

# A Refresher on Uniform Guidance Procurement Requirements

## Thoughtware Article

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The Office of Management and Budget (OMB) issued Title 2 U.S. Code of Federal Regulations, Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Per 2 CFR 200.109, the OMB must review the Uniform Guidance regulations every five years. As a result of the first five-year review, in August 2020 the Uniform Guidance was

revised and a refreshed **frequently asked questions (FAQ)** document related to the Uniform Guidance for grants was issued in May 2021.

The revisions to the Uniform Guidance are generally effective for awards made on or after November 12, 2020, and will not retroactively apply to federal awards made prior to the effective date, with certain exceptions. The FAQ states that federal agencies must review their original adoption of the Uniform Guidance and where there is a policy conflict between the revisions and the federal agency's adoption, the adoption of the revisions must be made by the federal agency before the revisions become effective for recipients.

It should be noted that at the time of this article, not all federal agencies have adopted the revisions of the Uniform Guidance; therefore, a recipient may not be able to make some of the changes noted below. OMB instructs recipients to consult their federal awarding agency for more information.

The procurement standards included in Subpart D, Section 200.317–200.327, of the Uniform Guidance apply to procurement of goods and services directly charged to a federal award; the standards don't apply to indirect costs or payroll. The standards have a strong emphasis on procurement methodology to achieve the goals of increased accountability and competition.

In reviewing the general procurement standards (§200.318 and §200.319), here are some key items that must be followed:

- ▼ Competition – A nonfederal entity must provide for full and open competition in procuring goods and services. This means situations must be avoided that may prevent competition, such as placing unreasonable requirements on firms to qualify noncompetitive pricing practices between firms or affiliated companies or specifying only a "brand name."
- ▼ Documented policies – Nonfederal entities must document procurement procedures and policies. If procedures aren't currently documented, nonfederal entities must make this a priority. If policies already are documented, entities should review those policies and ensure they incorporate and follow applicable regulations. These procedures must ensure all solicitations clearly and accurately describe the requirements of the goods or services to be procured and identify all requirements that

bidders must fulfill and the factors used in evaluating bids. In addition, if policies include a prequalified list of persons, firms, or products used in procuring goods and services, the list should be current and include enough qualified sources for open competition.

- ▼ Oversight – A nonfederal entity must monitor contractors to ensure they perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. This requirement supplements a similar requirement in which contracts only are awarded to those that use funds responsibly and in accordance with the agreement's terms.
- ▼ Conflicts of interest – A nonfederal entity must have written policies about conduct of its employees involved in the selection, award, and administration of contracts. These policies must cover both organizational and personal conflict of interest to prevent unfair or noncompetitive awards being provided. These policies also must include disciplinary actions for any violations of the conflict-of-interest standards.
- ▼ Necessary purchases – A nonfederal entity must avoid unnecessary or duplicative purchases. To this end, an entity should consider the most efficient and effective approach to purchases, *e.g.*, bulk purchasing, lease versus purchase, agreements for use of common or shared goods and services, use of federal excess and surplus property as opposed to purchasing new equipment, etc.
- ▼ Use of state, local, or tribal geographical preferences – Unless federal statutes specifically mandate or encourage geographical preference, a nonfederal entity must prohibit using statutorily or administratively imposed state, local, or tribal geographical preferences when conducting procurements.
- ▼ Records – A nonfederal entity must maintain documentation to support the history of the procurement, *i.e.*, rationalization for method used, contractor selection or rejection, basis for contract price, etc.

After considering the general requirements for procurement, Uniform Guidance specifically outlines six allowable methods (§200.320) as outlined below.

## **Micropurchases**

This method is for purchases in which the aggregate dollar amount doesn't exceed the micropurchase threshold—currently \$10,000 or \$2,000 for construction subject to the Wage Rate Requirements as defined by Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 unless a higher threshold is requested by the nonfederal entity and approved by the cognizant agency for indirect costs. Purchases may be made without cost or price analysis or soliciting any quotes or bids if the nonfederal entity considers the price to be reasonable based on research, experience, purchase history, or other information and documents it files accordingly. Purchase cards can be used for micropurchases if procedures are documented and approved by the nonfederal entity. Under this method, the entity is encouraged to distribute these purchases among qualified suppliers. For example, when purchasing supplies, a nonfederal entity might consider rotating purchases between vendors that offer similar rates. When applying the micropurchase threshold, a nonfederal entity should note the threshold applies to the **aggregate** purchase amount rather than the cost of individual items. For instance, if a purchase is made for multiple kinds of office supplies (computer paper, pens, pencils, ink cartridges, etc.) and the total price is \$25,000, this method would not be applicable because the threshold must be applied to the overall purchase total and not the price of individual types of supply items purchased.

In the 2020 revised Uniform Guidance, §200.320 allows nonfederal entities to increase their micropurchase threshold if certain criteria are met and must be authorized or not prohibited under state, local, or tribal laws or regulations. A nonfederal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- ▼ A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit
- ▼ An annual internal institutional risk assessment to identify, mitigate, and manage financial risks
- ▼ For public institutions, a higher threshold consistent with state law

Any micropurchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs.

## **Small Purchase**

This method is for purchases above the micropurchase threshold but below the simplified acquisition threshold (SAT) as defined by the FAR—currently \$250,000, adjusted periodically for inflation. Price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the nonfederal entity. This doesn't mean formal bids and solicitations for quotes must be made. Quotes may be obtained from a variety of simple sources, *e.g.*, internet search, vendor price listing, verbal quotes, etc. Similar to the micropurchase method, no cost or price analysis is required. As with the micropurchase examples, if a nonfederal entity purchases a variety of office supplies that total \$25,000, this would require consideration for quotes. A nonfederal entity may compare pricing based on an internet search between a local supply store versus a national chain and select a vendor based on these quotes.

## **Simplified Acquisition Thresholds**

The nonfederal entity is responsible for determining an appropriate SAT based on internal controls, an evaluation of risk, and its documented procurement procedures, which must not exceed the threshold established in the FAR—currently \$250,000, adjusted periodically for inflation. When applicable, a lower SAT used by the nonfederal entity must be authorized or not prohibited under state, local, or tribal laws or regulations.

## **Sealed Bids**

This method is for purchases greater than the SAT. Bids are publicly solicited, and a firm fixed-price contract is awarded to a responsible bidder who has the lowest price and conforms to all the material terms and conditions of the invitation for bid. Price is a significant factor in this method and generally is the preferred method for procuring construction. This method is used if bids may be solicited from an adequate number of suppliers (two or more), a complete and realistic specification or purchase description is available, the purchase results in a firm fixed-price contract, and the selection may be made based on price. A cost and

price analysis must be performed for these purchases, and the entity must make independent estimates before receiving bids or proposals.

## **Proposals/Requests for Proposal (RFP)**

This method is for purchases greater than the SAT in situations where sealed bids aren't appropriate. This may be the case when price isn't the only factor in awarding a contract. In general, this results in a fixed-price or cost-reimbursement type contract. Under this method, the following requirements apply:

- ▼ RFPs must be publicized and identify all evaluation factors and their relative importance
- ▼ Proposals must be solicited from an adequate number of qualified sources
- ▼ The entity must have a written method for evaluating and selecting recipients
- ▼ Contracts must be awarded to a responsible firm

Similar to sealed bids, a cost and price analysis must be performed for these purchases.

## **Noncompetitive Procurement**

This method results in solicitation from a sole source and may be used if one or more of the following conditions apply:

- ▼ The acquisition of property or services, the aggregate dollar amount of which does not exceed the micropurchase threshold
- ▼ Item is available from only one source
- ▼ Public emergency won't permit a delay resulting from publicizing a competitive solicitation
- ▼ Awarding agency authorizes noncompetitive proposals in response to a written request from the nonfederal entity

- ▼ After soliciting a number of sources, competition is determined to be inadequate

Sole-source purchases are applicable at any level when one of the aforementioned criteria is met.

## Additional Notes

With any of the above methods, the procurement standards also emphasize contracting with small and minority-owned businesses, women's business enterprises, and labor surplus area firms (§200.321). A nonfederal entity must use these firms when possible. Methods for inclusion include placing these businesses on the vendor list, soliciting pricing from them when they're potential sources, breaking up projects or orders into smaller tasks to permit participation by these firms, or requiring contractors to follow these guidelines for subcontracts.

As previously mentioned, regardless of what method is used and decision made, documentation of the procurement must be kept, *e.g.*, maintaining printouts of internet searches for quotes or documenting in a memo the reasons for acceptance or rejection of bidders in sealed bids or competitive proposals.

The Uniform Guidance procurement standards are very prescriptive and may be new for many nonfederal entities. In addition, the federal agency adoption requirements of the Uniform Guidance further complicate the requirements. Federal grant recipients should clearly document their policies and procedures and work with their federal agencies as needed.

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