

MAY 1, 2024

UNIFORM GRANTS GUIDANCE BASICS: PROCUREMENT AND RECORDKEEPING

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ABOUT THE PRESENTER

R. Brian Tipton, Esq., is a practicing attorney with over two decades of experience working with nonprofits and grant-funded organizations across the United States. Currently, Brian is Managing Director of Tipton KPCL in metro Atlanta, where he heads the firm's tax-exempt entities practice. He is a summa cum laude graduate of both the Louisiana State University and the Cumberland School of Law of Samford University. As part of his law practice, Brian regularly advises and represents Head Start and other grant-funded entities in the areas of regulatory compliance, audits, funding source disputes, administrative appeals, and litigation. He also consults with organizations on governance, human resources, program, and corporate matters. In addition, Brian develops and presents training programs for nonprofits and a wide range of other grant-funded entities.

WELCOME

OUTLINE

Background

Procurement under the UGG

Recordkeeping

Question and Answer Period

WELCOME

LEARNING OBJECTIVES

Outline current Uniform Grants
Guidance procurement standards

Outline current Uniform Guidance
recordkeeping requirements

Identify changes to standards under
the updated Uniform Grants Guidance

QUIZ # 1

When was the last time your organization updated its procurement policies?

- Within the last year
- Within the last 5 years
- More than 5 years ago

BACKGROUND

Uniform Grants Guidance Basics: Procurement and Recordkeeping

BACKGROUND

- Designed to replace series of prior OMB Circulars
 - Guidance for Federal funding sources, grantees (recipients), subgrantees (subrecipients), and auditors
 - Purpose of OMB Circulars to promote uniformity
 - However, different Circulars for different topics and entities
- Uniform Guidance intended streamline rules and increase accountability by combining and standardizing requirements as much as possible
 - Issued December 26, 2013 (Federal Agencies)
 - Generally effective December 26, 2014 (Non-Federal Entities)

BACKGROUND

UNIFORM GRANTS GUIDANCE CODIFIED AT 2 C.F.R. PT. 200

- Subpart A = Acronyms and Definitions
- Subpart B = General Provisions
- Subpart C = Pre-award Requirements & Award Contents
- Subpart D = Post Award Requirements
- Subpart E = Cost Principles
- Subpart F = Audit Requirements
- Followed by 12 appendices

BACKGROUND

Request
for
Information
(Feb. 9,
2023)

Comments
Due (Dec.
4, 2023)

Official
Publication in
Federal
Register (April
22, 2024)

Proposed
Update
Published
(Oct. 5,
2023)

Final
Update
Issued
(April 4,
2024)

BACKGROUND

- OMB announced final UGG update on April 4, but officially published on **April 22** at **89 FR 30046**
- Final update runs 163 pages (including preamble and related 2 C.F.R. revisions)
- Full text and PDF version available online at Federal Register website (federalregister.gov)
- See <https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-07496.pdf>

BACKGROUND

- Final version of updated UGG provides agencies some flexibility concerning effective date
 - General effective date of **October 1, 2024**
 - However, Federal agencies may elect to apply updated UGG to awards issued before October 1, 2024
 - But if applying updated UGG early, effective date no earlier than **June 21, 2024**
- Federal agencies have until May 15 to submit plans for implementing updated UGG to OMB

BACKGROUND

PROCUREMENT AND RECORDKEEPING RULES FOUND IN UNIFORM GUIDANCE SUBPART D (POST AWARD REQUIREMENTS)

Fiscal Management

Property Management

Procurement

Performance and Financial Monitoring and Reporting

Subrecipient Monitoring and Management

Records Retention and Access

Remedies

Closeout and Post Closeout Adjustments

PROCUREMENT

Uniform Grants Guidance Basics: Procurement and Recordkeeping

PROCUREMENT



PROCUREMENT

UNIFORM GUIDANCE PROCUREMENT RULES FOUND AT 2 C.F.R. §§ 200.317- 200.327

§ 317 Procurement by states

§ 318 General procurement standards

§ 319 Competition

§ 321 Contracting with small businesses, etc.

§ 322 Restrictions on public access to records

§ 323 Procurement of recovered materials

§ 324 Contract cost and price

§ 325 Federal awarding agency or pass-through review

§ 326 Bonding requirements

§ 327 Contract provisions

PROCUREMENT

- Final UGG update makes significant changes to the procurement standards
 - Allows Tribes as well as States to use own procurement policies and procedures [§ 200.217]
 - Adds guidance regarding contractors' proper classification of employees under FLSA and permits use of Project Labor Agreements and certain other labor practices [§ 200.218]
 - Removes prohibition on state-and-local geographic preferences and clarifies UGG does not prohibit scoring mechanisms that reward bidders committed to specific numbers of American jobs and certain compensation [§ 200.319]
 - Expands affirmative efforts to include “veteran-owned businesses” [§ 200.321]
 - Adds language encouraging sustainability [§ 200.323]
 - Expands the cost and price analysis language to include workforce impacts that displace public employees and removes requirement to negotiate price separately in certain circumstances [§ 200.324]

PROCUREMENT

PROCUREMENT RULES THAT ALSO APPLY TO STATES

- Must comply with § 200.321 (affirmative efforts to use disadvantaged businesses) [but see **EPA regulations at 40 C.F.R. § 33.301**]
- Must comply with § 200.322 (domestic preference) [compare Build America Buy America Act under Bipartisan Infrastructure Law and new 2 C.F.R. pt. 184]
- Must comply with § 200.323 (recovered materials)
- Must comply with § 200.327 (contract provisions in App. II)

PROCUREMENT

ADHERE TO STANDARDS OF CONDUCT

- Must maintain written standards of conduct
- Must cover conflicts of interest of employees, officers & agents engaged in all stages of procurement process (selection, award, and administration of contracts)
 - Applies to real or apparent conflicts of interest
 - Also prohibits soliciting or accepting gratuities, favors, or things of value from contractors or parties to subcontracts (subject to limited exceptions under organization's policies)
- Must provide for penalties for violations

PROCUREMENT

ADHERE TO STANDARDS OF CONDUCT

- Must also have organizational conflict of interest policy
 - Addresses impartiality in contracting with related entity
 - Not an express prohibition on related-party procurement but need policy
- Does not apply to governmental entities

PROCUREMENT

AVOID UNNECESSARY OR DUPLICATIVE ITEMS

- Suggestions
 - Consolidating/breaking down procurements
 - Lease/purchase analysis
 - Appropriate analysis to find most economical method
- Encouraged enter into intergovernmental or inter-entity procurement agreements
- Encourage use of Federal excess or surplus property
- Encouraged use value engineering clauses

PROCUREMENT

MAINTAIN ADEQUATE COMPETITION: EXPRESSED AS PROHIBITIONS

- Placing unreasonable requirements on firms for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Noncompetitive pricing practices between firms or between affiliated companies
- Organizational conflicts of interest

PROCUREMENT

MAINTAIN ADEQUATE COMPETITION: EXPRESSED AS PROHIBITIONS

- Noncompetitive contracts to consultants that are on retainer contracts
- Specifying only a “brand name” product instead of allowing “an equal” product based on required performance
- Any arbitrary action in the procurement process

PROCUREMENT

- Informal procurement methods
 - Micro-purchases
 - Small purchases
- Formal procurement methods
 - Sealed bids
 - Proposals
- Noncompetitive procurement

PROCUREMENT

MICRO-PURCHASE

- Available when aggregate dollar amount does **not exceed micro-purchase threshold in FAR**
- Should **equitably distribute micro-purchases across qualified contractors**
- **Not** required solicit competitive quotations if price believed be reasonable
- Sub-species of small purchase procedures

PROCUREMENT

SMALL PURCHASE PROCEDURES

- Simplified, informal procedures for purchases **not** exceeding Simplified Acquisition Threshold
- **Organizations can use lower threshold**
- Must obtain price or rate **quotations** from **adequate number** of qualified sources

PROCUREMENT

PROCUREMENT THRESHOLDS TIED TO FAR

- Current FAR thresholds found in 48 C.F.R. pt. 2 (took effect August 31, 2020)
 - Micro-purchases (generally) = \$10,000
 - Simplified Acquisition Threshold = \$250,000
- Uniform Guidance provides some flexibility
 - Micro-purchases = lower or higher (\$50,000)
 - Small purchases = lower (consistent with law)

PROCUREMENT

SEALED BIDS (FORMERLY ALSO CALLED FORMAL ADVERTISING)

- Firm fixed price contract awarded to lowest responsible and responsive bidder (but can reject all bids if solid reason)
 - Complete and adequate specifications
 - At least two responsible bidders willing and able to compete
 - Procurement can be made using fixed price contract primarily on price
- Procedure:
 - Public advertising (governmental entities) of bid invitation plus solicitation of sufficient number of bids with adequate time for response
 - Invitation must include specifications and other information sufficient for bidders to respond
 - Public opening of bids at prescribed time & place (for governmental entities)

PROCUREMENT

PROPOSALS [FORMERLY COMPETITIVE PROPOSALS AND ALSO CALLED REQUEST FOR PROPOSALS (RFP)]

- Multiple sources submit offers
- Generally, results in award of fixed price or cost-reimbursement contract
- Used when conditions not appropriate for sealed bids
 - Requests must be publicized and contain relevant evaluative factors (including relative importance)
 - All responses must be considered to maximum extent practicable
 - Must have written method for evaluating proposals and selecting winner
 - Must award contract to responsible offeror with most advantageous proposal, considering price and other factors

PROCUREMENT

NONCOMPETITIVE PROCUREMENT (FORMERLY NONCOMPETITIVE PROPOSALS AND ALSO CALLED SOLE-SOURCE PROCUREMENT)

- Proposal solicited from a single source
- Used when following conditions apply:
 - Micro-Purchase
 - Only a single source for item
 - Public emergency or exigent circumstances
 - Awarding agency or pass-through entity has authorized noncompetitive proposals after written approval requested
 - Determination that inadequate competition exists

QUIZ # 2

Which of the following is **not** an authorized procurement method under the Uniform Guidance?

- Micro-purchase
- Small purchase
- Sealed bids
- Forced preference

PROCUREMENT

AWARD CONTRACTS ONLY TO RESPONSIBLE CONTRACTORS WITH ABILITY PERFORM SUCCESSFULLY [§ 200.318]

Contractor integrity

Public policy compliance

Past performance

Financial & technical resources

PROCUREMENT

RECORDS MUST SUFFICIENTLY DETAIL
HISTORY OF TRANSACTION [§ 200.318]

Reason for procurement method

Selection of contract type

Contractor selection or rejection

Price basis

RECORDKEEPING

Uniform Grants Guidance Basics: Procurement and Recordkeeping

RECORDKEEPING

UNIFORM GUIDANCE RECORDKEEPING RULES FOUND AT 2 C.F.R. §§ 200.334-.338

§ 334 Retention requirements for records

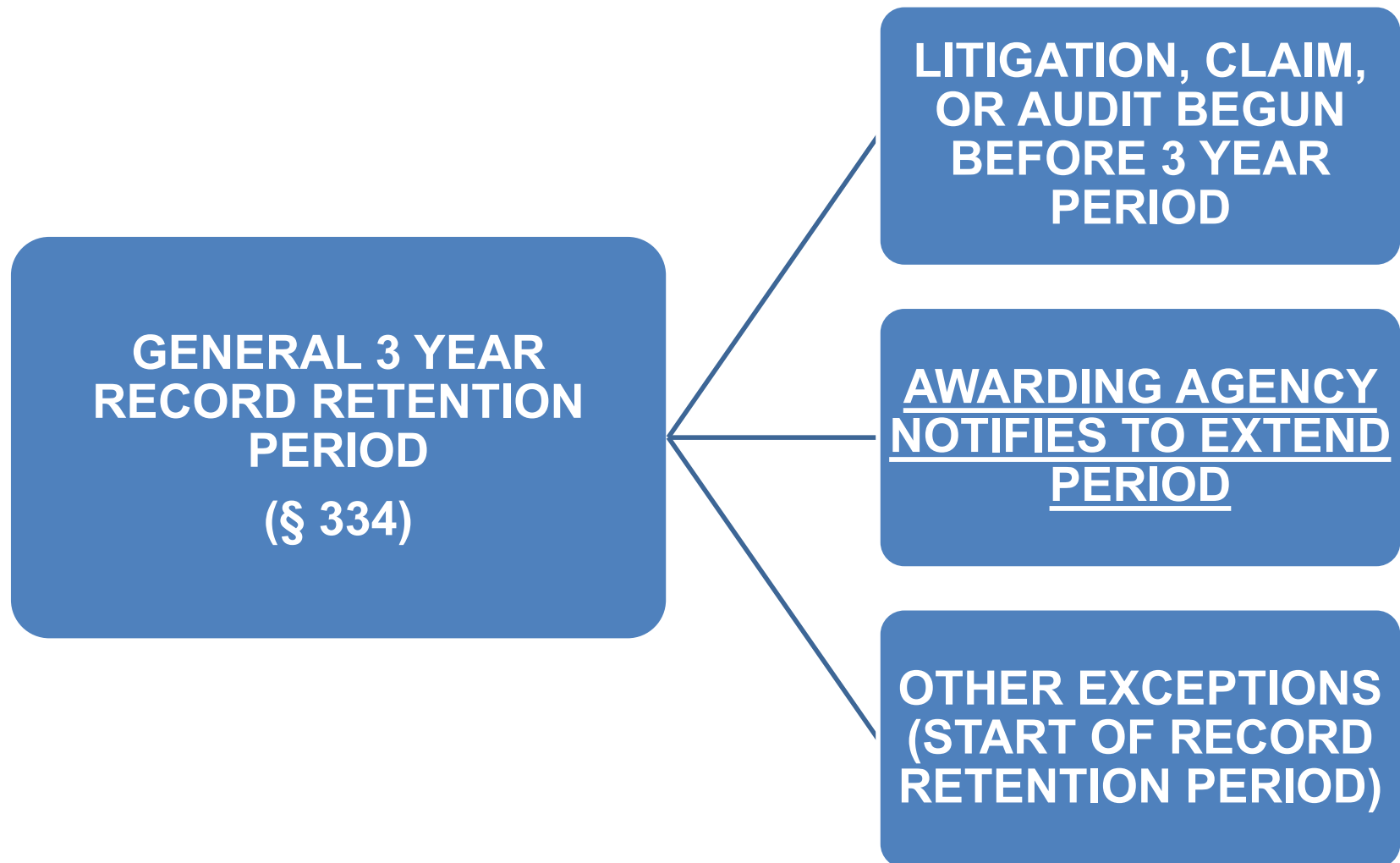
§ 335 Requests for transfer of records

§ 336 Methods for collection, transmission, and storage of
information

§ 337 Access to records

§ 338 Restrictions on public access to records

RECORDKEEPING



RECORDKEEPING

LONGER RETENTION PERIOD MAY BE NECESSARY OR DESIRABLE

- **REMEMBER:** 3-year record retention period in UGG § 334 is **MINIMUM**
- Actual retention period will depend on nature of records and surrounding circumstances
 - Some records may need to be retained permanently
 - Others beyond 3-year period based relevance and applicable laws

RECORDKEEPING

LONG TERM TRANSFER AND STORAGE FOR RECORDS

Transfer of records from grantee to Federal funding source covered in § 335

Awarding source may request transfer of records to its custody for long-term retention

Awarding source may also coordinate retention with grantee to avoid duplicate recordkeeping

RECORDKEEPING

FORMATS FOR RECORDS IN § 336

- Under Uniform Guidance, preference for records in “open and machine readable formats rather than in closed formats or on paper” [2 C.F.R. § 200.336]
 - Electronic-only original records acceptable when cannot be altered
 - Can substitute electronic records for paper originals
 - Quality controls in place
 - Reasonable safeguards against alterations
 - Readability maintained
- However, awarding agency (or pass-through) must still provide and accept paper versions of award-related information

RECORDKEEPING

FUNDING SOURCE ACCESS TO RECORDS IN § 337

- Access rights
 - Awarding source
 - Inspector General
 - Comptroller General
 - Pass-through entity
- Includes access to records and relevant personnel
- Access rights continue for as long as records retained (even if beyond required retention period)

RECORDKEEPING

PUBLIC ACCESS TO RECORDS ADDRESSED IN § 338

- Awarding agency may not generally restrict grantee in providing public access to records
 - Protection of personally identifiable information (PII)
 - Exempt under Freedom of Information Act (FOIA)
- Federal FOIA generally does not apply records in custody of grantee
- Other considerations
 - State and local open records laws and restrictions
 - Program specific requirements

QUIZ # 3

Public access to recipient's records may be affected by:

- Requirements to protect personally identifiable information
- Programmatic requirements
- State and local statutes
- All the above

QUESTIONS

Uniform Grants Guidance Basics: Procurement and Recordkeeping

QUESTION & ANSWER PERIOD

**WHAT ARE YOUR
QUESTIONS?**



“Did someone have a question?”

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