

Uniform Guidance Procurement Requirements for North Carolina Local Governments Webinar Questions and Answers

On April 24, 2018, the UNC School of Government, in cooperation with the State and Local Government Finance Division of the North Carolina Department of State Treasurer, conducted a webinar on the Uniform Guidance procurement requirements (2 C.F.R. Part 200, Subpart D). Listed below are questions received during the webinar and our presenters' answers. For additional information on the Uniform Guidance procurement requirements, see the School of Government's local government purchasing and contracting website at the following link: <https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/federal-procurement-requirements>.

Some questions received during the webinar relating to specific programs require more research and thus are not included on this list. Those questions will be answered directly to the person asking the question.

Are Title I funds covered by UG?

The Treasurer's Office has been advised that Title I funds are covered.

Are requirements (policies, etc.) adopted by the board?

The UG does not require governing board approval of your local procurement or conflicts policies (and neither does state law), so follow your own local policies in determining how your policies are to be approval.

Does the LRRB (lowest responsive responsible bidder) standard of award apply to service contracts under UG?

Under the UG there is no distinction between purchase contracts and service contracts; service contracts must be bid and awarded under the same standard of award as purchase contracts (which is the lowest, responsive, responsible bidder standard).

Did the micro-purchase and SAT dollar threshold recently increase to \$10,000 and \$250,000 or does this increase apply to something else?

Not for local governments. There was an increase for institutes of higher learning, certain non-profits related to institutes of higher learning, and some other related entities.

Is e-rate (Universal Service) reimbursements and discounts covered?

The Treasurer's Office has been advised in the past that the E-Rate program is not subject to UG procurement requirements. However, you should confirm directly with your grantor agency.

Under NC law you are allowed to apply for an exemption currently for federally funded transportation projects as it relates to engineering services for design and construction administration. We are assuming at with these new rules this will no longer be allowed with reimbursable transportation projects (exemption component-specifically).

Federal agencies have the authority to issue guidance and interpretations of the Uniform Guidance requirements. We recommend checking directly with your grantor agency to confirm whether this previous exemption is still allowed.

If you have an engineer under an on-call contract and they set up the requirements of design, can they be awarded the contract for design or must it go out to bid?

The UG prohibits a contractor (which would include an engineer working under contract) who is involved in developing or drafting specifications, requirements, statements of work, and invitations for bids or requests for proposals from bidding on the contract (2 C.F.R. § 200.319(a)). We have been told that some federal agencies are considering modifying this prohibition but we've not seen any written guidance, so we recommend consulting directly with your grantor agency.

Can you describe what the M/WBE solicitation really consist of at a minimum?

2 C.F.R. § 200.321 outlines six M/WBE solicitation requirements, which are listed on Slide 40 of the webinar. These requirements are:

- Include M/WBEs on solicitation lists.
- Solicit M/WBEs when such firms are potential bidders.
- Where economically feasible, divide total contract requirements to enable more minority participation.
- Where economically feasible, establish delivery schedules to encourage M/WBE participation.
- Use services SBA and Minority Business Development Agency of US Dept. of Commerce or NC HUB Office to assist with communication of solicitation.
- Require prime contractors to take the same affirmative steps.

What happens when only one bid is received?

The UG doesn't address this situation. For contracts subject to the UG sealed bid procedure, we recommend readvertising once just as is the case under state law for construction or repair projects in the formal bidding range. For contracts subject to the UG small purchase procedure, since formal advertising isn't required, we recommend documenting your efforts to solicit pricing from multiple sources. And, for construction contracts costing \$500,000 or more, state law requires readvertising one time.

Does SOG have any checklists developed to use as a resource?

Slide 61 of the webinar outlines suggested actions to take in preparation for the UG compliance deadline. At a minimum, we recommend:

- Become familiar with 2 CFR Part 200

- Adopt/update local purchasing policies (sample policy is available at <https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/federal-procurement-requirements>)
- Adopt/update conflict of interest/gift ban policies (sample policy is available at <https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/federal-procurement-requirements>)
- Ensure procedures are in place to fully document procurement processes, including your cost analysis that is required for contracts costing \$150,000 or more
- Work with your attorney to develop federal contract provision templates (contract provisions requirements and examples are available at <https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/federal-procurement-requirements>)
- Review relationships with nonprofit partners (is an MOU or contract in place? Are you monitoring compliance?)
- Where applicable (such as disaster recovery), bid prepositioned contracts (debris removal, etc.)
- Review terms and conditions of federal grant awards to confirm all requirements – check with your grantor agency

Do requirements differ for IT Purchase contracts? Thinking of Best Value procurements under state law where contracts are not public until after award. Do we still perform a public bid opening?

In our opinion, the UG Competitive Proposal Method would be available for IT goods and services contracts that you might procure under the IT RFP option under state law (G.S. 143-129.8). The UG Competitive Proposal Method does not require a public bid opening (the UG sealed bid method does).

Does UG require we spread small purchase contracts out between vendors/suppliers?

For contracts costing less than \$3,500, the UG requires that you distribute micro-purchases among qualified suppliers *to the extent practicable*. (2 C.F.R. § 200.320(a)). So, while we would not consider this to be a mandatory requirement, you should make the effort to do so where feasible.

Is there a different selection method for the small purchase threshold for AES contracts, other than the state QBS process?

For AES contracts costing less than \$150,000, use the state QBS process (G.S. 143-64.31). For AES contracts costing \$150,000 or more, use the UG competitive proposal method with the evaluation still based on qualifications, not price. The two methods are substantially similar. A detailed description of these requirements is available in the “Most Restrictive Rule” summary that is available on the SOG local government purchasing and contracting website mentioned during the webinar: <https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/federal-procurement-requirements>

What if we are already contractually obligated?

You should consult with your federal grantor agency about what requirements will apply after July 1st to pre-existing contracts. At a minimum we recommend adopting the procurement and conflicts of interest policies required under the UG.

Are coop purchasing contracts acceptable?

There is no exception to UG procurement requirements for coop purchasing contracts. However, interlocal government cooperation is encouraged under the UG, so it is possible that a coop which is operated by a unit of government, such as the City of Charlotte's [Cooperative Purchasing Alliance](#) (CCPA) might qualify as interlocal cooperation. We strongly recommend you confirm with your grantor agency whether a coop purchase will be allowed.

What if during the year you have several small purchases and they will add up over \$3,500? Example - Title I schools purchase various supplies. When added together they come up to over \$3500.

While the UG requirements apply to *contracts*, and technically speaking, each purchase can represent a separate contract, if you anticipate expending more than \$3,500 on the same items (or groups of items) during the course of the fiscal year, we recommend following the sage wisdom of experienced purchasing officers: "When in doubt, bid it out."

Are there tools for internal controls (such as checklists for mitigating risk of waste, fraud, and other abuse of funding)?

At this time we do not have an internal controls checklist that is specific to the UG. If anyone becomes aware of any resources related to this question, please share with us. If we are able to identify any resources we will post them on the SOG's federal procurement requirements website.

The district will use the same nursing agency for special needs children as the child uses at home to provide continuity. There would be no saving to do a bid because they are paying the Medicaid rate. Would there need to be a bid in this case?

The Treasurer's Office advises "yes." This appears to be a cost reimbursement arrangement and if the contract is in excess of \$150K, then this is a §200.320(d) competitive proposal. "Other factors" would need to be consider other than price. However since we do not fully understand everything about this program, it may be best to contact your awarding agency.

Is there a checklist of new policies and procedures needed that local government needs to continuously have on hand and keep updated?

At a minimum, the UG requires you to have the following:

1. Written procurement policies that are consistent with state and federal law
2. Written conflicts of interest and gift policies that are consistent with state and federal law
3. For individual contracts, documentation of your procurement process, including a clear and accurate description of the items or services to be procured, the rationale for

procurement method used, the factors to be used in evaluating the bids, and the basis for contract award.

4. For contracts costing \$150,000 or more, documentation of the price/cost analysis conducted prior to bid solicitation.

Do EC federal funds IDEA Part B, Preschool 619 and Part B 611 fall under UG requirements?

The Treasurer's Office was advised by a management liaison with NC Department of Education (US DOE), that other than portions of the Impact Aid program under 20 USC 7702-7703b, no other US DOE programs are exempt. Refer to the Uniform Guidance §200.101(d)(2). You may want to contact your awarding agency.

What tools exist to assure vendors or contractors are in compliance?

At this time we do not have vendor/contractor compliance checklist that is specific to the UG. If anyone becomes aware of any resources related to this question, please share with us. If we are able to identify any resources we will post them online.

Does the requirement to adopt written procurement and conflicts of interest policies apply under emergency situations, i.e., FEMA, or emergency repairs?

Yes. The requirement to have written procurement and conflicts of interest policies applies for all procurement activities, including those during emergency situations, so it is important to update your policies now instead of during a crisis situation.

If we currently have purchasing policies that do not comply with the UG requirements, can we just add the UG requirements to Federal Grant funds and have separate thresholds?

Yes. You are not required to adopt the UG bid thresholds for procurements not paid for with federal funds, so you may continue to operation under your regular policies for procurements funded with non-federal dollars. However, you are required under the UG to have written policies that comply with the UG requirements when paying for a contract with federal funds. You can adopt a simple compliance statement or a more detailed set of policies applicable to federal funds. Examples are available at <https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/federal-procurement-requirements>

Is a purchase order considered a written contract?

Yes, if it meets the other legal requirements for a contract (such as preaudit where applicable). The same is true for credit card purchases, p-card purchases, and invoices.

If you have a contract that only a portion of which is allocated/charged to a federal grant, and that portion is below \$3500 annually, do you follow the micro procurement policy (because the amount charged to the grant is within that range) or must you follow the applicable policy for the entire contract (i.e. a non-profit's IT contract, which allocates a portion to the grant activities within the organization)?

Our interpretation of the UG is that its requirements apply to any contract funded wholly or *in part* with federal funds, so the cost of the total contract is what determines which bidding method you must use, not the amount to be charged to federal funds. However, your federal

grantor agency might issue guidance on this point so you should check your grant documents and confirm directly with your grantor agency.

Would the documentation requirement be met by such things as the paper trail of the RFQ/ITB/RFP and meeting minutes from council action?

Yes. The documentation is not required to be in a specific form so long as the relevant information itself is recorded in some fashion.

What are record retention requirements on this documentation?

Records relating to federal fund expenditures, including documents relating to procurement of contracts paid for with federal funds, must be retained for a period of 3 years from the date of either (1) the final expenditure report, or (2) for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report as reported to the Federal awarding agency or pass through entity in the case of a subrecipient (2 C.F.R. § 200.333).

Is it the responsibility of the State agency administering the grant to ensure the grant recipient complies with UG?

All recipients are responsible for monitoring compliance by subrecipients. This requirement also applies to a local government that passes through federal funds to another entity such as a nonprofit. The local government must monitor compliance by its subrecipient.

When a local government has a loan and grant combination of funding does the coverage of UG requirements extend to the loan portion?

The answer to this question might depend on the category of federal funds and how the grantor agency is applying the UG requirements specifically to loan funds. We recommend checking with the grantor agency.

Are there specific requirements within the UG for alternative project delivery such as Design-Build, GCCM, etc.

The UG does not specifically authorize alternative construction delivery methods, such as CM at Risk or Design-Build. The UG competitive proposal method appears to be a contracting method that is available for this category of contracts, but state requirements will still apply. We recommend consulting directly with your grantor agency to confirm before considering using an alternative construction delivery method paid for with federal funds.

If UG prohibits geographic preference but our policy encourages local vendors, do we need to follow the UG?

Yes. The UG specifically prohibits the award of a contract based on geographic preference unless specifically authorized under federal law, not by state law or local policy. Generally speaking, the only category of contract for which the UG authorizes a geographic preference is for architect and engineering contracts, and then only a preference for *in-state* firms, not local firms as that may be defined by your local policy.

The UG states that for small purchase procedures we must obtain an “adequate number” of quotes? What determines adequate? For ex: If we solicit from 20 firms and only receive two quotes is this adequate?

For contracts bid under the small purchasing method, the UG simply requires an “adequate number.” In OMB training sessions, OMB staff advised that 2 quotes were sufficient. However, some federal agencies might issue guidance further interpreting what constitutes an “adequate number.” For example, FEMA interpreted “adequate number” to be 3 quotes for Hurricane Matthew Public Assistance grants. We recommend checking the grant award documents and confirming with the granting agency whether “adequate number” has been further defined by that agency and, if not, it appears that 2 quotes is sufficient.

How do we handle annual software agreements, copiers etc.?

These categories of contracts would be governed under the same UG rules as all other service contracts which, under the UG, must be treated the same as purchase contracts. Remember, if you aren’t paying for those contracts with federal funds that are covered under the UG, state law and your local policies controls.

If the grant was bid prior to July 1, 2018 is the project exempt from the UG policy that must be implemented by July 1st?

You should adopt the local policies required under the UG (procurement and conflicts). Whether your grantor agency will impose the new UG requirements on contracts bid prior to July 1st is up to that agency. The advice given by OMB is “assume the UG requirements apply unless you are advised in writing by your grantor agency that different rules apply.” It is best to confirm directly with your grantor agency.

Is there a sample Procurement Policy with the UG requirements/language?

Yes. Sample policies are available on the SOG’s federal procurements requirements website at <https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/federal-procurement-requirements>