



Uniform Guidance Procurement Requirements for NC Local Governments

UNC School of Government
Webinar Presentation
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Welcome!



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OVERVIEW





FEDERAL REGISTER

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Part III

Office of Management and Budget

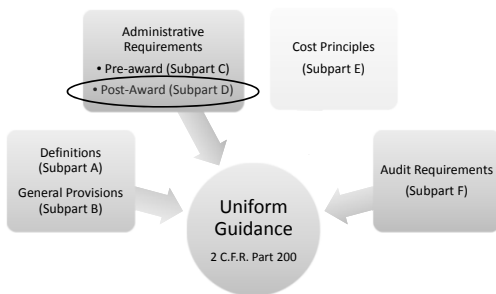
2 CFR Chapter I, Chapter II, Part 200, et al.
Uniform Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards; Final Rule

What is the Uniform Guidance?

- Rules that set uniform standards for the award and expenditure of federal financial assistance (grants and loans)
- UG supersedes previous rules/OMB Circulars (ex: A-102, A-133)
- UG codified at 2 C.F.R. Part 200
- Procurement standards codified at 2 C.F.R. Subpart D (§§ 200.317-326)



What is the Uniform Guidance?



What is the Uniform Guidance?



Post-Award Requirements (Subpart D)

1. Financial and Program Management Standards
2. Property Standards
3. **Procurement Standards**
4. Performance and Financial Monitoring and Reporting
5. Record Retention and Access
6. Remedies for Noncompliance
7. Closeout
8. Post-closeout adjustment and continuing responsibilities
9. Collection of Amounts Due



Who Does the UG Apply To?

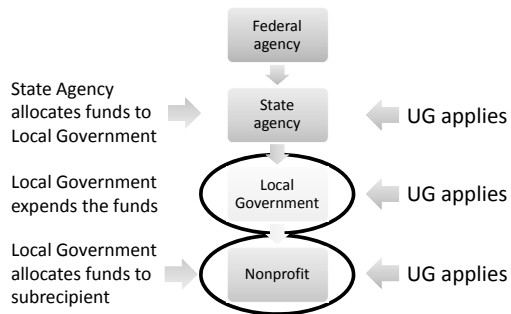
“Non-federal entities” that receive federal financial assistance – states, nonprofits, Indian Tribes, universities and colleges, and local governments

- ✓ City and County
- ✓ School District
- ✓ Public Authority and Special District
- ✓ Council of Government
- ✓ Any other “political subdivision”



Who Does the UG Apply To?

Recipients *and all subrecipients* are covered



Which Programs are Covered?

- UG applies to most (but not all) categories of federal financial assistance programs
- Not all federal programs are covered
- Not all parts of the UG apply to all categories of covered funds

ASSUME THE UG APPLIES UNLESS THE GRANTOR AGENCY ADVISES OTHERWISE - CHECK WITH YOUR GRANTOR AGENCY!



When Does the UG Become Effective?

Grace period for implementing new requirements ends
on your first FYE after 12/25/2017



Example:
If your fiscal year ends
6/30/2018, UG requirements
apply 7/1/2018



Why Is This Important?



Funding

☐ Obligated Funds

☒ Deobligate Funds

☐ No Change to Funding

Noncompliance with
state and federal
requirements has
serious consequences



Why Is This Important?

- | | |
|---|---|
| <ul style="list-style-type: none">• DHS (FEMA) OIG audits<ul style="list-style-type: none">• 2009-2014:
<i>Disallowed \$387m</i>• 2015:
<i>Disallowed \$122m</i>• Noncompliance with federal procurement requirements most common reason for FEMA PA deobligation | <p>Common Procurement Violations with FEMA PA:</p> <ol style="list-style-type: none">1. Noncompetitive contracting2. Contract provisions3. M/WBE requirements4. Cost-Plus contracts5. Lack of documentation |
|---|---|



TOP 10 GENERAL UG PROCUREMENT STANDARDS



General UG Procurement Standards

1. Oversight

Maintain oversight to ensure contractors perform according to terms, conditions, and specifications of contract



2. Necessity

Avoid unnecessary/duplicative supplies and services; limit acquisitions to what is necessary to perform the scope of work (no "stockpiling")



General UG Procurement Standards

3. Standards of Conduct

- Written policy governing conflicts of interest and performance of employees engaged in contracting
- Must address conflicts of interest and gifts
- Must include disciplinary action for violations



4. Conflicts of Interest

- Cannot be involved in contracting process if you have a *real or apparent* conflict of interest
- Must disclose conflicts in writing to federal grantor agency

5. Gifts

- Cannot solicit or accept gifts or favors from contractors or subcontractors

General UG Procurement Standards

6. Award to Responsible Contractors

- Award contracts only to *responsible* contractors; adhere to the lowest responsive, responsible bidder standard of award
- Cannot award to federally debarred bidder

7. Records

Maintain records detailing the procurement process, including documentation of:

- Rationale for method of procurement used
- Contract type
- Contractor selection process
- Basis for contract price

DOCUMENT EVERYTHING!!!

Put the contract in writing!!!



General UG Procurement Standards

8. Time and Materials & Cost-Plus Contracts

Generally not allowed.



9. Settlement of Issues

The local government, *not* the federal government, is solely responsible for settling all contract disputes and claims. Federal government will not become involved in or defend contract claims.



General UG Procurement Standards

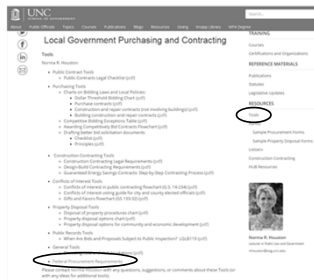
10. Full and Open Competition

- Procurement process must be “full and open competition” consistent with state and federal bidding requirements
- Designers/contractors who help develop specs cannot bid on the contract
- Geographic preferences prohibited
- “Brand-name” specifications without equal alternatives prohibited
- Pre-positioned competitively bid contracts are permitted



Additional Resources

- Detailed comparison chart available on [SOG website](#)
- Requirements summarized in [Treasurer's Memorandum #2018-06](#)



www.ncpurchasing.unc.edu



TOP 10 DIFFERENCES BETWEEN

UG PROCUREMENT REQUIREMENTS AND STATE LAW

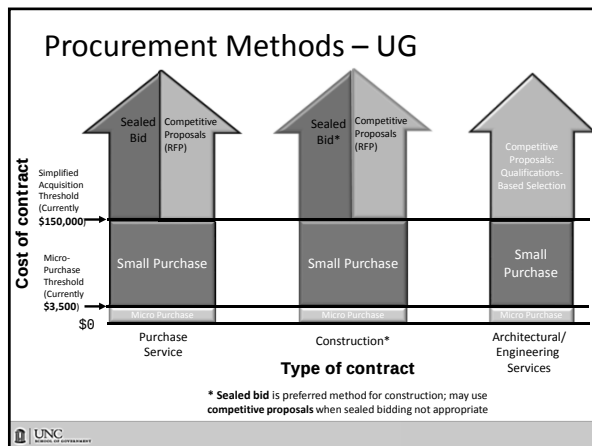


Which Rules Do You Follow?

“The non-Federal entity must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.”

- 2 CFR § 200.318(a)

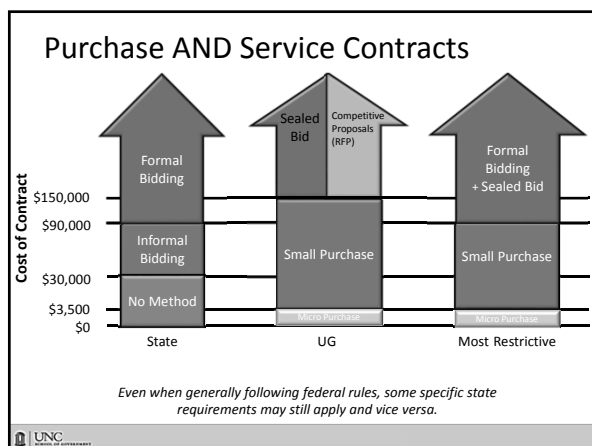




Which Set of Rules Do I Follow?

- Follow the “Most Restrictive Rule”
- If rules are different but neither is more restrictive than the other, follow federal rules
- Even when generally following federal rules, some specific state requirements may still apply
. . . and vice versa

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University of North Carolina



"Most Restrictive Rule"

Purchase and Service Contracts

Contract Cost:
\$3,500-\$90,000

UG Small
Purchase
Procedure

Procedures:

- Quotes from "adequate number" of bidders
- M/WBE solicitation
- Award on fixed-price or not-to-exceed basis
- Contract in writing with UG provisions
- Award to LRRB
- Document procedures

"Most Restrictive Rule"

Purchase and Service Contracts

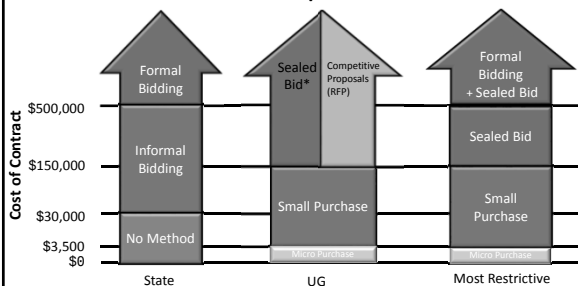
Contract Cost:
\$90,000 and
above

State formal
bidding and
UG Sealed Bid

Procedures:

- Specs available to bidders
- Formal advertising
- Sealed bids
- Public bid opening
- Award to LRRB
- Price analysis before bidding
- M/WBE solicitation
- 2-bid minimum
- Award on fixed-price basis
- Contract in writing with UG provisions
- Document procedures

Construction and Repair Contracts



Even when generally following federal rules, some specific state requirements may still apply and vice versa.

*Some grantor agencies may require sealed bid for all construction

"Most Restrictive Rule"

Construction and Repair Contracts

Contract Cost:
\$3,500-
\$150,000



UG Small
Purchase
Procedure

Grantor agency may
require sealed bid
method!

Procedures:

- Quotes from "adequate number" of bidders
- M/WBE solicitation
- Award on fixed-price or not-to-exceed basis
- Contract in writing with UG provisions
- Award to LRRB
- Document procedures



"Most Restrictive Rule"

Construction and Repair Contracts

Contract Cost:
\$150,000 to
\$500,000



UG Sealed Bid
Procedure

Procedures:

- Price analysis before bidding
- Specs available to bidders
- Public advertising
- M/WBE solicitation
- Sealed bids
- Public bid opening
- 2-bid minimum
- 5% bid bond / P&P bonds
- Award on fixed-price basis
- Contract in writing with UG provisions
- Award to LRRB
- Document procedures



"Most Restrictive Rule"

Construction and Repair Contracts

Contract Cost:
\$500,000 and
above



State formal
bidding and
UG Sealed Bid

Procedures:

- Specs available to bidders
- Formal advertising
- Sealed bids in paper form
- Public bid opening
- 3-bid minimum
- 5% bid bond / P&P bonds
- Award to LRRB
- Price analysis before bidding
- M/WBE solicitation
- Award on fixed-price basis
- Contract in writing with UG provisions
- Document procedures



“Most Restrictive Rule” Construction and Repair Contracts

Contract Cost:
\$300,000 and above
Involving a building



Additional state
requirements for
large building
projects

Additional requirements:

- State formal HUB, including bidders' good faith efforts
- Separate specs for main trades
- Authorized bidding method
- Dispute resolution procedures (all building projects)



Competitive Proposal Method

Available for contracts costing **\$150,000 and above** when conditions not appropriate for sealed bid method

Examples:

- Service contracts
- Innovative IT goods and services
- Alternative construction delivery methods (CMR, DB)

Don't use for purchase and construction contracts in formal bidding range (state bidding requirements more restrictive)

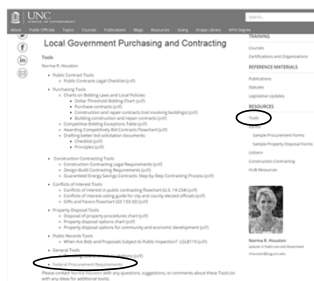
Procedures:

- Publicly advertise RFP
- M/WBE solicitation
- Identify evaluation criteria and weighting in RFP
- Consider all responses to maximum extent
- Written evaluation procedures
- Award to firm with most advantageous proposal based on price and other factors considered
- Contract in writing with UG provisions
- Award on fixed-price or cost-reimbursement basis



Additional Resources

“Most Restrictive Rule” summary available on [SOG website](http://www.ncpurchasing.unc.edu)



www.ncpurchasing.unc.edu



4. MINORITY SOLICITATION REQUIREMENTS



HUB Participation

- Is a **goal**, not a quota
- Focuses on opportunity to **compete** for contracts
- Lowest responsive, responsible bidder standard still applies
- Non-discrimination in contract award still applies



HUB - Follow UG AND State Law

UG (M/WBE)

- ✓ Applies to **All** Contracts regardless of type above micro-purchase threshold (\$3,500)
- ✓ Requires 6 specific solicitation steps (UG steps similar to state HUB good faith efforts)

State (HUB)

- ✓ Local government engages in outreach efforts for all building construction contracts costing \$30,000 and above
- ✓ Require bidders to engage in good faith efforts for all building construction contracts costing \$300,000 and above



UG M/WBE Requirements

1. Put M/WBEs on bidders list
2. Include M/WBEs in bid solicitations
3. Where feasible, divide project into smaller contracts to encourage M/WBEs participation
4. Where feasible, establish delivery schedules to accommodate M/WBEs
5. Use services of SBA, US Dept. of Commerce Minority Development Agency, and other similar agencies (NC HUB Office)
6. Require prime contractors to comply with steps 1-5 above



5. TIME & MATERIALS / COST-PLUS CONTRACTS



This One's Easy . . .



- Contracts must be for a fixed-price (lump sum, not-to-exceed, etc.)
- Cost-plus contracts are not allowed
- Time & Materials may be allowed in exigent circumstances within limited time frame *and* contract includes not-to-exceed limit



6. BIDDING EXCEPTIONS



Follow UG Generally . . .

Noncompetitive (sole source) contracts allowed when:

- ✓ Item only available from one source - similar to state "sole source" exception; state procedural requirements apply
- ✓ Public exigency - similar to state emergency exception but within limited time frame
- ✓ Awarding agency authorizes noncompetitive contract - purchase and construction contracts must still fall within allowed state exception
- ✓ Competition inadequate after attempts at solicitation - state law requires readvertising for construction contracts in formal bidding range
- ✓ GSA Contract Purchase or Interlocal Agreement

BEFORE USING AN EXCEPTION, CHECK WITH YOUR GRANTOR AGENCY!



State Exceptions Not Allowed Under UG

- ✗ Piggybacking
- ✗ Group Purchasing Programs
(may be allowed if the coop qualifies as an interlocal agreement and contracts are procured in compliance with UG – check with your federal grantor agency!)
- ✗ State contract
(state contract must have been bid in compliance with federal requirements applicable to local governments to be allowed)

Can use state contract and group purchasing for micro-purchases (below \$3,500)



7. WRITTEN POLICIES & DOCUMENTATION



UG Requires:

1. Written procurement policies that are consistent with state and federal law
 - Must include statement that local government will comply with all federal laws and regulations applicable to federal grant funds
 - Not required to reprint entire federal code in local policy; compliance statement is sufficient:
“Contracts funded with federal grant funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards.”

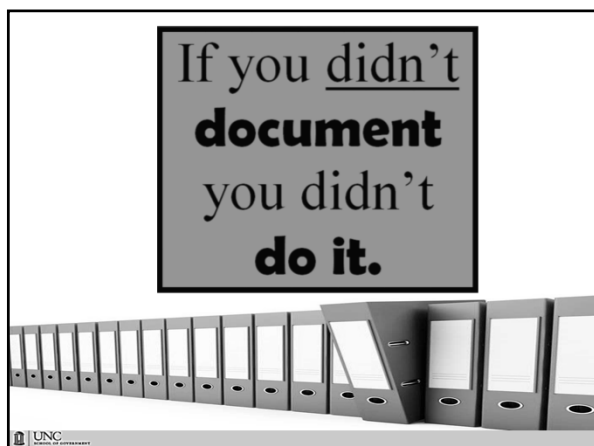


UG Requires:

2. Written conflict of interest policy governing financial conflicts of interest in contract award and gift bans
3. Documentation of procurement steps and required activities, including basis for contractor selection and price

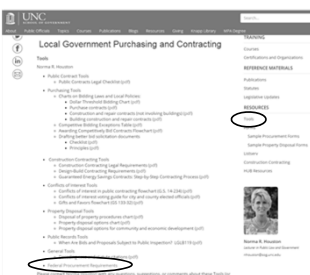
PUT ALL CONTRACTS IN WRITING!





Additional Resources

- Sample policies available on [SOG purchasing website](http://www.ncpurchasing.unc.edu)
- Thanks to:
 - Debbie Anderson, Catawba County
 - Laura Jones, Onslow County



Thank you

www.ncpurchasing.unc.edu

8. CONTRACT PROVISIONS



Can you do another draft of this? There's still a couple of sentences people might actually understand...

UG Contract Provisions

- Contracts must contain certain “boilerplate” provisions
- Must have provisions in writing in some form
- Requirements vary depending on cost of the contract
- Can include in standard T&Cs
- Can include in bid specs for vendors to certify agreement when submitting bids



Grantor agency may require additional provisions – check with your grantor agency!



UG Requires Contract Provisions On:

- | | |
|--|---|
| 1. Remedies for breach | 8. Byrd Anti-Lobbying |
| 2. Termination for cause and convenience | 9. Recovered Materials |
| 3. EEO | <u>Others:</u> |
| 4. Bacon-Davis wage requirements | 1. Changes and modifications to contract |
| 5. Work Hours and Safety Standards | 2. Access to records |
| 6. Clean Air Act and Federal Water Pollution Control Act | 3. Compliance with federal law, regulations, and executive orders |
| 7. Debarment and Suspension | 4. Federal government hold-harmless |
| | 5. Fraud and False Statements |



Give Your Attorney Something To Do!

- Work with your attorney to develop UG boilerplate provisions
- Contract provisions listed in Appendix II to Part 200 https://www.ecfr.gov/cgi-bin/text-idx?SID=956b5e913f2dd41cc9ec031c4cfab670&mc=true&n ode=ap2.1.200_1521.ii&rgn=d iv9 (more resources available on SOG purchasing website)



9. CONFLICTS OF INTEREST



Conflicts of Interest

	UG (2 C.F.R. § 200.318(c)(1))	State (G.S. 14-234(o)(1))
Who is covered	Officers, employees, and agents of recipient and subrecipient involved in contracting	Officers, employees involved in contracting
Who else is covered	Spouse, immediate family, partners, current or soon-to-be employer	Spouse
What kind of interest	Real or apparent financial or other interest or personal tangible benefit	Direct benefit
Exceptions	Financial interest that is not substantial	1. Banks & utilities 2. "Friendly" condemnation 3. Spouse employment 4. Public assistance 5. Small jurisdictions
Penalties	1. Loss of federal funds 2. Disciplinary action 3. Other remedies for noncompliance listed at 2 C.F.R. § 200.338	1. Class 1 misdemeanor 2. Void Contract

Gifts & Favors

	UG (2 C.F.R. § 200.318(c)(1))	State (G.S. 133-32)
Prohibited giver	Current or future contractor or vendor	Past (w/in 1 year), present, or future contractor or vendor
Prohibited receiver	All officers, employees, agents of recipients and subrecipients	Officers and employees involved in: 1. Preparing plans 2. Awarding or administering contracts 3. Inspecting or supervising construction
Exceptions	Unsolicited gift of nominal value	1. Honoraria 2. Nominal advertising items 3. Meals at banquets 4. Professional groups 5. Family and friends
Penalties	1. Loss of federal funds 2. Disciplinary action 3. Other remedies for noncompliance listed at 2 C.F.R. § 200.338	Class 1 misdemeanor

10. NON-PROFIT PROCUREMENT



UG Requirements Apply to Nonprofits!

- Same rules that apply to local governments **also** apply to nonprofits, **including your subrecipients**
- **You** are still responsible for monitoring your subrecipient's compliance with UG requirements
- Have written MOA or contract between local government and nonprofit to
 - verify nonprofit is acting on your behalf
 - require subrecipient compliance

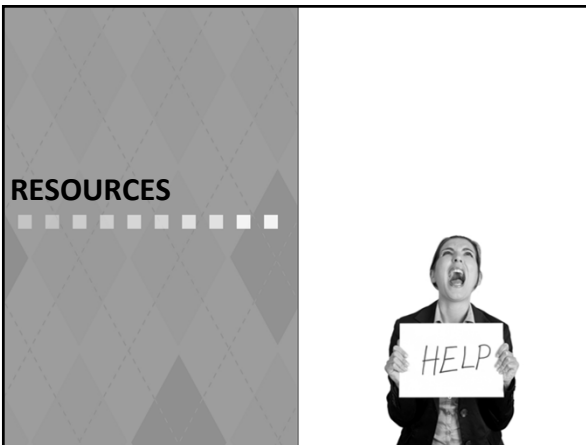


THINGS TO DO WHEN YOU GET BACK TO YOUR OFFICE



Be Prepared . . .

- ✓ Become familiar with 2 CFR Part 200
- ✓ Adopt/update local purchasing policies
- ✓ Adopt/update conflict of interest/gift ban policies
- ✓ Ensure procedures are in place to fully document procurement processes
- ✓ Work with your attorney to develop federal contract provision templates
- ✓ 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!



CFR Website

e-CFR

Home
gpo.gov
govinfo.gov

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e-CFR Navigation Aids

- Browse
- Single Search
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- Search History
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Electronic Code of Federal Regulations

e-CFR data is current as of April 11, 2018

Title 2 → Subtitle A → Chapter 9 → Part 200

TITLE 2—Grants and Agreements

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

CHAPTER 9—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

https://www.ecfr.gov/cgi-bin/text-id?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2_cfr200_main_02.tpl



NC Treasurer's Office Website

NC Treasurer's Office Website

www.nctreasurer.com/slg/lfm

SOG Purchasing Website

- "Most Restrictive Rule" summary
- Detailed comparison chart
- Treasurer's guidance memo
- Link to 2 CFR Part 200
- Federal contract provisions
- Sample policies
- Webinar slides

SOG Purchasing Website

www.ncpurchasing.unc.edu

SOG Emergency Management Website

www.sog.unc.edu/ncem

SOG Emergency Management Website

www.sog.unc.edu/ncem

US Chief Financial Officers Council

UNIFORM GUIDANCE

In December 2014, OMB, together with Federal awarding agencies issued an interim final rule to implement the uniform administrative requirements, Cost Principles, and Audit Requirements for Federal awards (Uniform Guidance). The guidance and implementing regulations directed all Federal awarding agencies and all Federal award recipients under Federal award 2014, the February 26, 2015 Procurement Memorandum, and the agencies had until 10/1/15 to better align their rules and better direct resources to achieve evidence-based outcomes. The final guidance, originally published December 26, 2015 available at 30 FR 7505, subsequently improved performance, transparency and oversight for Federal awards. The www.cfo.gov/grants/uniform-guidance/

UNIFORM GUIDANCE: PROMISING PRACTICES IN IMPLEMENTATION JUNE 2016

UNIFORM GUIDANCE IMPLEMENTATION: A SERIES OF DIALOGUES OCTOBER 2014

UNIFORM GUIDANCE: PROMISING PRACTICES IN JULY 2016: OMB UNIFORM GUIDANCE TRAINING SERIES HOSTED BY ECIVIS

UNIFORM GUIDANCE IMPLEMENTATION: A OCTOBER 2014: OMB UNIFORM GUIDANCE TRAINING SERIES HOSTED BY ECIVIS

www.cfo.gov/grants/uniform-guidance/

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FEMA PDAT

FEMA Procurement Disaster Assistance Team

www.fema.gov/procurement-disaster-assistance-team

Procurement Under Grants 2.0 Webinar Module 3B: NFEs Other than States - Competition and Procurement Methods

Conclusion of Module 3B
<https://www.fema.gov/procurement-disaster-assistance-team>

Module 3B: NFEs Other than States - Competition and Procurement Methods

The Federal Emergency Management Agency (FEMA) Procurement Disaster Assistance Team (PDAT) has put together a series of webinar modules on the rules for procurement under grants. There are eight (8) modules in this series. This webinar series

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Thank You!

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Evaluation: https://unc.az1.qualtrics.com/jfe/form/SV_9X0uh1zLqgVjCVn

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