Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards

Presented by: Al Brooks
Director of Research/Major Contracts, Iowa State University
Introduction

This presentation will allow participants to discuss the major components of the Uniform Guidance and highlight several requirements that universities and colleges are finding difficult to implement. It is my hope that through dialog with the higher education community we can glean best practices or approaches for implementing the Uniform Guidance.
Uniform Guidance Basics

Purpose

“This reform of OMB guidance will improve the integrity of the financial management and operation of Federal programs and strengthen accountability for Federal dollars by improving policies that protect against waste, fraud, and abuse.”

Major changes from OMB A-110C

- Requires recipients to report of Conflicts of Interest
- Adds “a tangible personal benefit” to situations that pose a conflict of interest
- Requires conflict of interest polices for the recipient’s affiliated organizations
- Adds bid limits that mirror the Federal Acquisition Regulations (FAR)
- Allows sole source procurement with caveats
- Requires independent cost estimates prior to bidding
Major changes from OMB A-110C

BUT WAIT, THERE’S MORE!
Uniform Guidance Basics

Major changes from OMB A-110C continued

- Restricts the use of geographical or local preferences
- Defines situations that restrict competition including “any arbitrary action in the procurement process.”
- Requires procurement of recovered materials
- Requires proof of contract and sub-award fulfillment
- Includes arbitrary action in the procurement process in the cost reasonableness test
Areas presenting challenges when implementing Uniform Guidance

- Managing Conflicts of Interest
- Prohibited use of geographical preferences
- Competition for procurements at $3,500 the micro purchase limit
- Independent cost estimates
- Negotiating profit on sole source contracts
- Purchase of Recovered materials
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Managing Conflicts of Interest

Here are the sections related to conflict of interest management:

Creating a Conflict of Interest Policy §200.112 Conflict of interest.

Develop written standards of conduct covering conflicts of interest and the actions of employees engaged in the selection process §200.318 General procurement standards.

Develop standards for Organizational Conflicts of Interest with affiliates §200.318 General procurement standards.

Review non-organizational professional activities for conflicts of interest §200.430 Compensation—personal services.
Sources of Information on Managing Conflicts of Interests

Counsel On Governmental Relations (COGR)- Recognizing and Managing Personal Conflicts of Interest

The Federal Government Contracts & Procurement Blog – Organizational Conflict of Interest (OCI) – What is it?
Uniform Guidance Basics

Discussion

Uncle Sam says -

GARDEN

to cut food costs

Ask the -

U.S. Department of Agriculture, Washington, D.C.

for a FREE Bulletin on Gardening - it's food for thought
Prohibitions on use of geographical preferences

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.

§200.319 Competition.
Geographical Preferences

Does your State, Local Government or Governing Board prescribe geographical preferences?
Examples would be:

✓ Preference for buying from State or local businesses
✓ Restricting companies from certain areas or states from bidding
✓ Specifying products known to come from a limited regional market base
Discussion
Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

An adequate number of sources is stated as two (2) in the COFAR FAQ of 2015 and three (3) in FAR Part 6.
Small Purchase Procedures - Strategies for Compliance

✓ Develop competitively bid contracts for items most likely to be purchased such as general scientific equipment and supplies, chemicals, computers, software and hardware, etc.

✓ Utilize cooperative contracts that have been formally bid such as E&I, U.S. Communities, NASPO (formerly WSCA), MiCTA, etc.

✓ Reduce P-Card limits to meet the $2,999.99 maximum
Help him to help U.S.!

Help the Horse to Save the Soldier

THE AMERICAN RED STAR ANIMAL RELIEF
National Headquarters, Albany, N.Y.
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. §200.323 Contract cost and price.
Strategies to provide independent estimates

- Use procurement records to create estimates, add for inflation if previous transactions are several years old.
- Utilize third party such as The Advisory Board Company’s cohort price data base. [https://www.advisory.com/](https://www.advisory.com/)
- Request price information through colleagues.
- The NAEP Forum is also a good venue to request price information
Discussion
(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. §200.323 Contract cost and price.
There are several sources to help determine allowable profit. However, you must determine the contractor’s true costs before determining profit.

FAR PART 31 – **Contract Cost Principles and Procedures** provides guidelines for determining cost [https://www.acquisition.gov/?q=/browse/far/31](https://www.acquisition.gov/?q=/browse/far/31)

FAR Part 15 – **Contracting by Negotiation**, section 15.404-4 discusses the amount of allowable profit on a Federal contract which is 10% unless the contractors takes financial risks. [https://www.acquisition.gov/?q=/browse/far/15](https://www.acquisition.gov/?q=/browse/far/15)

Defense Department - **Contract Pricing and Finance Guide Chapter 11**
Sources to help with negotiating profit - continued

**USAID - Independent Government Cost Estimate Guide and Template**

**USAID - Cost Analysis Key Components Guidance and Checklist**

**HUD - Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients**
Discussion
Procurement of recovered materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable... §200.322  Procurement of recovered materials.
Procurement of recovered materials - continued

Some of the key requirements of CFR 40 Part 247 include:

(a) Preference program for purchasing the designated items;
(b) Promotion program;
(c) Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and
(d) Annual review and monitoring of the effectiveness of the program.
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Discussion

It's Your America!
HELP THE TEN-YEAR ROLL CALL

1940 CENSUS
HARRY L. HOPKINS U.S.A. WILLIAM L. AUSTIN
Uniform Guidance Updates


OMB allows an additional year for Procurement compliance Fiscal years ending before December 31, 2016


OMB allows an additional year for Procurement compliance Fiscal years ending before December 31, 2017

October 1, 2015 Federal Acquisition Regulations (FAR) raise the micro-purchase threshold to $3,500 which also raises the limit in Uniform Guidance. [https://www.federalregister.gov/documents/2015/07/02/2015-16206/federal-acquisition-regulation-inflation-adjustment-of-acquisition-related-thresholds]
Uniform Guidance Updates - continued

**January 20, 2016** – Council on Government Relations submits letter on *Implementation of Sensible Procurement Standards*

The letter requests modification the micro-purchase limit from $3,000 to $10,000 with an option to request a $20,000 limit. Also requested were clarifications and changes to 2 CFR Sections 200.317-326. As of the April 13, 2016 CFO news letter no action has been taken to address these request.

Uniform Guidance Updates - continued

May 4, 2016 – Council on Government Relations through the COGR LISTSERV sends out procurement survey. Results were due May 19th.

July 12, 2016 – Council on Government Relations through the COGR LISTSERV sends out a list of issues that OMB and COGR intend to finalize. This includes:

- Extension of the grace period to the recipient’s FY19;
- Allowing comment on the $3,500 micro-purchase threshold; and
- Regardless of further modifications Procurement Standards will become effective FY19, or July 1, 2018 for most institutions.

In an NSF audit of the University of Washington released on February 11, 2016, auditors stated: An “FAQ is informal and non-authoritative” in a dispute over salary re-budgeting. The implication is that unless the specific direction offered in a FAQ response is codified in the CFR it is non-binding and the CFR version applies.

The Department of Housing and Urban Development has interpreted the UG bidding requirements similar to the FAR clauses. If only one bid is received, there is no price comparison. Therefore a cost and price analysis must be performed and profit negotiated.

Uniform Guidance Basics

Sources for information on the Uniform Guidance

Office of Management and Budget: https://www.whitehouse.gov/omb/gils_gil-home


Council on Governmental Relations: http://www.cogr.edu/


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Closing remarks

GIVE IT YOUR BEST!