

# GRANTS PROCUREMENT BEST PRACTICES: PROCURING GOODS & SERVICES WITH GRANT FUNDING

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# **PART 200 UNIFORM ADMINISTRATIVE REQ, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

Formerly know as the “Uniform Grants Guidance”, the  
“Omni Circular” and the “Super Circular”

# 2 CFR PART 200

- Subpart A – Definitions
- Subpart B – General Provisions
- Subpart C – Pre Award Requirements
- **Subpart D – Post Award Requirements**
- Subpart E – Cost Principles
- Subpart F – Audit Requirements

# PROCUREMENT

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# CONTRACTS VS. SUBAWARDS (200.330)

- A Pass-through entity must make a case-by-case determination whether each agreement casts the party as a subrecipient or contractor. Look at the nature of the relationship. It does not matter what the agreement is called.

<u>Subaward</u>	<u>Contract</u>
<ul style="list-style-type: none"><li>■ Allowable activities based on applicable statute, local plan, State rules</li><li>■ Management rules<ul style="list-style-type: none"><li>■ UGG; and</li><li>■ State law/policies and procedures</li></ul></li></ul>	<ul style="list-style-type: none"><li>■ Allowable activities based on terms and conditions of contract</li><li>■ Management rules<ul style="list-style-type: none"><li>■ Terms of the contract; and</li><li>■ State contract law</li></ul></li></ul>

# SUBRECIPIENTS (200.330(a))

- Determines who is eligible to receive what federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable federal program requirements specified in the federal award; and
- In accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

# CONTRACTORS (200.330(b))

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the federal program; and
- Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

# PROCUREMENT BY STATES

## 200.317

- State agencies simply must follow the same policies and procedures it uses for procurements from its non-federal funds.
- All other non-federal entities (including subrecipients) must follow, at a minimum, the requirements of Sections 200.318-200.326.
- All of DC's subrecipients must follow the most restrictive requirements between DC law and Uniform Grant guidance.



# GENERAL PROCUREMENT STANDARDS

## 200.318(a)

- All non-federal entities must have documented procurement procedures which reflect applicable Federal, State, and local laws and regulations, and must include:
  - Conflicts & Gratuities Policies (can be separate document)
  - Protest procedures
  - Such procedures should include, among other things, as a best practice:
    - How the non-federal entity initiates procurement actions
    - Procurement thresholds for different methods of procurement
    - Mandatory approvals for all procurements actions

# CONTRACT ADMINISTRATION 200.318(b)

- Nonfederal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract
  - Are contractors delivering on time?
  - Are all invoices verified before they are paid?
  - Are goods inspected upon delivery?

# CONFLICT OF INTEREST

## 200.318(c)(1)

- Must maintain written standard of conduct, including conflict of interest policy.
- A conflict of interest arises when any of the following has a financial, other interest, or a tangible personal benefit, in the firm considered/selected for an award:
  - Employee, officer or agent
  - Any member of that person's immediate family
  - That person's partner
  - An organization which employs, or is about to employ, any of the above or has a financial interest in the firm selected for award
- Such individuals may not participate in the selection, award, or administration of a contract supported by a federal award

# CONFLICT OF INTEREST (CONT.)

## 200.318(c)(1)

- Must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors/subcontractors.
- However, may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- Standards of conduct must include disciplinary actions applied for violations.



# CONFLICT OF INTEREST (CONT.)

## 200.318(c)(2)

- If the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state or local government the entity must also maintain written standards of conduct covering organization conflicts of interest
  - Is there arms-length bargaining?
  - How will non-federal entity ensure all contracts are awarded in a way that avoids conflicts/appearance of conflict?
  - Are dealings between parent and subsidiary subject to internal monitoring?

# CONFLICT OF INTEREST (CONT.)

## 200.112

- All non federal entities must disclose in writing any potential conflict to federal awarding agency in accordance with applicable federal awarding agency policy.
- In the case of any state-administered program, such disclosure must also be made to the pass-through entity.
- Even if further investigation shows no actual conflict, written notice must be given to pass-through.

# MANDATORY DISCLOSURES

## 200.113

- **Must disclose in writing, in a timely manner:**
  - All violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.
  - Failure to make disclosures can result in remedies in 200.338 (remedies for noncompliance) including suspension and debarment.
- **For examples, if an official receives courtside Wizards tickets from a vendor that is being considered for a contract paid with federal funds:**
  - If the non-federal entity fails to disclose such a gratuity violation, not only can the entire procurement action be thrown out, but pass-through can take enforcement actions including terminating the federal award.

# VENDOR SELECTION PROCESS

## 200.318(h)

- Must award contracts only to responsible contractors possessing the ability to perform successfully:
  - Contractor integrity
  - Compliance with public policy
  - Record of past performance
  - Financial and technical resources
- In other words, if the vendor has a history of delinquency, malfeasance, or acting in bad faith/unethical, the non-federal entity must find a different vendor.



# COMPETITION

## 200.319(a)

- All procurement transactions must be conducted with full and open competition.
- To eliminate unfair advantage, contractors that develop or draft specifications, requirements, statement of work, and invitations for bids or RFPs must be excluded from competing for such procurements.

# COMPETITION (CONT.)

## 200.319(a)

- Situations that restrict competition:
  1. Unreasonable requirements on firms to qualify to do business
  2. Requiring unnecessary experience or excessive bonding
  3. Noncompetitive pricing practices
  4. Noncompetitive awards to consultants on retainer
  5. Organizational conflicts of interest (see 200.318(c)(2))
  6. Specifying a brand name instead of allowing “an equal”
  7. Any arbitrary action in the procurement process

# COMPETITION (CONT.)

## 200.319(b)

- Must prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposal, except where applicable Federal statutes expressly mandate or encourage geographic preference.
- Does not preempt state licensing laws.
- Exception: architectural and engineering services (if it provides appropriate number of qualified firms).

# COMPETITION (CONT.)

## 200.319(c)

- Written procedures for procurement must ensure all solicitations:
  - Incorporate a clear and accurate description of the technical requirements for materials, product or service to be procured; and
    - “Brand name or equivalent” may be used as needed, but the specific features of the named brand which must be met by the offers must be clearly stated
  - Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

# METHODS OF PROCUREMENT

## 200.320

- Method of procurement:
  - Micro-purchase
  - Small purchase procedures
  - Competitive sealed bids
  - Competitive proposals
  - Noncompetitive proposals

# MICRO-PURCHASE

## 200.320(a)

- Acquisition of supplies and services for **\$10,000** or less.
- May be awarded without soliciting competitive quotations if nonfederal entity considers the cost reasonable.
- To the extent practicable must distribute micro-purchases equitably among qualified suppliers.
- All micro-purchase contracts must be for purchases that are necessary & reasonable
  - To ensure the price is reasonable, non-federal entities should document how the agreed-upon price was reviewed
  - Did you compare prices with other vendors? Review prior purchases? Search for online deals?

# SMALL PURCHASE PROCEDURES

## 200.320(b)

- Good or service that costs \$250,000 or less
  - \$250,000 (a.k.a. the Simplified Acquisition Threshold) was raised under NDAA 2018
  - Organization may set lower threshold
- Must obtain price or rate quotes from an adequate number of qualified sources
  - At least two, but three is a best practice
- “Relatively simply and informal”

# SEALED BIDS

## 200.320(c)



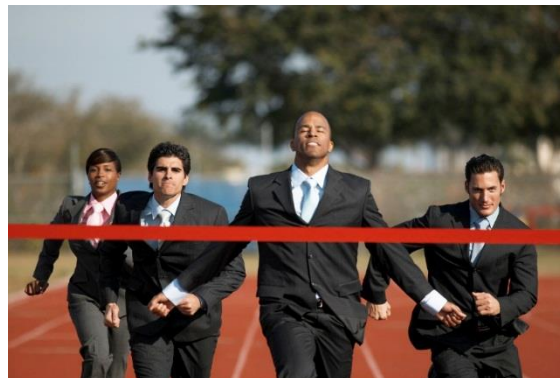
- Over \$250,000
  - Organization may set lower threshold
- Bids are publically solicited.
- Appropriate when:
  - A complete, adequate and realistic specification or description of good or service is available;
  - Two or more responsible bidders are willing and able to compete effectively for the business
  - Selection of vendor can be made principally based on price and it's a firm fixed price contract.



# COMPETITIVE PROPOSALS

## 200.320(d)

- Over \$250,000
  - Organization may set lower threshold
- Award contract to responsible vendor whose proposal is most advantageous to the program, considering price and other factors.
- Generally used when sealed bid is not appropriate.



# NONCOMPETITIVE PROPOSALS

## 200.320(f)



- Appropriate only when:
  - The item is only available from a single source;
  - There is a public emergency that will not permit delay;
  - After soliciting a number of sources, competition is determined inadequate; or
  - The federal awarding agency or pass-through expressly authorizes noncompetitive proposals in response to a written request from non-federal entity;
    - Written requests should provide reasons for sole-sourcing.
    - Pass-through has complete discretion in responding to these requests.

# CONTRACT COST AND PRICE

## 200.323



- Must perform a cost or price analysis in connection with every procurement action over the simplified acquisition threshold, including contract modifications
- Independent estimate before receiving bids or proposals.
  - Price analysis generally means evaluating the total price
  - 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 cost/price analysis is performed.

# SUSPENSION AND DEBARMENT

## APPENDIX II(H)

- Cannot contract with vendor who has been suspended or debarred
  - Excluded Parties List System in the System for Award Management (SAM)
  - 2 CFR Part 180 (OMB Debarment Suspension Rules)

# SUSPENSION AND DEBARMENT

## 2 CFR 180.300

- For contracts over \$25,000 you must verify that the person with whom you intend to do business is not excluded or disqualified.
- This MUST be done by either:
  - a. Checking SAM; or
  - b. Collecting a certification from that person; or
  - c. Adding a clause or condition to the covered transaction with that person.



# Recordkeeping and Retention

# ACCOUNTING RECORDS

## 200.302(b)(3)

- **Source Documentation Must Be Kept On:**
  - Federal Awards
  - Authorizations
  - Obligations
  - Unobligated balances
  - Assets
  - Expenditures
  - Income
  - Interest

# RECORD STORAGE (200.335)

- When original records are electronic and cannot be altered, there is no need to create and retain paper copies.
- When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided they:
  - Are subject to periodic quality control reviews,
  - Provide reasonable safeguards against alteration; and
  - Remain readable.



# RECORD RETENTION (200.333)

- UGG says to keep records for 3 years (200.333)

BUT...

- Some federal agencies have statute of limitations for longer than 3 years.
  - For example, ED recipients keep records for 5 years from the last expenditure report because of “Statute of Limitation” under General Education Provisions Act (GEPA) Section 81.31(c)



# QUESTIONS?

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