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**Key Strategies for Compliance with the Procurement
Standards under the Uniform Guidance: 2 CFR 200 of the
Code of Federal Regulations**

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05. Knowledge of post-award grant management practices sufficient to inform effective grant design and development

Abstract

Effective July 1, 2018, grant seeking organizations interested in obtaining federal government grants or currently working on federal grants must comply with a standard set of guidelines known as the Uniform Guidance.

The Procurement Standards under the Uniform Guidance offer grant professionals and procurement staff a comprehensive set of principles for the purchase and management of property, supplies, and services, and include guidelines for conducting price analyses and vendor selection based on the method of procurement used. This paper provides an overview of the Procurement Standards and discusses strategies for grant managers to effectively conduct post-award oversight and monitoring of grant awards issued under the Uniform Guidance.

Introduction

The federal government provides substantial support to nonprofit organizations, including many colleges and universities, in the form of research and development grants and contracts as well as financial aid to undergraduates through the Federal Pell Grant Program. In 2017, for example, higher education funding as a share of federal expenditure totaled \$3.9 trillion dollars according to PEW research (PEW Charitable Trust, 2019). As part of the oversight of federal funding for grant seeking organizations, the federal government has established requirements through regulations, guidance, or statutes that nonprofit organizations must comply with when applying for, receiving, and reporting on the results of federal grants. Such requirements seek to ensure transparency while helping to prevent waste, fraud, and abuse in nonprofit organizations. Grant professionals must fully understand these rules and regulations to effectively perform their jobs.

Complying with the Procurement Standards under 2 CFR 200

Organizations seeking federal government grants must now comply with a standard set of rules and requirements known as the Uniform Guidance. The Uniform Guidance supersedes and streamlines the requirements from several grant circulars into one set of guidelines that all grant seeking organizations need to follow, including Subparts A through F as summarized:

- A – Definitions;
- B – Purpose and Applicability;
- C – Administrative Requirement for Federal Agencies;
- D – Procurement, Internal Control, and Subrecipient Monitoring;
- E – Cost Principles; and
- F – Single Audit Requirements.

This paper offers a review of the Procurement Standards under the Uniform Guidance and discusses strategies for grant seeking organizations to achieve compliance with the standards. The paper also takes into account proposed revisions to the Uniform Guidance as of January 2020.

Overview of 2 CFR 200 – Uniform Guidance

What is the Uniform Guidance and to whom does it apply? In December 2013, the Office of Management and Budget (OMB) published 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, also known as the Uniform Guidance.

The Uniform Guidance applies to all nonfederal entities that are recipients of federal funds. Nonfederal entities are described under 2 CFR 200 Subpart 69 as State or Local Government, tribal governments, institutions of higher education, or nonprofit organizations that are prime or subrecipients of a federal award in the form of a grant or contract.

Although the OMB published the Uniform Guidance in December 2013, given the significance and complexity of the guidelines, adoption of the procurement standards was deferred through 2016 and then extended for one additional year through December 2017. This grace period allowed organizations ample time to make the changes necessary to implement the new requirements.

Implementation of the General Procurement Standards

The implementation of 2 CFR 200 Subpart 318, the Procurement Standards, started with fiscal years beginning after December 2017. This meant that, for example, if the nonfederal entity's fiscal year ended on December 31, 2017, the effective date of the Uniform Guidance for that entity would have been January 1, 2018.

Example of Implementation Timeline for the Procurement Standards

Fiscal Year End for Nonfederal Entities	Due Date for Implementation of Procurement Standards
December 31, 2017	January 1, 2018
April 30, 2017	May 1, 2018
June 30, 2017	July 1, 2018

Most organizations, by now, have already implemented the General Procurement Standards, including a revision of procurement and accounting practices, and policies and procedures. Here are key areas of compliance for institutions of higher education and other qualified nonprofit or research institutions.

Key Areas of Compliance under the Uniform Guidance

1. Nonfederal Entities Must Have Documented Procurement Procedures that Conform to the Uniform Guidance

In the Uniform Guidance, 2 CFR 200.318 outlines the general procurement standards that nonfederal entities must follow if they are recipients of federal funds. Nonfederal entities *must* use their own documented procurement procedures, which not only reflect state and local regulations, but must also conform to applicable federal laws identified under the procurement standards. Nonfederal entities are also required to have written rules of conduct covering conflicts of interest that govern the actions of employees engaged in any part of the procurement process.

The following Subparts under 2 CFR 200 are also of importance to nonprofits and other grant seeking organizations:

- Maintain records to detail the history of procurement (200.318).
- Maintain oversight over contractors and subrecipients to ensure they perform in accordance with terms and conditions and specifications of contract (200.318).
- Construction projects may only use time and material contracts when no other alternative is feasible and must consider value engineering as a cost saving mechanism (200.318).
- Contracts must be awarded only to those contractors deemed responsible with the ability to perform successfully under the terms of the proposed procurement (200.318).
- Procurement must be conducted in an environment that provides for full and open competition (200.319).
- Prequalification lists, when used, must include sufficiently qualified sources to maintain full and open competition (200.319).
- Solicitations must outline the method of procurement to be followed and must contain clear and accurate description of the technical requirements for the goods or services, as well as document the criteria used for evaluating proposals and determining awards (200.320).
- Affirmative steps must be taken to ensure participation from women and small minority-owned businesses (200.321).
- Avoid acquisition of unnecessary or duplicative items. Consider procurement of recovered materials (200.322).
- Cost and price analyses must be conducted on each procurement action above the simplified acquisition threshold (200.323).
- Bonding requirements (200.325)

2. *Procurement must be Conducted Utilizing One of the Five (5) Procurement Methodologies Under the Uniform Guidance*

The Uniform Guidance identifies five (5) allowable procurement methods (2 CFR 200.320) that grant seeking organizations must follow:

- Micro-purchases;
- Small purchases;
- Sealed bid;
- Competitive proposal; and
- Noncompetitive proposal or sole source.

Allowable Procurement Methods Under the Uniform Guidance

Methodology	Dollar Threshold	Requirements
Micro-purchase	Not to exceed the micro-purchase threshold of \$10,000	No bid or quote required if price is deemed fair and reasonable. Reasonableness may be determined utilizing published pricing, catalog pricing, or other historical pricing.
Small purchase	Greater than \$10,000 and not exceeding the simplified acquisition threshold of \$250,000	Quotes must be obtained from an adequate number of sources (at least two), and the process must be documented.
Sealed bid	Greater than the simplified acquisition threshold of \$250,001	A complete, adequate, and realistic specification of the requirements must be available, and the procurement must lend itself to a firm fixed price contract. Selection can be made, mainly on the basis of price, to the most responsive and responsible bidder.
Competitive proposal	Greater than the simplified acquisition threshold of \$250,001	Must be publicly advertised and the solicitation must identify the evaluation factors and their importance relative to the award. Proposals must be solicited from an adequate number of qualified sources and there must be a written method for conducting the technical evaluations. Contracts may only be awarded to responsible bidders that are most advantageous, price and other factors considered.
Noncompetitive proposal (Sole Source)	Greater than the micro-purchase threshold of \$10,000	Used only when a single source is available, during public exigency or emergency, or when after solicitation of a number of sources competition is deemed inadequate. Justification of the use of noncompetitive proposal must be documented, along with price reasonableness.

Strategies for Nonprofit Organizations to Ensure Compliance with the Procurement Standards

Should nonprofit organizations adopt application of the Uniform Guidance to all procurement, or should they adopt the guidelines only for projects utilizing federal funds? There is no right or wrong answer as to what will work best for any one organization, but there are several factors that must be considered before deciding on any one approach.

First, there are merits to adopting the Uniform Guidance to all procurement actions within the organization. This would create one set of rules that would simplify and standardize the procurement process. One set of rules also lowers the risks associated with projects utilizing mixed funding if funds are transferred between accounts.

On the other hand, for some, adopting the Uniform Guidance for all procurement actions would be extremely onerous and could strain resources and add to the administrative burden of faculty, staff, and administrators, and may even end up doing more harm than good. In such cases, the guidelines should be adopted only for projects that are federally funded. If there are merely a handful of projects or departments within an organization that receive federal funding, adoption of the guidelines on a per-project basis may be the best approach. This way the vast majority of projects would be exempt from the more stringent guidelines should those projects allow for greater flexibility.

Notwithstanding these viewpoints, each organization will need to review its own set of circumstances and decide on the best approach for its particular set of conditions. Each organization should also consider these key points:

1. If you cannot separately track federal dollars from start to finish, it may be best to consider adoption of the Uniform Guidance as best practice for all procurement actions.
2. You may consider using an e-procurement system for high volume, low dollar value items such as those within the small purchase threshold. This will help to centralize these purchases and give procurement and grant professionals some visibility so there is oversight over the process.
3. Each procurement action should be documented and good records kept for auditing purposes.
4. Organizations must keep abreast of changes to the Uniform Guidance and make changes to policies and procedures as needed to remain compliant.

Conclusion

Complying with the Uniform Guidance is not easy, but noncompliance is not an option for nonprofit organizations and other grant seeking institutions that rely on federal funds. Adoption of the guidelines as best practice throughout the organization may be the best approach to manage compliance challenges. This does not mean that procurement needs to be centralized, but rather that everyone involved in the procurement process must follow the same set of guidelines to the extent possible. If this is not feasible, then consider an approach where all purchases over a certain threshold, such as the small purchase threshold of \$10,000 or a higher formal competitive threshold, are centralized.

For some organizations, neither of these options is feasible. In such a case, efforts should be made to ensure that the organization develops a standard set of rules and that everyone follows the same set of rules for procurement. Those rules should adopt applicable sections of state and federal laws including applicable sections of the Uniform Guidance. The organization should offer training to all employees involved in the procurement process, no matter how minor the involvement or role.

It would also be prudent to conduct periodic review of the organization's policies and procedures to make sure they are current and reflect the Uniform Guidance, which may change from time to time. For example, on January 22, 2020, the Office of Management and Budget (OMB) released a proposed notice titled "*Guidance for Grants and Agreements*" with the objective of, among others, to clarify areas of misinterpretation in current requirements. Although the period for public review and comments has since passed, nonprofit organizations must remain alert for periodic changes that may affect their operations.

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Dr. Harris started her career as a Procurement Specialist at the United Nations Development Program over 19 years ago. She also served as President to the National Contract Management Association, San Diego Chapter (NCMA), and holds a Doctorate in Organizational Leadership from Pepperdine University. She can be reached at theresaharris@sandiego.edu.