

# Uniform Guidance and Procurement Challenges for Higher Ed

Cory Harms, Iowa State University  
BJ Pivonka, University of Connecticut


# Background

- Business Analyst at University of Connecticut
- Licensed Attorney
- Conferences Attended/Presented
  - NAEP New England Events
  - Federal Demonstration Partnership (FDP)
  - Hosted Procurement Meetup Groups at FDP
- Monthly UG Procurement Conference Call
  - Peer institutions call monthly to discuss UG related topics.
  - **Schools in attendance include: Harvard, Columbia, Pittsburgh, Univ. of Alaska, Iowa State**




# Disclaimer

- Any interpretations are that of myself and what the University of Connecticut has deemed appropriate for compliance with Uniform Guidance. Please conduct your own due diligence and/or contact your University's legal team(s) for further guidance
- Nothing in this presentation constitutes legal advice




# Agenda

- Key Terms
- Core Theme
- Common Mistakes of Contracting (FEMA)
- General Procurement Standards
- Methods of Procurement
- Contracting with SMBEs
- Contract Cost & Price
- Q&A



# Terms

- **UG** = Uniform Guidance
- **IHE** = Institution of Higher Education
  - **NFE** = Non-Federal Entity
  - **MPT** = Micro-Purchase threshold
- **SAT** = Simplified Acquisition Threshold
- **SMBE** = Small & Minority Businesses



## Core Theme of UG: Competition

- 1) Cost Savings
- 2) Analysis/Due Diligence
- 3) Transparency/Documentation
- 4) Confusion/Frustration



## Common UG Mistakes According to FEMA

# Forbidden Contract Types

- Time-and-materials contracts without a ceiling price
  - Exception: with a ceiling price that the contractor exceeds at its own risk
  - Documentation that no other contract type is suitable
  - NFE must have “high degree of oversight” to get reasonable assurances that contractor is using effective cost controls and efficient practices
    - i.e. monthly reviews/reports, site visits, customer feedback
- **Best practices: milestone-based payments (project based), max payable language**
- Other Types of forbidden Contracts:
  - Cost-plus-percentage-of-cost contract
  - Percentage of construction cost contracts



# “Piggybacking” Contracts

- Be wary of...
  - Using another jurisdiction’s contract when non-competitive procurement is not appropriate
  - “Materially different in terms of scope or requirements”
  - Timing regarding when the contract was negotiated (pre/post UG)

# Contract Provisions

- Include language for all provisions covered in Appendix II to Part 200 in all contracts under federal awards
- **Best practice: if doing a formal solicitation, incorporate language in bid document as well**
  - Ex. At UConn we include a sample contract which would include this language for federally funded procurements



# General Procurement Standards



# Contract Close-Outs (200.318 b )

- When should they be done?
  - How are they done?
- Who are we communicating with?
- What are we documenting?

# Geographic Preference

- Geographical location is invalid as an evaluation criteria
- That does not mean that geography is not permitted to be mentioned in the Scope of Work
- Exceptions:
  - Federal statutes expressly mandate or encourage geographic preference
  - Architectural and engineering series (A/E), as long as it leaves an “appropriate number” of qualified firms

## Conflict of Interest (200.318(c))

- Must maintain written Conflicts Of Interest policy standards
  - “No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest”
- ***Managed conflicts not allowed. This is an outright bar on conflicts***

# Responsible Contractors (200.318(h))

- Evaluation Tools:
  - System for Award Management (SAM)
  - Federal Awardee Performance and Integrity Information System (FAPIIS)
  - References
  - Past Performance
  - 3<sup>rd</sup> Party Vendor Screening Services
- Documentation, Documentation, Documentation

# Federal Excess & Surplus Property (200.318(f))

- Communication:
  - Let the community know its options
    - Ex: Sites for federal excess property (GSA/State)
  - Policy/Procedure Updates
- Documentation: Attestation button in eProcurement system:
  - “If this purchase is on a federal grant, I assure, based on the confirmation from the Principal Investigator, this purchase is necessary for the research sponsored by the grant and reasonable efforts were made to source accessible or available equipment, and for NSF grants no existing equipment is reasonably available and accessible.”



# Sample Language

- **Federal Excess Property** (When applicable, Procurement will check with local Federal Excess Property for items in lieu of procuring new items when the use is feasible and will result in a lower cost to the project.)
- Federal Surplus is available through Iowa Prison Industries at <http://www.iaprisonind.com/store/c/27-Federal-Surplus.aspx>. Current contact in Iowa for federal surplus property (IPI):
- **Clint Schmidt**  
Iowa Federal Surplus Property  
600 South East 18th Street  
Des Moines, IA 50317  
Phone: [515-266-6913](tel:515-266-6913)  
Email: [clint.schmidt@iowa.gov](mailto:clint.schmidt@iowa.gov)  
Fax: [515-263-4910](tel:515-263-4910)
- Procurement will also access federal surplus property information at <https://gsaxcess.gov/> and work to procure through IPI when needed.



# Methods of Procurement

## Price Reasonableness (200.320(a))

- Applies to micro-purchases (threshold under \$10k)
- GovSpend Tool (database of pricing information from other universities & government organizations)
- In UConn's eProcurement system we instituted the following attestation button:
  - "As the Principal Investigator, or as confirmed from the Principal Investigator, this purchase price is reasonable for the goods or services requested. This determination is based on comparing the price to multiple potential purchasing sources."

# Procurement by Non-Competitive Proposals (200.320(f)(1)-(4))

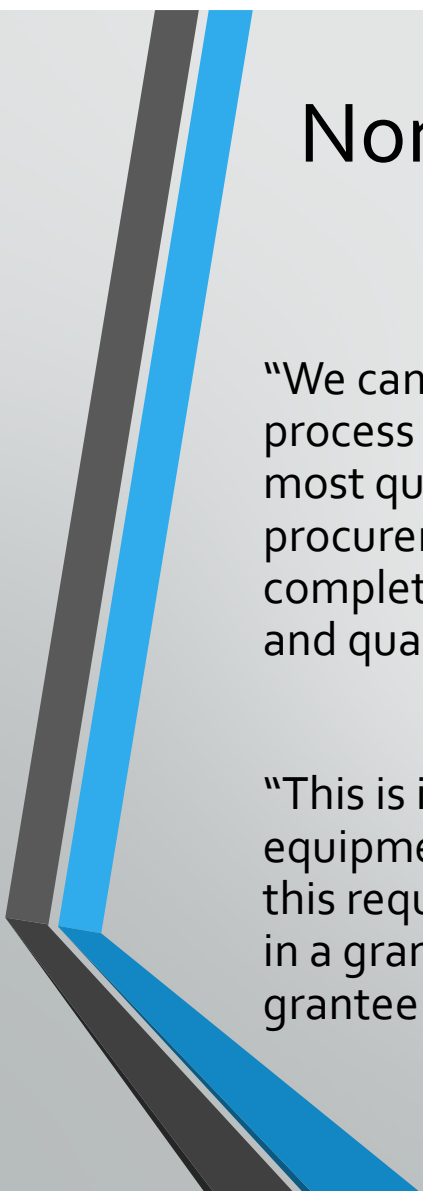
- Sole Source Types
  - The item is only available from a single source
    - Sole Source vs. Best Source
  - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (be mindful of when the emergency ends)
  - The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
  - After solicitation of a number of sources, competition is determined inadequate
- Sources named in the grant
- Faculty Owned Companies & COI
- Document (FEMA)
- [Hypotheticals](#)



**POOR PLANNING  
ON YOUR PART DOES  
NOT AUTOMATICALLY  
CONSTITUTE AN  
EMERGENCY  
ON OUR PART**

# Non-Competitive Procurements – Difficulties w Federal Agencies (DOE)

- “According to [2 CFR 200.308](#), prior approval to purchase equipment is not required. Just get the concurrence from your Program Manager, Glen Crawford. Please let me know if you have any other questions”
- “There is no need to get prior approval from DOE to purchase equipment, sole source or otherwise”
- “What about my explanation doesn’t make sense to you? You might be thinking in terms of contracting regulations, but this is financial assistance. There are no regulations requiring competition/bidding for the purchase of equipment. If you’d like to verify this information with my contracting officer, I’ll be happy to provide you with his contact information. Let me know if you have any other questions.”
- “I do not have any objection to your current and future sole source purchase(s) of American made LAPPD equipment as long as it is in accordance with University’s procurement policies.”



## Non-Competitive Procurements – Difficulties w Federal Agencies (NIH)

“We cannot approve a sole source based on the quote provided. The general NIH grant process is to obtain, at minimum, three bids/quotes whenever possible, and to ensure the most qualified vendor is selected. NIH does not dictate a grantee organization’s procurement policies and procedures after award. It is the expectation that the applicant completes research prior to award to ensure selection and service of the most reasonable and qualified vendor.”

“This is in response to the request for approval to use a sole source procurement for equipment awarded in supplement Notice of Award 3R01GM120316-02S1. Staff reviewed this request and determined that our approval is not necessary since funds are provided in a grant and not a contract. Requests of this nature fall within the purview of your grantee institution’s internal policy and procedures.”



# Contracting with SMBEs



# Solicitation of SMBEs (200.321)

## Solicitation Requirements

- IHE must make specific **affirmative efforts** to solicit SMBEs
- Prime contractor must take same efforts if using subcontractors
- **NOTE: Federal designations may be different than your state's designations**

## Certified Lists

- Small Business Administration Federal Contracting Assistance Programs
- National Minority Supplier Development Council (NDSDC)
- Third Party Certifications:
  - El Paso Hispanic Chamber of Commerce – The Women's Business Border Center
  - National Women Business Owners Corporation (NWBOC)
- Some state entities may have a list as well
  - ConnDOT has a list



# Contract Cost & Price

# Cost Analysis & Negotiation of Profit

## Cost Analysis

- NFE must perform a cost OR price analysis on every procurement over the SAT
  - **Do a price analysis whenever possible**
- NFE must make independent estimates before receiving bids or proposals
  - Use GSA baseline pricing

## Negotiation of Profit

- Must be done when there is no price competition (i.e. sole source) or in any instance where a cost analysis is performed
- GSA pricing already determined to be fair and reasonable by the federal government
- Aspects to be considered for profit:
  - Risk borne by contractor
  - Contractor's investment
  - Amount of subcontracting
  - Quality & past performance
  - Industry profit rates

# Negotiation for Profit & Cost Analysis

- Technology Service Provider Example
  - Provided rates, overhead cost %, profit markup %, and final flat rate
  - 3<sup>rd</sup> party service provider had a report with general baselines for % of cost for labor, overhead, and profit for benchmarking
  - Calculated all percentages into dollars to verify all the numbers
  - Created a one-page summary and attached all cited documents and emails into one PDF for future use (i.e. Auditor)

Q&A





# Contact Information

BJ Pivonka

Business Analyst

University of Connecticut

[BJ.Pivonka@UConn.edu](mailto:BJ.Pivonka@UConn.edu)