



Uniform Procurement Guidance *for* ***Non-Federal Entities***

Contract Oversight Division
September 14, 2018

UNIFORM GUIDANCE



- The Uniform Guidance (UG) was created by the Office of Management and Budget (OMB) in 2014, as part of the Code of Federal Regulations (CFR).
 - The UG replaces eight OMB Circulars, including OMB A-102.
 - 2 CFR Part 200, is officially titled - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.
 - Effective December 26, 2016, the UG is the basis for all federal grant awards, and was adopted by all federal agencies that administer federal financial assistance programs.



UNIFORM GUIDANCE



- ***Federal financial assistance*** means funding that non-Federal entities receive or administer in the form of:
- Grants
 - Cooperative agreements
 - Non-cash contributions or donations of property (including donated surplus property)
 - Direct appropriations
 - Food commodities
 - Other financial assistance



IMPLEMENTATION



- **Amendment to the Uniform Guidance issued May 17, 2017:**
 - **Non-federal entities allowed one additional year to adopt the Uniform Guidance in procurement.**
 - **The new standards apply starting with the fiscal year beginning on or after Dec. 26, 2017.**
 - **Palm Beach County, Children Services Council, Solid Waste Authority, and all Municipal entities should implement the guidance by the start of FY 2019, October 1, 2018.**
 - **On March 2, 2018, Palm Beach County issued PPM# CW-L-049, *Procurement of all Non-Construction related Goods or Services Purchased or Reimbursed with Federal Funds*, with an effective date of March 12, 2018.**

OVERVIEW



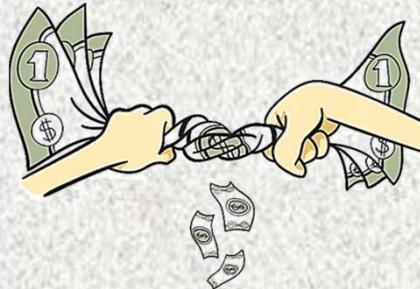
- ***Procurement Standards*** for the use of federal funds are specified in 2 CFR 200.317-326:
 - Every non-federal entity must have its own documented procurement procedures that reflect federal law, Uniform Guidance standards, and any state/local regulations.
 - Non-federal entities may have procurement policies that are more stringent than, but at a minimum, must comply with the Uniform Guidance.



OVERVIEW



- **Procurements using federal funds must:**
 - **Use the most economical solutions, such as: surplus property, break-out/consolidate purchases, and use value engineering on construction projects.**
 - **Avoid the purchase of unnecessary items.**
 - **Consider using shared services and intergovernmental agreements for greater economy and efficiency.**
 - **Perform a cost analysis of lease versus purchase alternatives.**



OVERVIEW



- **Conflict of Interest/Standards of Conduct policies are:**
 - **Required.**
 - **Must be in writing.**
 - **Must state that no employee, or agent may participate in the selection, award, or administration of a contract if they have an actual or apparent conflict of interest.**
 - **Must provide for disciplinary actions.**



OVERVIEW



➤ **Conflict of Interest/Standards of Conduct policies must also address contractor Organizational Conflicts of Interest (OCI):**

• **An OCI may result when:**



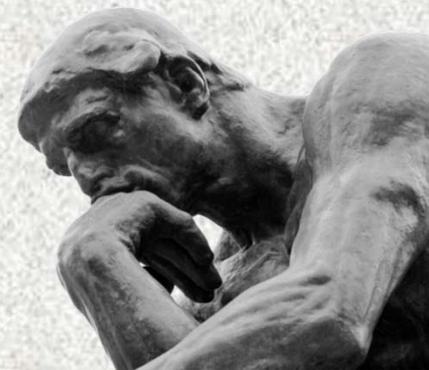
- **Factors create an actual or potential conflict of interest on an instant contract.**
- **The work to be performed on the contract creates an actual or potential conflict of interest on a future acquisition.**
- **A conflict of interest exists with a parent company, affiliate, or subsidiary organization.**

- **OCIs should be avoided, neutralized, or mitigated prior to making any contract award.**

OVERVIEW



- The entity must document the procurement process, including:
 - Basis for the method of procurement.
 - Selection of contract type.
 - Justification for contractor selection, and the determination of responsibility.
 - Basis for contract price.



OVERVIEW



➤ Vendor Responsibility:

- Awards shall not be made to any party suspended, debarred, or otherwise excluded or ineligible to receive federal funds.
- Vendor exclusions are found on GSA's System for Award Management (SAM) at: www.sam.gov



OVERVIEW



- **After award, the entity must:**
 - **Maintain a level of contract oversight adequate for the commodity, and contract type.**
 - **Ensure that contractors perform in accordance with the terms of the contract.**
 - **Settle all contractual and administrative issues.**
 - **Exercise sound business judgement in administrative practices.**



COMPETITION



- **The Uniform Guidance requires full and open competition:**
 - **Contractors that draft specifications, statements of work, or bids must be excluded from competition.**
 - **Specifications cannot have unreasonable requirements to limit competition, and must use only minimum essential requirements.**
 - **Must not use state or local geographic preferences.**
 - **Vendors must not be precluded from qualifying for a prequalified bidders list during the solicitation period.**



COMPETITION



- **Competition Thresholds:**
 - **Micro-Purchase (2 CFR §200.67) - The purchase of supplies or services that do not exceed the micro-purchase threshold, as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1.**
 - **Simplified Acquisition (2 CFR §200.88) - The dollar amount below which a non-Federal entity may purchase property or services using small purchase methods, as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1.**

COMPETITION



➤ Competition Thresholds:

- The National Defense Authorization Acts (NDAA) of 2017, and 2018 raised the Micro-Purchase Threshold from \$3,000 to \$10,000.
- The Simplified Acquisition Threshold was also raised from \$150,000 to \$250,000.
- For further guidance, please refer to OMB Memorandum M-18-18, *Implementing Statutory Changes to the Micro-Purchase and Simplified Acquisition Thresholds for Financial Assistance*, dated June 20, 2018.

<https://www.whitehouse.gov/omb/memoranda/>

COMPETITION



- **Competition Thresholds:**
 - **Non-federal entities must comply with any requirements and stipulations of grant awarded funding.**
 - **Federal granting agencies can add conditions, restrictions, and lower the competitive thresholds on the use of federal assistance funds.**
 - **The grant recipient is responsible for establishing and maintaining the necessary processes to monitor its compliance with Federal requirements.**

METHODS OF PROCUREMENT



- **The Uniform Guidance outlines 5 methods of procurement:**
 - **Micro-purchase: Purchase is less than \$10,000 (or \$2,000 if the procurement is construction and subject to the Davis-Bacon Act). No competitive quotes required if the price is determined reasonable.**
 - **Small purchase: Purchases from \$10,000 up to the Simplified Acquisition threshold (currently \$250,000) require informal quotes from a sufficient number of qualified sources (typically 3).**

METHODS OF PROCUREMENT



- **Sealed Bids:** Purchases over the Simplified Acquisition Threshold (\$250,000) require formal bids, where the award is based on the lowest price.
- **Competitive Proposals:** Purchases over the Simplified Acquisition Threshold (\$250,000) require formal solicitations, where the award is based on the most advantageous proposal to the program, with price and other factors considered.

METHODS OF PROCUREMENT



- **Noncompetitive Proposals: Also known as a sole-source procurement, may be used when:**
 - **Item is available only from one source.**
 - **There is a time sensitive public emergency.**
 - **When authorized by the Federal awarding agency.**
 - **After a number of attempts at a competitive process, the competition is determined inadequate.**



OTHER REQUIREMENTS



➤ Business Utilization

- The awarded entity must take all necessary **Affirmative Steps** to assure that small and minority businesses, women business enterprises, and labor surplus area (LSA) firms are used when possible.



OTHER REQUIREMENTS



- **Affirmative Steps must include:**
- **Placing qualified businesses on solicitation lists.**
 - **Assuring that such businesses are solicited whenever they are potential sources.**
 - **Dividing total requirements, when economically feasible, into smaller tasks, or quantities to permit maximum participation by these businesses.**
 - **Establishing delivery schedules, where the requirement permits, to encourage participation by these businesses.**

OTHER REQUIREMENTS



- **Affirmative Steps must include:**
 - **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.**
 - **Requiring prime contractor to take the affirmative steps for obtaining subcontractors.**

OTHER REQUIREMENTS



- **Recovered Materials:**
 - **May be subject to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires that items procured over \$10,000 (per item or annual purchase volume) must contain the highest percentage of recovered materials practicable.**



OTHER REQUIREMENTS



➤ Recovered Materials:

The EPA's Comprehensive Procurement Guideline (CPG) Program designates eight (8) categories of goods that are, or can be made with recovered materials.



- Construction products
- Landscaping products
- Non-paper office products
- Paper and paper products
- Park and recreation products
- Transportation
- Vehicular products
- Miscellaneous products

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

OTHER REQUIREMENTS



➤ Cost and Price Analysis:

- An independent estimate is required prior to receipt of bids and proposals.
- A Cost and Price analysis is required with every procurement in excess of the Simplified Acquisition Threshold (currently \$250,000), including contract modifications.



OTHER REQUIREMENTS



- **Procurement Review:**
 - The Federal awarding entity may request a review of any procurement document at any time, and require the review of solicitations prior to issuance.
- **Bond minimums for construction contracts over the Simplified Acquisition Threshold (\$250,000), are:**
 - Bid guarantee of 5%
 - Performance bond of 100%
 - Payment bond of 100%



OTHER REQUIREMENTS



- **Records Retention:**
 - Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report.



OTHER REQUIREMENTS



- **Contract Provisions:**
 - A 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.



NEXT STEPS



- 1. Review and update procurement policies and procedures by October 1, 2018.**
- 2. Verify documentation procedures for the procurement processes, including: justifications, determinations, and cost analyses.**
- 3. Address any differences between federal and non-federal purchase bid/quote levels. This includes pCard purchases greater than the micro purchase threshold using federal funds.**
- 4. Implement procedures for identifying and soliciting small and minority businesses, women business enterprises, and labor surplus area (LSA) firms.**
- 5. Update bid and contract terms used in federally funded procurements.**





Thank you!

visit us online at www.pbcgov.com/OIG

