



NYC Administration for Children's Services
Administrative Advisory for Head Start
Procurement
Program Year 04 | Fiscal Year 2018

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Introduction

The purpose of this Advisory is to further highlight new regulations in the area of fiscal management which are important for procurement activities. In May, 2015, ACS communicated the introduction of New Uniform Guidance by way of Memorandum numbered EL20, captioned “Uniform Guidance Highlights” (also included in Appendix C of the EarlyLearn Fiscal Manual). This was further reinforced by annual Wipfli training for Head Start delegates since June, 2015 on 45 CFR Part 75 overview and Uniform Guidance and Hot Topics.

All delegate agencies are required to establish written procurement procedures for services, supplies and other expendable property, equipment, and real property. In addition, agencies are advised to use Federal funds to procure goods and services in the most economical way, and to purchase only what is needed. Agencies are allowed to design systems for procurement and use whatever forms and workflow processes that best suit the organizational structure. Head Start Agencies must follow the standards for procurement found in regulations §45 CFR 75.329 for any purchases made with Head Start funds.

Effective/Applicability Date

The implementation date for the procurement standards in 45 CFR Part **§75.327** through **§75.335** (2 CFR 200.317 through 200.326) became effective for fiscal years beginning on or after December 26, 2017. All Agencies must document procurement procedures for purchasing services, supplies and other expendable property, equipment and real property and provide copies to ACS. Agencies are advised to use Federal funds to purchase items and services in the most economical way, and to buy only what they need. Agencies are allowed to design their own systems for procurement and use whatever forms and workflow processes best suit the organizational structure.

The Simplified Acquisition Threshold (SAT) is the dollar amount below which an entity may purchase properties or services using small purchase methods to expedite the purchase of items costing less than that amount. Currently, the amount is \$150,000. Federal principles lay out the following five permissible methods of procurement:

- “Micro purchase” means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro purchase threshold of \$3,500 (as per 48 CFR 2.1, effective 10/1/2015 through 9/30/2020);
- Small purchases, except most construction, that are less than the SAT;
- Competitive sealed bids with formal advertisement; required for most construction and all others above the SAT;
- Competitive proposals, required above the SAT; and
- Non-competitive proposals or sole source.

Note: “Supplies” are defined as all tangible personal property other than those described in §75.2 - Equipment. A computing device is a supply if the acquisition cost is less than the capitalization level established by ACS for financial statement purposes (\$5,000).

This does not mean that computers and related equipment should not be inventoried and tracked, which are practices recommend by ACS. Rather, it refers only to capitalization and depreciation.

ACS, as pass-through entity, and CPA firms conducting Compliance Audits on behalf of ACS may, at any time, request a copy of current and compliant procurement policies and procedures and perform tests or audits to ensure the delegate is following the policies and procedures they have put in place.

Procurement is discussed in the Uniform Guidance at 45 CFR **Part 75 §75.327** through **§75.335** and 2 CFR **200.318** through **200.326. 5**

General Procurement Standards

All Delegate Agencies must:

- use documented procurement procedures and must have written procedures for procurement transactions §75.328(c);
- maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders;
- maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; and
- maintain records sufficient to show detail of all procurement activities.

Note: Head Start delegate agencies can use **My Wipfli** subscriptions to download and customize suitable templates for procurement policies and procedures.

Micro Purchases

Purchases of supplies or services under \$3,500 are treated as “micro-purchases.” The purchase orders may be awarded without soliciting any competitive quotations if the Agency considers the costs to be reasonable. The Agency must, to the extent practicable, distribute these purchases equitably among qualified suppliers. For example, 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 Agency’s written policies, which may include strategic sourcing or bulk purchase arrangements as described in section 200.318, the Agency 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.

Small Purchases

Purchases under the simplified acquisition threshold are purchases for goods or services meeting the small purchase threshold (currently at \$150,000). Therefore, all purchases between \$3,500 and \$150,000 can use the “small purchase procedures” stated in section 200.320 (b) which describes the procedures as “relatively simple and informal.” It states that “price or rate quotations must be obtained from an adequate number of qualified sources.” It leaves the discretion of the Agency’s written policy to determine the “adequate” number of qualified sources (i.e., any number greater than one) and the methods or methods of obtaining the price or rate quotations (e.g., it can be in writing, orally, vendor price list on website, or generated via online search engine).

Section §75.329 also excludes the small purchases from any requirements for cost or price analysis. For example, a purchase order for Mega Blocks in the amount \$4,000 can be treated as a small purchase order. This purchase order requires a rate quote from at least two sources, which can be obtained in writing from two suppliers or research done on public websites. A cost or price analysis is not required. In addition, if the Mega Blocks are of special quality that is offered by

only one company or only one company can deliver in the time frame required, the purchase order can be made under the sole source purchase provision in section §75.329 (f).

Sealed Bids

This method is preferred for construction. For purchases over the simplified acquisition threshold (currently at \$150,000), the more prescriptive methods of either sealed bids (if the Agency has very specific parameters for the purchase) or competitive proposals apply.

Competitive Proposals

Based on the Federal standard established in 45 CFR §75.328, all procurement transactions must be conducted in a manner providing full and open competition. This means that, even if it seems like a "good deal", agencies cannot make the purchase until other vendors also are given consideration.

Soliciting competitive bid prices from vendors may be done in different ways. For example, Agencies can secure vendor prices by advertising in newspapers, sending letters to prospective vendors or through telephone calls to prospective vendors. Solicitations for bids should clearly state all the requirements the vendor must fulfill in order for the bid or offer to be evaluated by the Agency.

The procurement should be given to the vendor whose bid or offer is responsive to the solicitation, and is the most advantageous to the Agency (considering price, quality, and other applicable factors). Any and all bids or offers may be rejected when it is in the Agency's interest to do so. This means that Head Start Agencies do not have to accept the lowest bid received because other factors, such as quality of the product or service record of the vendor, also may be considered by the Agency in making the decision.

Sole Source

It may be necessary or economically preferable to purchase products or services on a sole source basis. Since sole source purchasing is an exception to the normal procurement function, it must be objectively justified. Delegate Agencies should develop procedures to provide written records of the basis used in sole procurement decisions. This constitutes a valid reason for procurement by noncompetitive proposals. This method of procurement is available for procurement of any dollar amount, provided it complies with the general procurement standards, including documentation requirements in §75.329 and 200.318.

Allowable Costs

Allowable costs shall be determined in accordance with the applicable cost principles. In general, EarlyLearn contractors, including CDBG sub-recipients, must be guided by 2 CFR Part 200.403. However, All Head Start subrecipients are governed by 45 CFR Part §75.403.

Any cost found by ACS to be improperly incurred by the subrecipient shall not be subject to reimbursement.

Common Reasons for Disallowing Costs:

- Purchase disallowed under Federal, State or City laws and regulations;
- Lack of documentation;
- Credit not handled correctly;
- Non-compliance with procurement requirements;
- Improper dispersal of Cost of Living Adjustments (COLA);
- Claiming a cost as both direct and indirect;
- Charging a federal grant different than other funds;
- Failure to retain on file or update a written cost allocation plan and/or indirect/direct plan
- Improper allocation of costs;
- Year-end spending issues;
- Lack of formal system for recording obligations;
- Liquidation of Head Start liabilities more than 90 days after the grant year ends;
- Fines and penalties; and
- Bonus payments

Prior Written Approval

§75.407 - In order to avoid subsequent disallowance or dispute based on unreasonableness or non-allocability, the subrecipient may seek the prior written approval of the HHS awarding agency or ACS in advance of using funds for special or unusual costs:

§75.318 Real property

§75.320 Equipment

§75.439 Equipment and other capital expenditures;

§75.441 Fines, penalties, damages and other settlements - Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the HHS awarding agency. See also §75.435.

§75.445 Goods or services for personal use - Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

§75.447 Insurance and indemnification

§75.454 Memberships, subscriptions and professional activity costs, paragraph (c);

§75.467 Selling and marketing costs;

§75.470 Taxes, (including Value Added Tax, paragraph (c); and

§75.474 Travel costs - Travel costs associated with employees who engage in long-distance travel are generally eligible for reimbursement for lodging, meals, and incidentals, to the extent that such costs are reasonable and allowable, as per the sub-recipient's written travel policy. The method of reimbursement for such costs must be in keeping with the sub-recipient's written travel reimbursement policies. Employees who engage in local travel are generally not eligible for lodging, meals, and incidentals. Alternatives must be explored before long-distance travel is approved for training or any related conference.

General Provisions for Selected Items of Cost

Note: Advertising and public relations

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

- (1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also §75.463);
- (2) The procurement of goods and services for the performance of a Federal award;
- (3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or
- (4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

Contract Termination

Appendix II to Part 75

A. Contracts for more than the simplified acquisition threshold, currently set at \$150,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Child and Adult Care Food Program (CACFP)

Eligible public or private nonprofit centers, outside-school-hours care centers, Child Care Centers, Family Child Care Homes, Head Start programs, and other institutions which are licensed or approved to provide day care services must participate in CACFP, independently or as sponsored centers. The procedures participating institutions must follow when purchasing meals from an outside source are outlined in the DOH-CACFP Policy Memorandum 110 (see Appendix II).

Summary

The Uniform Guidance emphasizes oversight in the procurement procedures to ensure that performance is in accordance with the terms and specifications of contracts and purchase orders. Documentation of the procurement process is also of paramount importance. When a procurement instrument has been determined by the delegate agency (sealed bid, request for quote, request for proposal or advertisement) it must be appropriate for the procurement and promote the best interest of the program or project.

Appendix I: Frequently Asked Questions

Methods of Procurement and Indirect Costs

Q1: Does the Uniform Guidance procurement standards apply to procurements made for indirect costs (for example: would a non-Federal entity need to follow them when hiring a plumber to fix a broken pipe in the headquarters building?)

A1: No. The Uniform Guidance procurement standards do not apply to procurements made in indirect cost areas. They apply to procurements for goods and services that are directly charged to a Federal award.

Methods of Procurement and Charge Cards

Q2: Does the Uniform Guidance require non-Federal entities to limit charge card purchases to a particular threshold amount?

A2: No. The Uniform Guidance provides requirements for the internal control framework that surround any purchase, but does not provide any guidance around whether the non-Federal entity uses cash, charge cards, checks, or any other payment medium for the transaction.

Methods of Procurement – Micro vs Small vs Over Threshold

Q3: How are procurements of micro-purchases and small purchases under the simplified acquisition threshold less burdensome than those above it?

A3: In summary, all purchases under the simplified acquisition threshold (including micro-purchases) require fewer terms and conditions, have a lesser competition standard than purchases over the simplified acquisition threshold, can be solicited informally, and do not require a cost or price analysis. However, as stated under Contract Termination above, any contract more than \$10,000 must address termination for cause.

Methods of Procurement and Strategic Sourcing/Shared Services

Q4: Do the requirements for competition in the methods of procurement apply to each individual item purchased or only applied to broader procurement decisions to leverage strategic sourcing agreements, shared services arrangements, or other practices that result in more efficient use of the funds?

A4: Yes, the requirements for competition apply to broader procurement decisions. **45 CFR §75.327** General Procurement Standards paragraphs (d) and (e) explicitly encourage non-Federal entities to build into their procurement policies practices that consolidate procurement, where appropriate, to make most efficient use of Federal funds, while ensuring that costs are allowable.

Source: Frequently Asked Questions

Updated: July 2017

For The Office of Management and Budget's

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards At 2 CFR 200

Appendix II: CACFP Policy Memorandum 110

<https://www.health.ny.gov/prevention/nutrition/cacfp/policymemo/no110.htm>