



Procurement During Uninterrupted Crises

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Virtual Spring Forum 2022

Planning for Uninterrupted Crises



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Methods of Procurement 200.320

- Grantee must have and use documented procurement procedures for the following methods:
 - (a) Informal procurement methods
 - Micro-purchase
 - Small purchase procedures
 - (b) Formal procurement methods
 - Competitive sealed bids
 - Competitive proposals
 - (c) Noncompetitive proposals

Formal v. Informal





Informal Procurement 200.320(a)

- Use when value does not exceed \$250,000 (simplified acquisition threshold), or a lower threshold established by a non-federal entity
- Procurement of property or services required under federal award
- Purpose: to expedite completion and minimize administrative burden and cost



Informal Procurement, 200.320(a)(1) Micro-purchases

- Threshold: \$10,000 or lower State rule
- Distribution. "To the maximum extent practicable, the non-federal entity should distribute ... among qualified suppliers."
- Awards. May be awarded without price or rate quotes if non-federal entity "considers the price to be reasonable **based on research, experience, purchase history or other information and documents its files accordingly.**"



Informal Procurement, 200.320(a)(1) Micro-purchases (cont.)

- Thresholds. Determined and documented by grantee, based on internal controls, risk, and procedures. Authorized by state, local laws. May be higher than threshold in FAR (\$10,000).
 - Nonfederal entity may self-certify threshold up to \$50,000, if:
 - Low-risk auditee for most recent audit (200.520)
 - Annual internal institutional risk assessment to identify, mitigate and manage financial risks; or
 - For public institutions, a higher threshold consistent with state law
 - Over \$50,000, must have approval of cognizant agency indirect costs



Informal Procurement, 200.320(a)(2) Small Purchases

- Used when for purchases greater than micro-purchase threshold, but less than simplified acquisition threshold (\$250,000).
- Price or rate quotations from “adequate number of qualified sources” **as determined appropriate by non-federal entity**
- Thresholds. Established based on internal controls, risk and procedures, and documented. Cannot exceed the threshold in FAR (\$250,000) but may be lowered.



Simplified Acquisition Threshold in Emergency??

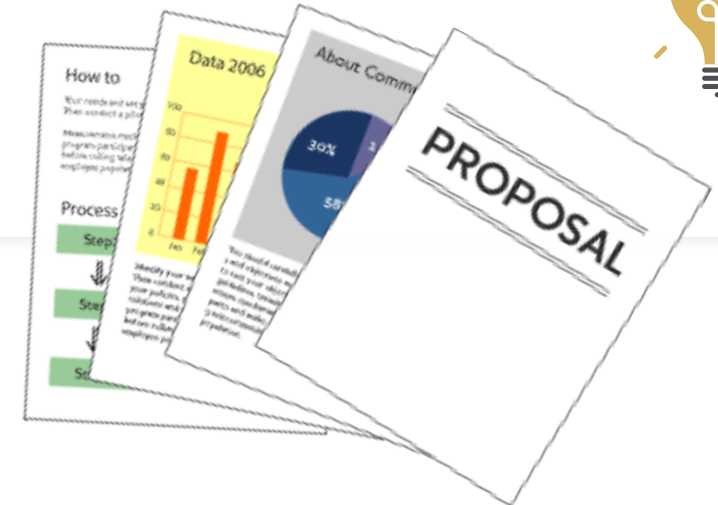
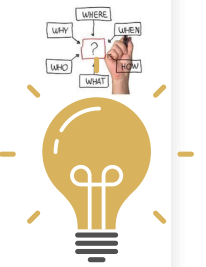
- 2 CFR 200.1 defines simplified acquisition threshold by cross referencing the Federal Acquisition Rules. Under FAR, the threshold is \$250,000 except for:
 - Threshold increases to **\$800,000** for supplies and services “to support a response to an emergency or major disaster” ... for contracts “awarded and performed ... inside the US”
 - If no state/local requirement that is more restrictive, is ESSER/GEER/HEERF subject to higher threshold???



Formal Procurement, 200.320(b)

- Used for purchases that exceed small purchase threshold (\$250,000, or lower, if set by the non-federal entity)
 - Require documented procedures
 - Require public advertising
- Two options:
 1. Sealed bids
 2. Proposals

Noncompetitive Proposals 200.320(c)



Appropriate only when:

- **Micro-purchases**
- The item is only available from a single source;
- There is a public emergency for the requirement that will not permit delay resulting from **publicizing** a competitive solicitation;
- The Federal awarding agency or pass-through expressly authorizes noncompetitive procurement in response to a written request from non-Federal entity; or
- After soliciting a number of sources, competition is determined inadequate.



Discussion Questions





If School A purchases from a Vendor; and School B purchases from the same vendor, must the district aggregate the purchases in determining procurement thresholds?

Generally, yes. Thresholds apply at the “grantee/ subgrantee” level.



What if my contract was under a bidding threshold, but is later modified and now exceeds the bidding threshold?

May need new cost/price analysis (2 CFR 200.324);
documentation to ensure reasonableness.



Can I “piggyback” off of another entity’s competitively procured contract?

Maybe, but proceed with caution. HHS disallows piggybacking; FEMA strongly discourages, warns that it puts funding at risk; and disallows if any change in scope. ED has not issued guidance on “piggybacking.”



Do I have to use federal procurement for services agreements with another state or local agency?

Probably, unless you meet one of the conditions in 2 CFR 200.320(c) for noncompetitive procurement.



Are cooperative purchasing programs compliant with federal procurement requirements?

It depends...



2 CFR 200.318(e)

- To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.



What about pre-qualified lists?

- 2 CFR 200.319(e)
 - The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.



For COVID-related purchases, doesn't the exception to procurement in 200.320(c)(3) allow me to forego competition?

It depends ...



Exigency or emergency - what's the difference? (FEMA clarification)

- Exigency: there is a need to avoid, prevent or alleviate serious harm or injury, financial or otherwise, to the entity; and using competitive procurement proposals would prevent the urgent action required to address the situation
- Emergency: threat to life, public health or safety, or improved property requires immediate action to alleviate the threat
 - <https://www.fema.gov/news-release/20200514/procurement-under-grants-under-exigent-or-emergency-circumstances>



FEMA example of exigent circumstances:

A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole source with a contractor it has contracted with previously. The city can demonstrate that this constitutes an “exigent circumstance” because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.



ESSER Guidance: Do Federal procurement requirements permit noncompetitive procurements, if necessary, to enable an SEA or LEA to use ARP ESSER funds to operate a summer enrichment program in 2021?

- Yes, “Consistent with 200.320(c)(2), an LEA may determine that its response to the COVID-19 pandemic qualifies as a public exigency or emergency that does not permit the delay that would result from competitive bidding. Under these circumstances, ... an LEA could use noncompetitive procurement. The LEA should consult with its SEA before using this authority.”



Could the SEA provide general exceptions to federal procurement under 2 CFR 200.320(c)(4)?

Typically, (c)(4) exception must be “in response to a written request” from the LEA. But maybe set up standardized request/approval process for particular vendors or services?



If I have previously executed contract,
can ESSER/HEERF pay part of the costs?

It depends...



Previously planned projects/ contracts - can ESSER/HEERF pay part?

- Avoid acquisition of unnecessary or duplicative items (consolidating or breakout out procurement to obtain more economical purchase); 200.318(d)
- Use excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs; 200.318(f)



Previously planned projects/ contracts – can ESSER/HEERF pay part? (cont.)

- Other considerations: Prior approval, 200.439; contract terms and conditions; Davis-Bacon Wage requirements; project timelines; “necessary, reasonable and allocable”; “prevent, prepare for and respond to the coronavirus”



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