

Procurement Policies and Procedures

Is your Organization Ready for the End of the Grace Period?

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Your Presenter

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Mr. Mark Maraccini is a partner at Crowe Horwath LLP (Crowe) who specializes in regulatory compliance for governmental and not-for-profit entities. He has over 17 years' experience with government, higher education, not-for-profit (NFP) audits, attestation services and other consulting projects.

Mark started his career as an auditor, but about midway through his career, Mark pivoted to Crowe's regulatory compliance practice. Since then he has worked with hundreds of governmental entities to complete risk assessments, finding mitigation, compliance audits and audit readiness assessments in accordance with AICPA and Governmental Auditing Standards.



Learning Objectives:

- Discuss regulation changes and impact on current business practices
- Identify potential gaps in current policies and procedures
- Discuss practical tools to help assess compliance
- Discuss key observations from the field





Regulation Changes and Impact on Current Operations



Grace Period

- The Federal government is providing a grace period after the effective date for non-Federal entities to comply with the procurement standards.
- The Grace period is three full fiscal years after the effective date of the UG, which was December 26, 2014 (implementation for fiscal years beginning on or after December 26, 2017)
- Need to document what standards you are following (i.e. that you choose to take the grace period)
 - Memo, policy, procedure.



Procurement Standards

The procurement standards (in sections 200.317 through 200.326) are generally based on the requirements in A-102 for states, local governments and Indian tribes, with modifications

Written Policies:

- States use their own policies and procedures
- All other non-Federal entities, including subrecipients of a state, must have and follow **written** procurement procedures that reflect the procurement standards
- Standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

Entities are encouraged to enter into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.



Procurement Polling Question

Can a non-federal entity have different procurement requirements for federal and nonfederal requirements?

- A. Yes
- B. No
- C. Maybe
- D. I Don't Know
- E. Can you Repeat the Question



Subrecipient vs. Contractor

- A non-Federal entity may concurrently receive Federal awards as a:
 - Recipient
 - A subrecipient
 - Contractor
- Must make case-by-case determination whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a:
 - Subrecipient, or
 - Contractor
- Substance of the agreement is more important than the form



Subrecipient vs. Contractor

- Contractor:

- A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor.

- Subrecipient:

- A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient

Subrecipient vs. Contractor

Subrecipient	Contractor
Creates a Federal assistance relationship	Purpose is to obtain goods and services for the non-Federal entity's own use and creates a procurement relationship
Determines who is eligible to receive what Federal assistance	Provides the goods and services within normal business operations
Has its performance measured in relation to whether objectives of a Federal program were met	Provides similar goods or services to many different purchasers
Has responsibility for programmatic decision making	Normally operates in a competitive environment
Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and	Provides goods or services that are ancillary to the operation of the Federal program; and
In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing stature, as opposed to providing goods or services for the benefit of the PTE	Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons



Procurement Polling Question

What are some key risks of an organization improperly classifying a contractor as a subrecipient and vice versa?



Improper Classifying an Organization

- Key risk to improperly classifying an organization can result in:
 - Failure to adequately conduct monitoring
 - Monitoring against wrong requirements and/or failure to communicate requirements
 - Can be mitigated through retaining documentation explaining the rationale for classification.



Methods of Procurement

- Micro-purchases
- Small purchase procedures
- Sealed bids (formal advertising)
- Competitive proposals
- Noncompetitive proposals



Methods of Procurement

- Micro-purchases for acquisition of supplies or services if aggregate amount does not exceed \$3,500 (\$10,000 for institutions of higher-education, not-for-profits related to higher ed, not-for-profit research organizations, independent research institutes)
 - Normally used for the acquisition of supplies or services
 - Must distribute micro purchases equitably among qualified suppliers
 - May be awarded without soliciting competitive quotations if the entity considers the price to be reasonable



Methods of Procurement

- Small purchase procedures
 - Simple and informal procurement methods for securing services, supplies or other property that do not cost more than the Simplified Acquisition Threshold.
 - If used, price or rate quotations must be obtained from an adequate number of qualified sources.
 - Simplified Acquisition Threshold is between \$3,500 and \$150,000



Methods of Procurement

- Sealed bids (formal advertising)
 - Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the lowest responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
 - Preferred method for procuring construction
 - In order for sealed bidding to be feasible:
 - Complete, adequate and realistic specification or purchase description is available
 - Two or more responsible bidders are willing and able to compete effectively for the business
 - Procurements lends itself to a firm fixed price and the selection of the successful bidder can be made principally on the basis of price



Methods of Procurement

- Sealed bids (formal advertising)
 - If sealed bids are used:
 - Solicitation requirements
 - Invitation requirements
 - Public opening
 - Award is made in writing to the lowest responsive and responsible bidder
 - Bids can be rejected



Methods of Procurement

- Competitive proposals
 - More than one source submits and offer and either a fixed price or cost-reimbursement type contract is awarded.
 - Used when the conditions are not appropriate for the use of sealed bids.



Methods of Procurement

- Competitive proposals
 - Requirements:
 - Requests for proposals must be publicized and identify all evaluation factors and their relative importance.
 - Must be solicited from an adequate number of qualified sources.
 - Entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
 - Contracts awarded to the responsible firm whose proposal is most advantageous to the program with price and other factors considered.
 - May be used for qualifications-based procurement of architectural/engineering professional services.



Methods of Procurement

- Noncompetitive proposals
 - Procurement through solicitation of a proposal from only one source and may be used only when one or more of the following apply:
 - Item is available only from a single source
 - Emergency for the requirement will not permit a delay resulting from competitive solicitation
 - Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity
 - After solicitation of a number of sources, competition is determined inadequate.



Pre Procurement Review

- Upon request of the Federal awarding agency (or pass-through entity), the entity must make the procurement documents (e.g., requests for proposals, invitations for bids, or independent cost estimates) available for pre-procurement review when:
 - The entity's procurement procedures or operations fail to comply with the procurement standards
 - The procurement is expected to exceed the Simplified Acquisition Threshold [\$150,000] and:
 - The procurement is to be awarded without competition or only one bid/offer is received in response to a solicitation
 - The procurement specifies a "brand name" product
 - The proposed contract is to be awarded to other than the apparent low bidder under a sealed bid procurement
 - A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.



Pre Procurement Review

- The Entity is exempt from the pre-procurement review:
 - If the Federal awarding agency (or pass-through entity) determines that its procurement systems comply with the standards
 - The entity self certifies its procurement system (but the self-certification does not limit the Federal awarding agency's right to survey the system)



Course Exercise:

**Procurement
Policy Review**



Procurement Contract Provisions

- Contracts for more than the Simplified acquisition threshold must address administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for sanctions and penalties.
- Contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner it will occur and basis for settlement.



Procurement Contract Provisions

- Contracts that meet the definition of “federally assisted construction contract” must include the Equal Employment Opportunity clause.
- All construction contracts over \$2,000 must include a provision for compliance with the Davis-Bacon Act.
- Contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with the Contract Work Hours and Safety Standards Act.



Procurement Contract Provisions

- If the Federal award is a “funding agreement” and the recipient enters into a contract with a small business or NFP regarding experimental, developmental or research work then must include provision for compliance with Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.
- Contracts in excess of \$150,000 must contain a provision that requires compliance with the Clean Air Act and the Federal Water Pollution Control Act.



Procurement Contract Provisions

- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- Contract not awarded to a party listed on the Excluded Parties List System
- Contracts in excess of \$100,000 must file the required certification that the Byrd Anti-Lobbying Amendment is being followed.

Observations from the Field





Observations from the Field

- Procurement – Common Issues:
 - Procedures have not been revised/updated to align with the Uniform Guidance;
 - Missing documentation of guidance being followed during grace period
 - Lack of documentation supporting procurement decisions; and
 - Inadequate support for sole and single source procurements.



Observations from the Field

- Procurement – Common Issues (Continued)

- Organizations have not evaluated the impact of the procurement changes on existing business or performed gap analyses (e.g., micro-purchase thresholds, requirements for bids, impacts of less-restrictive small purchase thresholds, and independent estimate requirements).

- Example:

- Issue 1 Example: An entity has a small purchase threshold of \$10,000 – below which supporting documentation for reasonableness is not required. Bids are required for purchases above \$10,000.

What is the potential risk exposure?



Observations from the Field

- Procurement – Common Issues (Continued)
 - Issue 2 Example:
 - Cost or price analyses are not required to be performed for all purchases exceeding the simplified acquisition threshold.
 - Potential Impact: What types of findings might result? Are questioned costs a risk in this situation?

A close-up photograph of a hand holding a glowing incandescent lightbulb. The lightbulb is the central focus, emitting a warm, golden glow. The background is a soft, out-of-focus bokeh of green and yellow light, suggesting an outdoor setting with sunlight filtering through leaves. The hand is positioned at the top, with fingers gently gripping the base of the bulb. The overall mood is one of inspiration and clarity.

Questions?

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Thank You