients of HUD funds. We'll also discuss the key changes that became effective with the Uniform Grant Guidance, we'll talk about the conflict of interest requirements, the differentiation between sub-recipients versus contractors as they relate to procurement.

We will also discuss a suggested implementation approach that we have developed for you, some best practices and lessons learned from BMC conducting reviews of several agencies' policies and procedures over procurement. We'll also talk about the assistance that is offered under the Housing Counseling Grant, so as far as any action plans or technical assistance relative to the procurement policy and procedures that you may have. We'll also talk about frequently asked questions, and then I'll provide you with some resources for your reference as an FYI.

The Uniform Guidance, which became effective in December of 2014, has a section for Part 200.317 through 200.326 which addresses all of the procurement standards. Procurement is defined as the purchase of commercially available goods or services in connection with a grant-

supported project or program. So, the purchase of any commercially available goods or services with your HUD Housing Counseling Grant award, that's pretty much what we will be talking about today.

As a requirement, with the Uniform Grant Guidance you need to now have documented policies and procedures in place for the procurement of goods and services. The policies will be clear, simple statements of how your agency intends to conduct business relative to procurement. These policies are usually defined by upper level management, whether the executive or your board of directors, and then the procedures are action plans that are going to be put in place for how you will achieve the company's policies and objectives. The procedures will define who will perform what function, what steps are necessary in order to achieve the common goal, and what forms and documents you need to have in place in order to make sure that you have an adequate and sufficient paper trail.

As for the Housing Counseling Grant with HUD, we have a few examples listed here of what would qualify as a procurement type of activity. Any purchase or contract with consultants for the Housing Counseling Program, any training costs that you incur, purchases for supplies and materials, any travel expenses, whether it be airfare, hotels, any purchases

of conferences or training events, and any equipment and things of that nature, as long as they're directly related to the grant then those would qualify as procurement activities. We do want to emphasize that sub-awards to your sub-recipients would not qualify, and we'll get into that a little bit further along.

As I said in the beginning of the presentation, the Uniform Guidance became effective December 26, 2014 and agencies who receive federal funds are required to be in compliance with the requirements as of that date. However, an addendum was issued in May of this year where they granted a three-year grace period for agencies to have documented procurement policies and procedures and have those policies and procedures fully implemented.

Basically, what that means is by December 31, 2017 all agencies must have documented policies and procedures, and they must have implemented those policies and procedures as they relate to procurement. Any agency that chose to utilize this extension should have this documented in their policies and procedures, that they took advantage of the extension.

The purchase of goods and services that are directly related to your federal award, those are what the procurement policies and procedures will apply to. It doesn't apply to the indirect costs, just anything that's directly charged to your Housing Counseling award is what we'll focus on.

For those of you who actively work in the procurement department, you would probably be familiar with OMB circular A-102 or A-110, because that is where most of the language that are now in the Uniform Guidance, that's where most of the language came from.

I want to emphasize that it applies to expenditures of any monies that you receive from federal grants directly or through an intermediary. If you are a sub-recipient, you too are required to be compliant with the requirements, and if you're a parent agency you want to make sure that your sub-recipients are aware of their need to be in compliance. And you are responsible for ensuring that you are conducting proper oversight procedures to make sure that they're compliant.

The final thing on here is that you must have documented procurement procedures that reflect federal laws, the Uniform Guidance standards and any other state regulations.

Up next, we'll talk specifically about the key areas that changed with the implementation of the Uniform Guidance. The first section that changed has to do with the general requirements, and pretty much agencies must have their own documented procurement policies and procedures that reflect applicable state and federal laws. Agencies can't just refer to, perhaps, the state's procurement policies and procedures; each agency must have their own documented policies and procedures that they need to perform specific to their agency in order to be in compliance.

Agencies must maintain oversight to ensure that the contractors perform in accordance with the terms and conditions and the specifications of the award. That oversight responsibility rests with the agencies who receive the federal funds.

Agencies must maintain written conflict of interest statements for any employees who are involved with the selection, award, and administration of contracts. You also must maintain organizational conflict of interest standards, for agencies that may have parents, or sub-recipients or any affiliates you want to make sure that you have, at the organizational level, conflict of interest standards for those transactions.

Another change is that agencies have to avoid any unnecessary or duplicative item and you're encouraged to seek the most economic purchase when you're procuring goods or services. You're also encouraged to consider the use of shared service contracts if at all possible.

Also, you could consider contractor integrity and past performance when you're awarding a contract, and you want to definitely maintain sufficient records so that you have a history of the procurement steps that were performed as well as the documentation that you are required to maintain on file during the procurement process.

Other changes affected by the Uniform Guidance, it speaks to the different types of procurement methods, and there are five of them. The first one has to do with micro-purchases, and this is for the acquisition of supplies or services that are under the threshold of \$3,000. That threshold, though, is \$2,000 in the case of any construction contracts.

One thing that you want to bear in mind is that you have to distribute micro-purchases equitably amongst any qualified suppliers, and they can be awarded without soliciting competitive quotes as long as the prices are

reasonable. For small purchases, small purchases are for the procurement of goods and services that are above \$3,000 but less than the simplified acquisition threshold of \$150,000.

Small purchases are pretty much simple and more informal methods for procuring goods and services. But the one thing that you have to note when using this method is that you would need to have more than one quote in order to take advantage of this. Of course, the most important thing is to make sure that the dollar amount is under the simplified acquisition threshold of \$150,000.

The third type, or method of procurement, is procurement by sealed bids, and with this type of procurement you would need to have formal advertising for the public. These are usually awarded to the most responsible bidder at the lowest price, and it is the preferred method for when you're procuring construction contracts. You need to have at least two responses if you're going to be using this method and you want to make sure that you have complete and very realistic specifications that you communicate to the responders or purchase descriptions when you're advertising for the sealed bids.

Whenever agencies use this type of procurement method, they want to make sure that they allow the bidder sufficient time within which to respond. The bids should be open at a time and place that was already specified. It's also important to note that any bid can be rejected as long as there is a sound reason for doing so.

Sealed bids pretty much are used, as long as the time permits, for the solicitation, submission and evaluation of the bids, as long as you're able to make the award based on price and other important factors. They're not necessary to conduct any discussions with the responding offers, then you could use this method, or if you have a reasonable expectation for receiving at least two bids then you could go ahead and use this process.

The other type of procurement method would be a competitive proposal, and you use this method whenever the sealed bid/proposal is not feasible for you to do so. Whenever you use a competitive proposal, a cost price analysis is required. You do have to have at least two proposals, and the contracts, they're usually awarded to the firm whose proposal is the most advantageous to the program, with price and other factors being considered. A successful proposal would result in a fixed price or a cost-reimbursable type of contract.

The fifth method of procurement has to do with non-competitive proposals, and this method is used in very specific situations. For example, when the item that you're trying to procure is only available from one store, then you could go ahead and use this form of procurement; or if you've submitted and been granted a written request from your federal awarding agency or your pass-through entity to use a single-source or a sole source, then you could use a non-competitive proposal; or in a case where you've tried and tried and tried and you've realized that competition is not going to give you the type of products or services that you need, after solicitation from several sources and those have been unsuccessful, then you could go ahead and use non-competitive proposals. But of course you'd have to have proper documentation for whenever you use this type of procurement method.

Another area addressed under the Uniform Grant Guidance has to do with conflicts of interest. Agencies must make sure that they're maintaining written standards of conduct for governing conflicts of interest for their employees. Basically, any employees, or affiliates, or officers that you have that may participate in the selection or the award of a contract that's supported by a federal award, if they have any real or apparent conflict of

interest, then you'll want to make sure that you're mitigating that as soon as you become aware and you're avoiding any conflict of interest.

If there is a financial interest or a benefit that may arise from a relationship that you have with a contractor, then that is something that would pose or give rise to a conflict of interest that needs to be governed and addressed as they arise. Each agency wants to make sure that they have policies and procedures of how would they deal with certain situations as that, so who is the go-to person whenever there is a conflict of interest and who determines what a conflict of interest is if something is in, perhaps, a gray area. You want to make sure that your agency has policies and procedures for how that will be addressed.

In your written code of conduct there should be a code of conduct that governs procurement personnel, that explains to personnel in the procurement department what types of transactions are allowed in your agency, how should they conduct themselves in making purchases on behalf of your agency. If there any conflicts of interest that are known, then those personnel should not be participating in the procurement activities for a specific contract.

Also, there should be no solicitation or acceptance of gratuities or favors or anything with monetary value from your consultants or your vendors because of course that gives rise to a conflict of interest.

The Uniform Guidance also spent some time differentiating between who is a sub-recipient versus a contractor because, as I mentioned before, sub-recipients are not included in this procurement process, it's really the contractors, so they wanted to make sure that agencies knew which of these relationships you needed to address as far as the procurement.

The Uniform Grant Guidance talks about sub-awards as transactions to carry out, a portion of a federal award and to create a federal assistant relationship with a sub-recipient. Basically, in a relationship of this nature, your sub-recipients, if you have them, would determine who's eligible to receive services, for example, housing counseling services under the HUD grant.

Your sub-recipients have the responsibility for the programmatic decision-making, for how they will carry out their housing counseling program but they're also very much responsible for adhering to the federal requirements as their parent agencies are. Also, sub-recipients, they will

use federal funds to carry out the program for a public purpose as opposed to providing goods or services for the benefit of their parent agency.

On the other hand, the contract is to obtain goods and services for the non-federal entities own benefits. The contractor usually provides the goods or services that are being procured within their normal business operations. They would provide similar goods or services to many different purchasers. They normally operate in a competitive environment, and they're not subject to being in compliance with the requirements of the federal program as a result of the agreement. That's what distinguishes between the sub-recipient and the contractor.

BMC has developed an implementation approach to help agencies get ready, if they haven't already done so, for being in compliance with the procurement requirements. We created this readiness checklist, so we encourage that agencies read through the checklist just to kind of gauge where they're at and what steps they need to take to make sure that they're in compliance with the requirements.

The first and foremost thing that we recommend is that you identify the ultimate owner or owners of the procurement process, so whether or not

that will be a director of procurement or someone who's knowledgeable and familiar with procurement requirements. And that person would be responsible for making sure that the policies of the agency is being communicated to employees, and that employees are performing procedures that are in compliance with those policies and that they're maintaining ongoing compliance management for the agency.

Also, you want to determine whether or not you've reviewed the Uniform Grant Guidance standards. I'd mentioned to you before Part 200.316 to 326, that's where you'll find the Uniform Guidance Procurement Standards. You want to make sure that you've read that to determine what does my agency need to do, what is required of me in order to be in compliance?

Once you've done that, then you want to conduct a gap assessment to see okay, where am I today and where do I need to be based on what the procurement standards are, and how do I need to update my policies and procedures to make sure that any identified gaps have been addressed.

You also want to check whether or not you've updated any forms or checklists, or even develop them if you didn't have any on file, such as

your request for proposal templates or your proposal evaluation form, cost analysis tools and things like that, have you updated them recently to make sure that they capture all of the information necessary for you to be in compliance. Also, have you revisited your contractual standards and templates just to make sure that they include all of the contractual provisions outlined in the procurement standard of the Uniform Guidance?

Whenever you're looking at your policies and procedures, you're checking to see whether or not it's clearly specified who should perform what function, when should they do it and how should those procurement activities take place, how are we going to document it as we go through the procurement process.

If you have sub-recipients, have you developed any risk assessment, or have you developed any standard oversight processes for how you will monitor your sub-recipients and just make sure that they, too, are in compliance with the requirements?

Have you standardized the process by which your staff is going to store and access procurement documentation just to make sure it's easily available for your review, an auditor review or any kind of reviews?

You also want to check to see if you've trained your staff, new personnel on the new requirements, just to make sure that everyone is on the same page and employees are clear as to what their roles and responsibilities are as far as the procurement process.

Another very important thing is to determine whether or not you've communicated a clear problem resolution process for your staff to follow when they have questions or issues with procurement activities.

Procurement is a situation where everything is really subjective and so you want to make sure that your staff know what procedures they need to follow whenever an issue arises throughout the process.

As I mentioned before, we have conducted reviews of a lot of agencies' procurement policies and procedures, and based on our experience with that, we've developed best practices that we're going to share with you.

One of our best practices that we like to share is that you want to develop, if you haven't already done so, an update of your procurement policies and procedures as soon as possible.

The thresholds have changed, so if you haven't revisited, at least you need to go back and change the threshold for the different types of procurement

methods. As far as the conflict of interest, you want to revisit that as well to make sure that you're really specifying how these types of issues will be governed, whether it be on the federal level or at the organizational level.

We also recommend that you consider centralizing purchasing operations, because we've noted that this does reduce the risk for noncompliance with the requirements. It does give you consistency in how you process the procurement transactions and how you document them, and it does provide less room for error.

We also recommend that you create checklists that will guide your purchasers through the process, so it will have the steps as well as the various decision criteria for each procurement method and each step underneath each method. Any procedures that they would need to perform for how they manage conflict of interest, and that too should be standardized as a recommendation. You also want to make sure that you have the required documentation, that part standardized as well for each of the different types of procurement.

Some common procurement weaknesses that we've noted from conducting our reviews, a lot of times there's a lack of contract file documentation. We can't stress enough how important it is to make sure that you have sufficient documentation on file. When you're revamping your procurement process, just be mindful that for each of the different procurement methods you want to make sure that you're using a checklist to show what documents do we need to maintain for this type of procurement activity.

Also, the lack of approvals, we've seen that a lot also. Transactions need approval so that you can reduce the risk of fraud, waste, and abuse. You want to make sure that the right personnel are signing off on the procurement transactions and that employees aren't just making purchases without the proper approval.

Failure to follow existing procurement procedure, that's usually another big one too. As an agency, if you have a policy in place, you want to make sure that your personnel are following your policies and your procedures. If they don't, then there's a breakdown in your internal control system which suggests a bigger risk, possibly in other areas as well.

Lack of competition in small purchase procurements or unauthorized commitments to vendors, those two have been areas where we've seen a breakdown in the procurement process that you want to be mindful of.

Some frequently asked questions that we've had. Then, after I do this, I will break a little bit for questions and then get back to the presentation.

The first one. How are procurements of micro purchase and small purchase under the simplified acquisition threshold, less burdensome than those above it?

Pretty much, in short, they do require much fewer terms and conditions than purchases that you would have the open competition on. You can do micro purchases and small purchases very informally, and they don't require any cost or price analysis when you're doing them.

The second question. Does the Uniform Guidance procurement standards apply to procurements made for indirect costs? The answer here is no, it does not. It's only related to direct costs related to federal funds.

Does the Uniform Guidance require non-federal entities to limit charge card purchases to a particular threshold amount? The answer to that is that

there is nowhere in the guidance that specifies any purchase threshold using purchase cards.

Another question. Can you please clarify when it's allowable to hire or contract without competitive bidding?

That, pretty much, was the fifth procurement method that we went over. Again, if it's a situation where the item that you're trying to procure, there's only one vendor for that item, or if your federal entity allowed you guys, in writing, to use a single source or a sole source, then those are the instances where you could go ahead and procure the item without using a competitive bidding process.

To what extent does the new Uniform Guidance requirement align with the federal acquisition regulations? Can the federal acquisition regulations be used as the prevailing guidance where there are questions?

The federal acquisition regulations is for procuring goods and services outside. It's not for agencies who receive federal funds. The Uniform Guidance is pretty much for agencies that receive federal funds and are using those funds to procure goods and services, while the federal

acquisitions regulation is not. Therefore, the prevailing one for you all would be the Uniform Guidance.

I'll pause really quickly. I think we have a question here. Someone asked: "When implementing the procurement policies, can you clarify whether the procedures would apply specifically only to goods paid by federal funds, or goods purchased by the organization, regardless of payer. Thank you."

Specific to this training, the Uniform Guidance specifically talks about procurement of goods and services for agencies who receive federal funds using federal dollars. Any direct costs that you incur relative to your housing counseling grant, as an example of a federal award that you receive, then those are the types of activities that are covered here.

It is important to note that every agency is required to have procurement policies and procedures because of the Uniform Guidance. Of course, if you're going to be developing your procurement policies and procedures and you make other types of purchases under other federal programs, you would still want to make sure that you have documented policies and procedures for that as well.

Another question that came in is: “Is there any boilerplate language that grantees can use to help them guide when drafting policies and procedures?” I’m about to get into that, in one second, if you’ll allow me. I’ll see if we have any other questions.

Another question that came in. “In regards to procurement for construction of less than \$150,000, is it best to follow the process of procurement for \$150,000 or more?”

Let me read that again. “In regards to procurement for construction of less than \$150,000, is it best to follow the process for procurement for \$150,000 or more?”

I guess I’m not really clear. When you’re talking about the different thresholds, you want to follow the process based on the purchase threshold, so whether it be the micro purchase threshold, or under the simplified acquisition threshold, or above that. So for procurement, depending on the dollar amount of the construction activity, then based on the dollar amount you would go with whatever procurement method matches up with that dollar amount or that threshold.

I think those are my questions so far. At the end, I will circle back to see whether or not we have additional questions. But for now let's go into the available Office of Housing Counseling assistance that's available to you all.

We do provide training. Let me preface. With management consulting we provide training, action plans, and technical assistance sessions to housing counseling grantees, any agency that receives funds under the housing counseling program, with regards to whatever financial or administrative issues that you may have. So, specific to procurement, available services that we have include training. Under training we do an internal control training, which is a full or half day training, where we would implement an internal control plan for your agency, where we'll go over your internal control policies and procedures for procurement specific to your agency.

We also provide that training to any sub-grantees that you may have. We also provide action plans where—there are two forms of action plans. We could actually take a look at where you are today. If you have policies and procedures that may be outdated, we will take a look at the policies and procedures that you have and we'd work with you to develop or update your policies and procedures as well as your templates, and things of that

nature so that you would become in compliance. Pretty much, we look at what you have right now, we look at the Uniform Guidance, we see what's missing and we try to bridge that gap.

But we make it very specific to your agency, where we would be working with someone directly at your agency, perhaps in your procurement department, to make sure that we have a clear understanding of the types of procurement transactions that you incur, and then developing your policies and procedures to address those.

We also provide technical assistance. For agencies that don't have any procurement policies and procedures in place at all, we do still speak with personnel at your agency to get an understanding of the types of activities that are conducted at your agency. We document policies and procedures for your agency and we work with personnel from your agency throughout the process so that we're making sure that it's very customized to the transactions that you incur day to day.

We also draft internal control plans, the who, what, when, where of how you would make sure that the procurement cycle goes through smoothly. We take a look at any single audit findings that you may have relative to

procurement. We assist with the implementation of any corrective action plans as they relate to procurement. If you received any FARs or action plans, and there was a deficiency noted in your procurement policy and procedure, then we do provide assistance with you depending on what type of assistance you need. To make sure that you guys are in compliance with the requirements of the Uniform Guidance.

If you are interested in receiving any of those types of assistance, you would send a request to your HUD POC. You would provide your name, the type of service you're interested in, and your contact information, of course. That information would be shared with the technical monitors for the contract that we have with HUD.

The technical monitors, those are the GTMs, they would then review the requests and determine whether or not they would approve it. If approved, then they would share that request with Booth Management Consulting.

Then once we receive notification or approval to provide you with the service, then we would reach out to someone from your agency. We will schedule a few meetings, depending on what you need done. But we definitely have to talk with personnel from your agency to determine what

you really need, what type of activities you perform at your agency and how we could tailor procurement policies and procedures specific to your needs. Once we've done that, then we would share the deliverable with yourselves, your HUD POC as well as the HUD GTM.

We've noted several benefits from receiving these types of services that we offer. One, you receive comprehensive assistance that would minimize the burden of implementing the new regulations of the Uniform Grant Guidance on your own. We do have a pool of expertise here in documenting procurement policies and procedures because we know what the requirements are, and we can really help your agencies or customize the policies and procedures that we draft to your agency.

It could potentially reduce any findings that may occur during the financial review process. Anything that you learn, and also the policies and procedures that you draft, those could be transferred to any other federal programs that you receive and that you have procurement activities for.

If you have sub-grantees, it does reduce the administrative burden of parent agencies to make sure that their subs are in compliance with the

requirements of the Uniform Guidance, and have proper procurement policies and procedures in place.

I'll break now to see if we have any questions. Someone asked the question: "What is a simple acquisition, is it a specific dollar amount?" Yes, the simple acquisition threshold is a specific dollar amount of any purchases above \$3,000 but less than \$150,000. That is what it is currently.

I don't believe we have any other questions as far as in the question boxes. Here, we have a list of references for you guys to look at if you have any questions in the future. But I wanted to open up the session for anyone that wanted to pose a question verbally.

Moderator [Operator instructions]. At this time, I'm seeing no questions from the phone lines.

Petergay Okay. If you do think of any questions, because I know that sometimes it takes a while to think about it, go back and speak to your respective departments, and then develop questions, so if you do have any questions,

please forward them to housing.counseling@hud.gov with Overview of Procurement as the subject.

I want to thank you all so much for your time today. Hopefully you learned something. Hopefully you'll be able to apply what you've learned today with developing your own procurement policies and procedures. Or, if you needed to request technical assistance, hopefully I gave you enough information for you to do so formally with your HUD POC as well as the HUD GTM.

Again, I'm Petergay Bryan. Thank you for participating.

Moderator

Ladies and gentlemen, that does conclude our conference for today.

Thank you for your participation and for using AT&T Teleconference.

You may now disconnect.