

TEES Uniform Guidance Policies & Procedures

The Office of Management and Budget (OMB) has combined many federal circulars into a single guidance document (known as Uniform Guidance (UG), or 2 CFR 200). The purchasing changes defined in the UG become effective on **September 1, 2018**. Procurement guidance is specifically located in sections 200.317-200.326. Funding agency policy should still be reviewed for their specific requirements. This guidance focuses on increased competition and transparency in the procurement process.

TEES must continue to conform to applicable Texas laws and regulations along with the 2 CFR 200 Procurement Standards.

What is Changing?

Since TEES has followed state regulations, changes to procurement practices should be minimal under UG. Compliance with UG focuses on three main areas:

Sole Source Procurement

UG has limited the use of sole sources to four distinct justifications:

1. Product/service is only available from a single source;
2. Public Emergency Procurement;
3. Federal Awarding Agency Authorization: the awarding agency specifically authorizes a non-competitive procurement after a written request from the Non-federal entity (Principal Investigators should contact their SPS team for guidance and assistance in making requests to sponsors); and/or
4. Inadequate competition after solicitation of multiple sources.

These changes will result in increased scrutiny for ALL sole source justifications. The most significant change to this section of UG (from the OMB circulars) is that **“continuity of research” is no longer an acceptable justification for sole source approval**. Additionally, sole source justifications may require further evidence or statements confirming that no financial conflicts of interests exists with potential vendors.

Every sole source will require both:

- a) a price/cost justification
- b) TEES to negotiate profit with the vendors for those sole sources.

Consulting Services On Sponsored Program Awards

Modification to existing consulting agreements under existing grants **DO NOT** have to be re-sole sourced. The UG will apply to new consultants and new awards (including competitive renewals on or after September 1, 2018). Listing the consultant in the grant proposal will, by itself, no longer be sufficient justification for a sole source under the UG.

Conflict of Interest

TEES Procurement will follow the TEES and The Texas A&M University System policies on conflict of interest:

- o 15.01.03 Financial Conflicts of Interest in Sponsored Research
- o 15.99.03 Ethics in Research, Scholarship and Creative Work

TEES cannot issue a Purchase Order (PO) contract to a vendor or individual consultant where an organizational conflict of interest exists.

Other General Procurement Standards (Section [§200.318](#))

Uniform Guidance outlines general procurement standards for purchases using federal funds. TEES Procurement has adopted policies and procedures to ensure compliance with all standards outlined in the Uniform Guidance.

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These standards include the following:

- PIs must avoid requesting the acquisition of unnecessary or duplicative items.
- PIs should review federal excess and surplus property inventory before issuing a request to purchase equipment or property. There is also a property search available in Maestro.
- The TEES Purchasing Office is required to maintain records sufficient to detail the history of each procurement and file the issued purchase order with all associated documents. PIs are required to submit all applicable supporting documentation with each request for procurement (e.g., vendor price quotations, vendor contact agreements, product specifications).
- The TEES Purchasing Office, in conjunction with the PI, are responsible for the settlement of all contractual and administrative issues arising out of procurements.

Competition (Section [§200.319](#))

All procurement transactions must be conducted in a manner providing full and open competition consistent with standards in this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals (bids) **must be excluded** from competing for such procurements.

Requests for procurements must incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such descriptions must not contain features that unduly restrict competition. Specifying a “brand name” product instead of allowing “an equal” product to be offered should be avoided.

Methods of Procurement to be Followed (Section [§200.320](#))

TEES Procurement is required to follow one of five procurement methods specified in the Uniform Guidance listed below. As indicated in the specifications for these procurement methods, Uniform Guidance now requires proof of competition for all procurement methods except for those less than \$10,000. Procurement methods used for purchases of \$10,000 or more require two or more competitive price quotes and/or proof of a solicitation attempt.

The five UG procurement methods are:

1. **Micro-Purchases:** Purchasing of supplies, equipment or services where the aggregate total is less than \$10,000. If the purchase is subject to Davis-Bacon Act or Service Contract Act, the aggregate total may not exceed \$2,000.
 - Micro-purchases may be awarded without soliciting competitive quotations if the TEES buyer can defend the price as reasonable
 - One quote/proposal is needed
 - Micro-purchases must be distributed equitably among qualified suppliers, when practicable
2. **Small Purchases:** Aggregate total is between \$10,000 and \$250,000 for procurements of supplies, equipment or services
 - If more than one supplier exists, two or more informal quotes/proposals must be obtained (to be used as the basis for the required determination of the reasonableness of cost). The same specifications must be provided to all solicited vendors to ensure quotes are comparable (see Competition: Section [§200.319](#))
 - If only one supplier exists, the **Sole Source** guidelines (item 5 below) must be followed

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3. **Sealed Bids:** Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction. The following procedures and requirements apply:
 - The TEES buyer, in conjunction with the requestor, will determine if the procurement request lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price
 - Requestors must submit a non-catalog requisition in Aggiebuy.
 - Using the information provided on the Aggiebuy requisition, the TEES buyer, in accordance with applicable requirements in Uniform Guidance Sections 200.319 and 200.320, initiates the competitive bidding process by preparing and issuing the appropriate formal request for competitive proposals (RFIs and/or RFPs or RFQs). The TEES buyer also determines how and where to publicize the request for competitive proposals.
 - The TEES buyer conducts the public bid opening at the time and place prescribed in the invitation for bids
 - A firm fixed price PO contract award will be made to the lowest responsive and responsible bidder
4. **Competitive Proposals:** The aggregate total is \$250,000 (Simplified Acquisition Threshold) or more, and more than one potential supplier exists. Suppliers submit offers, and either a fixed price or cost-reimbursement type PO contract should be awarded. This method is generally used when conditions are not appropriate for the use of sealed bids. The TEES buyer will determine which method is used (Competitive Proposal or Sealed Bidding). If the Competitive Proposals procurement method is used, then the following procedures and requirements apply:
 - Requestors must submit a non-catalog requisition in Aggiebuy.
 - Using the information provided on the Aggiebuy requisition, the TEES buyer, in accordance with applicable requirements in Uniform Guidance Sections 200.319 and 200.320), initiates the competitive bidding process by preparing and issuing the appropriate formal requests for competitive proposals (RFIs and or RFPs or RFQs) and determines how and where to publicized the request for competitive proposals. Principal investigators must select the responsible bidder whose proposal is most advantageous (see Competition: Section §200.31).
5. **Sole Source:** This method is applicable to any dollar amount, but it must be documented on procurements over \$10,000. PIs requesting a sole source for procurements exceeding \$10,000 must complete and submit a Sole Source Justification Form with their purchase request

Contracting with Small and Minority Businesses, Women’s Business Enterprises and Labor Surplus Area Firms (Section [§200.321](#))

Uniform Guidance requires us to take “affirmative steps” to use small businesses (and socioeconomic subsets of small businesses) whenever possible. It is the policy of TEES Procurement to promote the procurement of goods and services from small, small-disadvantaged and woman-owned businesses and vendors located in labor surplus areas whenever possible. It is the responsibility of both the PI and TEES Procurement to direct purchases toward these types of businesses. TEES Procurement will take the following affirmative steps:



- Review small business lists prior to soliciting competitive proposals (see 200.319 & §200.320) and solicit quotes from small businesses and place qualified small businesses on solicitation lists as appropriate

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- Review requisitions and work with PIs to determine if requirements can be divided into smaller tasks or quantities, or delivery schedules can be modified to allow increased opportunities for small businesses

Procurement of Recovered Materials (Section [§200.322](#))

PIs should search for and request procurement of items that contain the highest percentage of recovered materials practical, consistent with maintaining satisfactory levels of competition, when the purchase price exceeds \$10,000 or the value of the quantity procured by the project in the preceding fiscal year exceeded \$10,000. The TEES buyer will ensure compliance with the standards and requirements identified in section 200.322.

- Other requirements include procuring solid waste services in a manner that maximizes energy and resource recovery.
- In Aggiebuy, green or recycled products are flagged.  Green  Recycled
- **Green Purchasing** is also known as “environmentally preferred purchasing (EPP), green procurement, affirmative procurement, eco-procurement, and environmentally responsible purchasing,” particularly within the U.S. Federal government agencies.
- **Recyclable** products are considered to be environmentally friendly since they can be recycled through established recycling programs or they have been manufactured from recycled products or they can be used in ‘green chemistry’ programs.

Contract Cost and Price (Section [§200.323](#))

Uniform Guidance requires extensive supporting documentation on procurements of \$250,000 or more. PIs must contact a TEES buyer for any proposed procurement of \$250,000 or more **prior** to communication with potential suppliers. The TEES Buyer will obtain competitive proposals and perform the required cost or price analysis as described below:

- For every procurement action of \$250,000 or more, including modifications to existing contracts, a cost or price analysis must be performed. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the requestor or PI must make independent estimates before receiving bids or proposals.
- Profit must be negotiated as a separate element of the price for all Sole Source procurements and in each case where a cost analysis is performed in order to establish a fair and reasonable profit for the procurements. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risks borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates in the surrounding geographical area for similar work.
- Costs or prices based on estimated costs are allowable only to the extent that costs incurred or included in the cost estimate would be allowable under Uniform Guidance Part 200 Subpart E-Cost Principles
- Cost plus a percentage of cost and percentage of proposals must not be used in establishing Purchase Order (PO) contracts

Federal Awarding Agency or Pass-Through Entity Review (Section [§200.324](#))

TEES Procurement plans to self-certify our procurement system. TEES agrees to have policies, procedures, regulations or standards available for review.

Bonding Requirements (Section [§200.325](#))

This section of Uniform Guidance provides bonding requirements for construction or facility improvement procurements

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exceeding the Simplified Acquisition Threshold. Requestors are encouraged to contact TEES Procurement immediately if they will be requesting construction type or facility improvement procurement of \$250,000 or more. The TEES buyer will obtain any necessary bonds applicable to the procurement.

Contract Provisions (Section [§200.326](#))

As required by Uniform Guidance 200.326, the TEES Federal Terms & Conditions have been updated to include applicable provisions by incorporation of “Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards” for all procurements funded by federal grants. TEES Procurement recommends when requesting informal verbal or written price quotations (offers), you inform potential vendors that any subsequent purchase will depend upon the vendor’s acceptance of the TEES Federal Terms & Conditions.