

# CLIENT NEWS BRIEF

## New Rules for Use of Federal Funds Effective July 1: Are You Ready?

New requirements for using federal funds become effective this coming fiscal year. The requirements apply to non-federal entities such as school districts, institutions of higher learning, and state and local governments.

In order to comply with the new rules, non-federal entities seeking federal funds may need to revise their board policies and administrative regulations, contract documents, and other internal procedures by the beginning of their 2018-2019 fiscal year. For school districts, the California School Boards Association has updated its sample Board Policy and Administrative Regulation 3230 to reflect the new rules.

Previously, the requirements for spending federal funds were governed by a series of Office of Management and Budget (OMB) circulars. In 2013, OMB issued new rules in a single, cohesive set of regulations: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (Uniform Guidance) published at 2 C.F.R. § 200 et seq. While federal entities were required to comply with the new requirements the following fiscal year, OMB gave non-federal entities a three-year grace period. The grace period expired in December, so non-federal entities' purchasing procedures must be in compliance for their 2018-2019 fiscal year. For non-federal entities whose fiscal years begin on July 1, that deadline is less than two weeks away.

The Uniform Guidance requirements incorporate many rules from the old OMB circulars that may be familiar to those who have procured federal funds in the past. However, the Uniform Guidance also adds new requirements, most notably those requiring internal controls and documenting purchasing procedures. Some of the most important sections of the Uniform Guidance include:

**General Purchasing Standards.** This section establishes general rules for non-federal entities for purchases using federal funds, including:

- Maintaining written records of purchases that provide the rationale for the method of purchase, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- Maintaining written conflict of interest standards.
- Monitoring contractors to ensure they perform to the standards of the contract.
- Additionally, the entity must choose a contractor that is able to successfully perform under the agreement, with consideration given to the contractor's integrity, record of past performance, resources and other factors.

**Competitive Bidding Standards.** Non-federal entities must put their contracts out to bid in a manner that does not stifle competition or give a

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certain contractor an unfair advantage. The entity must have written procedures for bidding which clearly describe the product or service to be purchased. If the entity has a list of prequalified persons, firms, or products, the list must have enough sources to ensure maximum free and open competition.

## Five Methods of Purchasing

In addition to the rules for general purchases, the Uniform Guidance requirements provide five purchasing methods that non-federal entities are limited to when using federal funds. Many of these requirements already existed prior to 2013, but they have been relocated within the federal regulations and consolidated with the Uniform Guidance.

- 1) **Micro Purchases:** A purchase using a simplified procedure, where the aggregate price does not exceed the Micro-Purchase Threshold set by 48 C.F.R. Subpart 2.1 (currently \$3,500, though subject to change). The non-federal entity need not solicit competitive quotes if it considers a price quote to be reasonable. To the extent practicable, the entity must spread its micro-purchases equitably among the qualified suppliers.
- 2) **Small Purchase Procedures:** A relatively simple and informal purchase procedure. The purchase price cannot exceed the applicable threshold, which can vary based on the type of agency. To use small purchase procedures, the non-federal entity must consider an adequate number of price or rate quotations.
- 3) **Sealed Bids:** A formal advertising process in which the non-federal entity must publically solicit bids. The entity must open all bids at the same time, and a fixed price contract is awarded to the lowest responsible bidder. This is the preferred method for construction contracts.
- 4) **Competitive Proposals:** A bidding process used when sealed bids are not appropriate.
  - Requests for proposals must be publicized and must identify all evaluation factors and their relative importance.
  - Requests for proposals must solicit an adequate number of qualified sources.
  - The non-federal entity must have a written method for evaluating proposals.
  - The entity must award the contract to the responsible firm whose proposal is most advantageous to the entity, taking all factors into account, including price.
  - For architectural and engineering services, the non-federal entity may select the most qualified competitor, regardless of price.
- 5) **Noncompetitive Proposals:** A purchase when a non-federal entity seeks a proposal from only one source. The entity can only use a noncompetitive proposal when:
  - The item is only available from one source.
  - There is a public emergency that prohibits the delay that would result from a competitive bidding process.
  - Competition is determined inadequate after soliciting multiple sources.
  - The federal awarding or pass-through agency explicitly authorizes it.

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The full text of the Uniform Guidance can be read [here](#).

## Takeaways

For non-federal entities whose upcoming fiscal year begins on July 1, the deadline to comply with the new Uniform Guidance rules is less than two weeks away. These entities should make it a priority to update their administrative policies if they intend to be eligible for federal funds. For school districts, the California School Boards Association has updated its sample Board Policy and Administrative Regulation 3230 to reflect the new rules. However, the samples are a framework rather than finished regulations, and may require additional language to ensure compliance.

For assistance in compliance with the Uniform Guidance requirements or questions about the Uniform Guidance in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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