

Align Your Procurement Procedures with the Uniform Guidance

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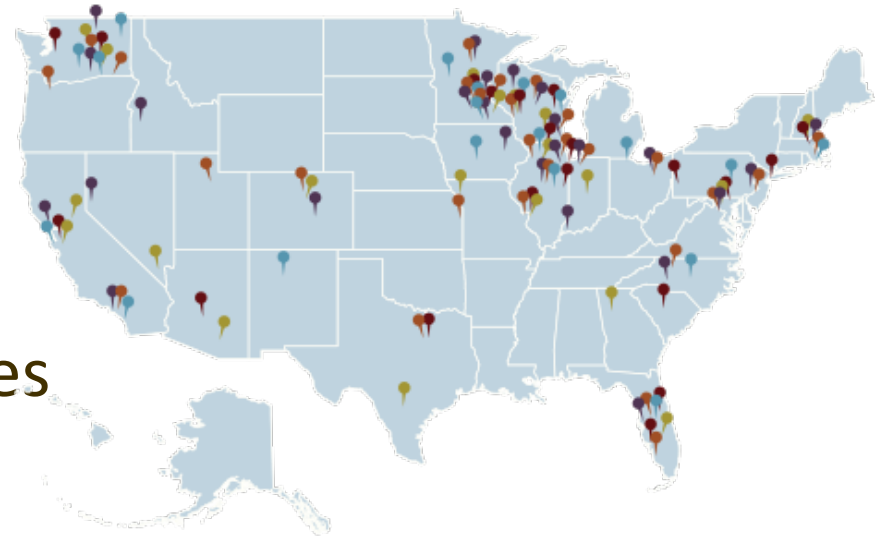
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- More than 5,000 employees
- Offices coast to coast
- Over 60 years of experience, serving more than 6,000 nonprofit clients



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Speaker Introductions

Rebecca Field

- Manager
- Knowledge with single audits regulations and requirements
- Works with grant compliance, including policy and procedure development



Marcus Valerio

- Chief Administrative Officer, Catholic Charities of Southern Nevada
- Responsible for the finance, human resources, information technology and development functions



Learning Objectives

- At the end of this session, you will be able to:
 - Determine when the procurement requirements are effective for your entity
 - Differentiate the allowable methods of procurement
 - Recognize the allowable methods of procurement, and the indicators of a contractor versus subrecipient relationship





Grant Compliance

What is Grant Compliance?



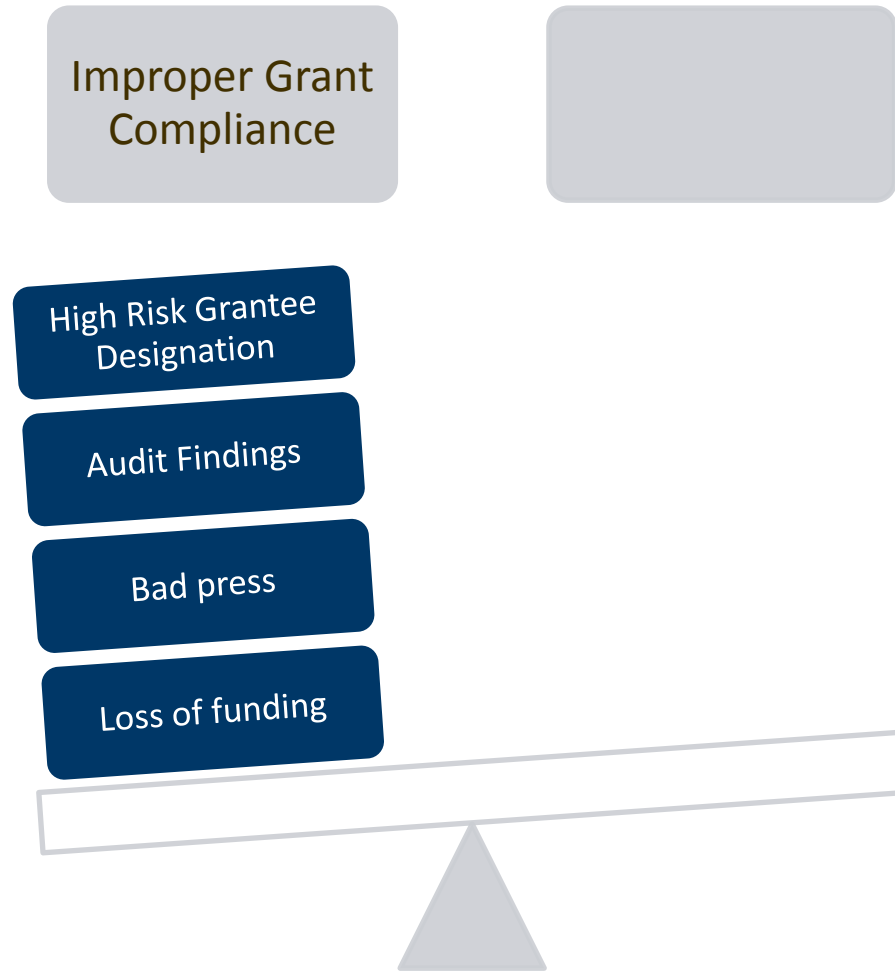
What is Grant Compliance?

Effective grant compliance relies on having an in-depth understanding of the grant requirements, and the resources and personnel to meet them.

This includes having the proper policies and procedures in place, and strong internal controls.



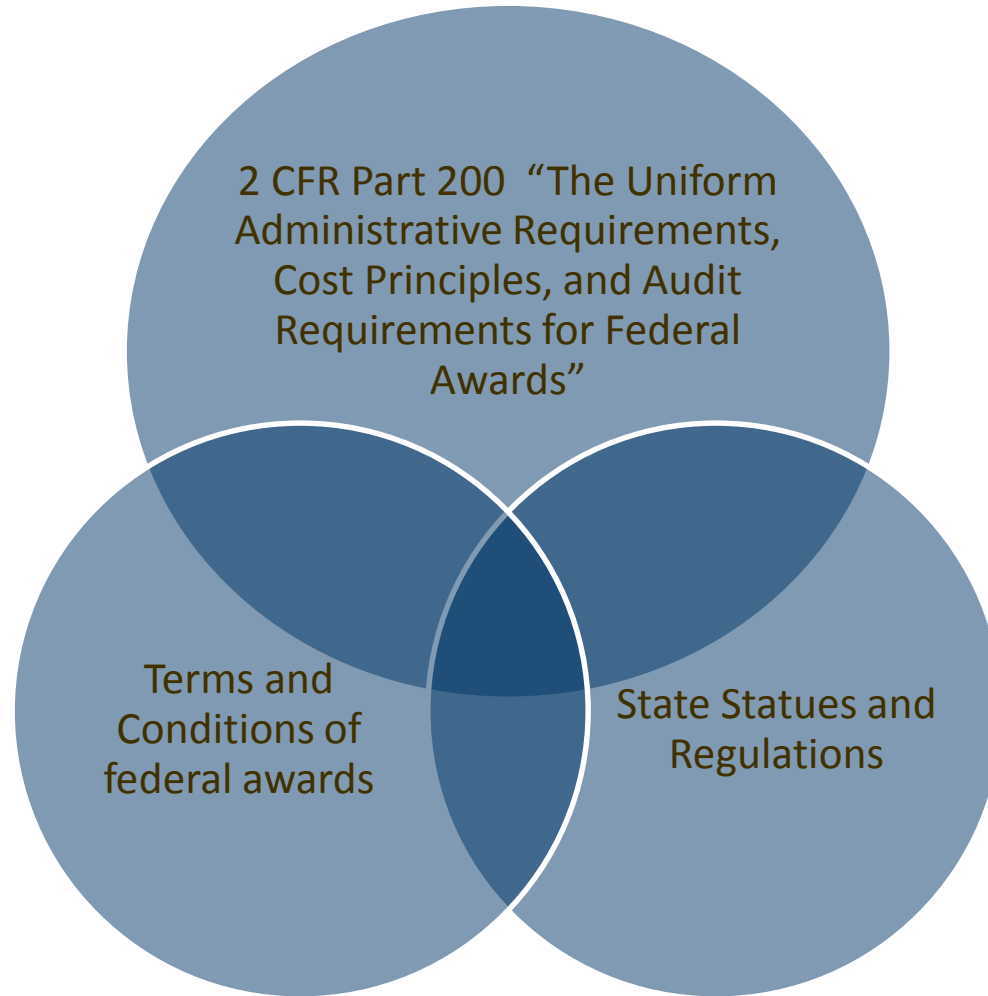
Possible Results of Improper Grant Compliance



Grant Compliance Responsibility



Sources of Compliance Requirements





Background on the Uniform Guidance and Effective Dates

Uniform Guidance

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – referred to as the “Omni Circular” or “Super Circular”

Consolidated and streamlines eight previous federal regulations into comprehensive guidance codified at 2 CFR Part 200 (Subparts A – F)



Objectives of the Uniform Guidance

Eliminate duplication and conflicting guidance

Focus on performance over compliance for accountability

Encourage efficient use of IT and shared services

Provide for consistent and transparent treatment of costs

Limit allowable costs to make best use of federal funds

Set standard business processes using data definitions

Encourage non-federal entities to have family-friendly policies

Strengthen oversight

Target audit requirements on risk of waste, fraud, and abuse



Uniform Guidance

Previous Guidance:

A-21, A-87, A-122 Cost Circulars

A-133 Single Audit Guidance

A-89 Catalog of Federal Domestic Assistance

A-102, A-110 Uniform Administrative Requirements

A-50 Audit Followup

New Guidance:

Subpart A – Acronyms and Definitions

Subpart B – General Provisions

Subpart C - Pre Federal Award Requirements

Subpart D – Post Federal Award Requirements

Subpart E – Cost Principles

Subpart F – Audit Requirements

Effective Dates

New awards made after 12/26/14

Incremental funding after 12/26/14 that are opportunities to change award terms and conditions



Effective Dates

Existing federal awards will continue to be governed by the terms and conditions of the federal award

Incremental funding that are subject to the Uniform Guidance, non-Federal entities are not obligated to segregate or otherwise track old funds and new funds but may do so at their discretion.



Effective Dates

We have been in “transition years” – will have grants governed by old guidance and some by new guidance

Non-Federal entities with both old and new awards may make changes to their entity-wide policies (for example to procurement systems)

Non-Federal entities wishing to implement entity-wide system changes to comply with the Uniform Guidance after the effective date of December 26, 2014 will not be penalized for doing so, regardless of if they have new awards



Impact on Subawards

The effective date of the Uniform Guidance for subawards is the same as the effective date of the federal award from which the subaward is made.

The requirements for a subaward, no matter when made, flow from the requirements of the original federal award from the federal awarding agency

Procurement Grace Period

May 16th, the Office of Management and Budget (OMB) issued a federal register notice to further extend the grace period of implementing the procurement requirements under the Uniform Guidance to three full fiscal years that begins on or after 12/26/14



Procurement Grace Period

December 31 year end grace period would be through year ending 12/31/17.

June 30 year end grace period would be through year end 6/30/18.

Be proactive!



Procurement Grace Period

Organizations must document whether it is in compliance with the old or new standard

and must meet the documented standard.



Procurement

What are the requirements?

What does Uniform Guidance Procurement Requirements Apply to?

Goods and services charged to:

 nonfederal program

 Indirect cost pool

 federal award

Source: COFAR FAQ .320-5



Procurement for States

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds



Procurement (200.317-326)

All other non-Federal entities, including subrecipients of a state, will follow the following Uniform Guidance provisions:

- **§200.318** General procurement standards.
- **§200.319** Competition.
- **§200.320** Methods of procurement to be followed.
- **§200.321** Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- **§200.322** Procurement of recovered materials.
- **§200.323** Contract cost and price.
- **§200.324** Federal awarding agency or pass-through entity review.
- **§200.325** Bonding requirements.
- **§200.326** Contract provisions.



Must vs. Should

When the Uniform
Guidance references:

MUST =
Requirement

SHOULD = Best
Practice, Suggestion,
Recommendation



Procurement (200.318(a))

Question:

Can/should an organization have different procurement procedures for federal and nonfederal procurements?

Answer

The nonfederal 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 Uniform Guidance



Procurement (200.318(b))

Entities must maintain oversight to ensure that contractors perform in accordance with the

terms

conditions

and specifications

of their contracts or purchase orders



Individual Conflict of Interest (200.318(c)(1))

Need to have documented policy stating that:

No

-employee

-officer

-or agent

may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest



Individual Conflict of Interest

Such a conflict of interest would arise when:

-the employee

-officer

-or agent

-any member of his or her immediate family

-his or her partner

-or an organization which employs or is about to employ any
of the parties indicated herein

**has a financial or other interest in or a tangible personal
benefit from a firm considered for a contract**



Procurement (200.318)

Organizational conflicts of interest means that because of relationships with:

- a parent company

- affiliate

- or subsidiary organization

the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization



Procurement (200.318(d))

Procedures must avoid acquisition of unnecessary or duplicative items.

Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.



Procurement (200.318 (d))

Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.



Procurement (200.318 (e)+(f)+(g))

When appropriate, entities are encourage to:

- Enter into state and local intergovernmental agreement or inter-entity agreement where appropriate
- Use Federal excess and surplus property in lieu of purchasing new equipment and property
- Use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions



Procurement (200.318(h))

Organizations Must Award Contracts Only to Responsible Contractors:

- Contractors must possess the ability to perform successfully under the terms and conditions of a proposed procurement.
- Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- Suspension and debarment checks for contracts over \$25,000 should be made on the EPLS site – (www.sam.gov) and documented, or add in the clause in the procurement contract



Procurement Records (200.318(i))

OMB Circular A-110:

For procurements > small acquisition threshold (\$25,000):

- Basis for contractor selection
- Justification for lack of competition
- Basis for award cost or price



Uniform Guidance [200.318(i)]:

For ALL procurements:

- Detail history of the procurement [different for each procurement method]
- Rationale for method of procurement
- Selection of contract type
- Contractor selection or rejection
- Basis for contract price

Competition (200.319)

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of 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 must be excluded from competing for such procurements.

Competition (200.319)

Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business

(2) Requiring unnecessary experience and excessive bonding

(3) Noncompetitive pricing practices between firms or between affiliated companies

(4) Noncompetitive contracts to consultants that are on retainer contracts

(5) Organizational conflicts of interest

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement

(7) Any arbitrary action in the procurement process.



Competition (200.319)

The non-Federal entity must conduct procurements in a manner that **prohibits** the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals



except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

Competition (200.319)

Must have written
procedures for
procurement transactions



Competition (200.319)

These procedures must ensure that all solicitations:

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured

The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use

Competition (200.319)

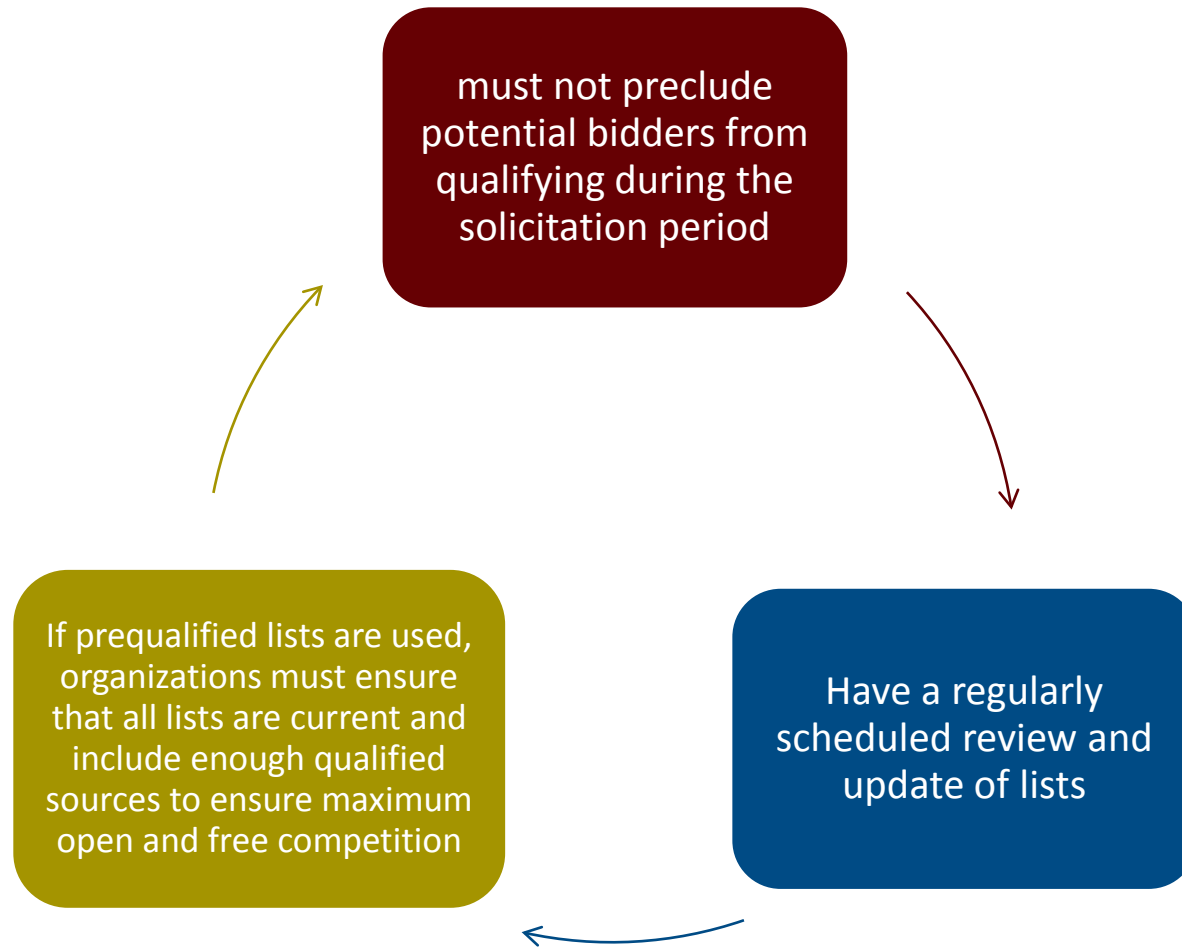
These procedures must ensure that all solicitations:

When it is impractical or not economical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement.

Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.



Competition (200.319)





Allowable Methodologies

Procurement

Uniform Guidance allows
for 5 acceptable
procurement
methodologies
(200.320)



UG Procurement Methods

Method	Dollar Threshold
Micro-purchase	Not to exceed micro-purchase threshold (currently \$3,500)
Small purchase procedure	Greater than micro-purchase, not to exceed the Simplified Acquisition Threshold (currently \$150,000)
Sealed bid	Greater than the Simplified Acquisition Threshold
Competitive proposal	Greater than the Simplified Acquisition Threshold
Noncompetitive proposal (Sole Source)	Greater than micro-purchase threshold



Procurement Method: Micro-Purchase

- Acquisition that, in the aggregate, does not exceed the micro-purchase threshold
- Micro-purchase threshold set by Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1
 - Subject to change- not scheduled to be adjusted until 2020
 - Currently, \$3,500 (see future slide for recent development)
- No quotations, price just must be reasonable
 - Review of reasonableness can be documented through allowable use of funds procedures



Procurement Method: Micro-Purchase

- When practicable, distribute micro-purchases among qualified suppliers
 - A purchase of computer paper in the amount of \$2,000 can be treated as “a micro-purchase.”
 - No rate competitive quotations are necessary for the purchase. A cost or price analysis is not required.
 - However, in accordance with the organization’s written policies, which may include strategic sourcing or bulk purchase arrangements, the organization must consider whether to make the purchase from any one of a number of office supply stores.
 - Such policies may dictate the purchase of computer paper to rotate among qualified suppliers if they offer the same rates.



Recent Development: Micro-Purchase Threshold

- In December 2016, the National Defense Authorization (NDAA) Act - PL 114-328, Sec. 217 was approved which increases micro-purchase threshold for following types of entities:
 - ◇ Universities
 - ◇ Nonprofit research organizations
 - ◇ Independent research institutes



Recent Development: Micro-Purchase Threshold

- Increases threshold to:
 - (a) \$10,000 or
 - *(b) such higher threshold as determined appropriate by the head of the relevant executive agency and consistent with clean audit findings under 5 chapter 75 of title 31, internal institutional risk assessment, or State law*
- This threshold can be used during the grace period
- Waiting on more information from OMB once UG is required to be implemented

Procurement Method: Small Purchase Procedure

- “Simple and informal” procurement method
- Acquisition cost more than micro-purchase but not greater than Simplified Acquisition Threshold (> \$3,500 < \$150,000)
- Simplified Acquisition Threshold established by FAR at 48 CFR Subpart 2.1 (Definitions)
 - Subject to change
 - Currently, \$150,000
- Price or rate quotations must be obtained from an adequate number of qualified sources (interpreted that to mean at least 2 sources)
 - Can be informal – phone call and document or web search



Procurement Method: Sealed Bids

When Cost is over simplified acquisition threshold of \$150,000



In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available

(ii) Two or more responsible bidders are willing and able to compete effectively for the business, and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price



Procurement Method: Sealed Bids

If sealed bids are used, the following requirements apply:

Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids,

For local, and tribal governments, the invitation for bids must be publicly advertised;

must define the items or services in order for the bidder to properly respond;

All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.

Any or all bids may be rejected if there is a sound documented reason.



Procurement Method: Competitive Proposals

When Cost is over simplified acquisition threshold of \$150,000

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical

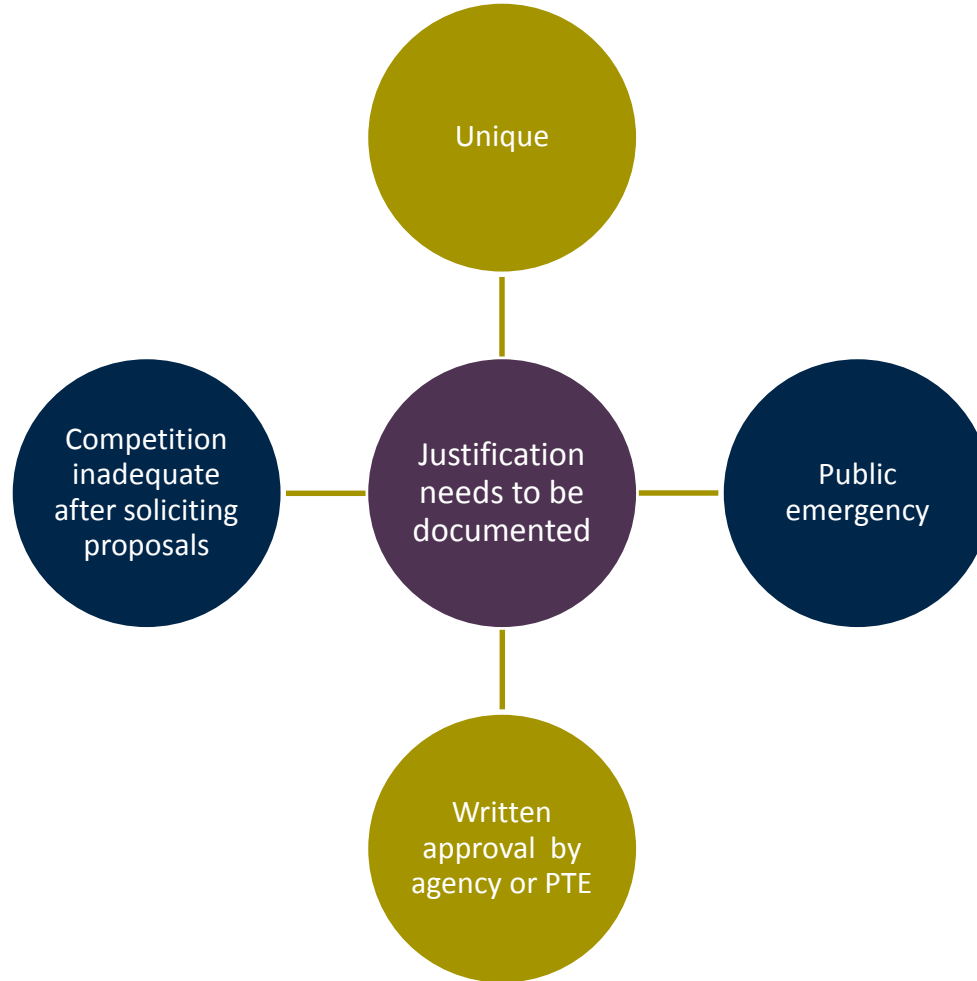
(2) Proposals must be solicited from an adequate number of qualified sources
(Decided internally – best practice is at least 3)

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered



Procurement Method: Sole Source



Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (200.321)

The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible



Contracting (200.321)

Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take affirmative steps



Cost or Price Analysis (200.323)

Non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals



Common Compliance Issues: Procurement

- Understanding and documentation of the procurement grace period
- Lack of existing, written procurement procedures
- Inadequate written procurement procedures
 - Does not address the Uniform Guidance procurement “musts”
 - Procurement methods including noncompetitive procurements
 - Cost and price analysis not documented
 - Small and minority businesses, and women’s business enterprises (SMWBE) provisions
- Implementation of procurement policy change
 - Decentralized systems, existing procurement culture
 - Staff training
 - Monitoring





Case Study

Catholic Charities of Southern Nevada

- Community Development Block Grant (CDBG)
- Construction Project-Sealed Bid

Catholic Charities of Southern Nevada

- Located in Las Vegas, Nevada
- 501(c)3 Established in 1941
- 250 Employees; \$25m Annual Budget
- Provides 20+ Programs
- Serves 55,000 Unduplicated Clients Annually
- Core Services
 - Food: Meals on Wheels, Daily Homeless Meals, Food Pantry
 - Shelter: Homeless Shelters, Low-income Housing
 - Senior Services and Refugee Resettlement

Project Background

- CDBG Capital Grant
 - Awarded in November 2015 for \$2.4m
 - Expand and Consolidate Operations for Food Programs
 - Increased Square Footage by 10,000 square feet
 - Project Completed by October 2016
- Internal Preparations
 - Refresh Internal Procurement Policy
 - Procure Third Party Construction Accounting Firm

Project Bid Process

- >\$150k - Sealed Bid Process (formal advertising)
 - Bid Solicitation
 - Advertised Locally – in three publications (newspapers, trade journal)
 - Solicited for no fewer than 7 days
 - Bidder was allowed no fewer than 10 days to submit a response
 - Project Committee – opened bids, scored, and submitted recommendation

Project Bid Process (cont.)

– Bid Process and Timing

- February 2016 – Solicited Proposals from (3) General Contractors
- March 2016 – Bids were Opened; only two bids were received
- March 2016 – Third Party Architectural Firm Evaluated Bids
- March 2016 – Internal Project Committee (per internal Procurement Policy) Evaluated Bids and recommended to Board of Trustees
- March 2016 – Board of Trustees Approved Award
- April 2016 – Federal Award notice sent to All Bidders with Notification

Project Bid Process (cont.)

- **Scoring**

- Scoring Considerations: Pricing, Performance Capability, Availability and Timeframe, Detail of Scope, Qualifications, Initial Completion of Bid Proposal, Scheduling and Phasing of Project, and Understanding of Project
- Lowest and Responsible Bidder to be Awarded

- **Grievance Period**

- May be filed for Adverse RFP Guidelines
- Period begins immediately following the Bidder Notification

Project Completion and Summary

- Project Summary
 - June 2016 – Construction Began
 - October 2016 – Construction Completed
 - 54 Change Orders
 - Completed Under Budget by \$54k



Subrecipient vs. Contractor

Knowing the difference

Contracts

Contract is for the purpose of obtaining goods and services for the non-federal entity's own use and creates a **procurement relationship**



Contractor:

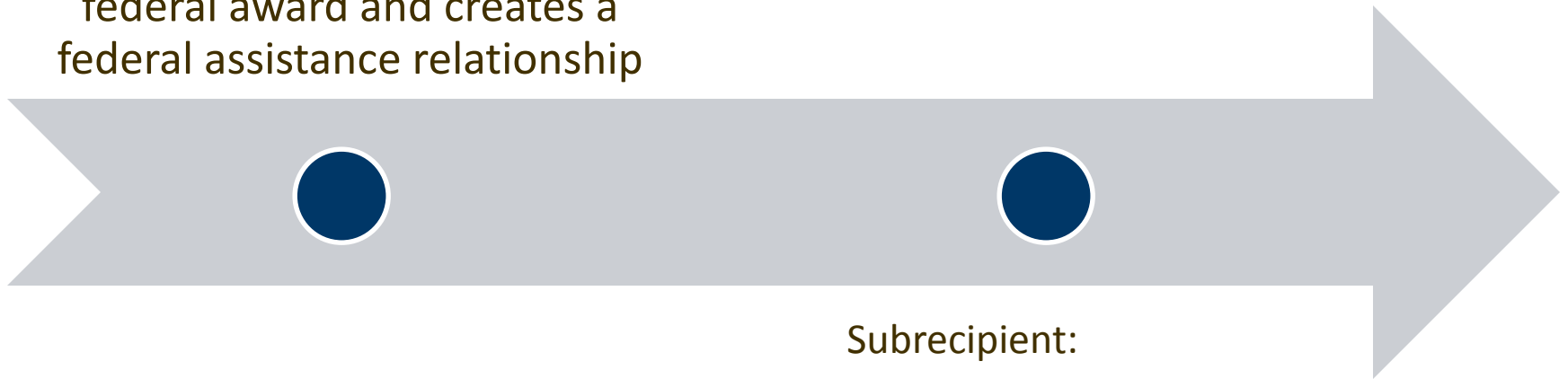
provides the goods and services normally

provides similar goods or services to many different purchasers

provides goods or services for the benefit of the pass-through entity

Subrecipient

Subaward is for the purpose of carrying out a portion of a federal award and creates a federal assistance relationship



Subrecipient:

determines eligibility

has performance measured in relation to objectives of program

has responsibility for programmatic decision making

and uses the Federal funds to carry out a program for a public purpose

Subrecipient / Contractor Determination

- All characteristics need not be present
- Judgment should be used in the determination process
- Substance of the agreement is more important than the form





Grants Management Best Practices

Grants Compliance

Read through
grant
agreement for
terms and
conditions

Read through
Uniform
Grant
Guidance

Read through
compliance
supplement
from OMB
(parts 3&4)

Obtain
proper
training



Documentation of Compliance

Document compliance requirements

Document proper internal controls over compliance

CLA's "Program Understanding and Internal Control Workbook" for each grant agreement

<http://www.claconnect.com/resources/tools/2017/grant-program-workbook-understanding-your-grant-compliance-and-internal>



Documenting Policies

Key to an effective grants management program is ensuring that proper policies and procedures are in place and documented.



Documenting Policies

The reasons for this are twofold:

- Internally, they can provide clarity and instruction to those involved in grant management
- Externally, they can show either current or potential funding agencies that your organization has a program in place to ensure full compliance



Policy review and revisions

Designate key individual or team to monitor your policies over federal programs



Regularly review policies for compliance and educate employees on changes to policies. Encourage open dialogue regarding questions and decision making.



Make sure policies are easily accessible for all employees involved and they know that they are responsible for reviewing these

CLA Grant Compliance Resource Center

<http://www.claconnect.com/resources/tools/resources-to-ease-the-burden-of-grant-compliance>

Compliance and Documentation: Cornerstones of Effective Grants Management	Achieve Compliance with Proper Grant Management	CLA's Uniform Guidance Workbook Helps with Subrecipient Risk Assessment	CLA's Uniform Guidance Checklist Streamlines Implementation
Uniform Guidance Brings New Rules for International Entities	Uniform Guidance Changes: Personal Services and Fringe Benefits	How to Monitor Subrecipients of Higher Education Grants	How Uniform Guidance Will Impact Your Single Audit
Preparing for a DOE Onsite Review of Your Federal Student Aid Program	Closing Out the Perkins Loan Program at Colleges and Universities	OMB's Compliance Supplement Can Make Your Single Audit Easier	The Hidden Costs of Grant Noncompliance for Governments



Grant Compliance Services CLA Can Provide

<http://www.claconnect.com/industries/nonprofit/grant-compliance-services>



Questions?

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