

Uniform Guidance - Procurement

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a brighter way



Effective Dates and Grace Period for Procurement

- 🌀 Federal Register 2017-09909 effective May 17, 2017 allowed an additional 1 year grace period for non-federal entities on top of initial 2 year grace period.
- 🌀 **6/30 year ends – effective 7/1/18**



Acceptable Procurement Methods

- 🌀 Micro Purchases
- 🌀 Small Purchases
- 🌀 Sealed Bids
- 🌀 Competitive Proposals
- 🌀 Noncompetitive Proposals



Micro Purchases

🌀 Purchases of \$10,000 or Less

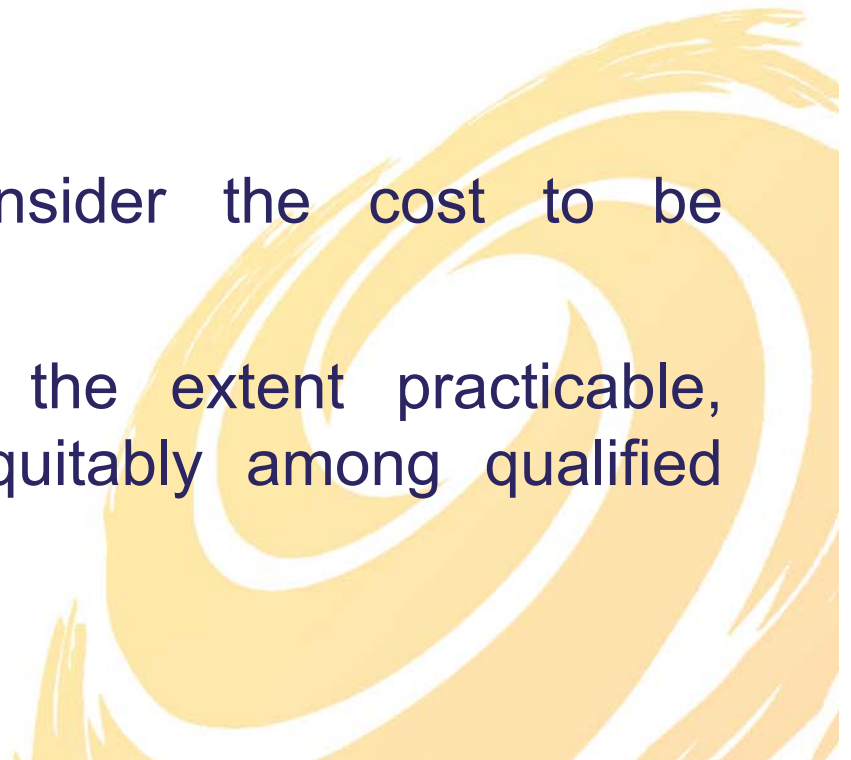
→ Previously \$3,500 (changed by OMB Memo M-18-18 dated 6/20/18)

🌀 Davis-Bacon Act Exception

🌀 No Need to Solicit Competition

🌀 Non-Federal entity must consider the cost to be reasonable

🌀 Non-Federal entity must, to the extent practicable, distribute these purchases equitably among qualified suppliers



Small Purchases

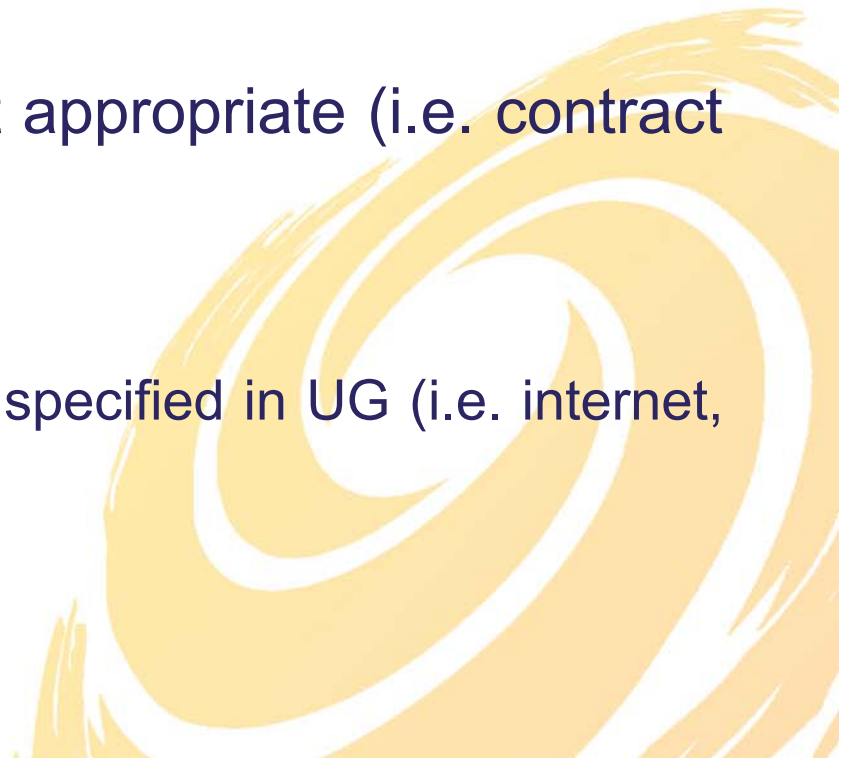
- ☉ Purchases between \$10,000 and \$250,000
- ☉ Non-federal entity's prior policy likely has much lower threshold, however, it can be increased
- ☉ Under the simplified acquisition threshold
- ☉ Price or rate quotations must be obtained from an adequate number of qualified sources
 - UG leaves the discretion of the non-Federal entity written policy to determine the “adequate” number of qualified sources (number greater than one) and the methods of obtaining the price or rate quotations (i.e. in writing, orally, price list on website, etc.)
- ☉ Excluded from any requirements for cost or price analysis

Sealed Bids

- ☪ Purchases over \$250,000 (ORC 3314.46 still applies \$50,000)
- ☪ Bids are publicly solicited from an adequate number of known suppliers
- ☪ Firm fixed price contract (lump sum or unit price)
- ☪ Two or more responsible bidders
- ☪ Awarded to the lowest responsive and responsible bidder
- ☪ Preferred method for construction projects
- ☪ Conditions required for use are found in 2 CFR 200.320(c)(1) and (2)

Competitive Proposals

- ☪ Purchases over \$250,000
- ☪ More than one source is expected to make an offer
- ☪ Either fixed price or cost-reimbursement type contract is awarded
- ☪ Used when sealed bids are not appropriate (i.e. contract services)
- ☪ RFP must be publicized
 - How this is accomplished is not specified in UG (i.e. internet, radio, newspaper, etc.)



Competitive Proposals (continued)

- ✪ Written procedures required for conduct of technical evaluation
- ✪ Awarded to the most advantageous offer with price and other factors considered
- ✪ MUST be used for Architectural/Engineering services and price CANNOT be used as a selection criterion (AKA “Brooks Bill”)



Noncompetitive Proposals

- ☪ Also known as Sole-Source procurement
- ☪ Appropriate ONLY when certain criteria are met
 - Only available from a single source
 - Public exigency or emergency
 - Federal awarding agency authorization
 - Inadequate competition
- ☪ “JOFOC”
 - Justification for Other than Free and Open Competition is required



Purchasing Cooperatives

 Do you use a purchasing cooperative for your food service program?

- The School remains responsible for compliance for UG Compliance on all purchases made from the food service fund (program income).
- Auditors should be testing procurement at the Co-Op level
- If non-compliance is found will be reported at School level. Possible questioned costs.
- Communicate with your co-op. Make sure they are in compliance to avoid a finding at your School.



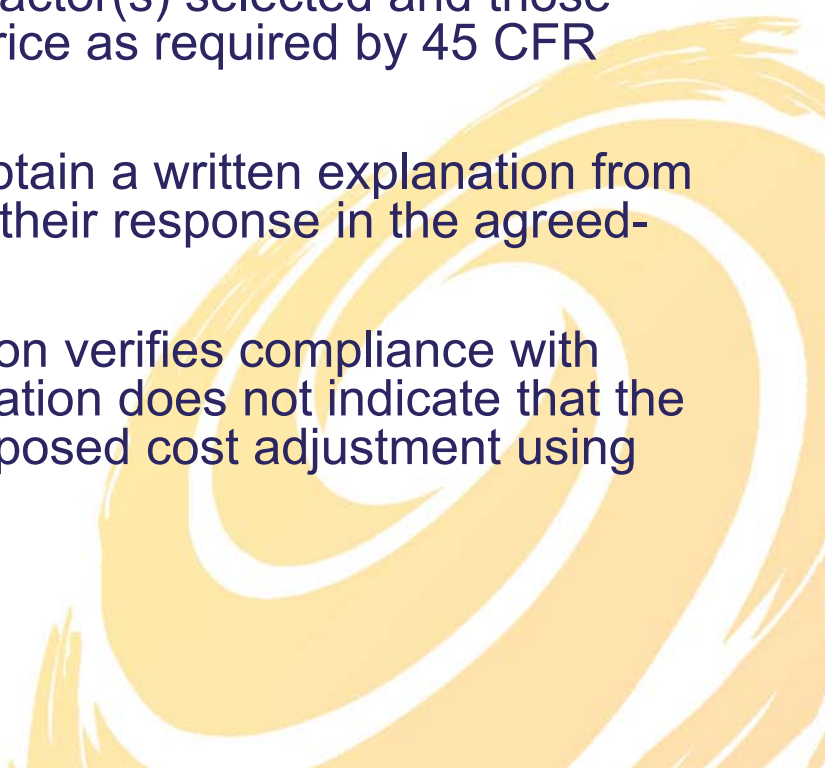
Common Questions

- 🌀 Is adopting Board policies for procurement alone adequate?
 - No, Non-federal entities are required to have written procedures that conform to the applicable federal law. These should be in addition to board adopted procurement policy.
- 🌀 If I entered into a contract prior to 7/1/18 but expenditures will be after that date will UG procurement apply?
 - No, determining if UG procurement is applicable is based on the date of the procurement activity not the date of the expenditures.
- 🌀 Do ESC contracts qualify for sole source procurement?
 - TBD, ODE is making a determination.


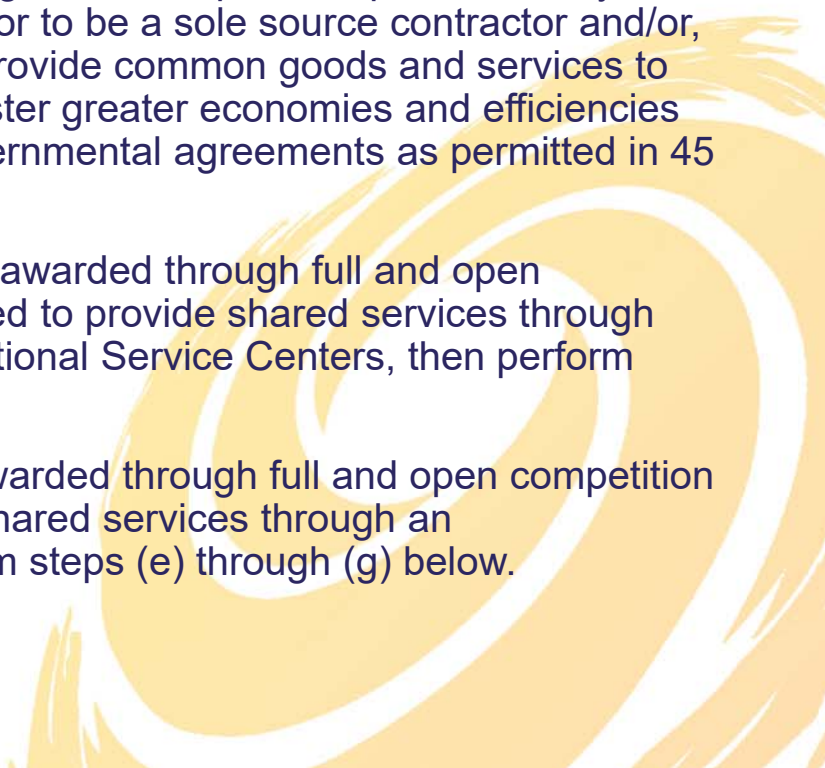
Common Questions

- ☉ What are the potential ramifications for not complying?
 - Non-compliance could result in modified opinion over compliance and questioned costs reported in audit depending on materiality.
- ☉ What if a change order results in the contract moving to a new procurement threshold?
 - This is subjective. The non-federal entity should have an estimate of what the total control amount will be and if determination is originally based on a reasonable estimate of the contract cost this should not be an issue. Do not intentionally estimate lower then apply change orders to avoid competition.
- ☉ How is “aggregate purchase” determined
 - This should be identified within your procedures and subsequently supported with supporting documentation of purchasing method utilized

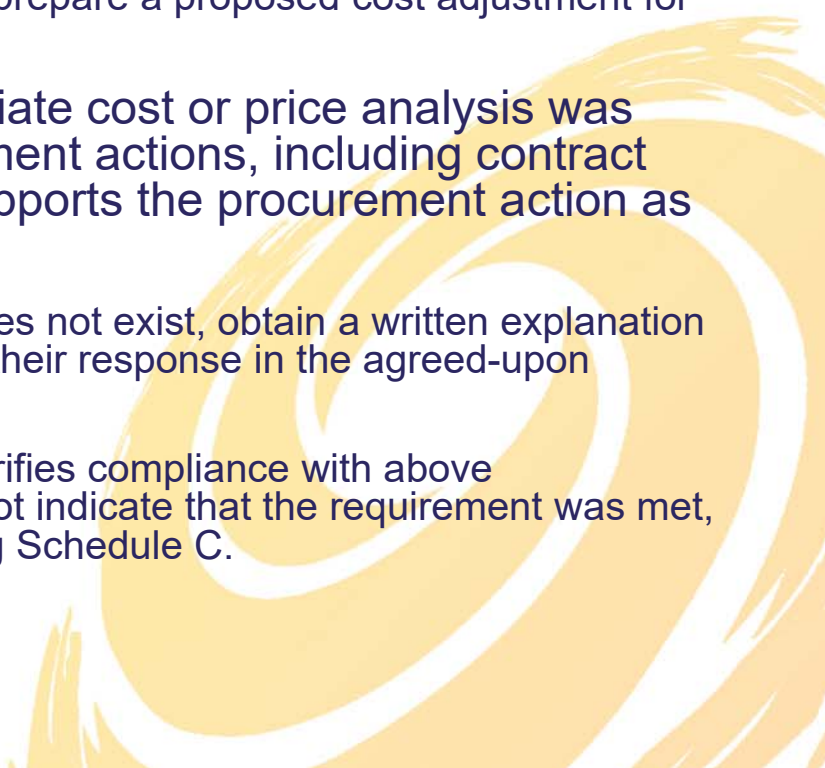
Medicaid AUP (Procurement & Non-Payroll)

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- A large, stylized yellow and white swirl graphic is positioned in the bottom right corner of the slide, partially overlapping the text area.
- 6. Obtain the contract files for each procurement selected and verify the following as they pertain to the vendor/contractor:
 - a. The contract file includes documentation of the significant history of the procurement, including the rationale for the method of procurement (e.g., lowest bid), contractor(s) selected and those rejected, and the basis of contract price as required by 45 CFR 75.327(i).
 - If the lowest bid was not selected, obtain a written explanation from management as to why and include their response in the agreed-upon procedures report.
 - Document whether written explanation verifies compliance with above requirement. If written explanation does not indicate that the requirement was met, prepare a proposed cost adjustment using Schedule C.

Medicaid AUP (Procurement & Non-Payroll)

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6. Obtain the contract files for each procurement selected and verify the following as they pertain to the vendor/contractor:
- B. The procurements provided for full and open competition as described in 45 CFR 75.328(a).
 - If the procurement was not awarded through full and open competition, verify whether the provider designated the vendor to be a sole source contractor and/or, verify the vendor has been organized to provide common goods and services to other like governments, i.e. schools, to foster greater economies and efficiencies for the like governments through intergovernmental agreements as permitted in 45 CFR 75.327(e).
 - If the procurement with the vendor wasn't awarded through full and open competition or, the vendor wasn't organized to provide shared services through intergovernmental agreement, e.g. Educational Service Centers, then perform steps (c) through (g) below.
 - If the procurement with the vendor was awarded through full and open competition or, the vendor was organized to provide shared services through an intergovernmental agreement then perform steps (e) through (g) below.
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Medicaid AUP (Procurement & Non-Payroll)

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- A decorative graphic consisting of several concentric, overlapping swirls in shades of yellow and orange, located in the bottom right corner of the slide.
6. Obtain the contract files for each procurement selected and verify the following as they pertain to the vendor/contractor:
- c. In cases where competition was limited, verify that documentation exists to support the rationale to limit competition as described 45 CFR 75.329(f).
 - If required documentation does not exist, prepare a proposed cost adjustment for all contract payments using Schedule C.
 - d. Contract files exist and an appropriate cost or price analysis was performed in connection with procurement actions, including contract modifications and that this analysis supports the procurement action as described by 45 CFR 75.332(a).
 - If cost or price analysis documentation does not exist, obtain a written explanation from management as to why and include their response in the agreed-upon procedures report.
 - Document whether written explanation verifies compliance with above requirement. If written explanation does not indicate that the requirement was met, prepare a proposed cost adjustment using Schedule C.

Medicaid AUP (Procurement & Non-Payroll)

- ✪ e. The contract includes a requirement that the vendor is to comply with the requirements of 45 CFR 164.504(e)(1) for safeguarding and limiting access to information concerning beneficiaries.
 - If the contract does not include a statement requiring the contractor to comply with 45 CFR 164.504(e)(1), obtain a written explanation from management as to why and include their response in the agreed-upon procedures report.
 - Document whether written explanation verifies compliance with above requirement. If written explanation does not indicate that the requirement was met, prepare a proposed cost adjustment using Schedule C.
- ✪ f. The contract includes a clause that allows the representatives of the U.S. Department of Human Services, ODM, ODE or their respective designee access to the subcontractor's books, documents and records.
 - If the contract does not include a clause allowing access to the subcontractor's records, obtain a written explanation from management as to why and include their response in the agreed-upon procedures report.
 - Document whether written explanation verifies compliance with above requirement. If written explanation does not indicate that the requirement was met, prepare a proposed cost adjustment using Schedule C.

Medicaid AUP (Procurement & Non-Payroll)

- g. The contract file includes an acknowledgement from the contracted party that they or their principles are not suspended or debarred.
 - If the contract does not include a clause indicating the contractor or vendor is not suspended or debarred, obtain a written explanation from management as to why and include their response and name of the contractor in the agreed-upon procedures report.
 - Document whether written explanation verifies compliance with above requirement. If written explanation does not indicate that the requirement was met, prepare a proposed cost adjustment using Schedule C.

Medicaid AUP (Procurement & Non-Payroll)

- 13. Using the payments selected in conjunction with step 11, select 10 students or 10% of the total number of students from the invoices related to medical services, whichever is less. If the payment selected is related to shared services, i.e. Educational Service Center, and student listings are not provided, obtain a listing of students served from the provider and select 10 students or 10% of the total number of students from the listing related to medical services, whichever is less. For each student selected, obtain from the provider the students' IEP which includes a plan of care and/or the ETR if scope is provided according to OAC 5160-35-04 (B)(1) and (B)(2). Using the information, verify the service(s) provided to the students is reflected in the student's plan of care as required by OAC 5160-35-05(G)(3).
- If the service included within the invoice is not identified with the student's plan of care, prepare a proposed cost adjustment to remove the expenditure amount included on the cost report. The proposed cost adjustment should be documented on Schedule C.

Medicaid AUP (Procurement & Non-Payroll)

- e. The agency obtained the lowest price for the goods or services purchased by obtaining price or rate quotes from an adequate number of vendors, but not less than 2 sources as prescribed by small purchase procedures described in 45 CFR 75.329(b). (Note: price or rate quotes may be documented through catalog or internet price lists, verbal quotes or other sources that identify item prices at the time of the purchase).
 - If the agency did not obtain price or rate quotes, as prescribed above, determine if the procurement is consistent with methods identified in:
 - 45 CFR 75.329(a) – micro-purchase limit
 - 45 CFR 75.329(f) – non-competitive proposals
 - 45 CFR 75.327(e) – shared service agreements
 - If the cost of a good or service was obtained through procedures described in 45 CFR 75.329(b), price quotes were obtained, and the selected provider was not the lowest of the rate or price quotes obtained by the agency, document the explanation provided by management and include in the agreed-upon procedures report. In addition, the agreed-upon procedures report must also identify the total price difference between the amount included in the cost report and the lowest quote.
 - If the agency did not document the method of procurement, include the total cost of the good or service and any explanation from management in the agreed-upon procedures report.
 - Document whether written explanation verifies compliance with above requirement. If written explanation does not indicate that the requirement was met, prepare a proposed cost adjustment using Schedule C

§200.318 General procurement standards highlights

- 🌀 (a) 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 the standards identified in this part.
- 🌀 (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- 🌀 (c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a 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. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

§200.318 General procurement standards highlights

- ✪ (d) The non-Federal entity's 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 versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- ✪ (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- ✪ (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

§200.318 General procurement standards highlights

- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition

- ✪ (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, 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. Some of the situations considered to be restrictive of competition include but are not limited to:
 - ✪ (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - ✪ (2) Requiring unnecessary experience and excessive bonding;
 - ✪ (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - ✪ (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - ✪ (5) Organizational conflicts of interest;
 - ✪ (6) 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


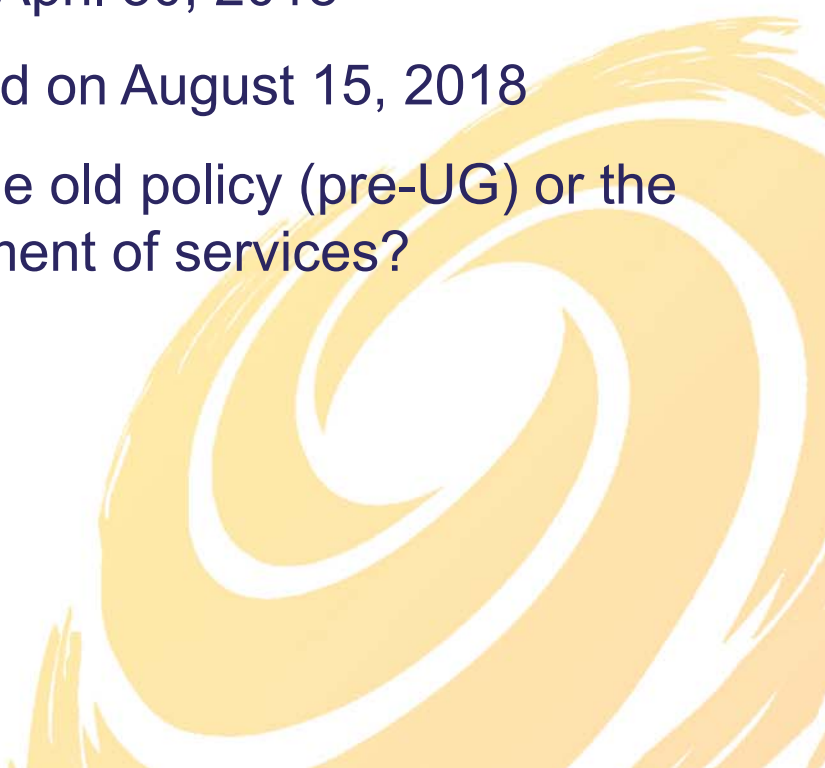
§200.319 Competition (continued)

- ⦿ (7) Any arbitrary action in the procurement process.
- ⦿ (b) 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 geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- ⦿ (c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
 - ⦿ (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured 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. Detailed product specifications should be avoided if at all possible. 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 as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - ⦿ (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- ⦿ (d) The non-Federal entity 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. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§200.323 Contract cost and price

- 🌀 (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- 🌀 (b) 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 cost analysis is performed. 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, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- 🌀 (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- 🌀 (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Case Studies

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- Scenario 1: Timing of entering contract vs. payment
- School District adopted Uniform Guidance (UG) required procurement policies/procedures on May 30, 2018
 - Contract for services entered on April 30, 2018
 - Expenditures for services incurred on August 15, 2018
 - Does the School District follow the old policy (pre-UG) or the new policy (UG) for this procurement of services?
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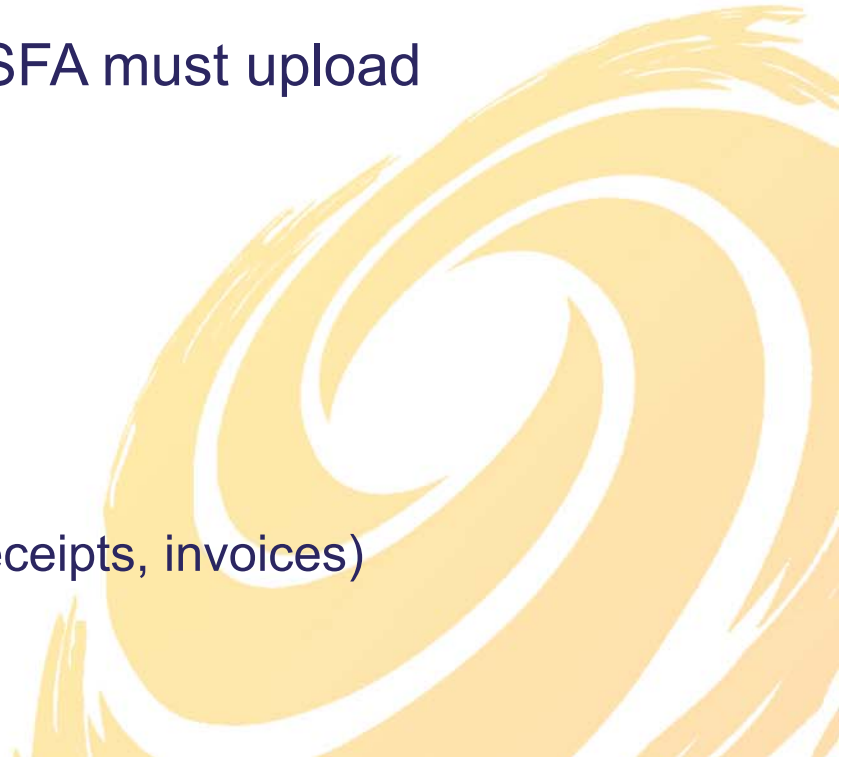
Case Studies (Continued)

Scenario 2: School District adopts UG policies/procedures

- Adopted on January 1, 2018
- Procurement effective date of July 1, 2018 for schools (6/30/18 fiscal year-end) per Federal Registrar 2017-09909
- Enters a contract on April 30, 2018
- Does the School District follow the old policy (pre-UG) or the new policy (UG) for the contracted services?

Nutrition Procurement Reviews

- 🌀 Required every 3 years
- 🌀 Conducted entirely in CRRS
- 🌀 SFA submits all required vendor documents including the bid, award and supporting documentation of services. ODE beings review of selected vendors
- 🌀 ODE selects vendor and notifies, SFA must upload
 - Solicitation Documentation
 - Reponses
 - Evaluation
 - Final Contract
 - Amendments
 - Purchasing Documentation (POs, receipts, invoices)



Contact Information

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