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Procurement Guidance for Federal Grants

The federal government makes grant awards to entities (referred to as “grant recipients” or, when the award funds are passed through the recipient to another party, “subrecipients”) such as state and local governments “to carry out a public purpose.” Recipients and subrecipients may then use funds from federal grant awards to enter into contracts with private companies to procure goods and services to fulfill the purposes of the grant award.

Federal regulations guide recipient and subrecipient use of federal grant funds for procurement. This In Focus discusses procurement standards for federal grant awards, including guidance on which federal policies apply to which entities, actions needed for procurement processes, and appropriate methods of procurement.

Source of Grant Procurement Guidance

Procurement guidance for federal grant awards is broadly established in 2 C.F.R. Part 200, specifically 2 C.F.R. §200.317 through 2 C.F.R. §200.327. The “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (2 C.F.R. Part 200) establish guidance for grant management across the federal government, although certain federal agencies have adopted modified versions as regulation. The Office of Management and Budget (OMB) issues and updates 2 C.F.R. Part 200.

Applicability to Different Entities

There is some variation as to which guidance different categories of grant recipients and subrecipients must follow. Per 2 C.F.R. §200.317, states and Indian tribes must use the same internal policies and procedures they use for procurement using nonfederal funds, provided such policies and procedures are not less restrictive than those of the federal government. If a state or Indian tribe does not have such policies and procedures, they must adhere to all the grant procurement guidance established in 2 C.F.R. Part 200. A state or Indian tribe that does have such policies and procedures must still adhere to certain grant procurement guidance in 2 C.F.R. Part 200, including

- considerations for contracting with small businesses or firms owned by certain groups of individuals (2 C.F.R. §200.321; see “Other Guidance”),
- domestic preferences for procurement (2 C.F.R. §200.322),
- certain standards concerning recovered materials (2 C.F.R. §200.323), and
- other standardized contract provisions for federal grants (2 C.F.R. §200.327).

All other recipients and subrecipients of federal grant awards must follow the guidance contained in 2 C.F.R. §§200.318–200.327.

General Grant Procurement Guidance

Several high-level standards are established in 2 C.F.R. Part 200 for procurement using federal grant awards by applicable recipients and subrecipients. For example, such recipients or subrecipients must maintain and use documented procedures for procurement transactions. Such procedures must comply with state, local, and tribal laws and regulations.

Applicable recipients and subrecipients must also have written standards of conduct concerning conflicts of interest. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract paid for by a federal grant award. Further, an employee, officer, agency, or board member of a recipient or subrecipient may not solicit or accept gratuities, favors, or anything of monetary value from contractors.

Full and Open Competition

Per 2 C.F.R. §200.319, procurement transactions made under a federal grant award generally must be done in a method that provides full and open competition (see “Noncompetitive Methods” for a discussion of exceptions). The regulations require recipients and subrecipients to refrain from certain activities that may restrict full and open competition. These include

- “placing unreasonable requirements on firms ... to qualify to do business,”
- “requiring unnecessary experience and excessive bonding,”
- implementing “noncompetitive pricing practices between firms or between affiliated companies,”
- offering “noncompetitive contracts to consultants that are on retainer contracts,”
- creating “organizational conflicts of interest,” and
- “specifying only a ‘brand name’ product instead of allowing ‘an equal’ product to be offered.”

Procurement Methods

In 2 C.F.R. §200.320, there are three categories of procurement methods for applicable recipients and subrecipients making purchases under a federal grant award: informal procurement methods, formal procurement methods, and noncompetitive procurement methods.

Informal Procurement Methods

Recipients and subrecipients may use informal procurement methods when the value of the transaction under the federal grant award does not exceed the simplified acquisition threshold, as established in the Federal Acquisition Regulation (FAR). The simplified acquisition threshold is

currently \$350,000 for most transactions. Recipients and subrecipients may also establish their own threshold below the simplified acquisition threshold for informal procurement.

There are two types of informal procurement methods: *micro-purchases* and *simplified acquisitions*. In most cases, micro-purchases may be made when the aggregate amount of the transaction under the federal grant award does not exceed the micro-purchase threshold established in the FAR, which is currently \$15,000 for most transactions. In such instances, the recipient or subrecipient may award micro-purchases without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price reasonable based on research, experience, and purchase history and maintains documents supporting such a conclusion.

Simplified acquisitions may be made when the aggregate amount of the transaction is above the micro-purchase threshold but below the simplified acquisition threshold. In such cases, price or rate quotations must be obtained from an adequate number of qualified sources. Unless otherwise specified by a federal agency, the recipient or subrecipient may determine what number of sources is adequate.

Formal Procurement Methods

Recipients and subrecipients must use formal procurement methods when the value of the transaction under the federal grant award is above the simplified acquisition threshold (or a lower threshold, as set by the recipient or subrecipient). Unlike informal procurement methods, formal procurement methods are competitive and must have public notice. Formal procurements methods include *sealed bids* and *proposals*.

Sealed bids are publicly solicited through invitation by the recipient or subrecipient. Sealed bids are allowable only if there are at least two responsible bidders identified as willing and able to compete effectively. Bids must be solicited from an adequate number of sources (the specific number again being determined by the recipient or subrecipient absent instructions from a federal agency). Following receipt of the bids, the recipient or subrecipient awards a fixed-price contract (with a specific payment amount regardless of actual costs incurred) to the “lowest responsive bid and responsible bidder.”

Proposals are used when sealed bids are infeasible. A recipient or subrecipient puts out a public request for proposals. Proposals must be solicited from multiple qualified entities. A fixed-price or cost-reimbursement (with payment provided only for allowable incurred costs) contract is “awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors.”

Noncompetitive Methods

Recipients and subrecipients may use noncompetitive methods for transactions under federal grant awards in certain cases. This allows a transaction to be completed

directly with one entity. A recipient or subrecipient must justify noncompetitive methods by determining that at least one of the following conditions is satisfied:

- the aggregate amount of the transaction must not exceed the micro-purchase threshold,
- the transaction can be fulfilled by only one source, or
- a public emergency or exigency for the transaction does not permit the delay that would result from public competition.

Other Guidance

As noted, all recipients and subrecipients are subject to certain 2 C.F.R. Part 200 guidance on procurement using federal grant awards. That includes, when possible, conditions for contracting with small businesses, minority-owned businesses, women-owned businesses, veteran-owned businesses, and labor surplus area firms. Among such considerations are

- including these businesses on solicitation lists,
- soliciting these businesses when they are deemed eligible as potential sources, and
- dividing procurement transactions into smaller purchases to facilitate increased participation by these businesses.

Recipients and subrecipients must also conduct a cost or price analysis for every procurement transaction made under a federal grant award that exceeds the simplified acquisition threshold. The type of analysis may vary depending on the particular conditions of the transaction. For instance, if the transaction may affect public sector employees, the recipient or subrecipient may choose to consider any potential workforce impacts of the transaction in its analysis. Regardless of the specific type of analysis employed, a recipient or subrecipient must conduct a cost or price analysis prior to receiving bids or proposals.

Congress and Grant Procurement

While Congress regularly takes an interest in and acts on issues concerning federal government procurement, it has legislated less frequently in recent years on procurement under federal grant awards. However, given that some policies guiding federal government procurement also apply to procurement under federal grant awards (e.g., the level of the micro-purchase threshold established in the FAR), there is some overlap between Congress’s role with federal government procurement and procurement under federal grant awards.

Congress also regularly prompts the executive branch to amend the FAR. Congress could seek a similar role with regard to OMB and its issuance and updating of 2 C.F.R. Part 200 as it relates to procurement under federal grant awards.

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