The Procurement and Management of Property Under the OMB’s Grant Reform Guidance

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Erin Auerbach, Esq.
Brustein & Manasevit, PLLC
Bruman.com
## What is Superseded?

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-102</td>
<td>• Administrative Rules State / Local</td>
</tr>
<tr>
<td>A-110</td>
<td>• Administrative Rules Postsecondary/ Nonprofit</td>
</tr>
<tr>
<td>A-87</td>
<td>• Cost Rules – State / Local</td>
</tr>
<tr>
<td>A-21</td>
<td>• Cost Rules – Rules – Postsecondary</td>
</tr>
<tr>
<td>A-122</td>
<td>• Cost Rules – Nonprofit</td>
</tr>
<tr>
<td>A-133</td>
<td>• Audit Rules (&gt;$750,000)</td>
</tr>
</tbody>
</table>
Who is covered?

• All “nonfederal entities” expending federal awards
Who crafted the changes?

• “COFAR”
  • Council on Financial Assistance Reform, and Key Stakeholders
  • www.cfo.gov/cofar

• Published by OMB
Key Dates:

- Feb 1, 2013 • NPRM
- Dec 19, 2013 • Final
- Dec 26, 2013 • Federal Register
- June 26, 2014 • Agencies Submit Draft Changes
- Aug 29, 2014 • COFAR Releases FAQs
- Dec 26, 2014 • Final Regulations Published
Inconsistency Between Program Statute and Circular

• If federal program statute or regulation differs from the uniform grant guidance, then statute / regulation governs.
• COFAR FAQs:
  • Uniform Grants Guidance applies to new awards and incremental funding after 12/26/14
    • COFAR FAQs § 110-5 and 110-7: “The Uniform Guidance will apply to new Federal awards made after [12/26/2014] and, if a Federal agency considers its incremental funding actions to be opportunities to change terms and conditions on previously made awards, the Uniform Guidance will apply to that Federal awarding agency’s incremental funding actions also.”
  • Applications for awards made after 12/26/14 should be developed in accordance with Uniform Grants Guidance
    • COFAR FAQs § 110-4
Grace Period for Procurement

• COFAR FAQs:

• Procurement Grace Period: “[I]n light of the new procurement standards, for procurement policies and procedures, for the non-Federal entity’s first full fiscal year that begins on or after December 26, 2014, the non-Federal entity must document whether it is in compliance with the old or new standard, and must meet the documented standard. . . . For future fiscal years, all non-Federal entities will be required to comply fully with the uniform guidance.”

• COFAR FAQs § 110-6
The Uniform Grant Guidance has a **MAJOR** emphasis on “strengthening accountability” by improving policies that protect against waste, fraud and abuse.
NEW: Required certifications 200.415

- **NEW:** Official authorized to legally bind the non-federal entity must **certify on annual and final fiscal reports or vouchers requesting payment:**
  
  - “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete and accurate and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information or the omission of any material fact, may subject me to criminal civil or administrative penalties for fraud, false statements, false claims, or otherwise.”
Procurement
Procurement Rules

Procurement Standards: § 200.317 - 200.326
Procurement Standards

Uniform Grant Guidance - 200.317
- Still provides flexibility for States: “[A] state must follow the same policies and procedures it uses for procurements from its non-federal funds.”
- All other nonfederal entities follow policies and procedures under Section 200.318-0200.326.
Procurement Standards - NEW

- Uniform Grant Guidance: All nonfederal entities must have documented procurement procedures which reflect applicable Federal, State, and local laws and regulations.
  - 200.318(a)
Ensuring Purchases are Necessary

• **All** costs have to be necessary for the performance or administration of the federal grant

• Therefore, must review all proposed purchases to avoid unnecessary or duplicative items
  • Surplus property
  • Structure procurement to obtain most economical purchase
  • Intergovernmental agreement for common goods or services
  • Lease vs. purchase
Open Competition

• All procurement transactions must be conducted with full and open competition.
  • Must have written code of conduct for all employees engaged in the award and administration of contracts (including conflict of interest policy)
  • Must have protest procedures to handle disputes

• To eliminate unfair advantage, contractors that develop or draft specifications, requirements, statement of work, and invitations for bids or RFPs must be excluded from competing for such procurements.
  • From OMB Circular A-110, now applicable to all nonfederal entities (200.319(a))
Open Competition

• Situations that restrict competition:
  • Unreasonable requirements on vendors to qualify to do business
    • Pre-qualified lists should not limit competition
  • Requiring unnecessary experience or excessive bonding
  • Noncompetitive pricing practices
  • Noncompetitive awards to consultants on retainer
  • Organizational conflicts of interest
  • Specifying a brand name
  • Any arbitrary action in the procurement process
  • In-state or local preferences
Conflict of Interest

- Must maintain written standard of conduct, including conflict of interest policy.
- A conflict of interest arises when any of the following has a financial or other interest in the firm selected for award:
  - Employee, officer or agent
  - Any member of that person’s immediate family
  - That person’s partner
  - An organization which employs, or is about to employ, any of the above or has a financial interest in the firm selected for award.
Conflict of Interest

- Policy must cover gratuities and provide for disciplinary actions for violations.
Conflict of Interest - NEW

• If the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state or local government the entity must also maintain written standards of conduct covering organization conflicts of interest! 200.318(b)(2)

• All non federal entities must establish conflict of interest policies, and disclose in writing any potential conflict to federal awarding agency in accordance with applicable Federal awarding agency policy. 200.112
Cost/Price Analysis

• Must perform a cost or price analysis in connection with every procurement action, including contract modifications
  • NEW (200.323): Only required for costs in excess of the simplified acquisition threshold ($150,000)
  • Cost analysis generally means evaluating the separate cost elements that make up the total price (including profit)
  • Price analysis generally means evaluating the total price
Cost/Price Analysis

• Goal of a cost/price analysis is to determine reasonableness (because all costs must be reasonable):
  • Fair market value
  • Arms length bargaining
  • Act with prudence under the circumstances
Cost/Price Analysis

• Method and degree of cost or price analysis depends on the particular facts and circumstances

• Must make independent estimate before receiving bids or proposals
Vendor Selection Process

- Must have written selection procedures
- Procedures must ensure all solicitations:
  - Include a clear and accurate description of technical requirements
  - Identify all requirements vendor must fulfill
  - Identify evaluation factors
Vendor Selection Process: New for IHEs and Non-profits

- Method of procurement:
  - NEW: Micro-purchase
  - Small purchase procedures
  - Competitive sealed bids
  - Competitive proposals
  - Noncompetitive proposals

- 200.320
Vendor Selection Process:
NEW: Micro-Purchase

• Acquisition of supplies and services under $3,000 or less.
• May be awarded without soliciting competitive quotations if nonfederal entity considers the cost reasonable.
• To the extent practicable must distribute micro-purchases equitably among qualified suppliers.
• 200.320(a)
Vendor Selection Process: Small Purchase Procedures

• Good or service that costs $100,000 or less (NEW: $150,000 under 200.88)
  • Organization may set lower threshold
• Must obtain price or rate quotes from an adequate number of qualified sources
• “Relatively simply and informal”
Vendor Selection Process: Competitive Sealed Bids

• Appropriate when:
  • A complete, adequate and realistic specification or description of good or service is available
  • Selection of vendor can be made principally based on price
  • Firm-fixed price contract
Vendor Selection Process: Competitive Sealed Bids

- An invitation for bids must be publicly advertised
- Bids solicited from an adequate number of sources
- Must provide sufficient time to submit bids
- Must include all specifications so bidder can properly respond
- All bids must be publicly opened at time and place announced in invitation for bids
Vendor Selection Process: Competitive Sealed Bids

• Award firm fixed-price contract to lowest responsive and responsible bidder
• Any or all bids may be rejected if there is a “sound documented reason”
Vendor Selection Process:
Competitive Proposals

• Appropriate when:
  • Not feasible to draft clear specification or description of good or service
  • Not feasible to award contract principally based on price
  • Fixed-price or reimbursement contract
    • Note that reimbursement contract is generally disfavored
Vendor Selection Process: Competitive Proposals

- RFP identifies all evaluation factors and their relative importance identified – RFP publicized
- Proposals solicited from an adequate number of sources
- Must have method for evaluating proposals and selecting vendor
Vendor Selection Process: Competitive Proposals

• Award contract to responsible vendor whose proposal is most advantageous to the program, considering price and other factors
Vendor Selection Process: Noncompetitive Proposals
New for IHEs and Nonprofits

• Appropriate only when:
  • The good or services is available only from a single source (sole source)
  • There is a public emergency
  • The awarding agency authorizes
    o NEW: awarding agency or pass-through must expressly authorize noncompetitive proposals in response to written requires from nonfederal entity. 200.320(f)(3)
  • After soliciting a number of sources, competition is deemed inadequate
Vendor Selection Process: Noncompetitive Proposal

- As a practical matter, noncompetitive contract raises “red flags”
  - Ensure persuasive and adequate documentation to facilitate audit
Vendor Selection Process

• Can only contract with responsible contractors possessing the ability to perform successfully:
  • Contractor integrity
  • Compliance with public policy
  • Record of past performance
  • Financial and technical resources

• 200.318(h)
Vendor Selection Process

• Cannot contract with vendor who has been suspended or debarred
  • Excluded Parties List System in the System for Award Management (SAM)
  • 2 CFR Part 180 (OMB Debarment Suspension Rules)
  • Appendix II(I)
Vendor Selection Process

• For contracts over $25,000 you must verify that the person with whom you intend to do business is not excluded or disqualified.

• This MUST be done by either:
  a. Checking SAM; or
  b. Collecting a certification from that person; or
  c. Adding a clause or condition to the covered transaction with that person.

• 2 C.F.R. 180.300
Procurement Records

• Must maintain records sufficient to detail the history of procurement.
• These records will include, but are not limited to:
  • Rationale for method of procurement
  • Selection of contract type
  • Contractor selection or rejection
  • Basis for the contract price
• Under the Uniform Grant Guidance this standard applies to ALL nonfederal entities: 200.318(i)
All contracts supported with federal funds must contain certain required provisions:

• Remedies for breach, sanctions, penalties
• Termination for cause and convenience
• Compliance with federal statutes and executive orders
• Reporting requirements
• Patent rights
• Copyrights
• Access by federal agency, Comptroller General of US to records of contractor
• Retention of records for 3 years after final payment
Contract Administration: Institutions of Higher Education, Hospitals, Other Nonprofits

- All contracts supported with federal funds above the small purchase threshold must contain certain required provisions:
  - Remedies for breach, sanctions, penalties
  - Termination for cause and convenience
  - Compliance with federal statutes and executive orders (all contracts)
  - Access by federal agency, Comptroller General of US to records of contractor
• Appendix II include required provisions
  • Administrative, contractual, legal remedies
  • Termination for cause or convenience
  • Equal Employment Opportunity requirements
  • Davis-Bacon Act
  • Etc., all as applicable.

• 200.326
• Nonfederal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract
• 200.318(b)
Contract Administration

• As a practical matter:
  • Must have written contracts (purchase order ok)
  • Contract should include clearly defined deliverables
    • Description of services to be performed or goods to be delivered
    • Description of dates when services will be performed or goods delivered
    • Description of locations where services will be performed or goods delivered
    • Description of number of students/teachers/etc. to be served (if applicable)
Contract Administration

- Invoice should be reviewed & approved before payment
  - Internal Controls
    - Segregation of duties
    - Documented approvals
    - Etc.
Property Management
Inventory Management

• Must have adequate controls in place to account for:
  • Location of equipment
  • Custody of equipment
  • Security of equipment
What is equipment?

- Equipment: tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.
- 200.33
Supplies

- Anything that is not equipment is considered supplies. 200.94

- NEW: Computing devices
  - Machines used to acquire, store, analyze, process, public data and other information electronically
  - Includes accessories for printing, transmitting and receiving or storing electronic information
  - Computing devices are supplies if less than $5,000
• Regardless of cost, grantee must maintain effective control and “safeguard all assets and assure that they are used solely for authorized purposes.” 200.302(b)(4)
Ownership

- Generally, title to equipment purchased with federal funds vests in the organization that made the purchase.
Inventory Management

• Must have inventory management system
  • Property records
    • Description, serial number or other ID, title info, acquisition date, cost, percent of federal participation, location, use and condition, and ultimate disposition
  • Physical inventory
    • At least every two years
  • Adequate maintenance procedures to keep property in good condition
  • Control system to prevent loss, damage, theft
    • All incident must be investigated
Inventory Management

• Equipment must be used for the program or project for which it was acquired as long as needed, whether or not the program or project continues to be funded.

• **NEW:** Cannot “**encumber**” the property without approval of Federal agency or Pass-through agency. 200.313(a)(2) and 200.313(c)(1)
Use of Grant-Acquired Equipment - Clarified

- During the time that equipment is used for original purpose, the nonfederal entity must make equipment available for use on other programs of projects as long as shared use will not “interfere”:
  - 1st preference – projects supported by federal awarding agency
  - 2nd preference – project funded by other federal agencies
  - 3rd preference – use for non federally funded programs

- 200.313(c)(2)
• When grantee acquiring replacement equipment, the equipment to be replaced may be used as a “trade-in” without recourse to federal agency

• 200.313(c)(4)
Inventory Management

• When no longer needed for original purpose, equipment must be used in other activities supported by the federal awarding agency in the following order:
  • 1st preference – activities under federal award from same federal agency
  • 2nd preference – activities under federal award from other federal agency
Disposition-Equipment

• When property no longer needed for original purpose of other federal activity, must follow disposition rules:
  • Over $5,000 – pay federal share
  • Under $5,000 – no accountability

• 200.313(e): Nonfederal entity must request disposition instructions from the federal awarding agency is required by the terms of the grant.
Disposition - Equipment

- Calculation of federal share:
  - Multiply the current market value or proceeds from sale by the federal awarding agencies percentage of participation in the cost of original purpose.
- Nonfederal entity permitted to retain $500 or 10%, whichever is less, for selling and handling expenses. 200.313(e)(2)
Disposition - Supplies

- If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, must compensate the federal government for its share.

- 200.314
Records and Reviews
NEW: Methods for collection, Transmission and storage of information

- When original records are electronic and cannot be altered, there is no need to create and retain paper copies.
- When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided they:
  - Are subject to periodic quality control reviews,
  - Provide reasonable safeguards against alteration; and
  - Remain readable.
- 200.335
NEW: Internal Controls

- **NEW:** Internal controls
  - The non-Federal entity must:
    - Establish and maintain effective control over the federal award.
    - Evaluate and monitor the non-federal entity’s compliance statutes, regulations, and terms of the federal award.
    - **Take prompt action when instances are identified including noncompliance identified in audit findings**
    - Take reasonable measures to safeguard protected personally identifiable information as defined under 200.79
    - **200.303**
QUESTIONS?

• To ask a question online:
  • Use the Q&A option in the chat box on the lower left side of your screen.

• To ask a question via telephone:
  • Press *1 on your touchtone phone.
  • If you are using a speaker phone, please lift the receiver and then press *1.
  • If you would like to withdraw your question, press *1.
Follow-Up Questions

If you have any remaining questions after the conclusion of today’s webinar please do not hesitate to get in touch.

Ask our webinar producer: mbarnes@columbiabooks.com

For more information and great grants related resources feel free to visit us online:

- [http://grants.complianceexpert.com/](http://grants.complianceexpert.com/) (Thompson’s subscription website, federal compliance regulations are available to all free of charge)
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