



Procurement Systems as Federal Grant Requirements

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Purchases of goods and services by recipients of Federal¹ grant funding are constrained by the concept of “fair procurement practices.” The reason for fair procurement practice requirements is to prevent the misuse of funds, i.e., to prevent grant funds being diverted to insiders and friends rather than being used economically. Federal procurement requirements may be contained in the grant program announcement, in Office of Management and Budget (OMB) Circulars, or in the agency’s grants management rules. Each of these requirement types will be discussed in turn.

The first place that most grant recipients encounter procurement system requirements is the grant program announcement (whether called a “solicitation,” a “notice of funding availability,” or by other names). Required procurement practices contained in grant program announcements vary from the relatively simple concept that “you shall not purchase from yourself,” to “you shall have a complete procurement system in place that meets the following guidelines.”

An example of the first of these two approaches, “you shall not purchase from yourself,” is contained in the guidelines for the Distance Learning and Technology Grant (DLT) used by the U.S. Department of Agriculture. In the 2009 guidance, the following language is used in Part IV (D) of the application guide:

All items to be funded with match or grant must be obtained from an organization other than the applicant or other entities participating in the applicant’s DLT project as hubs, hub/end-users, or end-users, i.e., items must be procured from a third party. In the *Application Guides* of years prior to 2006, third party procurement explicitly applied to category 2 (acquiring instructional programming) and category 3 (technical assistance and instruction) items because it was in these categories that applicants had requested to provide the items themselves. However, the logic that leads to this restriction for category 2 & 3 items applies equally to category 1 (equipment). There are a number of regulatory requirements that make this the only practical way to administer the DLT program:

¹ This article addresses only Federal procurement requirements. State and local government agencies must, of course, adhere to their own additional procurement laws, ordinances, and regulations. As stated elsewhere in this article, state grant recipients may operate in compliance with Federal procurement requirements by simply following their own rules, while local government grantees must ensure that their procurement practices meet Federal minimum requirements.

1. Salaries and administrative costs of the applicant are not an eligible purpose. If an applicant is also a vendor, it is administratively impossible to determine if the applicant’s salaries and administrative costs are part of the vendors selling price.
2. Items acquired before the application deadline are not eligible for grant or match. If the applicant is selling facilities to itself, we have no way to determine when the facilities were obtained.
3. Should a grant be made to an applicant, grant and match are administered on the basis of invoices from and purchase orders to third-party vendors. When the applicant obtains facilities from a third party, it is in the applicant’s interest to obtain the lowest price and the invoice is evidence of the actual price. If the applicant is selling facilities to itself, we lose the assurance of reasonable pricing that third-party procurement provides.

An example of the requirement (contained in the program announcement) that a recipient have a complete procurement system is found in the Interoperability Emergency Communications Grant Program (2009), U.S. Department of Homeland Security (FEMA) at page 27: “Applications must follow the applicant’s formal written procurement policy or the Federal Acquisition Regulation.” Hint: anyone who has used the Federal Acquisition Regulation (FAR) will advise a grantee to adopt and use its own, simplified written procurement policy instead of tackling the FAR.

In addition to procurement guidance issued with the grant opportunity announcement, grant recipients are subject to applicable Office of Management and Budget Circular requirements:

1. Circular A-133 Audits of State, Local Governments, and Non-Profit Organizations. Section .210(f) states that, “In most cases, the auditee’s compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements.
2. Circular A-21 (2 CFR Parts 215 and 220) Cost Principles for Educational Institutions. Section F2(c)(1)(a)(vii) requires review processes for construction of research facilities to include, “competitive procurement practices.”

Additional procurement requirements **for state and local government grantees** are found in each Federal department's or agency's "Grants Management Common Rule." A chart of the location of each department's and agency's grants management common rule is found at:

http://www.whitehouse.gov/omb/grants_chart/

A brief example from the U.S. Department of Agriculture's common rule (7 CFR 3016) will help in understanding the requirements.

§ 3016.36 Procurement. (a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

The Department of Agriculture's (USDA) common rule goes on to describe the complete procurement system requirements for government grantees (other than states) to include: contract administration, code of standards to prevent conflict of interests in procurement, review of proposed procurements to prevent purchase of unnecessary or duplicative products, award of contracts only to responsible contractors, record maintenance, limited use of time and material type contracts, processes for settling contract disputes, protest procedures, full and open competition, limited use of state or local preferences in awarding contracts, clear selection processes for contracts awarded, allowable methods of procurement (small purchases, sealed bids, etc.), and performance of cost and price analysis.

In addition to the grants management common rule for state and local governments, agencies have additional grant rules that apply to **non-governmental grant recipients** (also found referenced at http://www.whitehouse.gov/omb/grants_chart/).

Staying with the USDA, its Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations is found at 7 CFR 3019. The procurement requirements for grantees are found at 3019.40 – 3019.48 and include all the items previously discussed as part of USDA's common rule.

In order to understand the processes it must use to purchase goods and services after receipt of a Federal award, a grant recipient has two primary sources to examine: the grant opportunity announcement and the awarding agency's grant rules. In addition, the

awarding instrument may, on occasion, contain additional procurement-related information. And, in a very few selected instances OMB Circulars may affect procurement activities. Grant recipients should examine the announcement, the agency's grants rules, and the applicable OMB Circulars prior to submitting a proposal; the awarding instrument should, of course, be examined for latent procurement requirements.

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