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Best Practices in Procurement and Suspension and Debarment

Having proper policies and procedures in place over procurement and suspension and debarment is essential for organizations receiving federal financial assistance. This article discusses the common issues nonfederal entities encounter with procurement and suspension and debarment, and best practices for ensuring their processes and controls are properly designed to promote compliance with the requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). The guidelines discussed and referenced in this article are those in effect prior to October 1, 2024.

Background

The Uniform Guidance addresses procurement standards for nonfederal entities other than states, including those operating federal programs as subrecipients of states, in 2 CFR sections 200.318 through 200.326. Requirements for suspension and debarment are found in 2 CFR Part 180. Nonfederal entities must follow their own documented procurement procedures, which reflect applicable state and local laws and regulations, provided such procedures conform to applicable federal requirements.

Common Issues

Below are some of the most common issues noted concerning compliance by nonfederal entities, and the relevant requirements:

- ▶ **Lack of documented procurement procedures.** 2 CFR 200.318 states nonfederal entities must have and use documented procurement procedures. Such standards must conform with relevant state, local and tribal laws and regulations, as well as the procurement standards identified in 2 CFR 200.317 through 200.327. The nonfederal entity must maintain written standards of conduct covering conflicts of interest and actions of its employees engaged in the selection, award and administration of contracts.
- ▶ **Inserting restrictions on competition.** Procurement transactions are to provide for full and open competition. 2 CFR 200.319 provides examples of inappropriate conditions nonfederal entities will artificially impose to create limitations to competition, such as through placing unreasonable requirements on firms to qualify to do business, requiring unnecessary experience or specifying a “brand name” product. Furthermore, nonfederal entities must avoid use of statutorily or administratively imposed state, local, or tribal geographical preferences except where federal statutes mandate or encourage geographic preference.
- ▶ **Not retaining evidence of price or rate quotations for small purchases.** 2 CFR 200.320(a)(2) describes small purchases as those with an aggregate dollar amount higher than the micro-purchase threshold (\$10,000, or \$2,000 for acquisitions subject to the Davis-Bacon Act) but less than the simplified acquisition threshold (\$250,000, or a lower

amount as determined by the nonfederal entity). When small purchase procedures are used, the nonfederal entity must obtain price or rate quotations from an adequate number of qualified sources.

- ▶ **Inappropriate use of noncompetitive procurement.** 2 CFR 200.320(c) limits the use of noncompetitive procurement to specific circumstances which include: (a) the aggregate dollar amount does not exceed the micro-purchase threshold; (b) the item is available only from a single source; (c) a public exigency or emergency does not permit a delay for competitive solicitation; (d) the federal awarding agency or pass-through entity expressly authorized via response to a written request for noncompetitive procurement; and (e) after solicitation of a number of sources, competition is determined inadequate. Nonfederal entities procuring goods or services noncompetitively outside of the specific circumstances listed risk having the related costs disallowed and other negative ramifications due to noncompliance.
- ▶ **Not checking for suspended or debarred parties.** Nonfederal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred. Per 2 CFR 180.220, covered transactions include contracts for goods and services awarded under a nonprocurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed \$25,000, contracts that require the consent of an official of a federal awarding agency, or contracts for federally required audit services.

Question: Can a nonfederal entity use its history or familiarity with a vendor as criteria for selection?

Answer: No, procurement transactions must be conducted in a manner that provides full and open competition. Relevant technical requirements or the inclusion of minimum essential characteristics or standards may be used for evaluation purposes but must not contain features which unduly restrict competition. “Preferences” are not appropriate criteria for evaluating bids or proposals.

Best Practices

Below are suggested best practices to help ensure compliance with requirements for procurement and suspension and debarment:

- ▶ **Routine review of documented procurement procedures.** Nonfederal entities must have written procedures for procurement and should review these procedures routinely to ensure they are in compliance with relevant laws and regulations, and accurately reflect the actual procurement process.
- ▶ **Review of terms and conditions.** Invitations to bid, requests for proposal and contracts should be reviewed to ensure the terms and conditions are in compliance with recently enacted federal laws and regulations. For example, effective May 14, 2022, the Build America, Buy America Act (BABA) requires a Buy America preference for iron, steel, manufactured projects, and construction materials used in projects.
- ▶ **Retention of quotes, bids and proposals received.** For procurements made under small

purchase procedures or formal procurement methods, nonfederal entities should retain copies of the quotes, bids, or proposals received to support compliance for competitive procurement.

- ▶ **Written documentation of noncompetitive procurement.** Nonfederal entities should maintain robust documentation as appropriate for their scenario justifying the use of noncompetitive procurement. Such documentation should include:
 - Written approval from the federal awarding agency or pass-through entity authorizing noncompetitive procurement, when available.
 - Evidence of inadequate competition when solicited, proof that the item is only available from a single source, and the facts and circumstances explaining why a public exigency or emergency required immediate procurement.

- ▶ **Retention of documentation of the review for suspension and debarment.** Nonfederal entities should retain in their procurement files evidence that they verified the entity was not debarred, suspended, or otherwise excluded from federal programs prior to entering a covered transaction. This can include a screenshot of checking the System of Award Management (SAM) Exclusions maintained by the General Services Administration (GSA) available at [SAM.gov](https://www.sam.gov), collecting a certification from the entity, or adding a clause or condition in the agreement related to the covered transaction.

Question: Are non-federal entities required to have a separate procurement policy for federally funded procurements?

Answer: Nonfederal entities are not required to have separate procurement policies. However, the procurement procedures used when federal funds are involved must conform to applicable federal statutes and the procurement requirements identified in 2 CFR Part 200. Nonfederal entities may opt for more restrictive policies than the requirements in 2 CFR Part 200 if they so choose.

Conclusion

Compliance with the requirements of the Uniform Guidance for procurement and suspension and debarment is essential to continue to receive federal financial assistance. Through adherence to the best practices listed above, nonfederal entities can better position themselves for a successful future.