



# Uniform Guidance for Federal Awards - Procurement

What County Administrators Need to Know

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# What is the Uniform Guidance?

- The Uniformed Guidance is centered around Internal Controls. The Uniformed Guidance requires organizations to establish and maintain effective internal controls over federal awards.

# Uniform Guidance = Grant Compliance

- Effective grant compliance relies on having an in-depth understanding of the grant requirements, and the resources and personnel to meet them. This includes having the proper policies and procedures, and strong internal controls.
- 2 CFR Part 200 (subparts A-F) “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

# What are Internal Controls?

- A process implemented by a non-federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for federal awards
  - Transactions are properly recorded and accounted for;
  - Transactions are executed in compliance;
  - Funds, property and other assets are safeguarded against loss from unauthorized use of disposition;
  - Awards are being managed in compliance with laws and regulations
- Key terms are Segregation of Duties and Documentation

# Uniform Guidance Terminology

- Must = Requirement
- Should = Best Practice, Suggestion, Recommendation

# Objectives of Uniform Guidance

- Eliminate duplication and conflicting guidance
- Focus on performance over compliance for accountability
- Encourage efficient use of IT and shared services
- Provide for consistent and transparent treatment of costs
- Limit allowable cost to make best use of federal funds
- Set standard business processes using data definitions
- Encourage non-federal entities to have family friendly policies
- Strengthen oversight
- Target audit requirements on risk of waste, fraud and abuse

# What are Procurement's responsibilities

- Non-Federal entities will need to exercise judgment in determining the most appropriate and cost effective internal control in each circumstance.
- Non-federal entities must make changes to the entity-wide policies (i.e. procurement policies and systems)

# §200.318 General Procurement Standards

- The non-federal entity must use its own documented procurement procedures which reflect applicable, State, Local and tribal laws and regulations; provided that the procurements conform to applicable federal law and Uniform Guidance
- Entities must maintain oversight to ensure that contractors perform in accordance with the
  - Terms
  - Conditions
  - Specificationsof their contracts and purchase orders.



# §200.318 General Procurement Standards

- Individual Conflict of Interest: Need to have a documented Individual Conflict of Interest Policy stating that no employee, officer or agent may participate in the selection, award, or administration of a contract supported by Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the 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.
- Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

# §200.318 General Procurement Standards

- Procurement Procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
- Where appropriate, an analysis will be made of lease vs. purchase alternatives, and any other appropriate analysis to determine the most economical approach.

# §200.318 General Procurement Standards

- Enter into state and local intergovernmental agreements or inter-entity agreement where appropriate.
- Use federal excess and surplus property in lieu of purchasing new equipment and property.
- Use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

# §200.318 General Procurement Standards

- Organizations must award contracts only to Responsible Contractors:
  - Contractors must possess the ability to perform successfully under the terms and conditions of a proposed procurement.
  - Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
  - Suspension and debarment checks for contracts over \$25,000 should be made on the System for Award Management (SAM) site.

# §200.318 General Procurement Standards

- Procurement Record: A procurement record must be maintained for each procurement, including:
  - Detail history of the procurement
  - Rationale for method of procurement
  - Selection of Contract Type
  - Contractor selection or rejection
  - Basis for contract price (It is fair and reasonable)

# §200.318 General Procurement Standards

- Time and Materials contracts:
  - Must determine that no other contract type is suitable, and
  - The contract must include a ceiling price that the contractor exceeds at its own risk.
  - Time and material contract means a contract whose cost to a non-federal entity is the sum of (1) the actual cost of materials (no markup) and (2) Direct Labor hours charged at hourly rates that reflect wages, general and administrative expenses, and profit.
  - Requires a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

# §200.319 Competition

- All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section.
- Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

# §200.319 Competition

- Some of the situations considered to be restrictive of competition include, but are not limited to:
  - Placing unreasonable requirements on firms for them to qualify to do business;
  - Unnecessary experience and bonding requirements;
  - Noncompetitive pricing practices between firms or between affiliated companies;
  - Noncompetitive contracts to consultants that are on retainer contracts;
  - Organizational conflicts of interest;
  - Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - Any arbitrary action in the procurement process



# §200.319 Competition

- Preferences: The non-federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals; except in those cases where applicable federal statutes expressly mandate or encourage geographical preference.

# §200.319 Competition

- **Written Procedures:** A non-federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
  - Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
  - The description may include a statement of the qualitative nature of the material, product or service and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
  - When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of the procurement.

# §200.319 Competition

- Written Procedures cont'd.
  - Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
  - Use of Qualified Suppliers/Products lists:
    - Must have a regularly scheduled review and update of lists
    - Must not preclude potential bidders from qualifying during the solicitation period
    - Must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

# 200.320 Methods of Procurement

- Uniformed Guidance allows for 5 acceptable procurement methodologies:

Method	Dollar Threshold
Micro Purchase	Less than \$3,500 (10,000 for Department of Defense Awards, National Science Foundation, NASA, Nation Institute of Standards and Technology.
Small Purchase Procedure (Quotes – at least 2) (Written, Verbal or Web Search) (Local Thresholds apply if more stringent)	\$3,500 – 150,000
Sealed Bid (Local Thresholds apply if more stringent)	Greater than \$150,00
Competitive Proposal (Local Thresholds apply if more stringent)	Greater than \$150,000
Noncompetitive Proposal (Sole Source)	Greater than \$3,500

# 200.320 Methods of Procurement

- State and local thresholds apply if they are more stringent than Uniform Guidance thresholds.

# 200.320 Methods of Procurement

- **Sealed Bids:** For sealed bidding to be feasible, the following conditions should be present:
  - A complete, adequate, and realistic specification or purchase description is available,
  - Two or more responsible bidders are willing and able to compete effectively for the business; and
  - The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.

# 200.320 Methods of Procurement

- If sealed bids are used, the following requirements apply:
  - Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids,
  - The invitation for bid must be publicly advertised,
  - The solicitation must define the items or services for the bidder to properly respond,
  - All bids must be opened at the time and place prescribed in the invitation for bids and the bids must be opened publicly,
  - A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder,
  - Any or all bids may be rejected if there is a sound documented reason.

# 200.320 Methods of Procurement

- **Competitive Proposals:** If Competitive Proposals are used, the following requirements apply:
  - Requests for Proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - Proposals must be solicited from an adequate number of qualified sources; (Decided internally – best practice is at least three)
  - The non-federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
  - Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.



# 200.320 Methods of Procurement

- Sole Source: If a sole source purchase is to be made, the following requirements apply:
  - Unique product or service, response to Public Emergency or competition inadequate after soliciting proposals
  - Justification needs to be documented
  - Written approval from the funding authority may be required

# 200.321 Contracting with Small, MWBE and Labor Surplus Area firms

- The non-federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus firms are used when possible.
  - A **Labor Surplus Area** (LSA) is a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period.

# 200.321 Contracting with Small, MWBE and Labor Surplus Area firms

- Affirmative steps must include:
  - Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - Using the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
  - Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in the paragraphs above.

# 200.322 Procurement of recovered materials

- Must comply with §200.322 Procurement of recovered materials and comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
  - Procure only items designated in guidelines of the EPA that
    - Contain the highest % of recovered materials practicable;
    - Where the purchase price of the item exceeds \$10,000 or the value of what was purchased the previous year exceeded \$10,000

# 200.323 Contract cost and price analysis

- A non-federal entity must perform a cost or price analysis in connection with every procurement action more than the Simplified Acquisition Threshold (\$150,000 or lower state or local threshold) including contract modifications.
- The method and degree of analysis is dependent on the facts surrounding the procurement situation; but as a starting point, the non-federal agency must make independent estimates before receiving bids or proposals.
- The non-federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed.

# 200.323 Contract cost and price analysis

- To establish a fair and reasonable profit, consideration must be given to
  - The complexity of the work to be performed
  - The risk borne by the Contractor and the Contractor's investment
  - The amount of subcontracting
  - The quality of its record of past performance
  - Industry profit rates in the surrounding geographical area for similar work

# 200.324 Federal awarding agency or pass-through agency review

- A non-federal entity must make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.
- This review will generally take place prior to the time the specification is incorporated into a solicitation document.
- However, the federal awarding agency or pass-through entity may request to review the specifications after the solicitation has been developed.

# 200.325 Bonding Requirements

- For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-federal entity provided that the federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such determination has not been made, the minimum requirements must be as follows:
  - A bid guarantee (Bid Bond) equivalent to five percent of the bid price.
  - A performance bond for 100% of the contract price
  - A payment bond for 100% of the contract price



# 200.326 Contract Provisions

- The non-federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-federal entity under the federal award must contain provisions covering the following, as applicable:

# 200.326 Contract Provisions

- Contracts for more than the Simplified Acquisition Threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts more than \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
- Equal Employment Opportunity
- Davis Bacon Act
- Contract Work Hours and Safety Standards
- Rights to Inventions Made Under a Contract or Agreement
- Clean Air Act
- Debarment and Suspension
- Byrd – Anti-Lobbying Amendment
- Procurement of Recovered Materials

# Common Grant Compliance Issues

- Lack of existing, written procurement procedures
- Inadequate written procurement procedures
  - Does not address the Uniform Guidance “musts”
  - Procurement Methods
  - Cost and Price Analysis
  - SMWBE provisions
- Staff training
- Monitoring

# Best Practices to ensure compliance

- Grant compliance requires the involvement of Program Personnel, Accounting & Finance, Procurement, and Legal;
- Read through grant agreement for terms and conditions;
- Read through Uniform Guidance;
- Obtain proper training in grants management;
- Designate key individual or team to monitor your policies over federal programs;
- Regularly review policies for compliance and educate employees on changes to policies. Encourage open dialogue regarding questions and decision making;
- Make sure policies are easily accessible for all employees involved and they know that they are responsible for reviewing these.

# Additional training available from NIGP

- Contracting with Federal Funds/Grants “Intermediate”
  - Upon successful completion of this course participants will be able to:
    - Find and apply for grants that help the agency meet its needs to deal with emergency programs, disasters, public support, and local program enhancement.
    - Design grants to meet procurement rules, thus reducing unallowable costs that are not reimbursable.
    - Explain the grants process to meet federal requirements.

# Additional training available from NIGP

- Contracting with Federal Funds/Grants “Advanced”
  - Upon successful completion of this course participants will be able to:
    - Explain OMB’s role and circulars governing grants
    - Identify allowable and unallowable expenditures of funds
    - Discuss solicitation or purchase requirements in the grants process
    - Prepare purchases for audits, documentation and files
    - Create an effective internal controls program
    - Outline the Audit Process
    - List “Government Administrative Requirements”
    - Discuss Government Contract requirements
- Both are 2-day classes. Fee \$685 Can be held at FTC if there is interest from County Departments

# Questions

