



Final Transcript

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

December 18, 2018/2:00 p.m. EST

SPEAKERS

Robin Booth – Booth Management Consulting

PRESENTATION

Moderator Ladies and gentlemen, thank you for standing by. Welcome to the Overview of Procurement Policies & Procedures conference call. At this time, your telephone lines are in a listen-only mode. Later, there will be an opportunity for questions and answers. [Operator instructions]. As a reminder, today's conference call is being recorded.

I'll now turn the conference call over to your host, Robin Booth. Please go ahead.

Robin

Good afternoon, and welcome to Overview of Procurement Policies and Procedures provided to you today by the US Department of Housing and Urban Development, Office of Housing Counseling. As just some other follow up on the logistics, as the moderator said, this audio is being recorded, and it will be on the HUD Exchange generally within two business days. The training digest on the HUD Exchange will be updated when the webinar is posted, so you should receive a notification that it's been updated.

If you registered, you should have the handouts. They weren't sent out prior to the webinar, but they are available now, if you look at your control panel. For those who registered, you should see a PDF file there with the training materials. Just to clarify, they were not sent out prior to the webinar, but they are available now on your control panel if you just click and download. Those same training materials will also be available on the HUD Exchange along with the transcript and this audio.

We probably will not have a Q&A period due to the number of participants. However, if at the end of the call we have some time left, I will ask if there are any live questions and/or determine if there are any

questions that were submitted through the control panel that we can answer.

However, throughout this presentation you can submit questions using the questions on the control panel. We do have staff available to respond to those questions real-time. And if there are questions that we need further research or to obtain additional clarification, we will be able to advise you of that at that time. So you can submit your questions through housing.counseling@hud.gov.

You can also submit questions through housing.counseling@hud.gov any time following this presentation. So if tomorrow there's a question that arises relative to this material, you can send that question to housing.counseling@hud.gov, but please include in the subject line item the name of the training material.

At this point I also want to emphasize that only those questions submitted by stakeholders for the Office of Housing Counseling comprehensive housing counseling training grant program will be responded to. All other questions submitted by other agencies or for other grants will not be responded to as a result of this webinar.

Your phones have been muted. If in fact we are able to take live calls, you can hit star zero and you will be put in the queue. At that point where we take questions, you can ask your question live. Otherwise, your phone has been muted.

If you registered to the webinar and if you logged in, you will get an email indicating a thank you for participating. That email is in fact your training certificate, so please maintain a copy of the email itself. There will be no attachment. Either save it hard copy, or print it out and save it, but that is your certification of having participated in this training.

These materials, as I said, will be available on the HUD Exchange, the audio, the transcript, and the actual training materials. And you can obtain credit by selecting the webinar and then clicking that to get credit for this training, so you can also pursue getting credits for this training through the HUD Exchange.

Hello. My name is not Petergay Bryan. This is Robin Booth. I'm the Audit Principal. Petergay is on vacation. I will be conducting this training.

Our firm, Booth Management Consulting LLC, we are the quality audit and technical assistance firm engaged by the Office of Housing Counseling to assist recipients, both internal and external, of the comprehensive Housing Counseling Grant. So you all may interact with us relative to action plans or getting technical assistance or financial analysis. Some of you all may be interacting with our staff during the grant execution package, or even in the financial and administrative review. We also provide the training, such as today, both in a webinar format, but individual training.

Today's topic is a direct result of the, it's now well in effect, Uniform Guidance, which took effect December 26, 2014, and has been fully implemented as of the date of this training. So all aspects of that guidance, all changes, all modifications there, are now fully effectuated, including procurement.

Hopefully for those that are participating, this is not the first time you're hearing about the requirements for procurement policies and procedures, and we hope that this is just additional training to either give you some refresher information to verify that what you've been doing as far as to implement these requirements are in fact in line with what the guidance

requires, and/or just to kind of get some additional information or maybe other best practices, or things you need to be aware of.

Hopefully this is not your first introduction to this topic, because, as I said, the effective date for having implemented this requirement has passed. So we hope this is just one of those three things that we discussed.

We're going to go over definitions and applicability, summarize the key changes from these procurement changes, talk to you about conflict of interest, and understanding the difference between a sub-recipient and a contractor, because procurement is related to a contractor, not a sub-recipient. That is, there are different treatments in the Uniform Guidance and in various federal and state regulations for sub-recipients versus the contractors. So we want to make sure that's clear.

What we also want to do, for those of you that are still going through the implementation or effectuating all of this guidance, we're going to give you some recommendations for some implementation approaches, talk to you about some of the best practices we've seen from other agencies that have been implementing and adopting these requirements, and then go over some of the frequently asked questions that we get relative to this

particular topic. And finally, leave you with some resources and references that you can look back to, to potentially provide you with additional information.

This is a long definition that you can go read at your leisure, but it's found under Section 200.326 of the Uniform Guidance, where it tells you that procurement is actually just the act of purchasing commercially available goods and services, and in this instance with grant supported dollars. A policy which we think is important, because we're talking about overview of procurement policies and procedures. Based on our experience, we've noticed that a lot of agencies or individuals don't understand the difference between a policy and the difference between a procedure, so we wanted to make sure that as we're talking about procurement policies and procedures, you're clear on what we mean by a policy and what we mean by a procedure.

A policy is the simple statement. I always say that's the regulation, that's you recognizing or acknowledging what that regulation is, and that regulation becomes your policy. So it's a clear and simple statement of how you intend to conduct whatever services or businesses that relate to

whatever that guiding principle is, which in this instance is the Uniform Guidance.

Then your procedures actually describe how you're going to meet that policy. So it's going to really answer those questions who will do what, what steps need to be taken, what forms or documents need to be used. Procedures answers the who, what, where, when and how of how you're going to actually implement that policy, how you're going to make sure that your organization meets that policy as defined, or from the guidance that you're given, in this particular instance from the Uniform Guidance.

So that's a clear distinction of what a policy versus a procedure is and what's expected of you as you're developing your procurement related policies and procedures.

Now under the OHC grant, some of the most common areas where when we see procurement activity has to do with consultants, because you're procuring a service in that instance. As we went by the definition and it's a commercially available service, that's usually the consultant. Trainings, it could be different types of purchases, from maybe engaging someone to do the training in the form of consultants, and/or purchasing training

materials, and/or the travel, because when you're traveling you're purchasing services, and those are services which are also subject to federal travel regulations.

But training will be the materials, it will be those fees associated with the training that you're paying. That's another common purchasing type activity. Usually it's on the lower dollar amount, but what you have to recognize is that's still a purchase, and in this instance it's usually of a service and potentially some kind of material.

Supplies and materials, I think that's self-explanatory, that you're purchasing commercially available services or goods.

We talked about travel, conference is the same thing. That is a procurement activity. You're purchasing the fees that you're paying, that's the purchase of those services, you're purchasing potentially the travel, which is also a purchasing activity. But then again it could also be materials that you purchased to participate in a conference, or on the other hand, if you're presenting at a conference, those materials you're purchasing. That's some of the common grant activity; equipment not so much, only to the extent it complies with eligible activities.

As I hope most of you have really comprehended and incorporated in your budgeting and looking at how you're going to utilize the OHC comprehensive housing counseling grant budget, eligible activities is a term that's now very predominant and very important in understanding what budget line items you can charge to this particular grant. So with the main criteria being that whatever dollars you're spending they should be associated with some eligible activity that's really going to have the maximum benefit to the actual services you're performing. There's more emphasis now in these future grants on seeing those dollars, although limited, those limited dollars being used to actually provide housing counseling and less for administrative or other non-direct services.

Note that sub-awards were not included in this when we looked at examples of purchasing under OHC grants. That's because sub-awards fall in a different category, as we're going to talk about later in this presentation.

As I discussed with you at the beginning of this training that by this point this requirement under the Uniform Guidance should have been effectuated in your organization. There was an extension, an addendum done May 17, 2017, giving agencies some additional time, so they allowed

you three years after your fiscal year-end to implement. But that would have expired by, at this point the latest fiscal year would have been December 31, 2017. So from this point forward you should have these policies and procedures in place and effectuated.

If you choose to utilize the extension, you have to have it documented. This would come into play if you were subject to some type of financial and administrative review, or an examination and it came to the fore that you didn't adopt procurement policies and procedures within the normal prior to the extended period. Then it would be a question of what did you request, and did you document. You don't have to request, you just have to document internally that your organization elected to take advantage of that extension for adopting procurement policies and procedures. With that addendum, though, nothing else changed. The only thing that one addendum on May 17, 2017 did was give agencies additional time to meet this requirement.

Let's talk about the procurement activity and what that means. This applies to direct charges to federal awards, not those things that you're including in your indirect rate. These will be if you're doing your budget, these are the direct line items that you have included in your budget for

which you're going to be requesting reimbursement, not including indirect costs. If you have indirect costs on your budget, these requirements are not applicable to that indirect cost line item. However, it is applicable to wages, which is a service that you're buying, it's applicable to supplies, and every other eligible activity and budget line item you have included in your budget.

What this did was it did adopt a lot of the language that was in Circular A-102, which was part of the consolidated circulars that now represent the Uniform Guidance. But what has happened is now non-profit entities have to take on those requirements in addition to what was already a requirement in A-110. So it puts more emphasis on having good purchasing policies and procedures, and if you think about it, it's because the entire act of purchasing is where you get into the best use of federal government dollars.

This is consistent with all these efforts you're seeing to minimize fraud, waste and abuse, and it was recognized that even on micro purchases, if you do not have policies and procedures that are communicated throughout your organization to ensure that those dollars are being spent consistent with how federal award dollars should be spent, that that

increases the likelihood of fraud, waste or abuse. So that's why now they're saying well, no, not-for-profit entities, you, too, are subject to the same level of scrutiny as we would a state, local or independent, tribal on all of your purchases, not just a purchase over a certain dollar amount. It will start from what we'll call micro purchases through your much larger and competitive purchases.

Now when you're thinking about the OHC grant, though, we would be focused on all policies and procedures associated with the budget that you're awarded through OHC. So if you're an LHCA and you have a \$25,000 grant, we recognize that most of your purchases are going to fall within a certain category micro threshold, which is \$3,000 or less, or small purchases, which is \$3,000 up to \$150,000. We recognize that we would not be focused on your policies and procedures for your large or open competition, or those purchases over \$150,000. But we would be looking at your policies and procedures from micro purchases and for small business.

We do take into account the amount of the award, and we are looking at those purchases that would fall within the amount of the award, consistent with what your approved budget was. This requirement applies to all

federal grants, so it's not subject to any kind of exceptions based on grant award amounts. So it's not like a minimum or maximum amount, whatever federal grant award, whether it's \$5 or \$5 million, these same requirements apply.

You must have your own documented procurement policies and procedures. It is not sufficient to have a statement that says, we followed the federal government procurement policies or procedures, or we followed the policies and procedures of—maybe you're associated with another agency, and you say that agency. That is not acceptable. You have to have our own documented policies and procedures. That means that you may use policies and procedures of another agency or an affiliate or somewhere as your basis or your guidance or your template or format from which to build your own, but the reality is you have to have your own policies and procedures.

Some of the key Uniform Guidance procurement related changes, and we give you this section for you to refer back to, so you can go look at them and read them yourselves and get some more in-depth information and make sure you have sufficient knowledge. Some of the key areas, there were some changes in the general requirements and under the Uniform

Guidance it spelled out what the five methods of procurement are. It's very clear on what they're looking at relative to the five methods that you can use for procurement activity, so taking a lot of the guesswork out of it and saying, these are the methods that you have to use for procurement. Now, how you do that is up to you, but these are the methods for which you need to procure services and goods.

In the appendix section, 200.326, there are some specific contract requirements. You may need to review any of your existing contracts for services and goods and make sure they incorporate those contract requirements from Section 200.326 of Uniform Guidance.

Under Section 200.318, they give you some general standards, and this is where they talk about you have to have your own document policies which incorporate and reflect any federal and state and the Uniform Guidance. It emphasizes the standard of those purchases being necessary, and to the extent that you can use shared services, it recommends and encourages agencies to use the shared services to have some economies of scale for certain services by agencies being able to share those costs.

It also emphasizes the need for a written conflict of interest. A lot of you are experiencing that as you're going through the grant execution process, and we're really paying close attention to your conflict of interest statement. This becomes important because if there's instances of conflict of interest I think most reasonable people would recognize that that also leads to a higher probability of fraud, waste and abuse, things like collusion. As opposed to purchasing to the best interest of the federal government, it may be more beneficial to that individual because of whatever relationship they have or whatever conflict they have.

So, although for these particular grants because a lot of them the dollar amounts are not as large as in other areas, you can imagine what would happen if there was no requirement to have conflict of interest policies that you have to adhere to, and to avoid conflict of interest people pretty much can have organizations hand selecting who they wanted to buy services and goods from at whatever price they negotiated, which may or may not be in the best interest of the federal government. So that's why that became such a big factor in this Uniform Guidance.

And documentation, your documentation is not what you expect, it's what you inspect. So now it's not a question of what you tell, or what you're

able to say, it's what you've documented. It also reflects your ability to communicate that through your organization. If policies and procedures aren't documented, if your written conflict of interest policy isn't documented, if those things aren't documented, then how are they effectively communicated throughout your organization, and how can people comply? They can only do what they know. So then you have inconsistent application, which of course could lead once again to fraud, waste and abuse. You'll hear me say that term a lot, because that is such an emphasis throughout the federal government.

Another key change, and for some of you this full and open competition, which is usually required for acquisitions or purchases over \$150,000, in Section 200.319 it tells you what the specifications have to be in those RFPs. These are not notices of funding availability. These are Requests for Proposal solicitations, because once again, this procurement is related to purchasing commercially available goods and services. So even the terminology from a solicitation versus if you have a sub-recipient, a sub-award, there's different contractual requirements and there's different specifications that need to be included in those opportunities.

Full and open, you cannot have unreasonable requirements. You cannot make it difficult for smaller organizations or smaller contractors to be able to participate in any solicitation by making it so specific or bundling together so many services it would be difficult for smaller organizations. You want to make sure your competition is full and open and fair, and then you want to make sure you address any complexities of geographic preference. Especially in today's age, where technology can allow you to really work and perform services anywhere, from your home office, you have to make sure that you're not limiting competition by putting on geographic restrictions that make it difficult, if not impossible, for a full, open competition throughout the United States—throughout multiple geographical areas.

Then the big one, Section 200.320, this is one of the key areas of changes, because this is where they're telling you what the five methods of procurement is. This language has always been in the OMB Circular A-102 that was for the state, local and federal. It wasn't so much in Circular A-110, which was the one that applied to the not-for-profit before it was consolidated into the Uniform Guidance. But now it's very clear. One of the first methods is micro purchases. So for any supplies or services \$3,000 or less, that's considered a micro purchase; if it's

construction related, it's a \$2,000 or less criteria. While you don't need to have competitive quotes, you still have to do a certain amount of procurement activity to make sure you're getting the most reasonable and fair quote to the federal government. So you don't have to get multiple written quotes, but you still have to allow multiple vendors to participate in the solicitation.

Usually with micro purchases it's not an RFP, it could be just a purchase order you put out there and see who can provide those services, and they give you back a quote. But whether that quote is verbal or it's written, the reality is you still have to make it open to competition. You can't just go and say, I'm going to pick this vendor. I don't care. I'm not going to do my research to see if their pricing is reasonable or it's to the best advantage of the government or the best available price for the service we need. I'm just going to select that vendor. You cannot do that.

All this is saying is you don't have to go through the arduous process of getting all of these quotes. But you do have to go out there and do research and then identify and verify that you're getting the best pricing and the best deal, the most advantageous to the federal government.

The next method is small purchases, and that's for those purchases over \$3,000 but under what we call the Simplified Acquisition Threshold, SAT, which is \$150,000. So now they're saying, yes, you've got to get some quotes, you've got to provide sufficient information for people to give you a quote. And then unlike with the micro purchases, you can't just go out and do your research and say, oh, I found this person, I compared them to a couple of other companies, or I've compared the prices to a couple of others, and this worked out the best, which is what you can do with micro thresholds. With the small purchases you actually do have to get a quote, so that means you have to give them enough specifications so that anybody submitting a quote has the same information, so you can give comparable quotes.

The third method—and let me just say those first two methods, the micro threshold and the small, those are the ones we anticipate being most applicable to recipients of OHC's grant. We recognize that most of your purchases are going to fall into one of those two methods. So your policies and procedures from those methods have to speak to, well, how do you ensure that you do micro threshold purchasing? How do you ensure that you do the small purchasing? How do you do quotes and specifications? Who's responsible? How do you release them? How do

you ensure they're comparable? Who evaluates? As I said, that who, what, when, where and how becomes the procedures for how you're going to actually comply with that policy, which is the actual method that you have to use for that procurement activity.

The third method would be sealed bids. These are those that are formally advertised in the public, so once again, fair competition, comparable, being able to avoid even the appearance of any conflicts or any unfair treatment. In this instance you have to have at least two bids, you have to have a public opening of those bids, there has to be some kind of cost/price analysis, so your procedures would say how you do cost/price analysis, maybe there's a form that you create for them to do cost/price analysis. When it says that you must receive at least two bids, how do you advertise the bids? Where do you post them? How do you make sure it's out there sufficient so that you can get those two bids you need? Those become the procedures for how you're going to address this policy relative to procurement, by sealed bids.

This is preferred for construction. Generally, if you're in, and that's not necessarily applicable, and why pretty much I'm 99.9% sure it's not

applicable to any of the grant recipients for the OHC, but this method is pretty much most favorable in construction.

The fourth method is a competitive proposal method, and it's used when sealed bids are not appropriate. Usually when it's not construction related, you would do this competitive bid. And that's because generally when you do these opening bids, that's more so pricing, it's a lot of pricing information, where basically they're taking the lowest quote. If you think about construction and they needed some plumbing work done, and you had five plumbers submit proposals, you're looking at the pricing. You're looking at, okay, is that the materials, this is how much you said you're going to do it for, that's when that sealed bid method becomes most applicable.

In this instance, under this method, which would be probably the most applicable method for the OHC grant if in fact you were procuring any commercially available services for over \$150,000, which would be very limited and the possibility of that happening would be very limited under the OHC, just based on how it's funded and its purpose. In this instance, because you may have a technical proposal, so you have to have some kind of evaluators, we view the technical proposal and then there's

evaluation criteria, so it's not really just based on pricing and based on cost. That's why you would use this method for purchases of goods and services over \$150,000, as opposed to the sealed bid method.

This one usually results in a fixed price or a cost reimbursement contract, and it's awarded to those whose proposal is most advantageous to the program and price and other factors. So unlike a sealed bid, which is primarily focused in on pricing, as I said, this method, a non-sealed bid, is usually because it's more technical and there's other factors other than pricing that goes into the award decision.

The final method is non-competitive. Some of us refer to this as sole source or single source, and really you have to have a strong justification for why you've used this non-competitive method, because you're pretty much saying, we're going to give you this contract, or we're going to buy these goods from you. So there are a couple of benchmarks that have to be met.

One is the desired item is only available from a single source. Sometimes there are situations where maybe certain training materials or certain things are only available from a particular source, nobody else provides

them and you can't get them from anywhere else. Well, then that becomes what we call a single source justification. So it's really no competition when you think about it, which is why this non-competitive method makes sense.

Then the other may be that that federal awarding agency or [indiscernible] approved non-competitive in response to a written request from a non-federal entity. So what may happen is that this entity says, this particular contractor or this particular service, or whatever that good is, although we may be able to get it from another source, maybe due to time constraints maybe there's an urgency for the services, maybe it's because this particular contractor has years and years of knowledge or experience and at this point no one else may necessarily have that level of knowledge, and we need to maintain that, those are the justifications that can, and I'm going to say can loosely because it's very difficult to get a sole source justification. And that's a sole source. When you're trying to justify even though it may be other sources, this is the only source that we should use in this particular instance for this particular reason.

Unlike the single source, which was because there's really no other competition so there's only source, that's the difference between a single

source and a sole source. But as you can see, you must be able to heavily document your file and justify that position because from a general public perspective, the goal is not to have non-competition. Generally, that is not in the best interest of the federal government.

Conflicts of interest. For those of you—well, all of you to a certain extent, because it was required as a part of your grant execution process, you're required to post your conflict of interest statement to the HUD website. This statement, it must contain written standards of conduct covering conflict of interest, and the actions of employees that are engaged in any kind of the selection, the award, even the development of the solicitation of contracts.

So anybody involved in any area of the procurement process, if there's a conflict with the particular supplier or vendor for those services, that employee has to go through your conflict of interest statement and identify if there's a conflict or not. If there is a conflict, then they have to be excluded from any procurement related activity for that solicitation.

What does that mean? Let's say I have an employee, and we're going out and we're buying some training materials from this particular vendor, and

this employee has a relationship with one of the owners of the business, well, it's not suggesting that the employee can't do any procurement activities for anything. No. That employee just can't be involved in any kind of procurement activities for that solicitation with that vendor if potentially [indiscernible]. That means that they can't read the solicitation, they shouldn't have access to it, they shouldn't have any information that could lead to some kind of unfair advantage that could be shared with that particular entity.

So that's what a conflict means. It just means that once it's identified, that person has to be excluded from any activities associated with that particular procurement activity. So it has to be written.

Another conflict is any acceptance of gratuities, favors, or anything monetary. I'm telling my age, but years ago it wasn't uncommon for vendors to send you a thank you basket or some kind of thank you gift, and those are considered gratuities. If you are involved in procurement of federal award dollars and that particular vendor is one of those vendors for which you have procured those services or goods, you cannot accept any gratuities from them, any favors, anything of monetary value—none—not from the consultants, not from the vendors. So whether that be dinner,

whether that be I'm inviting you to the Christmas party, all those things could be perceived as any kind of favor or gratuity, especially if there's a cost associated with that particular activity.

So just be mindful of that, that that is what that means when we're talking about this conflict of interest. It's one thing to develop a statement to meet the requirements to get your grant executed, but it's another to be able to really execute and understand what that conflict of interest statement means, and to make sure that you're having those individuals that are involved with these federal awards actually read the conflict of interest requirements and then enforcing that if they become aware of the conflict of interest they have to let you become aware.

Unfortunately, we have worked in some situations, even with the OHC grant, where there were conflicts due to the relationships between various individuals within the agency. And those relationships weren't properly disclosed, but they also led to unfair or what could have been considered favorable treatment of individuals within the organization. So just be mindful of that, because these are federal dollars. For the non-federal dollars, you could be subject to whatever requirements consistent with those funding sources. But for the federal dollars, that is a big concern.

Let's talk about the difference between a sub-recipient versus a subcontractor. For those of you who are parents or you have sub-awards or sub-recipients, the difference between them and a consultant is really in the purpose. The sub-recipient is actually carrying out part of the federal award, so they're doing the services that you are also doing, or that you would otherwise do in conjunction with carrying out the actual federal award. They're not doing independent services and just providing you with the deliverable. They are actually carrying out the services required for the federal award. So there's a relationship that creates an assistance relationship between the parent and then the sub-award.

So if you're ever not clear, you're in a gray area, some of the things you should consider is that, are they performing measures in relation to whatever objectives of the federal program, so are they assisting you in meeting your performance goals, or your performance objectives? Do they have a responsibility for program manage decision making? Sub-recipient is responsible for adherence to the applicable federal programs, so they have to apply with the same federal program requirements that you do. They're using those funds to carry out a program. Notice I keep saying program as opposed to carry out just a service or commercially available service or goods.

In comparison, a contractor is someone from which you're obtaining goods and services. These are usually goods and services that you cannot otherwise provide or perform. And so you're creating a procurement relationship, I'm buying something from you, whether it's just service or your goods.

Unlike the sub-recipient, who was assisting me in meeting my goals and objectives relative to the federal award, a contractor gives you certain services and awards, services and goods during normal business hours, they're providing these same services and goods to the general public, to multiple clients. They're operating in a competitive environment where there are things like profits, because they're trying to use certain rates or certain pricing or costing, and these services are provided, they're ancillary, they're not direct services necessary for you to perform the grant, but these are other services generally necessary for you to just operate or ancillary to the federal program.

These contractors are not subject to those federal program requirements like we talked about when we talked about the sub-recipient. That's a big distinction. Think of a sub-recipient as assisting you in meeting your

federal program goals. Think of a contractor as somebody you're buying certain goods and services from.

Now we'll talk about just some implementation approach, and this is one area where you can actually request assistance through OHC for us to help you implement new procurement policies and procedures if you have not done so. We have a checklist that we can make available and we then assist you in responding to that checklist and developing your policies and procedures consistent with that checklist. So things like what's important? Okay, who's the ultimate owners of procurement? Who's responsible for procurement policies and procedures? And who's going to be responsible for the ongoing compliance requirements? You have to then gather and compile all of your existing procurement policies and procedures.

Sometimes, depending on the size of your agency, it can be certain programs have their own procurement policies and procedures, or maybe over here we did it this way. Well, under this guidance, where it relates to the federal dollars, you're going to have to compile all of that information to get an understanding of what all of your policies and procedures are in your organization. Then you have to look at what do we currently have as

policies and procedures, but what do we need as required in the Uniform Guidance.

And that's a gap analysis, where we're saying, this is where we are and what we have, and this is where we need to get to, and then come up with a road map of how to get from A to B as it relates to these. Then we start updating those documents, you develop checklists and forms that can be consistently applied. You may have to do some training to teach people how to do, for instance, evaluate proposals or maybe to do a cost analysis depending on the size of your procurement and the types of procurement activity.

Contractually, you want to come up with your standard template, just like you do for your sub-awards, where you have a standard sub-agreement. You want to make sure that on the procurement side, for those commercial goods and services, that all of the clauses or all of those federal requirements that are in the Uniform Guidance are incorporated in your purchase orders and your contracts and your other binding documents.

Then you have to communicate all of this. You have to come up with a communication plan, how are we going to roll out, who needs to know

about these procurement policies and procedures. Then at that point, make sure you effectively communicate it in a release and issue those and give people enough time to become familiar and then understand how you're going to oversee and monitor those things, which a lot of that will get to whatever training is required. And then who becomes the responsible owner that's going to make sure that all of these things are current.

So pretty much the checklist takes you through those processes, but as I said, you can get assistance in helping you to actually write them and respond to them through OHC.

Some of the best practices that we've seen, a lot of times there are existing policies and procedures so you want to go ahead and do that gap analysis and figure out, this is where we are and this is where we need to be. But you want to set some thresholds, you want to identify those individuals that will be involved in a procurement activity. You want to really make sure that you've identified any conflict of interest when you're developing these policies and procedures.

You might want to consider centralizing. Even though different programs may be funded from different sources, but if you're an agency that gets a substantial amount of federal funding, it may make more sense for you to centralize your procurement activity into one or two procurement related professionals, and have them responsible for buying for the entire agency so that you don't find yourselves with inconsistent application of policies and procedures, meaning that somebody may not have been aware that, oh, on a federal award you have to do it this way. This is non-federal, so we have to do it that way.

I will tell you, the federal requirements will always provide you with a strong internal control that even the non-federal requirements that would even benefit your procurement activity relative to your non-federal requirements. So this adaptation of centralized policies and procedures for procurement are stronger internal controls, which benefits your agency across the board. Of course it becomes a cost benefit analysis, of course how much do you procure, how much procurement activity do you really have, and to what end would those costs to try to centralize it benefit those procurement activities. So that's an assessment that you would have to make.

We strongly encourage any kind of checklist, or any kind of forms where there can be consistent application and consistent use, where it spells out the steps that you have to make, where it's giving clear guidance and then it tells you what other documentation you should maintain. So as much as you can give forms and checklists to get uniformity across the board, once again, that's a stronger internal control, which makes it a stronger policy and procedure relative to the Uniform Guidance.

Some of the more common, I'm going to say, procurement weaknesses— not maintaining sufficient contract file documentation is big. Part of it is because a lot of people are not aware of what should be in a contract file or what documentation should be maintained, so they're not maintaining all the necessary supporting documentation.

Lack of approvals, especially on micro purchases. One of the big areas is credit cards, and even the federal government recognizes that, because a lot of people don't recognize that when you make the purchase, that purchase should have been approved before you use the credit card. The credit card is just a method of payment. It is not an approval method. So there should have been something documented to say that you were

approved to use that credit card for a form of payment for whatever the transaction was.

A lot of people think, if I have the credit card and I keep my receipt, that's my source documentation. Well, that's verifying the charge, but it doesn't meet the internal control test of whether the transaction was approved prior to you making the charge. Where is that documentation? That's one of the common areas for lack of approval.

Failure to follow existing procurement procedures. A lot of that has to do with communication, where everyone may not be aware, people don't realize maybe when they're doing a procurement related activity they don't realize that, oh, well, we've been using them for 20 years, so we're going to keep using the same company to provide whatever services.

Well, that may not be the appropriate method for procurement. And so even though there may be policies and procedures out there, if they're not communicated, if they're not disseminated, and people aren't held accountable, they won't be followed.

Lack of competition and small purchases. We talked about small purchases, where you have to get quotes. And remember, small purchases

are those purchases greater than \$3,000 and up to \$150,000. So a lot of times in that dollar range you still have to get quotes, and that does not occur.

Then unauthorized commitment to vendors, having people in program areas tell somebody, oh, we're going to use you, we're going to buy that from you, without going through the appropriate procurement methods. That happens a lot, especially as more agencies are trying to really implement procurement policies and procedures.

Some of the frequently asked questions. How are procurements of micro purchases and small purchases under the simplified acquisition threshold less burdensome?

Quick answer, because you don't have as much documentation. You have fewer terms and conditions, you don't have to get as much competition, and generally you don't have to do a full price and cost analysis. So it's a lot less paperwork for these small purchases, especially—micro purchase is probably the most simplified, and it's meant to be, because the government recognizes that you don't have to over-document purchases for certain dollar amounts. But when you get to small purchases, \$3,000

and over, especially when you take into account those purchases that may be related to the federal awards for OHC, if you have a \$15,000 or \$20,000 grant, that \$3,000 purchase, that \$3,100 purchase can mean something. So it's just that it limits or minimizes terms and conditions, the amount of paperwork and backup and analysis you have to do.

The second question. Does this apply to indirect cost? No. This does not apply to indirect cost. This is for just the direct cost that you're charging or billing or including in your budget for the federal award.

Another question that we've gotten, does this require non-federal entities to limit charge card purchases to a particular threshold amount? No, it doesn't say that you can't charge anything over \$3,000 or under \$3,000. You set that up in your own policies and procedures. What it is telling you is that if you're going to purchase, because remember I told you, a charge card is just a method of payment. It is not a procurement method. It's not a method of buying. It's a method of payment. It's no different than a check or if you pay with cash. So it has nothing to do with the payment method. It has everything to do when you're buying it, what method you use. So there's no thresholds or no limitations on the credit

card activity, it's just letting you know that for what you're buying, these are the methods you have to use. Credit cards are just a form of payment.

Another question, is it allowable to hire a contractor without competitive bidding? Well, yes, if it's within certain thresholds. Remember, if it's under \$150,000, you have to get quotes, but you don't have to get competitive bidding, which is different. Then the federal threshold is for \$150,000, so all of that competitive bidding, where you follow those solicitations and all of those things, that happens from \$150,000 on, well greater than \$150,000. Below that, you don't have to be concerned.

This is a common one. What's the relationship between federal acquisition regulations and then the Uniform Guidance? The FAR, which is the Federal Acquisition Regulations, they set the rule for any federal agency for procuring business services, where the Uniform Guidance establishes it by grantees and performing goods and services for federal grant or sub-grant. So for the FAR, really for any federal agency, internal and external, whether it's a federal agency internally buying goods and services, or they've outsourced it through some contracts to buy goods and services, the Uniform Guidance is specific to federal grants or sub-grants.

It is designed to ensure that procurement involving federal funds, that it is conducted really within the best interests of the general public, because they're still taxpayer dollars. So you want it to be fair. You want it to be open. You want there to be integrity in the process. However, there are certain requirements under FAR that are not under Uniform Guidance and vice versa, so although you could use FAR as a reference in developing your own policies and procedures, you still have to make sure that they're addressing the requirements under the Uniform Guidance.

Now for those that have never been involved in a procurement process, this can appear to be daunting, and it can appear to be a very arduous process to implement these policies and procedures. That's not necessarily the case. You can request assistance through OHC [indiscernible] company or them internally to assist you and for developing your policies and procedures, everything from doing an internal control assessment of your procurement activities to providing training to your staff on procurement activities.

And especially the internal controls related with the procurement activities if you're a parent, because this flows through to your sub-recipients too, and they also have to have these policies and procedures. If you want

them to get training on procurement and assistance on developing or reviewing their procurement policies and procedures to make sure that they're in compliance with Uniform Guidance, you can request that.

It's a big emphasis on internal control because this is all a part of internal control, any time you're talking policies and procedures, so if you need a plan for how to develop policies and procedures for the procurement activities. If you want to obtain assistance in developing those things, that also can be provided to you.

All of this technical assistance that can be provided to assist you in addressing the procurements, they're all available to you through requesting the services. The way that you request them is you will request them through your HUD POC. Your HUD POC would then make a formal written request via email, it's not a form or anything, just email request to the subject matter experts assigned to our contract, which are, I would say Gail, but Gail Osgood is retiring, so she will no longer be under contract after December 21st, which is Friday. So it will be Tracy Fields and Matt Finn and Phyllis Ford.

They usually, within one business day of receiving any kind of request, they respond. Generally, unless it's something that doesn't fall within the scope of the contract, that gets approved. Then we work with you directly from, as I said, it could be implementing the various steps of the checklist, or reviewing your existing policies and procedures and letting you know if you're in compliance, or doing a gap analysis to say, this is where you are and this is where you need to be with procurement, and then assisting you in updating and revising our procurement policies and procedures as necessary.

So all of those services can be available to you. One of the benefits for asking for these services is that it reduces, or at least helps or alleviates some of the administrative burden to your agency to implement these new requirements. So as opposed to you all having to take on or maybe hire or engage consultants to develop your procurement policies and procedures, you can get that assistance through OHC.

It's funny, in the last year we've become aware of a lot more companies really advertising, hey, if you're a not-for-profit we can help you do your procurement policies and procedures. That's because they know that this requirement is out there for these and that a lot of non-profits historically

may not have had—a lot of agencies who are subject to these federal awards may not have had those things in place.

So you can get that same assistance through this grant, through OHC.

And potentially if you address this on the front end that should mean that on the back end if you're subject to a financial and administrative review, this area should be covered. This should not be an area for potential findings. I know that those financial and administrative reviews will continue to occur, so you don't want to be in a position where you did not have those things in place during the period that's under review.

A lot of this assists you—these procurement policies and procedures would not just be for the HUD OHC, they would be applicable to any federal award, so getting assistance and preparing those policies and procedures under this grant really would assist you with any other federal awards you would have because you would have those policies and procedures in place. And if you're a parent or MSO, you can get assistance on training your sub-grantees on making sure they have those things in place. So it alleviates some of your administrative burden, and your oversight and monitoring.

Some references you can look at in addition to the 2CFR, there's various JO reports under the government accountability office relative to procurement policies and procedures. On HUD Exchange, it talks there that they had a bulletin out there for a while, "Seven Keys to Handling a Conflict of Interest," which is good. Then, as I said, you can look at the Federal Acquisition Regulations. That's a long read, if you really want to read it, but it does give you some indication of what they're looking for as it relates to having policies and procedures.

I notice that there were some questions online, and I think we responded to those questions. At this point, as I said, if you realize after this presentation that you have questions, please feel free to send them to housing.counseling@hud.gov. Once again, only those questions that are from stakeholders from the Office of Housing Counseling housing counseling grant will be accepted and responded to. So if you're asking questions from another agency or in connection with another grant, they will not be responded to.

I thank you all for your time. As this is the last training before the New Year and the holiday, Happy Holidays and Happy New Year. Thank you.

Moderator

Ladies and gentlemen, that will conclude your conference call for today.

Thank you for your participation and for using AT&T's Executive
TeleConference Service. You may now disconnect.

Speakers, please hold. I'll bring you into a closed conference.