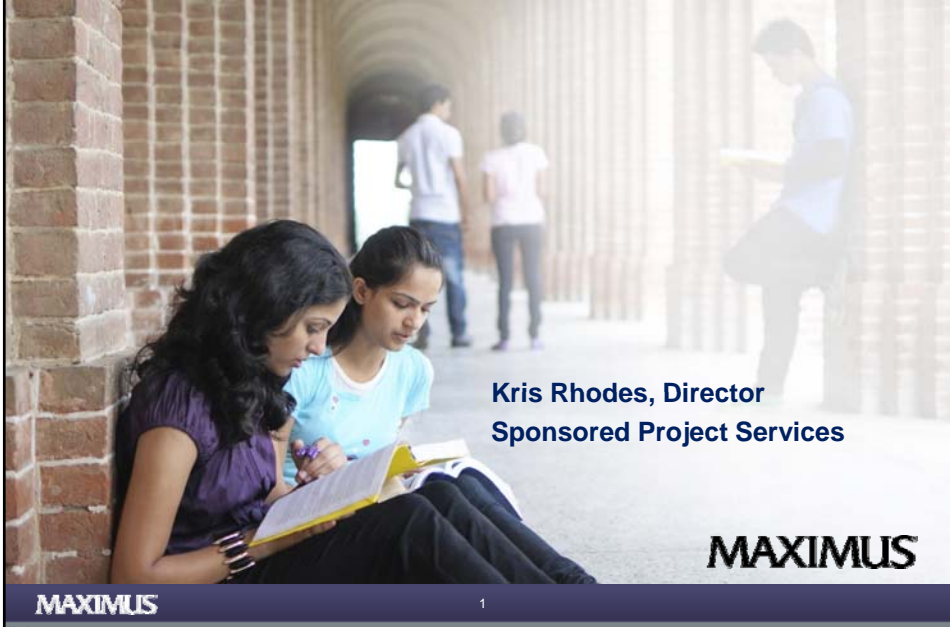


2 CFR 200 Uniform Guidance Procurement Standards



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Procurement Standards 2 CFR 200.317-326

- 200.317 Procurement 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 business, 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

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Effective Date of Procurement Standards

Per COFAR FAQ (8-29-14):

- **Grace period for complying with the Uniform Guidance Procurement Standards is in effect – first full fiscal year that starts after the effective date of the Uniform Guidance, which is December 26, 2014**
- **Single Audit Compliance Supplement will instruct auditors to review procurement policies and procedures based on the documented standard**

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Procurement Standards 200.317-318

Procurement by States, states must follow the same policies and procedures it uses for its non-Federal procurements.

- **Open item for COGR. Seeking clarification for application for Public Universities**

Procurements by all others:

- **Must** use its own documented procurement procedures providing they conform to State and local laws and regulations **AND** they are expected to conform to the guidance in 200.317-326
- **Must** maintain oversight to ensure that contractors perform in accordance with the terms and conditions of their contracts or purchase orders.
- **Must** maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent can participate in the selection, award, or administration of contracts. The standards of conduct must provide for disciplinary actions.

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Procurement Standards 200.318 (c)

- **Conflict:** A conflict of interest would arise when the 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.
- **Gratuities:** Officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. **However**, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

Procurement Standards 200.318 (c)



Organizational Conflict

- Organizations that are not a state, local government, or Indian tribe, **must** also maintain written standards of conduct covering organization conflicts of interest.
- Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the entity is unable to **or appears** to be unable to impartial in conducting a procurement action involving a related organization.

Procurement Standards 200.318 (d – f)

- Organizations must avoid acquisition of unnecessary or duplicative items.
Per COFAR FAQ's – no equipment screening procedures necessary.
- Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
- Where appropriate lease-purchase analysis should be conducted.
- Organizations are encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or share goods and services.
- Organization are encourage use Federal excess and surplus property in lieu of new equipment or property.

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Procurement Standards 200.318 (g – h)



- Organizations are encouraged to use value engineering clauses in construction contracts of sufficient size. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- Organization must award contracts only to responsible contractors possessing the ability to perform successfully. Consideration will be given to contractor integrity, compliance with public policy, past performance and financial and technical resources.

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Procurement Standards 200.318 (i-k)

- Organizations must maintain records sufficient to document the rational for the following, but not limited to:

- Procurement method, ★
- Selection of contract type, ★
- Contractor selection or rejection, and
- Basis for contract price.

★ Time and materials (T&M) contracts can only be used after a determination that no other contract is suitable **and** if the contract includes a ceiling price that the contractor exceeds at his own risk.

★ Organization are solely responsible for good administrative practices and sound business judgment, and for the settlement of all contractual and administrative issues arising out of procurements.

★ Competition 200.319 (a – b)

a) All procurements must be conducted in a manner that provides full and open competition. Situations considered to be restrictive of competition include:

- Placing unreasonable qualifying requirements on firms
- Requiring unnecessary experience and excessive bonding requirements
- Noncompetitive pricing practices between firms or affiliated companies
- Noncompetitive contracts to consultants that are on retainer
- Organization conflicts of interest
- Specifying on a “brand name” instead of allowing for “an equal” product consideration
- Arbitrary actions

b) Organizations are prohibited from using statutorily or administratively imposed state or geographical preferences (unless mandated by federal statute, or in cases where a state license, such as architectural or engineering, may be required to perform a project in your state)



Procurement Requirements 200.319 (c – d)

c) Written Procedures for procurement transactions that ensure:

- Clear and accurate description of the technical requirements for material, product or services.
 - Description must not contain features which unduly restrict competition (if competitive bid)
 - Detailed product specifications should be avoided if at all possible
 - A “brand name or equivalent” description may be used to define performance or other important requirement when it is impractical or uneconomical to make a clear and accurate description of the technical requirements.
- Identify all of the requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

d) Organizations must:

- Ensure that all prequalified lists of person, firms, or products that are used are current and include enough qualified sources to ensure maximum open and free competition.
- Not preclude potential bidder from qualifying during the solicitation period.

Procurement Requirements 200.320 (a)



Procurements without competition:

- Micro-purchases, \$3,000 or less, do not require competition or a cost/price analysis, but must be distributed equitably among qualified suppliers (to the extent practicable). \$2,000 for construction awards subject to the Davis-Bacon Act
- Micro-purchases may be awarded without soliciting competitive quotations IF the non-Federal entity considers the price to be reasonable.



Procurement Methods 200.320 (b – f)

• Procurements requiring competition or cost-price analysis

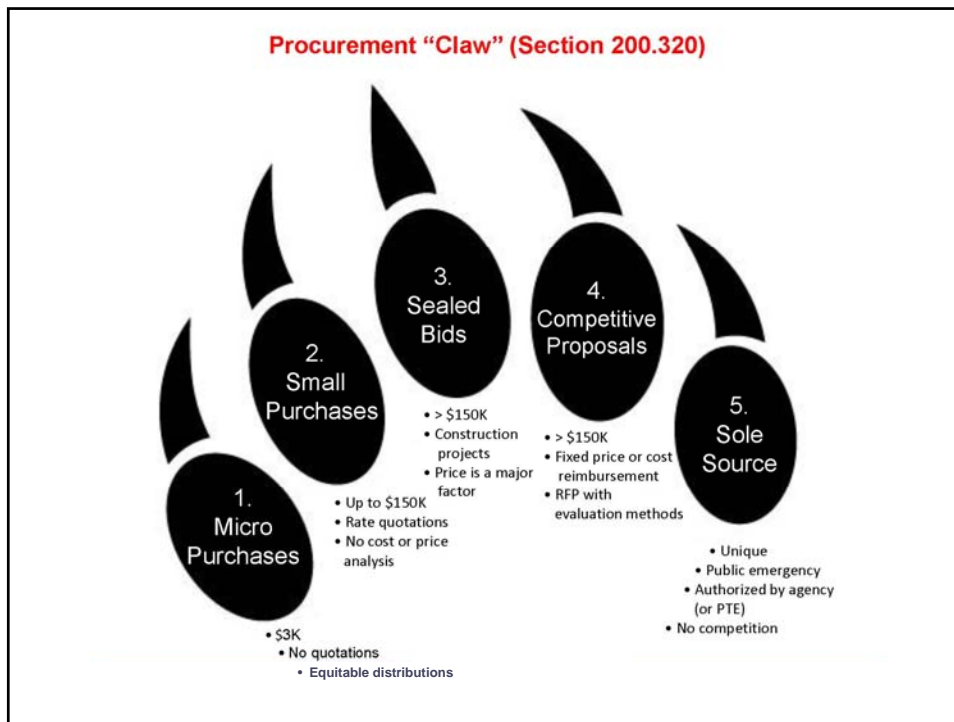
- **Small purchase**, \$3,000-\$149,999, price and rate quotes must be obtained from an adequate number of qualified sources. **Note: no cost/price analysis required.**
- **Sealed bids** using firm fixed price contract, require formal advertising, two or more bidders are willing and able to respond, and there is public opening of the bids.
- **Competitive proposals**, used when sealed bids is not appropriate, requires advertising, includes a **written method** for conducting the technical evaluation, responses must be solicited from an adequate number of qualified sources, normally has more than one source submitting an offer and the award is either fixed price or cost reimbursable.
- **Procurement by noncompetitive proposal**, is used when the items are only available from a single source. One or more of the following must apply:
 1. Available only through a single source
 2. Public exigency or emergency will not permit delay required for competition
 3. Awarding agency has expressly authorized a noncompetitive process, or after solicitation of a number of sources
 4. After solicitation of a number of sources, competition is deemed inadequate

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Procurement "Claw" (Sections 200.317-326)





Notes on Procurement Methods 200.320

- Per the COFAR FAQ, no matter the dollar amount, if a particular source to acquire items is needed for scientific reasons, this constitutes the use of single source procurement
- Strategic Sourcing and Shared Services –
 - You may apply the requirements for competition in the methods of procurement in broader procurement decisions in order to leverage strategic sourcing agreements, shared services arrangements, or other practices that result in more efficient use of the funds (recall 200.318 d – e)
- Procurement and Charge Cards:
 - The Uniform Guidance does not limit charge card purchases to a particular threshold amount, however you still need internal controls, and the methods for procurement still apply (micro-purchase, small purchase, single source, etc.)
- The Uniform Guidance procurement standards only apply to goods and services that are directly charged to a Federal award, including subrecipients of Federal awards
 - How will your procurement department know which funds, accounts, etc. are Federal or non-federal?

Procurement and Affirmative Action 200.321

Small and Minority Businesses, Women-Owned Businesses, and Labor Surplus Area Firms

Organizations **must take** the following affirmative steps to ensure these firms are used when possible:

1. Place qualified small, minority, and woman-owned business on solicitation lists;
2. Assure that such business are solicited when they are potential sources;
3. Divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses;
4. Establish delivery schedules, where requirements permits, which encourage such business to respond;
5. Use service and assistance from such organization as SBA, Minority Business Development Agency of the Department of Commerce; **and**
6. Require prime contractors to take the same affirmative steps.

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Procurement of Recovered Materials 200.322


- Organizations must comply with §6002 of the Solid Waste Disposal Act, for procuring items designated in the EPA guidelines of 40 CFR 247 requiring
 - Procurements must contain the highest percentage of recovered materials practical, consistent with maintaining satisfactory levels of competition, when the purchase price exceed \$10,000 or the value of the quantity procured in preceding fiscal year exceeded \$10,000;
 - procuring solid waste services in a manner that maximizes energy and resource recovery; **and**
 - establishing an affirmative procurement program for recovered materials.

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Contract Cost and Price 200.323

- a)  Every procurement in excess of the Simplified Acquisition Threshold (\$150,000) **must** have a cost or price analysis performed, **including** contract modifications.
 - Method and degree of analysis can vary given the situation, but as a starting point you must make independent estimates before receiving bids or proposals
- b) Profit must be negotiated 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.
- c) Cost or prices based on estimated cost for contracts are allowable to the extent that the costs incurred or estimates included in the negotiated prices would be allowable under the Federal cost principles.
- d) Cost plus a percentage of cost must not be used.

 **Contracts must contain the applicable provisions of Appendix II of 2 CFR 200 (200.326).**

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Procurement Review 200.324

- Organization must make available, upon request, technical specifications on proposed procurements to ensure the item or service is the one being proposed for acquisition. Typically this review takes place prior to procurement, but can occur post solicitation.
 - Organizations must make available for the agency or PTE procurement documents when:
 - Procurement processes or standards fail to comply with 2 CFR 200.
 - Procurements are expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or is awarded under sealed bid to entities other than the low bidder, specifies a “brand name”, or is a contract modification that changes the scope or increases the scope by more than the Simplified Acquisition Threshold.
- Organizations are exempt from this pre-procurement review if the agency or pass-through entity (PTE) determines the systems meet the standards of 2 CFR 200.
- Organizations may request that its procurement system be reviewed by the awarding agency to determine whether its systems meets these standards. Generally, these review occur where there is continuous high-dollar funding, and contract are awarded on a regular basis. Organizations may also self-certify its procurement system, but such certification does not limit awarding agency right to review the system.

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Bonding Requirements 200.325

Bonding may be required for construction / facility improvement contracts/subcontracts exceeding the Simplified Acquisition Threshold to ensure that the Federal interest in the procurement is adequately protected. Minimum requirements:

- A bid guarantee equal to 5% of the bid price to ensure that post bid selection that the successful bidder will enter into a binding agreement for the work.
- A performance bond to secure fulfillment of the contractor's obligations for 100% of the contract price.
- A 100% payment bond to assure payment as required by law of all persons supplying labor and materials in performance of work specified in the contract.

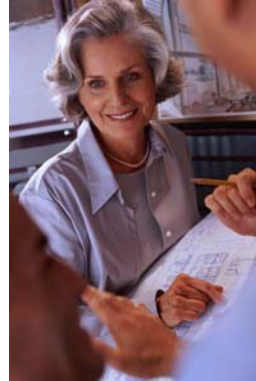
Contract Provisions 200.326

Non-Federal entity's contracts must contain applicable provisions described in Appendix II of Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards. Appendix II covers:

- ★ Contracts in excess of \$150,000 **must** address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- ★ Contracts >\$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - Equal Employment Opportunity (all federally assisted construction contracts)
 - Davis-Bacon Act (prime construction contract >\$2,000)
 - Contract Work Hours and Safety Standards Act (>\$100,000 where mechanics or laborers)
 - Rights to Inventions Made Under a Contract or Agreement
 - Clean Air Act and Federal Water Pollution Control Act (>\$150,000)
 - Byrd Anti-Lobbying Amendment (>\$100,000)
 - Debarment and Suspension

Take Aways

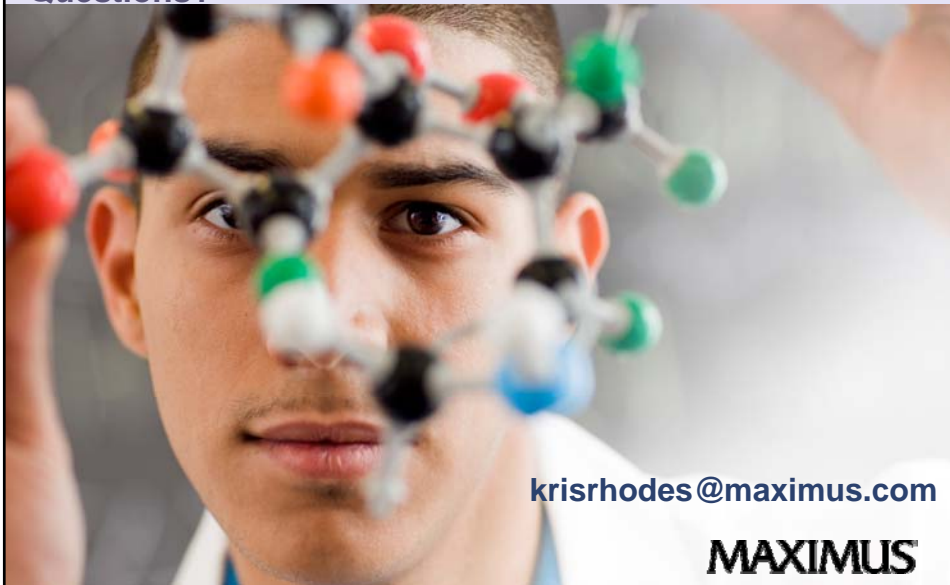
- Review and update your policies and procedures
- Procurements between \$3,000 and \$150,000?
- Contract templates
- Incorporate a procurement assessment in your subaward monitoring



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Questions?



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