

FEDERAL PROCUREMENT: PART II

UNIFORM GRANT GUIDANCE

OKASBO ■ NOVEMBER 13, 2020

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FEDERAL PROCUREMENT: UNIFORM GRANT GUIDANCE

- This is a sequel class to Part I offered at the OkASBO Fall 2019 conference.
- Learning Goals and Objectives

At the end of today's session you should have a better understanding of the following:

- Federal Procurement rules as provided in 2 CFR §200.318-326
- Know where to find the Oklahoma State Department of Education Child Nutrition Procurement Manual
- Understand a few special rules regarding child nutrition/school food service procurements

DEFENDING YOUR FEDERAL PROCUREMENT: WHAT WON'T WORK

It is not my fault!

Don't blame me!

I didn't know!

It is not my responsibility!

**ACCEPTANCE OF THE
FEDERAL FUNDS**

=

**ACCEPTANCE
OF RESPONSIBILITY**

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200

PROCUREMENT STANDARDS

§200.317 Procurements by states.

§200.318 General procurement standards.

§200.319 Competition.

§200.320 Methods of procurement to be followed.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

§200.322 Procurement of recovered materials.

§200.323 Contract cost and price.

§200.324 Federal awarding agency or pass-through entity review.

§200.325 Bonding requirements.

§200.326 Contract provisions.

Information in this presentation is current as of November 5, 2020



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.318 GENERAL PROCUREMENT STANDARDS

.318 General standards

- (a) Documented procurement procedures
- (b) Ensure contractor performance
- (c) Written standards of conduct
 - (1) For employees engaged in the selection, award and administration of the contract
 - (2) Organization conflicts for affiliate or subsidiary organizations of the non-Federal entity
- (d) Avoid duplicative and unnecessary items



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.318 GENERAL PROCUREMENT STANDARDS

(e-g) Cost-effective measures (shared services), Federal excess and surplus, value engineering for construction

(h) Award to responsible contractors

(i) Document the procurement history

(j) Time and materials contracts (actual material cost & fixed hourly rate)

- No other contract type is suitable
- Ceiling price for contract
- Contractor assumes risk for expenses above the ceiling

(k) Settlement of contractual and administrative issues (disputes, claims, etc.)

resides with the non-Federal entity



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.319 COMPETITION (a-d)

.319 Competition

(a) Procurement transactions

- Full and open competition
- Ensure objective contractor performance & eliminate unfair competitive advantage (guard against restrictive practices)



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.319 COMPETITION

(a) Other restrictive practices

- Unnecessary bonding and experience requirements
- Noncompetitive pricing practices between firms or affiliated companies
- Consultant contracts on retainer
- Arbitrary procurement actions



(b) No administratively imposed state, local or tribally imposed preferences unless mandated or encouraged by Federal statutes

- Examples:
 - Preference for manufactured in Oklahoma
 - School board policy allows for a local preference

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.319 COMPETITION

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UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.319 COMPETITION

(c) Requires written procurement procedures

- Solicitations (requests for quotes, bids, proposals)
 - Clear and accurate descriptions
 - Where brand name is used “or equal/equivalent” must be used
 - Requirements for the offers

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.319 COMPETITION

(d) Bidder's list

- Keep bidder's list current
- Cannot preclude potential bidders from qualifying during the solicitation period

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT (a-f)

.320 Five (5) methods of procurement

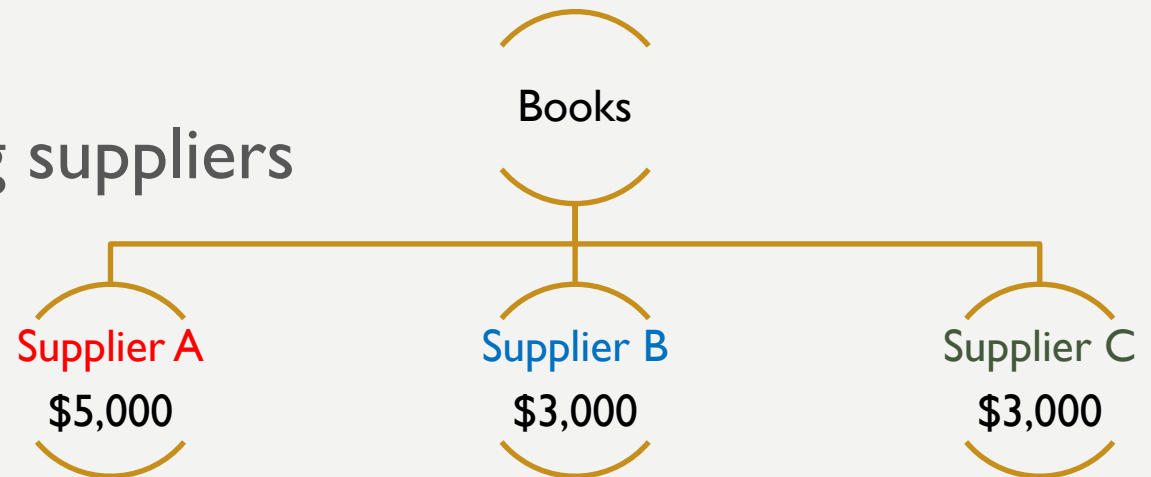
- (a) Micro-purchases
- (b) Procurement by small purchases
- (c) Procurement by sealed bids (formal advertising)
- (d) Procurement by competitive proposals
- (e) Reserved section
- (f) Procurement by noncompetitive proposals

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT

(a) Micro-Purchase

- Threshold determined by Federal Acquisition Regulation (FAR)
- Acquisitions under \$10,000
- Price must be reasonable
- Distribute equitably among suppliers
- No quotes required



Proposed changes: May allow non-Federal entities to increase Micro-purchase thresholds to \$50,000 and higher, subject to special rules. Stay tuned.

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT



Unacceptable – not a Micro-purchase



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT

(b) Small purchases

- Greater than micro-purchase threshold
- Less than \$250,000 (Simplified Acquisition Threshold)
 - Simple and informal procurement methods
 - Price or rate quotations from an adequate number of qualified sources
 - Adequate as defined by OSDE in Child Nutrition is 2
 - Defined in subsection (c) as two or more



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT

(c) Simplified Acquisition Threshold - \$250,000

– Sealed bids

- Check your board policy for lower (bid threshold)
- In Oklahoma, sealed bids required for construction at \$50,000
- Formerly advertised
- Lowest responsive and responsible bidder awarded for sealed bids
- Firm-fixed price contract
- Solicited from adequate number of suppliers
- Public bid opening as advertised

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT

Sealed bids: lowest responsive & responsible

Low bidder

No required bid bond.
No signed non-collusion statement.
No insurance.

2nd low bidder

No deficiencies in the bid response.

Award!

Be sure to document reasons for not accepting the low bidder.



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT

- (d) Competitive sealed proposals (Request for Proposals)
 - \$250,000 or more, but could be used under \$250,000
 - Factors other than price need to be considered
 - Advertised
 - Adequate number of sources
 - Defined technical evaluation and scoring
 - Award to responsible firm whose proposal is most advantageous to the program with price and other factors considered.



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT

Request for Proposals (RFP)

In awarding a competitive negotiation (RFP) a set of award criteria in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. **Price** alone is not the sole basis for award, but remains the **primary** consideration when awarding a contract.

Evaluation Criteria the district can use to award an RFP.

(Price must be given the highest points and award must equal 100 points. If not interested, the district can leave line of award blank.)

<u>Weight</u>	<u>Criteria</u>
_____ (points)	Price
_____ (points)	Service Capability Plan
_____ (points)	Quality
_____ (points)	Experience, References
_____ (points)	Business Practices, Financial Condition/Stability
_____ (points)	Accounting and Reporting System
_____ (points)	_____
_____ (points)	_____
_____ (points)	_____
100 points	TOTAL



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.320 METHODS OF PROCUREMENT

(e) [Reserved]

(f) Procurement by noncompetitive proposals

- Available from a single source
- Pass-through agency approves
- Competition is inadequate after soliciting proposals
- Emergency clause
- Does not exceed micro-purchase threshold (Proposed rule change, stay tuned!)



UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.321 - 326

.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus forms.

- Place such bidders on solicitation lists
- Assure they are solicited as potential sources
- Divide up total requirements
- Establish delivery schedules that encourage participation
- Use services and assistance available for these types of business, e.g. Small Business Administration, minority business development agency of the Department of Commerce

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.321 -326

.322 Procurement of recovered materials

- Purchase exceeds \$10,000
- School district and contractors to comply with Section 6002 of the Solid Waste Disposal Act
- Purchasing materials that contain highest level of recovered materials (recycled materials)
- Procuring solid waste management in a manner that maximizes energy and resource recovery

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.321 - 326

.323 Contract cost and price analysis

- Applies to projects exceeding the Simplified Acquisition Threshold
- Independent estimates for the cost before receiving bids/proposals
- Negotiate profit as a separate element when there is no price competition
- Subject to Subpart E. – Cost Principals
- Cost plus a percentage of construction cost methods cannot be used

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.321 - 326

.324-.326 Other requirements

–.324 Review by pass-through agency

- Requirements for when the pass-through agency needs to approve the procurement

–.325 Bonding

- Requires bonds for construction contracts
 - Bid bond
 - Performance bonds
 - Payment bonds

UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR § 200.321 - 326

.326 Contract provisions (A-J)

- Appendix II to Part II.
- Debarment and Suspension (System of Award Management)
- Contracts exceeding \$10,000 – termination for cause and convenience clause
- Equal Employment Opportunity Clause
- Wage and hour payment requirements
- Anti-kickback laws
- Anti-lobbying

CHILD NUTRITION

Resource: Oklahoma State Department of Education

School Meal Program - Various Documents/Forms

Child Nutrition Manual 2021 (All Sections)

Child Nutrition Manual 2021 (Sections)

1. [Cover and Index of Sections \(pdf\)](#)
2. [Compliance Section \(pdf\)](#)
3. [Eligibility Section \(pdf\)](#)
4. [Procurement Section \(pdf\)](#)
5. [Cafeteria Managers' Section \(pdf\)](#)

CHILD NUTRITION

- 2 CFR §200.318 – 326 rules apply
- USDA 7 CFR § 210 NATIONAL SCHOOL LUNCH PROGRAM
 - Buy American § 210.21
 - Provisions for Buy American must be included in solicitations
 - Purchase to the *maximum extent practicable, domestic USDA Foods or products*
 - *Agricultural USDA Foods produced and processed in the United States*
 - Over 51% of processed foods comes from American –produced products
 - Ref. P-16 of Procurement manual.

CHILD NUTRITION

- Equipment acquisitions of \$5,000 or more must have State Department of Education approval

• Floor mixers	• Oven—convection or conventional	• Range/stove
• Griddle	• Steamer	• Refrigerator/cooler (walk-in or reach-in)
• Freezer	• Warming/cooling table	• (walk-in or reach-in)
• Braising pan/ tilting skillet	• Combination oven/steamer	• Gas range
• Steam table	• Food slicer	• Dish machine
• Buffalo chopper/ vertical cutter	• Serving lines	• Transport carts
• Vent hoods	• Hot water tank	• Booster for dish washer
• Milk boxes	• Proofer	• Warming cart
	• Steam kettle	• Grease traps
	• Refrigerated salad bars	• Kiosk or mobile food carts
		• Refrigerated display cases

P-8 Oklahoma State Department of Education Procurement Section, July 2020

- Formal procurements (Sealed proposals/bids)
 - Purchases over \$250,000 or your district's threshold for sealed bids/proposal or at a lower threshold according to your district's policy.
 - Food Service Management Contracts



RETENTION OF RECORDS

- Reminders...
 - Procurement transactions need to be well-documented
 - Supporting documents, such as copies of quotes, bids, requisitions, purchase orders, affidavits, etc. “...must be retained for a period of **three** years from the date submission of the quarterly or annual financial report..” §200.333

ALMOST THE END, BUT NOT QUITE YET

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LINKS

- Link to the Electronic Code of Federal Regulations 2 CFR § 200

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200__main_02.tpl

- Link to Appendix II. Other clauses

https://www.ecfr.gov/cgi-bin/text-idx?SID=81d28c4d9c8edf21974ff4e980755556&mc=true&node=ap2.1.200_1521.ii&rgn=div9

- Link to OSDE Child Nutrition Procurement Document

<https://sde.ok.gov/sites/default/files/4%20-%20%20Procurement.pdf>

THE END

- Question or comments

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