

Don't say *UGH!* to UGG Procurement

PRESENTED TO
SWMSBO Conference 2017

PRESENTED BY
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Objectives

- Uniform Guidance Refresher
- Procurement Standards
- Action Items
- Resources



What are the Uniform Requirements?

Administrative Circulars: A-89,
A-102, A-110

Cost Circulars: A-21,
A-87, A-122

Audit Circulars:
A-133, A-50

2 CFR 200



Objectives of Change and Policy Reform

- Unify
- Clarify
- Simplify
- Standardize
- Leverage technology
- Shift focus to outcomes
- Minimize waste, fraud and abuse



Objectives of Change and Policy Reform

- Eliminate duplicative and conflicting guidance
 - 80 fewer pages in the new guidance!
- Focus on performance over compliance for accountability
 - OMB M-13-17, Evidence and innovation agenda
 - Clear performance goals



Objectives of Change and Policy Reform

- Strengthen oversight
 - Moves internal control guidance into administrative requirements (was previously only discussed in audit requirements, after funds were spent)
- Target waste, fraud and abuse



2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

- Subchapter A – Acronyms and definitions
- Subchapter B – General provisions
- Subchapter C – Pre-award Federal requirements and contents of Federal awards
- Subchapter D – Post-Federal award
- Subchapter E – Cost principles
- Subchapter F – Audit requirements



2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

- Appendices (Indirect cost guides, Hospital cost principles, etc.)
- Bonus – the preamble
- The Guidance can be found at:

<https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards>



General Procurement §200.318

- Must use own documented procurement procedures
- Oversee contractors are performing in accordance with contract
- Written conflict of interest standards on selection, award, and administration
 - Must include disciplinary actions
- May set standards for insubstantial financial interests and nominal value unsolicited gifts
 - Default is that none are acceptable



General Procurement §200.318

- Procedures must avoid duplicative or unnecessary items
- Where applicable, lease versus purchase analysis
- Encourage inter-entity agreements where appropriate for procurement or use of common/shared goods/services
- Only award contracts to responsible contractors able to perform successfully



Competition §200.319

- Full and open competition
- Contractors developing/drafting specifications, requirements, statements of work, and invitations to bid or RFPs cannot compete for that procurement
- No geographical preferences unless Federal statute mandates or encourages



Competition §200.319

- Written procurement procedures
 - Clear and accurate description of technical requirements
 - Minimum essential characteristics
 - Detail product specifications should be avoided if at all possible
 - Identify all requirements offerors must fulfill
 - Identify factors used in evaluating bids/proposals
 - Prequalification lists must be current and include enough qualified sources to ensure open and free competition
 - Must include all 5 types of procurement methods per MDE



Competition §200.319

- Situations considered to be restrictive of open competition:
 - Placing unreasonable requirements on firms in order for them to qualify to do business.
 - Requiring unnecessary experience and excessive bonding.
 - 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.
 - Any arbitrary action in the procurement process.
 - Not include state or local geographical preferences (except where federal statutes mandate or encourage geographic preference)



Procurement Methods §200.320

- Micro-purchases (new for government)
 - Aggregate does not exceed \$3,500
 - \$10K for some organizations
 - Distribute equitably among qualified suppliers
 - Simply need to consider price reasonable
- Small purchases
 - Cost less than Simplified Acquisition Threshold (\$150,000)
 - Price or rate quotations from an adequate number of qualified sources



Procurement Methods §200.320

- Sealed bids
 - Use if complete specifications, two + responsible bidders, and lends itself to firm fixed-price contract
 - Publicly advertise invitation for bids
 - All bids publicly opened at time and place prescribed in invitation
 - Firm, fixed-price contract awarded to lowest responsive and responsible bidder
 - Document sound reasons for rejection
 - Consider discounts, transportation costs, life cycle costs



Procurement Methods §200.320

- Competitive proposal
 - Use if conditions not appropriate for sealed bid
 - More than one source
 - Fixed-price or cost-reimbursement contract
 - Requests for proposals must be publicized and identify all evaluation factors and relative importance
 - Solicit from adequate number of qualified sources
 - Written method for conducting technical evaluations of proposals and selecting recipients
 - Award to “most advantageous” proposal including price and other factors
 - Only architectural/engineering can use selection without consideration of cost



Procurement Methods §200.320

- Noncompetitive proposals (restrictions on usage new for NPOs)
 - Solicitation from only one source
 - Use if only available from one source, Or
 - Use if public exigency or emergency that will not permit delay, Or
 - Use if Federal awarding agency or pass-through entity expressly authorizes, Or
 - After soliciting a number of sources, competition is determined inadequate



Contract Cost and Price §200.323

- Must perform cost or price analysis in connection with every procurement over Simplified Acquisition Threshold
 - Includes contract modifications
 - Independent estimates prior to receiving bids or proposals
 - Negotiate profit as separate element of price if no competition and where cost analysis performed
 - Cost plus percentage of cost not allowed
 - Percentage of construction cost method not allowed



Debarment and Suspension

- A contract award must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM)
- <https://www.sam.gov/>
- Contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority



Action Items

- Do a little light reading: http://www.ecfr.gov/cgi-bin/text-idx?SID=c941cffb38475e1f8a68ce626bec1edc&mc=true&node=sg2.1.200_1316.sg3&rgn=div7
- Subpart D, Post-Award Requirements, paragraphs 200.317 through 200.326
- Required contract specifications outlined in Appendix II: http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=1327f5cd489d7f4b56a28a9301fbf586&mc=true&n=pt2.1.200&r=PART&ty=HTML#ap2.1.200_1521.ii



Action Items

- Compare new requirements to existing, written procurement policies and procedures (if any)
- Assess whether you currently have appropriate procurement documentation. At a minimum, this includes:
 - The rationale for the method of procurement
 - Selection of the contract type
 - Contractor selection or rejection, and
 - Basis for the contract price



Other Items for Consideration

- Two spending policies
 - Federal vs. non-federal
 - Flexibility when quoting non-federal services (accountants, lawyers, etc.)
- Accounting system capabilities
 - How can you best document the rationale for the procurement method selected?
 - Electronic document retention



DEADLINE

Implementation is set for 7/1/17.

LET'S DO THIS



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Resources

- 1 Hour Webinar
 - How to Comply with UGG Requirements and Survive an Audit
 - Yeo & Yeo website under News – 2/17/16 post – **Has Your Organization Done Everything It Needs to for Compliance with the Uniform Grant Guidance?**



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