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-Your organization's internal written policy must define the number and methods of obtaining quotes.

What is required for above simplified acquisition threshold purchases?

-Sealed bids are the preferred method for procuring construction services. The *Uniform Guidance* requires that sealed bids contain project specifications or a purchase description, that a minimum of 2 bidders are solicited, that the solicitation be bid at a fixed price, and the solicitation and bid opening be made public.

-The other option for procurement for non-construction items/services is competitive proposals. In this case, a request for proposal is required along with an adequate number of bidders, and a written method of evaluation, considering price and other advantageous factors.

-A cost or price analysis must be performed.

There are scenarios where non-competitive proposals can be sought when acquisition costs are above or below simplified acquisition thresholds. These scenarios include:

-The item and service is only available from one single source.

-A public exigency or emergency won't permit a delay resulting from competitive solicitation.

-The federal awarding agency or pass-through entity has expressly authorized non-competitive proposals.

-After solicitation of several sources, competition is determined to be inadequate.

The following general standards must be adhered to for **all purchase types**:

-The purchase complies with written procurement policies and procedures.

-Procurement must be necessary.

-Procurement can't present a conflict of interest.

-Procurement must be subject to full and open competition.

**Procurement Under The Uniform Guidance**

In December 2013, the U.S. Office of Management and Budget (OMB) issued comprehensive grant reform rules titled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." (*Uniform Guidance*). Under the *Uniform Guidance*, procurement is one of the areas that had significant changes. Note that there was a grace period which delayed the applicability of the Procurement Standard for two full fiscal years, but beginning with fiscal years that commence on January 1, 2017, this Standard is now applicable.

**Procurement Types**

There are three main procurement types:

1. Micro Purchases – purchase threshold of \$3,500
2. Simplified Acquisition Or Small Purchase Procedure – small purchases of less than \$150,000
3. Above Simplified Acquisition Threshold – purchases greater than \$150,000

What is required for micro purchases?

-No bid or quote process is required.

-Micro-purchases should be equitably distributed among qualified suppliers.

-No cost or price analysis is required.

What is required for small purchase procedures?

-Price or rate quotations must be obtained from an adequate number of qualified sources.

-Proper documentation of purchase.

## Procurement Records

To be in compliance with the *Uniform Guidance*, your organization must adhere to the following requirements for your procurement records.

- You must use your own documented procurement procedures.
- You must maintain oversight over contractors.
- You have documented written standards of conduct covering conflicts of interest and governing employees who select, award, or administer contracts.
- You maintain written standards of conduct covering organizational conflicts of interest (i.e. parent, affiliate, or subsidiary organizations).
- You must maintain records that provide the history of the procurement (rationale for purchase, selection of contract type, contractor selection, and the basis for contract type).

## Contract Cost and Price

What does the *Uniform Guidance* require regarding contract cost and price?

- You must make an independent estimate before receiving bids or proposals.
- You must negotiate profit as a separate element of the price for each contract for which there is no price competition, and in all cases where a cost analysis is performed.
- To establish a fair and reasonable profit, the following should be taken into account:
  1. Complexity of work performed
  2. Risk borne by contractor
  3. Contractor's investment
  4. Amount of subcontracting
  5. Industry profit rates in the surrounding geographical area for similar work

- Costs/prices based on estimated costs for contracts are allowable if the costs incurred or cost estimates would be allowable under Subpart E – Cost Principles for the entity.
- Cost plus a percentage of cost and percentage of construction cost methods must not be used.

When are time and material type contracts allowed and what is required?

Time and material type contracts are permissible when your organization has determined that no other contract is suitable. A time and material type contract is defined as a contract whose cost to the non-federal entity is the sum of the actual cost of materials and direct labor hours charged at a fixed hourly rate (wages, general & administrative expenses, and profit). A time and material type contract is generally an open-ended contract price, where the contract sets a ceiling price that the contractor exceeds at its own risk. For this type of contract, you must assert a high degree of oversight to ensure the contractor is using efficient methods and effective cost controls.

## Contract Provisions

What provisions must be in your acquisition contract?

- Equal Employment Opportunity
- Davis-Bacon Act
- Contract work hours and safety standards act
- Right to inventions made under a contract or agreement
- Clean Air Act
- Debarment and suspension (refer to [www.sam.gov](http://www.sam.gov), a website database of people or entities that are suspended or debarred from performing federally funded work)
- Byrd Anti-Lobbying Amendment

For contracts greater than \$150,000, the contract provisions must address administrative, contractual, or legal

remedies where contractors violate or breach contract terms.

For contracts greater than \$10,000, the contract provisions must address termination for cause.

### **How Can Your Organization Comply With the Updated Procurement Requirements?**

1. Ensure all the “musts” in the *Uniform Guidance* are followed.
2. Update your procurement policies
  - Implementation of purchase checklists and forms
  - Determine what the “adequate number of source” definition is for your organization.
  - Use small business enterprises and minority, women, and veteran owned businesses when feasible.
  - Ensure that policies are written, documented, and communicated.
  - Monitor new policies.
  - Assess internal controls along with policies.
3. Update your standard contract wording (refer to Appendix 2 of the *Uniform Guidance*).
4. Identify conflicts of interest among employees with contract or procurement responsibilities.
5. Devote resources to the training and hiring of employees who are procurement specialists.
6. Utilize pre-qualified bidder lists.