



Uniform Guidance and Procurement

Challenges for Higher Ed

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Disclaimer

- ▶ Any interpretations are that of ourselves and what our Universities have deemed appropriate for compliance with Uniform Guidance. Please conduct your own due diligence and/or contact your University's legal team(s) for further guidance
- ▶ Nothing in this presentation constitutes legal advice



Legal Disclaimer

Terms

- ▶ UG = Uniform Guidance
- ▶ IHE = Institution of Higher Education
- ▶ NFE = Non-Federal Entity
- ▶ MPT = Micro-Purchase threshold
- ▶ SAT = Simplified Acquisition Threshold
- ▶ SMBE = Small & Minority Businesses

Purchasing Thresholds Codified

- ▶ Federal Register Made the following updates:
 - ▶ Micro-Purchase Threshold changed from \$3,500 to \$10,000
 - ▶ Simplified Acquisition Threshold increased from \$150,000 to \$250,000
- ▶ Source: [Federal Register](#)
- ▶ Effect on Audits



Conflict of Interest

- ▶ Must maintain written Conflicts Of Interest policy standards
- ▶ “No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest”
 - ▶ **Managed conflicts not allowed. This is an outright bar on conflicts**
- ▶ Affected: “employee, officer, or agent any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract”
- ▶ Exception for unsubstantial financial interest or nominal value of a gift
 - ▶ Statement when requesting a PO or contract that the requestor has no conflict
 - ▶ Have a conflict of interest disclosure process
 - ▶ Institute a review process for conflicts that may occur
 - ▶ Communication with departments related to bid process and conflicts (i.e.



Surplus Property

- ▶ The non-Federal entity is **encouraged** to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs
- ▶ Agents make a judgement decision on when it is reasonable to check
- ▶ Let the community know its options ([UCONN Opportunities](#))
 - ▶ UConn has multiple equipment share opportunities as well as surplus property programs (UConn and UConn Health, and the State program)
- ▶ Documentation: Attestation button in eProcurement system:
 - ▶ “If this purchase is on a federal grant, I assure, based on the confirmation from the Principal Investigator, this purchase is necessary for the research sponsored by the grant and reasonable efforts were made to source accessible or available equipment, and for NSF grants no existing equipment is reasonably available and accessible.”



Sample Language

- ▶ **Federal Excess Property** (When applicable, Procurement will check with local Federal Excess Property for items in lieu of procuring new items when the use is feasible and will result in a lower cost to the project.)
- ▶ Federal Surplus is available through Iowa Prison Industries at <http://www.iaprisonind.com/store/c/27-Federal-Surplus.aspx>. Current contact in Iowa for federal surplus property (IPI):
- ▶ **Clint Schmidt**
Iowa Federal Surplus Property
600 South East 18th Street
Des Moines, IA 50317
Phone: [515-266-6913](tel:515-266-6913)
Email: clint.schmidt@iowa.gov
Fax: [515-263-4910](tel:515-263-4910)
- ▶ Procurement will also access federal surplus property information at <https://gsaccess.gov/> and work to procure through IPI when needed.

Time & Material Contracts

- ▶ Only allowed after determining that no other contract type is suitable (not better) AND if the contract includes a ceiling price that the contractor exceeds at its own risk
 - ▶ T&M contracts to include scope for each project with a fixed ceiling
 - ▶ Only use when necessary
 - ▶ Look to bid or informally compete on federal funds
 - ▶ Periodic reviews/site visits/customer feedback to ensure that contractor is being time and cost efficient

Procurement Rationale

- ▶ The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price
 - ▶ Rationale Form or other tracking device
 - ▶ Contracts should have pricing basis (discount, price list, etc.)
 - ▶ Bids documentation should include invitees and selection criteria/method



Disputes and Protests

- ▶ The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.
 - ▶ Document procedures for disputes or protests
 - ▶ Sole source, non-compliant bid and other than low bid review process
 - ▶ Ensure a good process to limit disputes



Geographic Preference Laws

- ▶ The non-Federal entity must 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, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
 - ▶ Ensure any geographic preferences are not in play
 - ▶ May be able to use location as criteria for architectural or engineering services
 - ▶ Allowable to ensure meeting state licensing requirements



Sole Sources: Consulting Agreements

“The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity” (UG)

- ▶ NSF/NIH Responses (see next slide)
 - ▶ Expect proper sourcing

- ▶ Practices at Peer Institutions

- ▶ Proper Sourcing of Consultants
 - ▶ When to source consultants
 - ▶ Informal bid v. sole source justification



Federal Agency Responses

NSF Response:

Your institution should have procurement policies and procedures in place to procure consultants, etc. The NSF PO is not responsible for approving your processes and/or selection, and the institution must adhere to the Uniform Guidance (attached) when procuring using federal funding.

If <Vendor> is the only source that can provide the services, then a sole source justification will need to be completed and included with the procurement documentation. Please see Sections 200.318 - 200.326 for guidance.

NIH Response:

We cannot approve a sole source based on the quote provided. The general NIH grant process is to obtain, at minimum, three bids/quotes whenever possible, and to ensure the most qualified vendor is selected. NIH does not dictate a grantee organization's procurement policies and procedures after award. It is the expectation that the applicant completes research prior to award to ensure selection and service of the most reasonable and qualified vendor.

"This is in response to the request for approval to use a sole source procurement for equipment awarded in supplement Notice of Award <Number>. Staff reviewed this request and determined that our approval is not necessary since funds are provided in a grant and not a contract. Requests of this nature fall within the purview of your grantee institution's internal policy and procedures."

Sole Source Justification vs Informal Bid:

Informal Bid Threshold: \$10,000 - \$249,999.99

STEPS TO DETERMINE INFORMAL BID vs SOLE SOURCE:

1. ID the **unique** characteristics/qualifications required for the research need
2. ID other Candidates who meet the unique qualifications
 1. Internet Search
 2. Peer Recommendations
 3. Industry / Professional Associations
 4. UConn Procurement
3. If other candidates confirm price & availability = Inform Bid
4. If NO other candidates are identified or all decline = Sole Source

FEDERAL Sole Source Justifications:

- Only one service or good meets the unique characteristics & only one supplier provides the good or service
- Authorizing Agency approves a non-competitive selection
- Public Emergency
- Inadequate Competition (following attempted solicitation)

Negotiation for Profit

- ▶ Must be done when there is no price competition (i.e. sole source) or in any instance where a cost analysis is performed.
- ▶ Elements to consider
 - ▶ Complexity of the work
 - ▶ Risk borne by contractor, contractor investment
 - ▶ Amount of subcontracting
 - ▶ Past performance
 - ▶ Industry profit rates
- ▶ Bid whenever possible
- ▶ Only for a sole source or action exceeds \$250,000

Cost Analysis

- ▶ NFE must perform a cost OR price analysis on every procurement over the SAT.
 - ▶ NFE must make independent estimates before receiving bids or proposals
 - ▶ NFE MUST negotiate profit for each contract with no price competition and all cases where a cost analysis is performed.
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- ▶ Establish a budgetary price
 - ▶ Use market rates, past bids, data services for comparison
 - ▶ Bid whenever possible

Negotiation for Profit & Cost Analysis Example

- ▶ Technology Service Provider Example
 - ▶ Provided rates, overhead cost %, profit markup %, and final flat rate
 - ▶ 3rd party service provider had a report with general baselines for % of cost for labor, overhead, and profit for benchmarking
 - ▶ Calculated all percentages into dollars to verify all the numbers.
 - ▶ Created a one-page summary and attached all cited documents and emails into one PDF for future use (i.e. Auditor)

Questions



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