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ANSWERS FOR YOU

Sponsored Research Procurement

Presented by **Sponsored Research Services**



TEXAS A&M UNIVERSITY
Division of Research

Uniform Guidance General Procurement Standards

On December 26, 2013, the Office of Management and Budget (OMB) issued the "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," a/k/a Uniform Guidance.

Uniform Guidance requires that Institutions receiving government and non-government funding use consistent documented procurement processes when purchases are made using federal funds.

General Procurement Standards

(Section 200.318-326)

1. Use federal excess and surplus property in lieu of buying new equipment when feasible and less expensive (Check Maestro property list)
2. Lease / purchase analysis (Ask vendor if they lease equipment)
3. Consider consolidating or breaking out procurements to get better price (Use Dell contract for computers, buy components that you can from an existing contract)
4. Buy American if it all possible (While some foreign equipment is less expensive, the tariff can be up to 49% of the purchase price. You will not know the true cost until U.S. Customs classifies the equipment.)

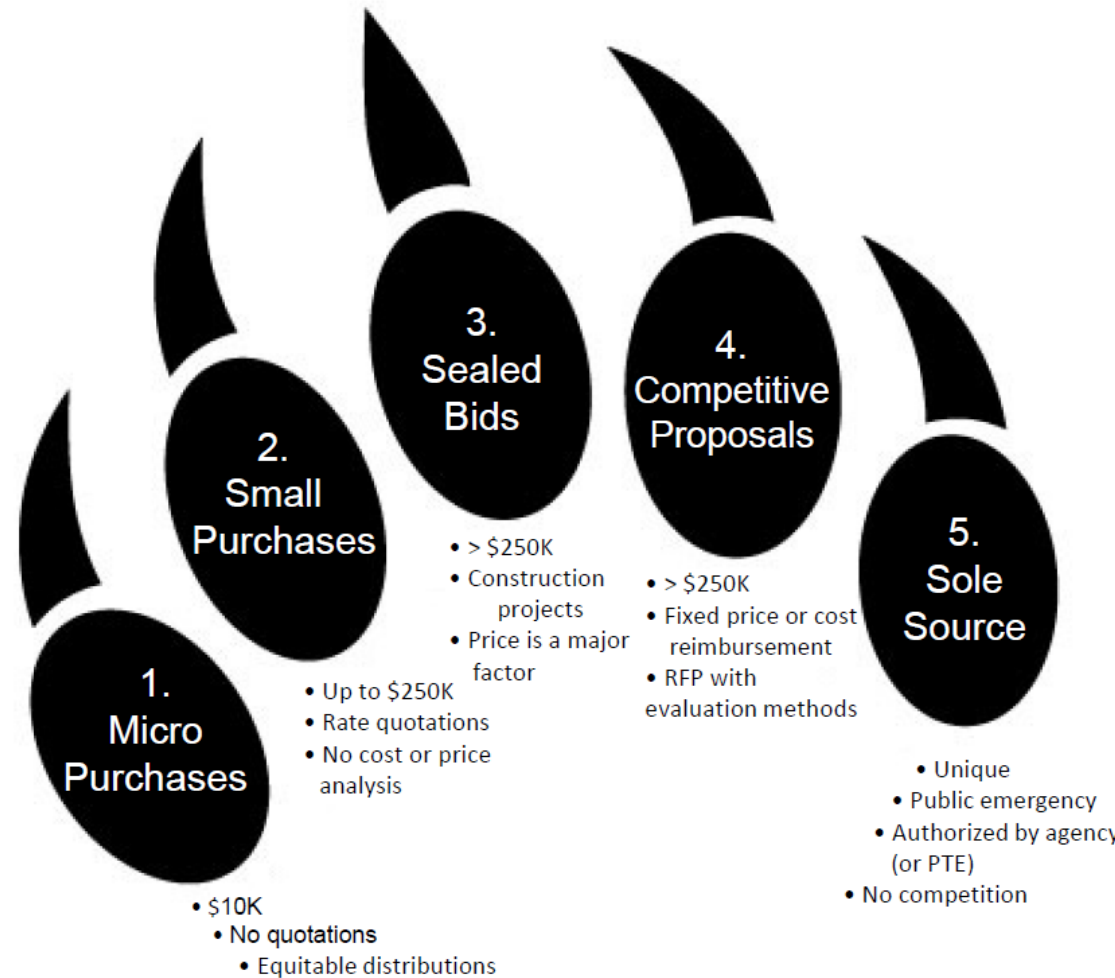
Competition (Section 200.319)

All procurement transactions must be conducted in a manner providing full and open competition consistent with standards in this section. In order to ensure objective, contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals (bids) must be excluded from competing for such procurements.

Situations considered restrictive to competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Specifications cannot have unreasonable requirements or require unnecessary experience
- Noncompetitive pricing practices between firms or between affiliated companies
- Noncompetitive contracts to consultants that are on retainer contracts
- Organizational conflicts of interest (PI owned company; previous employees)
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement

Procurement Claw (Section 200.320)



Sole/Single Source (Section 200.320)

- The item is available only from a single source (This will be verified by procurement.)
 - Valid scientific/technical reason to use this vendor, “PI doesn’t want to introduce variables in existing research”
 - The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
 - After solicitation of a number of sources, competition is determined inadequate.
- ***KEEP IN MIND SOLE SOURCE PURCHASES CANNOT BE USED TO AVOID COMPETITION.***
 - ***PRICE IS NOT A VALID SOLE SOURCE—THE BID PROCESS DETERMINES THE FINAL PRICE.***

Small, Minority, Disadvantaged Business Concerns(200.321)

The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in steps above

Domestic preferences for procurements (200.322)

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

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Procurement of recovered materials. (Section 200.323)

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, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contract cost and price (Section 200.324)

The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250,000) 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.

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.

This is another reason why the bid process is used for sole source contracts.

Federal Awarding Agency or Pass-through Entity Review (200.325)

The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed \$250,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed \$250,000 specifies a “brand name” product;
- (4) The proposed contract is more than \$250,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount to more than \$250,000

Bonding Requirements (Section 200.326)

For construction or facility improvement contracts or subcontracts exceeding \$250,000 the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Contract Provisions (Section 200.327)

The non-Federal entity's contracts must contain the applicable provisions required for federally funded contracts.

This is the reason I asked that all purchases go through Aggiebuy. Our standard terms and conditions include all of the federal contract provisions.

Employee or Independent Contractor

Employee

- We provide tools, office space, phone etc.
- We control duties, set hours
- We pay expenses (travel, supplies, office)
- Duties are similar to an existing position

Independent Contractor

- May work for other companies
- Provides own tools and pays expenses
- Decides how the task is completed
- Sets own working hours

Subrecipient or Vendor/Consultant

Subrecipient

SRS Subaward

- Programmatic decision making
- Scholarly/scientific contribution
- Requires discretion and unique expertise
- Sub PI may be co-author
- Performance measured by objectives

Vendor/Consultant

Procurement-Requisition Required

- Provides similar goods and services to many different purchasers
- Provides own tools and pays expenses
- Ancillary to federal program

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Top 5 Procurement Questions



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How much can I spend with a single vendor each fiscal year?

- ❖ Your delegated limit is \$10,000
- ❖ If you **anticipate** spending more than \$10,000 in a single fiscal year with a vendor, a requisition should be submitted to create a master order
- ❖ Implemented to allow purchases of goods/services needed immediately
- ❖ Must include freight charges
- ❖ Use of Historically Underutilized Businesses (HUB) is encouraged
- ❖ **VERY IMPORTANT-Do not split up purchases to avoid the procurement process. This is always identified in an audit.**

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What happens if I exceed my delegated limit?

- Failure to follow the Agency procedures constitutes a purchase procedure violation and would be classified by internal system auditor as a “finding”. Departments submitting an invoice that exceeds the \$10,000 limit will be subject to the following administrative actions.
- First violation: The person responsible for making the non-compliant purchase will be assigned "Disbursement of Funds" training to be completed within 30 calendar days. If the training is not completed within 30 calendar days, the expenditure will be transferred to the non-sponsored project.
- Second violation: Purchase will not be allowed on a sponsored project. **(TEES specific policy)**

Why did you send out a bid if my sole source was approved?

- The terms and conditions on the vendor's quote are in direct conflict with Texas Law. Indemnity, Governing Law and Jurisdiction are all issues when reviewing vendor quote.
- Export Control-The bid process is used to obtain required information related to export controls under ITAR USMAL or EAR CCL. The export classification is required prior to the vendor receiving a purchase order.
- Vendor's terms and conditions, payment or shipping terms are not favorable.
- Insurance Requirements-If work will be performed on TAMUS property, an insurance certificate is required prior to work starting.
- The bid process can be a few days but legal review by Contract Administration could take weeks or months. The bid process is actually faster than involving Contract Administration or OGC.

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What is an emergency purchase?

- Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat.
- Emergency purchases require a letter of justification documenting the emergency which must be signed, and at a minimum address the following:
 - The nature of the emergency purchase (hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state), and what caused the emergency situation; and
 - The estimated impact or damage either financial or otherwise that will occur by following normal procurement practices (general statements of loss or nominal damage are not acceptable).
- **Do not submit an emergency with a quote that was received months ago. Failure to plan does not constitute an emergency.**

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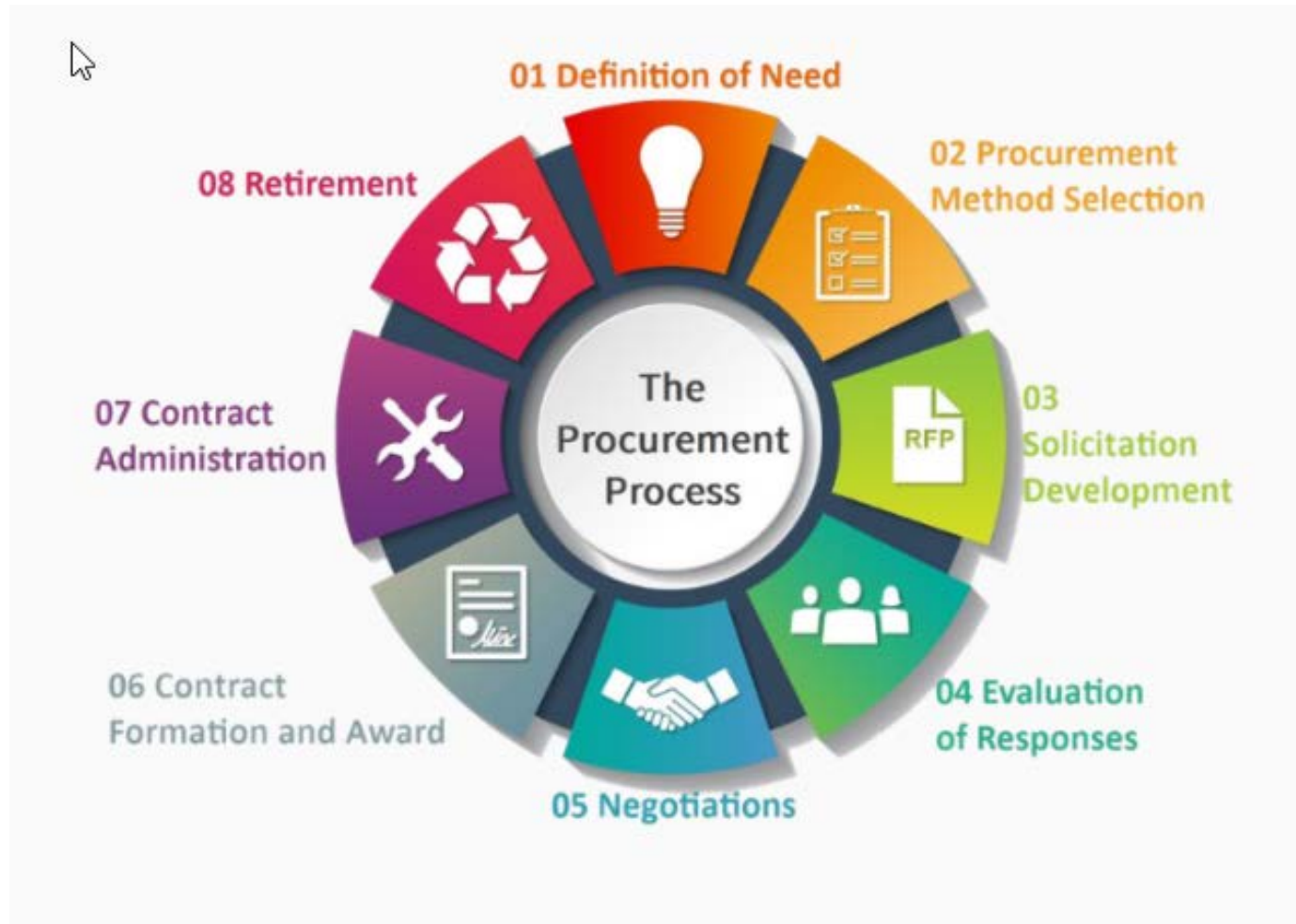
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Could you just approve my requisition?

- No, we cannot approve your requisition until all of the state/federal procurement steps have been performed. It is Procurement's responsibility to mitigate as much risk as possible while obtaining the very best value. ***We are required to post purchase orders on our website for the life of the contract. It is imperative that we have covered all of the requirements to avoid any appearance of impropriety.***
- Some the items that must be addressed:
 - Export Control
 - Conflicting terms and conditions
 - Insurance requirements
 - Shipping terms
 - Payment terms
 - 5 vendor compliance checks
 - Conflict of Interest

Procurement Process

1st Step is to submit requisition in Aggiebuy as soon as you identify a need.



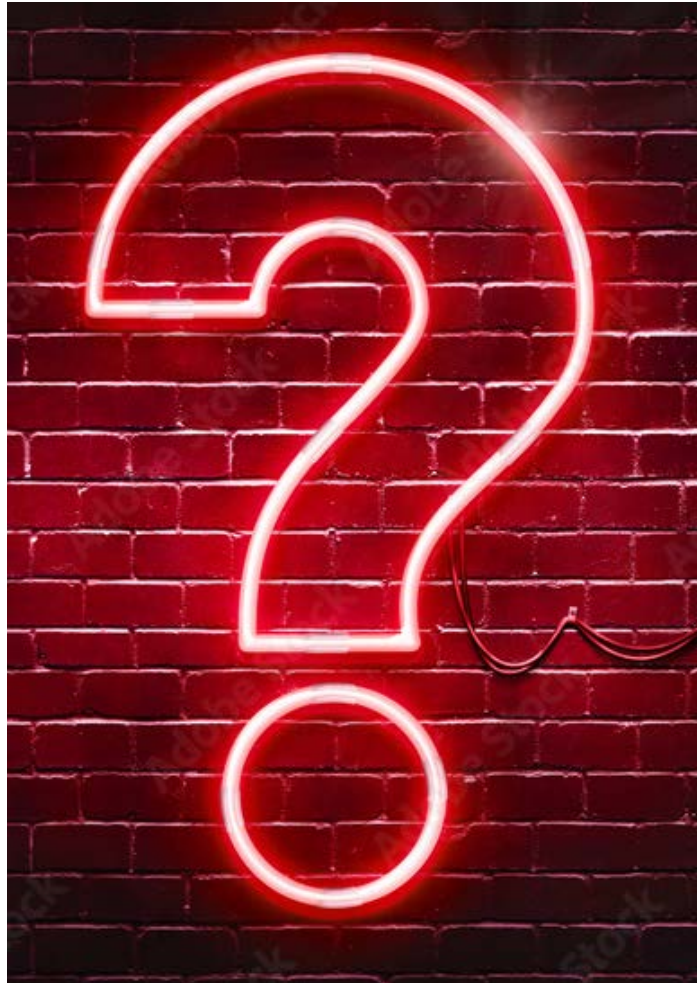
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Procurement Timeline

	REQUIREMENT	3-7 DAYS	14 DAYS	21-28 DAYS	>30 DAYS
PURCHASE >\$10K	Informal, Competitive Bid if not using approved competitively bid cooperative agreement	X			
	Solicit minimum of 4 Bids: 2 HUB & 2 non-HUB				
	> \$15K Post on Agency Website for the life of the contract				
PURCHASE >\$25K	Formal, Competitive Bid if not using approved competitively bid cooperative agreement		X		
	Post on Electronic State Business Daily (ESBD) & Solicit Centralized Master Bidders List (CMBL)		X		
	Report to LBB within 10 days of award (Construction & Professional Services)		X		
PURCHASE > \$100K	HUB Subcontracting Plan (minimum of 5 HUBs)			X	
	Monthly PAR (Progress Assessment Report)			X	
	Payment Bond (If needed)			X	
	Performance Bond (If needed)			X	
PURCHASE > \$1M	Texas Ethics Commission Form 1295 (2-Step Process- SSC must complete the TEC Form 1295, sign and notarize. No later than 30 days after contract execution, Member must provide form certification to TEC via online application.				X

Questions?



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