



Purchasing Goods & Services with Federal Funds

Presented by Bob Lloyd

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The NADO Research Foundation manages the EDD Community of Practice (CoP). Through the CoP, NADO RF and its partners provide tools, resources, and networking opportunities for EDD staff to strengthen organizational capacity and better guide regions towards becoming more competitive, resilient, and equitable.

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Bob Lloyd



Bob Lloyd is a respected authority on policies and practices affecting the award, administration and oversight of federal grants, contracts and subawards. He has nearly 40 years of experience in federal award implementation. Prior to starting his management consulting practice, he served as the executive director of the Grants Management Advisory Service and held staff positions in two large federally funded organizations. He has been a consultant, trainer or advisor to award and audit units in sixteen federal award-making departments and agencies, and to recipient and subrecipient organizations and their professional advisors. He is the principal author of *A Guide to OMB Grant Reform* and several other reference works on federal grants management and audits.



NADO Federal Grants Management Webinar Series

- **September 11: Single Audit Readiness and Survival**
- **September 26: Federal Grant Cost Allowability 101**
- **October 9: Procuring Goods & Services with Federal Funds**
- **October 16: Indirect Cost Recovery for RDO's (rescheduled from October 2, 2024)**



Sources of Authority Affecting Procurement by Regional Development Organizations

- **State Law Concerning Organization Status and Operation**
 - **Financial Management**
 - **Imposed Procurement Policies**
- **Policies Adopted by the Governing Body**

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- **Policies Adopted by the Governing Body**
- **Policies Imposed by Federal Funding Agencies**
 - **U.S. Office of Management and Budget**
 - **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200)**
 - **Adoption of 2 CFR 200 in Title 2 CFR (12/26/14)**
 - **Revision (Effective 11/12/20)**
 - **Revision (Effective 10/1/24)**

NOTE: The Federal Acquisition Regulation (Title 48 CFR) does not apply to purchases using grant funds.

Playing Well with Others: Procurement of Goods & Services Using Federal Funds

- **Back to Basics Again: Federal Award Relationships**
- **Assistance vs. Acquisition**
- **Defining Procurement**
 - **Merriam and Webster**
 - **Black's Law Dictionary**
- **Importance of the Proper Terminology**
- **When Do Federal Funds Lose Their Identity?**

Key Concepts

- **Reliance on organizational procedures to the extent they meet federal standards**
- **Organizations may or may have to adopt policies that are more strict than federal standards**
- **Privity of agreement (2 CFR 200.318(k))**
 - **Funding agencies are not a party to recipient or subrecipient contracts**
 - **Recipient or subrecipient responsibilities**
 - **Pre-award—Solicitation irregularities, award protests**
 - **Post-award—Contract administration, agreement interpretation, claims, disputes**
- **Possible funding agency involvement (2 CFR 200.325)**



Steps in the Procurement Process

- **Code of Conduct**
- **Acquisition Planning**
- **Solicitation of the Marketplace**
- **Competition**
- **Source Evaluation**
- **Source Selection**
- **Contract Award**
- **Contract Administration**
- **Procurement Records**

Code of Conduct

- **Conflict of Interest (2 CFR 200.318(c))**
 - **Familial**
 - **Financial**
 - **Organizational**

- **Appropriate Steps**
 - **Acknowledge Applicability**
 - **Determine Status**
 - **Disclose Conflict**
 - **Recuse from Action**
 - **Enforce "Teeth," if Necessary**

Code of Conduct

- **Solicitation or Acceptance of Gratuities (2 CFR 200.318(c))**
 - **Stated Examples**
 - **Items of Nominal Value [“...as an inducement...”]**
- **Federal Rules Allow Regional Council to Adopt Greater Restrictions**
 - **The Organization’s Own Rules Then Become the Compliance Standard.**

Procurement: Acquisition Planning

- **Identify Need to Purchase**
- **Avoid Unnecessary Purchases**
- **Consider Purchase Alternatives**
- **Conduct Market Research**
 - **Get Help (SBA, MBDA, Federal OSDBU, Chambers of Commerce)**
- **Engage in Cooperative Purchasing**
- **Prepare "Should Cost" Information**
- **Manage the Supply Chain**
- **Geographic Preference Rules (2 CFR 200.322)**
 - **State and Local**
 - **Buy American**
- **Recovered Materials (2 CFR 200.323)**

Procurement: Solicitation

➤ **Acronyms:**

- **RFEI**
- **RFQ**
- **IFB**
- **RFP**

➤ **Components**

- **Structure the Purchase**
 - **Bundling or Breaking Out**
- **Specifications/Statements of Work**
- **Deliverables**
- **Submission Instructions**
- **Evaluation Criteria**
- **Certifications**

Procurement: Competition

- **"Adequate Number of Sources"**
- **Cast a Wide Net**
- **Solicitation of DBE, SBE, MBE, WBE, Labor Surplus Areas (2 CFR 200.321)**
 - **Conduct Outreach**
 - **Get Help**
 - **Provide Opportunity to Compete**
- **Indicative Restrictions on Competition (2 CFR 200.319(b))**

NOTE: Special DBE Rules for Department of Transportation Assisted Contracts (49 CFR 26)



Acceptable Procurement Methods

- **Micro-purchase: < \$10,000**
 - **No Competition Required**
- **Small Purchase: > \$10,000; < \$250,000**
 - **Solicitation of an "Adequate Number of Sources"**
- **[Competitive] Sealed Bids**
 - **Criteria for Use (2 CFR 200.320(b)(1))**
 - **Preferred for Construction**
- **[Competitive] Proposals**
 - **Criteria for Use (2 CFR 200.320 (b)(2))**
 - **Architect and Engineering Services--"Brooks Bill"**
 - **Single Audit Services (2 CFR 200.509)**

Acceptable Procurement Methods

- **Non-competitive Procurement**
 - **Micro-purchase**
 - **Only One Source Available**
 - **Emergency or Exigent Circumstances**
 - **Awarding Agency Authorization**
 - **Competition Determined to Be Inadequate**

- **Time and Materials Contracts (2 CFR 200.318(i))**
 - **"Not to Exceed" Amount Imposed**
 - **Monitoring Role**

- **Cost Plus Percentage of Cost Contracts Prohibited**

- **Intergovernmental and Interlocal Methods (2 CFR 200.318(e))**

Source Evaluation

- **Responsiveness**
 - **Timeliness**
 - **Completeness**
 - **Correctness**

- **Responsibility**
 - **Integrity**
 - **Past Performance**
 - **Compliance with Public Policy**
 - **Financial and Technical Resources**

Source Evaluation and Selection

- **Avoid "Black Box Purchasing"**

- **Advisable Documentation**
 - **Solicitation Documents**
 - **Contacts with Potential Offerors**
 - **Offers**
 - **Cost or Price Analysis, if Required**
 - **Notes of Persons with Selection Responsibilities**
 - **Scoring Summaries**
 - **Evidence of Suspension and Debarment Vetting (Excluded Parties List System on www.sam.gov)**
 - **Contract Award Placement**

Cost or Price Analysis

- **Price Analysis**
 - **Comparison with Other Responsive Offers**
- **Cost Analysis**
 - **Employed When Costs in Offers Are Required to be Broken Out**
 - **More than Arithmetic!**
 - **"Cost Realism"**
 - **Allowability and Allocability of Costs**
 - **Applicable Cost Principles**
 - **2 CFR 200, Subpart E**
 - **48 CFR 31.205**

Source Selection

- **A "Sound and Complete" Agreement**
 - **Offer**
 - **Acceptance**
 - **Legal Content**
 - **Consideration**
 - **Jurisdiction**
 - **Obligations**
 - **Rights and Remedies**
 - **Severability**

Federal Public Policy Clauses

- **2 CFR 200, Appendix II**
- **"...as applicable..."**
- **Criteria**
 - **Contracts Exceeding Specific Dollar Size**
 - **Nature of Activity**
 - **Example: Construction**
 - **Davis Bacon Act**
 - **Copeland "Anti-Kickback Act**
 - **Contract Work Hours and Safety Standards Act**

Contract Administration and Oversight

- **2 CFR 200.318(b)**
- **Objectives: Performance and Compliance**
- **Access to Contractor and Its Records**
- **Avoidance of Interference**
- **What Tools Are Available?**
 - **Process Oversight**
 - **Delivery**
 - **Inspection**
 - **Acceptance**
 - **Payment**
 - **Promptness**
 - **Retainage**
 - **Warranties**

Procurement Records

- **2 CFR 200.318(i)**
- **"...at a minimum..."**
- **"History of the Procurement"**
 - **An "Audit Trail" from the Beginning**
- **Rational for the Procurement Method Used**
- **Rational for Contract Type Used**
- **Source Evaluation and Selection Process and Result**
- **Basis for Contract Price**

Procurement Compliance Vulnerability

- **OMB's Compliance Supplement (2 CFR 200, Appendix XI, Part 3-I)**
 - **Written Procurement Standards**
 - **Standards of Conduct**
 - **Acceptable Methods**
 - **Competition**
 - **Geographic Preference**
 - **Cost or Price Analysis**
 - **Contract Clauses**
 - **Awards to Responsible Contractors**
 - **Suspension and Debarment Vetting**
 - **Oversight**
 - **Required Records**

Inventory and Asset Management

- **Federal System Standards**

- **Financial Management Standards (2 CFR 200.302(b)(4))**
- **Internal Controls (2 CFR 200.303)**
- **Property Management Standards (2 CFR 200.310-316)**

- **Federal Definitions**

- **Equipment (2 CFR 200.439)**
- **Materials and Supplies (2 CFR 200.453)**
- **Intellectual Property (2 CFR 200.315, 2 CFR 200.448)**

- **Records Retention and Access (2 CFR 200.334-337)**



Equipment Management Standards

- **2 CFR 200.313(c-e)**
- **Equipment Records**
 - **Required Data Elements**
- **Periodic Inventory**
- **Control Procedures to Prevent Loss, Damage, or Theft**
- **Maintenance Procedures**
- **Disposition Procedures Providing for Competition**



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