U.S. Department of Housing and Urban Development
Office of Housing Counseling

BMC
BOOTH MANAGEMENT
CONSULTING

Facilitated by
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Overview of Procurement Policies & Procedures

December 17, 2018 2 pm EST

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Training Topics

- Definitions
- Applicability
- Key UG Procurement Changes
- Conflicts of Interest
- Sub-recipient vs. Contractor
- Implementation Approach
- Best Practices/Lessons Learned
- Available OHC Assistance
- Frequently Asked Questions
- Resources/References

Definitions

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 C.F.R.§ 200.317 to §200.326

- **Procurement:** The purchase of commercially available goods or services in connection with a **grant**-supported project or program.

- **Policy:** Clear, simple statements of how your Agency intends to conduct its services, actions, or business. They provide a set of guiding principles to help with decision making.

- **Procedures:** Describe how each policy will be put into action in your Agency. Each procedure should outline:
  - Who will do what?
  - What steps they need to take?
  - Which forms or documents to use?

Definitions

Examples under OHC **Grants***:

- Consultants
- Training
- Supplies and materials
- Travel
- Conferences
- Equipment
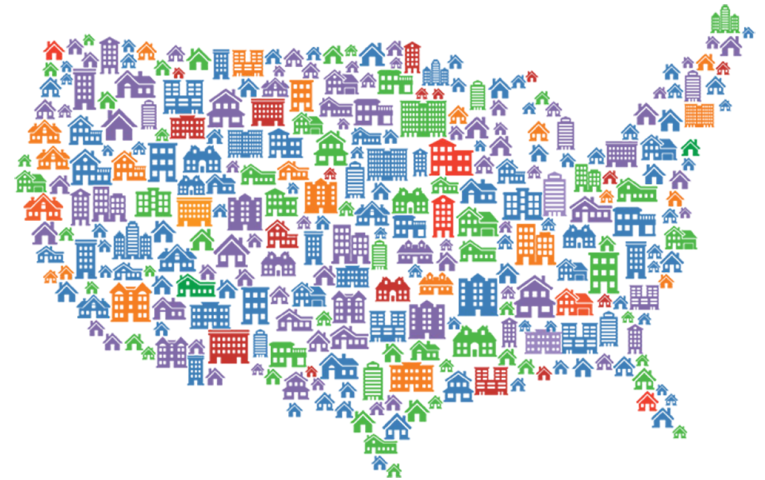
*Does not include sub-awards

Applicability

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 C.F.R. §§ 200.317 to 200.326

- Issued an [addendum](#) on May 17, 2017 allowing a grace period of one additional fiscal year (FY) for non-Federal entities to implement changes to their procurement policies or **3 YEARS after their fiscal year end following implementation date of December 26, 2014.**

  Example:

  FY End   6/30

  FY #1   6/30/2015

  FY #2   6/30/2016

  FY #3   6/30/2017 - IMPLEMENTATION

- Agencies that choose to utilize the extension MUST document this extension in internal procurement policy

- Other requirements in the section remain unchanged

Applicability

- Applies to purchases of goods and services **DIRECTLY** charged to a Federal Award.

- Adopts a majority of its language from OMB Circular A-102, which is applied solely to state, local, and Indian tribal governments. Now that it's part of the Uniform Guidance, not-for-profit entities that previously followed the guidance in OMB Circular A-110 are now included.

- Applies to all expenditures of monies received through Federal grants directly or through an intermediary.

- Must have documented procurement procedures that reflect Federal law, Uniform Guidance standards, and any state regulations.

Key UG Procurement Changes

Key UG Procurement Changes

Changes	UG Section
General Requirements and 5 methods for procurement - most closely follow the previous 0MB Circular A-102 requirements	200.318 - 200.326
Specific contract requirements - non-Federal entities should review contracts for compliance	200.326 Append II
General Standards • Documented policies which reflect Federal law, standards of UGG, and any state regulations • Necessary (and economical – use shared service purchases recommended where practical) • Written conflict of interest policies required • Documentation of procurement activities/steps required	200.318
Full and Open Competition • Contractors who draft specifications for RFPs must be excluded from competing for those opportunities • Cannot have unreasonable requirements to limit competition • Complexities with geographic preference criteria	200.319

Key UG Procurement Changes

§200.320 – 5 Methods of Procurement

Guidance on procurement has been clarified to better mitigate the risk of waste, fraud, and abuse.

Micro-Purchases (for supplies or services not exceeding $3,000 or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act)

- Exempt from needing competitive quotes
- Price must be reasonable

Small Purchases (for services, supplies, or other property greater than $3,000 but less than the Simplified Acquisition Threshold of $150,000)

- Price or rate quotations must be obtained from an adequate number of qualified sources (i.e., more than one price or rate quote)

Key UG Procurement Changes

§200.320 – 5 Methods of Procurement

Procurement by Sealed Bids (formally advertised to public) > $150,000

- Must receive at least two bid responses

- Must have public opening of bids

- Bids must receive a cost-price analysis

- Successful bid will result in firm-fixed price contract

- Sealed bids are preferred method for procuring construction services

Key UG Procurement Changes

§200.320 – 5 Methods of Procurement

Competitive Proposals (used when sealed bids not appropriate) >$150,000

- Non-Federal entity receiving proposals must have written procedures for evaluating proposals
- Competition must be formally publicized and include evaluation criteria
- Must receive at least two proposals
- Cost-price analysis of proposals required
- Contract must be awarded to firm whose proposal is most advantageous to the program, with price and other factors considered
- Successful proposal will result in fixed price or cost-reimbursable contract

Key UG Procurement Changes

§200.320 – 5 Methods of Procurement

Noncompetitive Proposals (applicable only when one or more of the following situations apply)

- Desired item is only available from a single source; Public need does not permit time for competitive solicitation

- Federal awarding Agency or pass-through entity approves noncompetitive proposal in response to written request from non-Federal entity

- After solicitation of several sources, competition is deemed inadequate

Conflicts of Interest

Conflicts of Interest

§200.318   General Procurement Standards

- (c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when an employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract……

Code of Conduct
Identifying Conflicts of Interest

- Written code of conduct governing procurement personnel

- No participation in procurements if/when conflicts of interest are known

- No soliciting or acceptance of gratuities, favors, or anything of monetary value from consultants or vendors

Sub-recipient vs. Contractor

Sub-recipient

Purpose of sub-award

- To carry out a portion of a Federal award and create a Federal assistance relationship with the sub-recipient.

Sub-recipient

- Determines who is eligible to receive what Federal assistance.

- Has its performance measured in relation to whether objectives of a Federal program were met.

- Has responsibility for programmatic decision making.

- Is responsible for adherence to applicable Federal program requirements specified in the Federal award.

- Uses the Federal funds to carry out a program for a public purpose, as opposed to providing goods or services for the benefit of the pass-through entity.

Contractor

Purpose of contract

- To obtain goods and services for the non-Federal entity's own use and create a procurement relationship with the contractor.

Contractor

- Provides the goods and services within normal business operations

- Provides similar goods or services to many different purchasers

- Normally operates in a competitive environment

- Provides goods or services that are ancillary to the operation of the Federal program

- Is not subject to compliance requirements of the Federal program as a result of the agreement

Implementation Approach

Procurement Readiness Checklist

- Identified the ultimate owner(s) of procurement policies, procedures, and ongoing compliance management within your Agency?

- Reviewed all of the UG procurement-related standards in detail to determine which apply to your Agency and what is required from each?

- Conducted a Compliance Gap Assessment by comparing your current, documented policies and procedures to the UG procurement standards, and updated your policies and procedures for any gaps identified?

- Updated and/or developed procurement forms and checklists, such as RFP templates, proposal evaluation forms, pricing, cost analysis tools, and sub-recipient oversight plans to ensure your procurement activities follow a standard process and are properly documented?

- Updated your contractual standards and templates to ensure they include all of the contractual provisions outlined in the standards?

Procurement Readiness Checklist

- Established documentation standards to ensure staff are clear on "who, what, when and how" procurement activities will be documented?

- If you have sub-recipients, updated and/or developed risk assessments and standard oversight processes for those sub-recipients?

- Standardized the process by which your staff will store and access procurement documentation to ensure you have it easily available for Agency and auditor reviews?

- Trained staff on new requirements and all of your updated policies and procedures to ensure they understand requirements along with roles and responsibilities?

- Communicated a clear problem resolution process for staff to follow when they have questions or issues with procurement activities?

Best Practices
and Lessons Learned

Best Practices

- Develop/update written policies and procedures
  - Thresholds and appropriate process for each of the five procurement methods
  - How conflicts of interest involving employees engaged to select, award, and administer contracts will be governed
  - How conflicts of interest involving parent entities, affiliates, and subsidiaries will be governed at the organizational level

- Consider centralizing purchasing operations
  - Reduce risk of non-compliance with requirements
  - Consistency in processes and decision making
  - Less room for error

- Create checklists to guide purchasers through proper processes
  - Steps as well as decision criteria for each procurement method
  - Procedures for uncovering and managing any conflicts of interest
  - Required documentation

Lessons Learned

Common Procurement Weaknesses

- Lack of Contract File Documentation

- Lack of Approvals

- Failure to Follow Existing Procurement Procedure

- Lack of Competition in Small Purchase Procurements

- Unauthorized Commitments to Vendors

Frequently Asked Questions

Frequently Asked Questions

QUESTION:

How are procurements of micro-purchase and small purchases under the simplified acquisition threshold less burdensome than those above it?

ANSWER:

In summary, all purchases under the simplified acquisition threshold (including micro-purchases) require fewer terms and conditions, have a lesser competition standard than purchases over the simplified acquisition threshold, can be solicited informally, and do not require a cost or price analysis.

QUESTION:

Do 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?)

ANSWER:

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.

Frequently Asked Questions

QUESTION:

Does the Uniform Guidance require non-Federal entities to limit charge card purchases to a particular threshold amount?

ANSWER:

No. The Uniform Guidance provides requirements for the internal control framework that surround any purchase but does not provide any guidance around whether the non-Federal entity uses cash, charge cards, checks, or any other payment medium for the transaction.

QUESTION:

Can you please clarify when it is allowable to hire/contract without competitive bidding?

ANSWER:

If the goods or services are only available from a single source, or if the transaction meets the requirements for simplified acquisition. The Federal threshold for simplified acquisition procedures for the procurement of goods and services is $150,000; contracts of $150,000 or more need to go through competitive bidding 45 CFR § 92.36 (b) through (i). Contracts secured under the simplified acquisition procedure must still document that the grantee took actions to ensure that it is receiving the best price for the services/goods purchased (e.g., document three (3) separate price quotes for equipment and justify why one was chosen).

Frequently Asked Questions

QUESTION:

To what extent do the new uniform administrative requirements align with the Federal Acquisition Regulation (FAR)? Can the FAR be used as the prevailing guidance where there are questions?

ANSWER:

The Federal Acquisition Regulation (FAR) establish the rules and requirements that Federal agencies must follow when procuring goods and services. The Uniform Guidance, by contrast, establishes requirements that must be followed by grantees when procuring goods and services needed to carry out a Federal grant or sub-grant. The Uniform Guidance, like the FAR, is designed to ensure that procurements involving Federal funds are conducted with integrity, fairness, and openness. However, procurement issues that arise in carrying out Federal grants must be resolved on the basis of the requirements set out in the Uniform Guidance and the recipients' written procurement policies rather than the FAR.

Available OHC Assistance

Available Services

Training

Menu	Description	Onsite and/or Remote
Internal Control	Full and 1/2-day training to implement an internal control plan or policies and procedures	Optional
Sub-grantee	Full and 1/2-day training to sub-grantees on internal controls and the requirements	Optional

Action Plan

Menu	Description	Onsite and/or Remote
Internal Control Assessment	Conduct an assessment of the grantees internal control to verify compliance with Uniform Guidance and recommend technical assistance and/or training	Optional

Available Services

Technical Assistance

Menu	Description	Onsite and/or Remote
Internal Control Plan	Assess and provide recommendations for improving their internal control and/or develop an internal control plan. This could be follow-up assistance from an Action Plan depending on how much assistance the agencies need.	Remote
Internal Control Policies and Procedures	Assist with updating and/or developing internal control plans	Remote
Internal Control Corrective Actions	Assist in the implementation of corrective actions from a FAR for internal control observations and findings	Remote
Single Audit Findings Follow Up	Assist with the implementation of corrective action plans for Single Audit internal control material weakness and findings	Remote

Requesting Services

1. **REQUEST Assistance from HUD POC**: State assistance required, person who will be the POC if approved, and availability for the assistance

2. **POC APPROVAL**: HUD POC reviews and determines for approval

3. **INITIATE ASSISTANCE**: If HUD POC approves, will submit to the HUD GTM for assistance

Benefits to Grantees

Benefits to Grantees

- Comprehensive assistance to grantees to minimize the burdens of implementation of new regulations

- Potentially reduce findings during financial reviews

- Provide financial and administrative technical assistance to grantees that can be transferred to other Federal programs

- Reduce administrative burden through training of sub-grantees

References/Resources

Government Accountability Office Reports
- http://www.gao.gov/new.items/d05218g.pdf
- http://www.gao.gov/products/GAO-02-230
- http://www.gao.gov/products/GAO-04-870
- http://www.gao.gov/products/GAO-06-577
- http://www.gao.gov/products/GAO-07-159

Office of Management and Budget
- 2 CFR Part 200.317-200.326
- https://www.ecfr.gov/cgi-bin/text-idx?SID=ed90f54836feb6a994f657188eb05e33&node=2:1.1.2.2.1&rgn=div5#sg2.1.200_1316.sg3

HUD Exchange
- Integrity Bulletin - 7 Keys to Handling Conflicts of Interest
- https://www.hudexchange.info/resources/documents/HUD-Integrity-Bulletin-Conflicts-of-Interest.pdf

Federal Acquisition Regulations
- https://www.acquisition.gov/far

Please forward any questions to:
housing.counseling@hud.gov
with
"Overview of Procurement"
in the Subject line
Note: Only questions related to the HUD, Office of Housing Counseling, Comprehensive Housing Counseling grant will be accepted and responded to.