

The Procurement Review- What to Expect

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What guidance will be used for Reviews?

- ★ **2 CFR Part 200** is now the governing regulation replacing 7 CFR Parts 3016-3019 and the following OMB Circulars (Regulations):
 - ★ *Circulars A-21 (Cost Principles for Education Institutions)*
 - ★ *A-87 (State, Local and Indian Tribal Gov. cost principles)*
 - ★ *A-122 (Cost Principles for Non-Profit Organizations)*
 - ★ *A-89 (Catalog of Federal Domestic Assistance (CFDA))*
 - ★ *A-102 (Grants and Cooperative Agreements with State and Local Government)*
 - ★ *A-110 (Administrative Requirements for Institutions of Higher Education, Hospitals and Other Non-Profit Organizations)*
 - ★ *A-133 (Single Audit Guidance)*
 - ★ *A-50 (Audit Follow-up)*



What is The Review Process?

- ★ All SFAs are supposed receive a procurement review once every three years; in MA it will be a portion of the SFAs selected for the Admin Review, at least for the near term
- ★ SFAs will be notified of the review and the timeframe by letter, which will be followed up within a week by an email that will include the SFA Procurement Table
- ★ The SFA will complete the Procurement Table and return to ESE along with a Vendor Paid List
- ★ ESE will select the procurements on the Procurement Table that will be reviewed and return the table to SFA along with a checklist of documents required to be uploaded prior to the on-site portion of the review
- ★ SFA will upload the required documents, ESE will review the documents and schedule the on-site portion of the review (typically one day)



Areas We Review...

- ★ General Procurement Procedures
- ★ Micro-purchases
- ★ Small Purchases
- ★ Formal Procurement (IFBs/RFPs)
- ★ FSMC Base Year
- ★ FSMC Renewal Year
- ★ Processing



General Procurement Procedures

What we will look for...

★ SFA Procurement Plan

- ★ Is there a written procurement plan (procurement procedures)? SFA must use its own documented procurement procedures which reflect applicable Federal, State, and local laws and regulations
 - ★ If no, this is a finding. Technical assistance will be provided.
 - ★ If yes,
- ★ Does it comply with the requirements in the Super Circular 2 CFR 200.318?
- ★ Are there provisions in opposition to above?



General Procurement Procedures

What we will Look for...

Written Procedures – Procurement Plan

- ★ Code (Standards) of Conduct / Purchasing Ethics
- ★ Procurement Threshold(s)/Methods of Procurement
 - ★ Micro-Purchasing
 - ★ Small/Informal Purchases
 - ★ Seal Bids/Competitive Proposals
 - ★ Noncompetitive Propos
- ★ State and Local regulations
- ★ Required Contract Provisions
- ★ Procedures – scoring, awarding, monitoring
- ★ Grievances / Bid Protest Procedures



General Procurement Procedures

What will we look for?

- ★ Is there a Code (Standards) of Conduct included in the Procurement Plan or in a separate document? Does it:
 - ★ Prohibit real, or apparent, conflicts of interest of employees, officers or agents engaged in selection, award, or contract administration
 - ★ Indicate no soliciting or accepting gratuities, favors, or anything of monetary value
 - ★ Ensure financial interest is not substantial or the gift is unsolicited and of nominal value
 - ★ Include disciplinary action for violations



Conflict of Interest



What is the value to be considered
not a conflict of interest?



Not so good procurement practice...

General Procurement Procedures

- ★ Most SFAs have no written Procurement Procedures (or incomplete) .
- ★ Many SFAs have no Code of Conduct (Standards of Conduct). This can also be a separate document – often the case when a district has their own Code of Conduct.



Let's take a look...

Procurement Methods

1. Micro-purchases
2. Small Purchases (Informal)
3. Sealed Bids (Formal)
4. Competitive Proposals (Formal)
5. Non-Competitive Proposals



What we will look for...

★ **Methods of Procurement - are you using the appropriate methods for your procurements and do you have the supporting documentation?**

- ★ Micro-purchases – under \$3,500. Spread equitably?
- ★ Small Purchase Procedures (\$3,500-\$50,000). State-most restrictive.
- ★ Sealed Bids/Competitive Proposals (above \$50,000). State-most restrictive.
- ★ Non-competitive Proposals. Does it meet the required circumstances?
- ★ Required Contract Provisions, as applicable



Not so good procurement practice...

Procurement Methods

- ★ Some SFAs have not used the aggregate value of expected purchases from a vendor over the year to determine the procurement method, but instead looked at the value of individual purchases.



What we will look for...

★ **Contract provisions:**

- ★ Appendix II to 2 CFR Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
 - Debarment and Suspension
 - Byrd Anti-Lobbying Amendment (>\$100k)
 - Termination for Cause and convenience (>\$10k)
 - Davis-Bacon Act (construction >\$2k)
 - Rights to Inventions
 - Clean Air Act (>\$150k)
 - Equal Employment Opportunity
 - Contract Work Hours and Safety Standards Act (>\$100k)
 - Remedies for violation or breach of contract with penalties (>\$150k)



What we will look for...

★ Other Contract Provisions:

- ★ Procurement Standards 2 CFR 200.318
- ★ Bonding (2 CFR 200.325)
- ★ Buy American (SP24-2016)
- ★ FSMCs (7 CFR 210.16)
- ★ Donated Foods (7 CFR 250.14(d))
- ★ FSMC Contract Provisions (7 CFR 250.53)



Not so good procurement practice...

Required Provisions

- ★ Many SFAs do not include all required contract provisions in their solicitations and contracts . Some have them in the solicitation, some have them in the contract, others in neither. They must be included in both the solicitation and contract.



Informal Procurement/Simplified Acquisition Threshold

2 CFR 200.320



Small (Informal) Purchases

What we will look for...

- ★ Documentation demonstrating the SFA/LEA obtained multiple quotes.
- ★ Written Specifications used to solicit quotes.
- ★ Documentation of the prices quoted
- ★ A contract or documentation outlining the agreed upon expectations from this solicitation.



Small (Informal) Purchases

What we will look for...

- ★ Vendor paid list/statement of expenses
- ★ Invoices/Receipts
- ★ Purchase orders
- ★ Other appropriate documentation



Not so good procurement practice...

Small (Informal) Purchases

- ★ An SFA did an informal purchase of a POS system since the cost was under the Simplified Acquisition Threshold. However, they used the vendor demos of the POS products as the key selection criteria as opposed to price.



Not so good procurement practice...

Small (Informal) Purchases

- ★ Not identifying all requirements, even for small purchases, in the request for quotes (e.g. delivery and installation requirements when purchasing equipment)



Formal : Sealed Bid (IFB)

Used when:

- ★ Value > \$50,000 Small Acquisition Threshold (SAT).
State requirement is more restrictive
- ★ Published Invitations for Bid (IFB)
- ★ Advertised
- ★ Opened publicly
- ★ Identify responsive, responsible bidder with the lowest-price
- ★ Award a firm, fixed-price contract



Formal : Sealed Bid (IFB)

What we will look for...

- ★ Original Solicitation issued
- ★ Responses received
- ★ Any additional documentation issued prior to awarding a contract
- ★ Awarding documentation/announcements
- ★ The contract and documentation showing the contract requirements are being or have been met.



Formal : Sealed Bid (IFB)

What we will look for in the Solicitation?

- ★ Scope of the solicitation
- ★ Required Federal Provisions from 2 CFR 200
- ★ Terms and conditions to be a responsive and responsible resposdee
- ★ Appropriately written product or service specifications and estimated quantities



Formal : Sealed Bid (IFB)

What we will look for in the responses?

- ★ Documentation determining:
 - ★ If bidder was responsive and responsible; if not, the reason.
 - ★ If bidders included value-added, overly responsive, or unallowable cost provisions and were still considered for award.
 - ★ If questions were received, were the responses issued to all respondents prior to the bid opening or awarding the contract?



Formal : Sealed Bid (IFB)

What we will look for....

★ Bid award

- ★ Was the bid awarded to the lowest responsive and responsible bidder?
- ★ Were all responding bidder's notified of the final award decision (Intent to Award)? Not required, but is a good practice.
- ★ Was a protest to the award filed?



Not so good procurement practice...

Formal Procurement

- ★ Not procuring (contracting with) processors. National and state agreements with processors are agreements to allow them to do business in the state. They have not been competitively procured. All processing of USDA foods must be competitively procured.



Formal: Competitive Proposal

Used when:

- ★ Value > \$50,000. State requirement is more restrictive
- ★ Published Request for Proposal (RFP)
- ★ Includes Technical Evaluation and scoring of Proposals (separate Technical proposal and Price proposal)
- ★ No public opening/must safeguard responses
- ★ Identify proposal most advantageous to the Program, with “price and other factors” considered
- ★ Price must be the primary consideration
- ★ Award either a fixed-price or cost-reimbursable contract



Formal: Competitive Proposal

What we will look for...

- ★ Original Solicitation issued to review:
 - ★ Scope
 - ★ Specifications for products or services
 - ★ Evaluation Scoring and Criteria Responses
 - ★ Notes of this evaluation and scoring process for contract award
- ★ Any additional documentation issued prior to awarding a contract



Formal: Competitive Proposal

What we will look for...

- ★ Terms and conditions to be responsive and responsible
- ★ Appropriately written product or service specifications
- ★ Determination documentation determining if bidder was responsive and responsible; if not, the reason.



Formal: Competitive Proposal

Other documentation prior to the award?

- ★ Are bidders including value-added or overly responsive items, or unallowable costs and the response is still being considered for award?
- ★ If questions were received, were the responses issued to all respondents prior to awarding?



Not so good procurement practice...

Formal Procurements

- ★ Identified numerous SFAs with overly responsive FSMC bids (including unallowable charges) that ended up in contracts:
 - ★ Scholarships
 - ★ Superintendent's Dinners
 - ★ Catering funds
 - ★ Back to school celebrations
 - ★ Holiday baskets
 - ★ Sponsorships – culinary centers, senior centers...
 - ★ Etc.



Formal: Competitive Proposal

What we will look for...

- ★ Awarding documentation/announcements
- ★ The contract and documentation showing the contract requirements are being or have been met.
- ★ Required Federal Provisions from:
 - ★ 2 CFR Part 200
 - ★ 7 CFR 210/250



Not so good procurement practice...

Formal Procurements

- ★ SFAs not contracting directly with vendors that were awarded through the Cooperative/Collaborative to which they belong.



Not so good procurement practice...

Formal Procurements

- ★ SFAs paying a percentage of cost to compensate a cooperative/ collaborative/agent to coordinate group purchasing (even if it's being charged to the vendor).



Noncompetitive proposals

What we will look for...

Documentation supporting one of the following circumstances:

- ★ Single/Sole Source: rationale & approval required
- ★ Emergency Procurement
- ★ SA expressly authorized noncompetitive proposals in response to a written request from the non-Federal entity/SFA
- ★ After solicitation of a number of sources, competition is determined inadequate.



Not so good procurement practice...

Noncompetitive Proposals

- ★ A procurement can't be considered a sole source simply because a vendor combines two disparate products that no other vendor offers together



Contractor Performance Monitoring

What we will look for...

- ★ What procedures are in place to monitor contracts?
 - ★ Who monitors contracts?
 - ★ What is monitored?
 - ★ When? (before payment is authorized)
 - ★ How?



Not so good procurement practice...

Contractor Performance Monitoring

- ★ Found incorrect prices on invoices - not matching the bid prices
- ★ SFAs not verifying index increases
- ★ SFAs not reconciling FSMC invoices monthly down to the vendor invoice detail



Handling findings...

- ★ Technical assistance
- ★ Required corrective action
- ★ Any need for fiscal recovery is to be assessed on a case-by-case basis.



Questions?

