

Purchasing With Federal Grant Funds

If you use grant money to buy goods and services, make sure you're following the correct procedures.

By Henry Flood

Each year the federal government makes more than \$200 billion in grants, and grantees use a substantial portion of that money to purchase goods and services. But government grants come with many strings attached, including the requirement that a grantee's purchasing system adhere to strict standards and promote "full and open competition."

It is important to understand the components and purpose of a good purchasing system. Because purchasing with grant funds is heavily regulated by specific policies and operational procedures, it is also important to know which purchasing rules and policies to follow and how to resolve conflicts in those rules and policies.

Which Rules and Policies Do I Follow?

If your organization is newly established or has never before adopted purchasing policies and procedures, you must follow one of the two federal procurement policies for making purchases with grant funds. State and local governments and Indian tribes must follow the procurement policies and procedures of the Common Rule, □ ____.36. Nonprofit corporations, colleges, universities and hospitals must follow the policies in OMB Circular A-110, □ ____.40-48.

State governments almost always have purchasing policies and procedures in place that meet or exceed the federal standards prescribed by the Common Rule and OMB Circular A-110, so they may continue to follow their established purchasing policies and procedures. Local governments and Indian tribes are permitted to use their own purchasing policies and procedures as long as those policies and procedures are substantially similar to the standards of the Common Rule. If there are areas of substantial deficiency, then the federal policies and procedures must take precedence. Nonprofit organizations may also use their own policies and procedures, but they must follow the requirements of A-110 where their own policies and procedures are silent or deficient.

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What this means for you as a grant administrator is that you must compare your organization's policies and procedures very carefully to the federal standards to see how they measure up. It is not necessary that you have the exact same policies and procedures. The key is having policies and procedures that are substantially similar to the federal standards.

It is critical to have a purchasing system that substantially meets or exceeds the federal threshold standards in order to satisfy the single audit standards for purchases with grant funding. The Compliance Supplement contains important practical guidance on procurement with federal funds.

Prior to the publication of the uniform grant administration circulars, federal funds were treated more like gifts, which led to many administrative abuses on the part of grantees. The establishment of minimum purchasing standards was one of the many issues addressed by the uniform grant administration requirements- and a very important one.

Don't assume that the standards spelled out in the circulars are the only rules that will apply to purchases made with grant funds. Some federal agencies have advance approval requirements for certain purchases and others preclude specific purchases. Some funders may also have special rules that affect major purchases with grant monies, and these special rules always supersede any more general purchasing policies.

For example, major research grants awarded by the Public Health Service, the National Institutes of Health, the Centers for Disease Control, and the National Science Foundation include special rules for purchasing. Major construction funding awarded by the Economic Development Administration, the Environmental Protection Administration, the Department of Housing and Urban Development, and the Department of Transportation have special procurement policies and procedures affecting the purchase of design, construction and capital improvements.

Grant administrators must take care to review the procurement policy provisions of every grant award package to ensure that all restrictions and special purchase requirements are understood and addressed. This is especially important in the case of major purchases (\$25,000 and above).

Building a Purchasing System

In thinking about how to formulate sound purchasing policies and procedures, consider the essential outcomes you intend to achieve. A good purchasing system

- Is effective and efficient
- Encourages free and open competition
- Is open to small and minority-run businesses
- Is free from organizational and personal conflicts of interest
- Is fair to potential vendors
- Has a mechanism for dealing with problems or disputes without federal intervention
- Has a mechanism for holding vendors accountable for contract performance
- Is capable of including and enforcing special federal contract clauses in contracts above the small- purchase limit
- Facilitates the acquisition of goods and services that are actually needed at fair and reasonable terms and prices;
- Is capable of preventing purchases that are unnecessary, unallowable or illegal;
- Is capable of distinguishing between small and large purchases;
- Is capable of distinguishing between negotiated and bid purchases;
- Uses sole-source and restricted purchases only when necessary and legally permissible.

When a federal agency gives you a grant, it does not become a party to your contract award decisions. This means that your agency alone is responsible for the outcomes of your procurement decisions, even if those decision are subject to review by the grantmaker.

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As for prospective vendors, they are entitled to have a fair shot at competing for your business. Your purchasing system must be fair, open, and treat all prospective vendors equally. To avoid favoritism, you must not award contracts to your friends and relatives and you must avoid actual and apparent conflicts of interest in the solicitation and award of contracts.

A purchasing system promotes full and open competition if sources are appropriately sought relative to the size and scope of the procurement-and if those sources compete on an equal footing. When big dollars are on the table, you may feel a great deal of pressure, both internal and external, to bend the rules and tilt your decisions toward certain individuals or vendors. Don't do it. Grant administrators must be especially alert to the potential for organizational and individual conflicts of interest involving purchases greater than \$10,000. When you make a purchase above that small-purchase threshold, be alert to potential conflicts of interest or favoritism. Purchases above \$25,000 must be documented in sufficient detail to demonstrate that such purchases are fully justified and legal. These large purchases should be approved in writing by persons one or two steps above the procuring official.

Most of the purchases you are likely to make over a funding cycle will be small purchases, anywhere from a few dollars up to \$25,000. Larger purchases would be for consultants, research, construction, design services, and major capital equipment. You must have in place a system of contract administration that is capable of distinguishing among large and small purchases, and generating the paperwork required to support each purchase according to its complexity. Large procurements (over \$25,000) also require the insertion of federal contracting clauses as well as provisions for enforcement of contract outcomes and remedies for non-compliance, including termination clauses. Finally, your system of purchase review and contract administration must be capable of preventing purchases that are unnecessary, do not advance the purposes of the grant, or are otherwise prohibited or illegal.

Small Purchases

Most purchases under \$1,000 require little formal documentation; they are likely to be catalog purchases, with prices that are readily available from many vendors. When buying goods and services in the \$1,000 to \$10,000 range, I recommend a system of telephone quotations and simple purchase or performance descriptions. The quotations and selected vendor might be part of the same file maintained according to what was purchased. Consider

keeping a database of vendors by name, minority or non-minority status, contract value, and types of items purchased.

Purchases of \$10,000 to \$25,000 should be treated more formally, though the acquisition procedures can still be somewhat streamlined. You may find it helpful to use mini-proposals for negotiated acquisitions; more formal purchase and performance descriptions should be included, with bid response requirements spelled out. Some federal agencies require the insertion of the uniform federal contract clauses in contracts of \$10,000. To insure that you have an adequate number of bidders, you may wish to advertise and devise pre-qualification procedures aimed at vendors who offer goods and services that you use often. Purchases of \$10,000 to \$25,000 will require greater documentation of cost allowability, need for the procurement, and vendor selection.

Large Dollar Bid and Negotiated Contracts

Purchases that are expected to exceed \$25,000 are deemed large acquisitions under the terms of most grant awards. Typically, large purchases are made using bid or negotiation procedures. When quantities are known and bidders can propose based on unit pricing or other quantities according to detailed purchase or performance descriptions, bids should be advertised, reviewed by a small selection panel and awarded to the most responsive and responsible bidder offering the lowest price. Responsiveness relates to how well the bidder has responded to the criteria laid out in your solicitation. Responsibility relates to past performance, financial stability and contractor integrity.

In cases where quantities are uncertain and pricing cannot be readily determined, or the procurement is for services, negotiation procedures are appropriate. The opportunity to supply the expertise or services should be advertised and proposals should be invited through a solicitation. The solicitation should describe the services or expertise desired, the functional or performance outcomes expected, proposal response requirements and criteria for proposal evaluations.

A selection panel will be needed to rate and rank the proposal responses. While awards could be made based on the proposals alone, it is customary to interview the top three or four highest-rated firms and, if necessary, ask the interviewed firms to revise their proposals as a best and final offer. In a negotiated acquisition, you are not required to select the lowest-cost proposal. Price is important, but not determinative. You are looking for a financially

and ethically responsible firm that that is responsive to the solicitation and offers the best technical proposal.

Special Concerns

Record-keeping: It is very important to document your purchasing decisions, since good procurement records are needed for contract administration purposes, legal sufficiency of contract actions, justification of purchases and procurement methods, and dispute resolution. OMB Circular A-110, ¶46 offers excellent guidance concerning procurement records.

Purchases over \$25,000 must be supported with purchase history files that document (1) the need and authority for the purchase; (2) the basis of contractor selection; (3) award cost and price data; (4) any exceptions and justifications concerning limited contracting or sole source awards; and (5) procurement protest and dispute resolution actions. These records should be integrated into your system of procurement administration.

Construction: Construction and architect-engineer (A/E) contracts are special forms of procurement that are subject to greater legal and regulatory scrutiny. Most states have special laws regarding the selection of architects and engineers. These laws usually apply to public bodies and nonprofit organizations that purchase A/E services with appropriated funds, funds raised from public or grant funds. At the federal level, the Brooks Act (and similar regulations) apply to the selection of architects and engineers who provide professional services. A/E selection typically follows this sequence:

- A professional need statement is issued and qualifications are solicited.
- Proposals for a specific project are sought.
- A selection panel rates and ranks all proposals received.
- The top three to five firms are interviewed.
- Negotiations are initiated with the top-rated firm.

Construction contracts are complex procurements. Even though an A/E may prepare the plans and specifications for bidding, your organization remains legally responsible for the actual procurement decision.

Fair Share: Federal policies covering grant-funded purchases place a special emphasis on ensuring that small businesses, women and minorities get a fair share of available business. The best way to satisfy this requirement is to incorporate minority participation directly into your acquisition planning and implementation procedures. As a federal grantee, you really are required to reach out to small, women-owned, and minority-owned businesses-and to prove that you have done so.

Here are some ways to accomplish this:

- Develop small and minority vendor profiles and cross-reference them to their major goods and services.
- Visit or host minority procurement fairs.
- Establish small business set-aside purchases and use multiple-order blanket purchase agreements where appropriate.
- Screen the list of 8-A and minority contractors in your local area.
- Offer technical assistance to small, women-owned and minority firms in preparing bids and proposals.

Resources

The National Institute of Government Purchasing (<http://www.nigp.org>) offers training and tools for developing purchasing skills. Another useful resource is the Model Procurement Code project maintained by the American Bar Association's Section on Public Contract Law. The model code, together with a set of continually updated model regulations, are available from the ABA's publications division (<http://www.abanet.org/abapubs/>). One of the best ways to get help with your purchasing questions is to review the purchasing policies and procedures of other governmental or nonprofit agencies like your own. Many organizations are likely to help you out.

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