

A-81 Uniform Guidance Procurement Standards Impact on OSU

OSU Procurement, Contracts and
Materials Management

Kelly Kozisek

Chief Procurement Officer

OMB Circular A-81//2 CFR 200

Procurement Standards §200.317 - §200.326

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The A-81 Uniform Guidance Procurement Standards will consolidate and supersede Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards as published by the Office of Management and Budget (OMB):

1. A-21 Cost Principles for Educational Institutions
2. A-50 Audit Follow-up
3. A-87 Cost Principles for State, Local and Indian Tribal Governments
4. A-89 Catalog of Federal Domestic Assistance
5. A-102 Grants and Cooperative Agreements With State and Local Governments
6. A-110 Uniform Administrative Requirement for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
7. A-122 Cost Principles for Non-Profit Organizations
8. A-133 Audits of States, Local Governments and Non-Profit Organizations

Effective July 1, 2016

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Uniform Guidance Procurement Committee Members:

Mike Bailey, Faculty Senate

Jack Breen, Agriculture Sciences and Marine Sciences Business Center

Kim Calvery, Office of Post Award Administration

Tamara Gash, Procurement

Pat Hawk, Office of Sponsored Programs

Kelly Kozisek, Procurement, Contracts and Materials Management

Debera Massahos and Brooke Davison, Capital Projects Contract Administration

Julee Otter, Internal Audit

Julie Penry, Office of General Counsel

Linda Powell, Finance and Administration

Alex Sims, Vendor Payment Operations

Clay Simmons, Compliance Office

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The Uniform Guidance (UG) Procurement Committee is tasked with providing input for consideration on the following as PCMM changes the OSU Standards and policies to be in compliance:

- 1. Options before decisions are made*
- 2. Development of an impact assessment for Assoc. VP and VP for Finance & Administration*
- 3. Development of a communication and training plan*

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Regulation	Comment
<p>§200.317 Procurement by States</p> <p>➤ 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. The state will comply with § 200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §200.318 General procurement standards through §200.326 Contract provisions.</p>	<p>We believe OSU is a non-Federal entity (NFE) and will need to follow the Uniform Guidance Procurement Standards. Procurement is working with General Counsel to solidify that determination.</p>

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Procurement Standards §200.317 - §200.326

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.318 - General Procurement Standards</p> <p>Purchase must be necessary</p> <p>a. Non-Federal Entity (NFE) must use its own documented procedures</p> <ul style="list-style-type: none">• Must reflect applicable State and local laws and regulations• Must conform to applicable Federal law and the 2 CFR 200 Procurement Standards <p>b. NFE must maintain oversight to ensure suppliers perform (terms, conditions, specs)</p>	<p>OSU currently does not conform to all the Procurement Standards.</p> <p>OSU will need to determine appropriate level of oversight and provide guidelines for those responsible for monitoring performance.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.318 - General Procurement Standards</p> <p>c.(1) NFE must maintain written standards of conduct and provide for disciplinary action</p> <ul style="list-style-type: none">➤ Conflict of interest and➤ Employee performance in selection, award, and administration of procurements➤ NFE may set standards for insubstantial financial interest and nominal gifts	<p>Strengthening of current OSU Financial COI policy language is needed.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.318 - General Procurement Standards</p> <p>(2) If NFE has a parent, affiliate or subsidiary organization that is not a state, local government or Indian tribe, the NFE must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.</p>	<p>It depends as we're not sure what affiliates or subsidiaries OSU may have. Potentially INTO, Foundation, etc. If they exist then OSU may need to write standards of conduct covering this.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.318 - General Procurement Standards</p> <p>d. NFE must have procedures that avoid unnecessary or duplicative procurements</p> <p>e. Fostering greater economy and efficiency NFE is encouraged to enter into state and local IGA's when procuring common or shared G's and S's</p> <ul style="list-style-type: none">➤ consolidate or break out procurements➤ Do an analysis of lease vs. purchase➤ Any other appropriate analysis to determine most economic approach.	<p>Currently no Procurement Standard, policy or process to avoid unnecessary or duplicative procurements.</p> <p>Will need to address in PaCS Policy.</p> <p>Nothing in place on lease vs. purchase.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.318 - General Procurement Standards</p> <p>f. NFE should use Federal excess and surplus property in lieu of new when feasible and cheaper</p> <p>g. NFE should use value engineering clauses for construction projects of sufficient size to offer reasonable opportunities for cost reduction.</p>	<p>OSU Procurement Standards or PaCS Policy 307-001 need to be updated to be more specific.</p> <p>Maybe for construction contracts?</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.318 - General Procurement Standards</p> <p>h. Must award contracts only to responsible contractors. Consideration given to contractor integrity, compliance with public policy, record of past performance and financial/technical resources.</p>	<p>OSU Standard 580-061-0130(3)(g) will need to be strengthened.</p>

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<p>§200.318 - General Procurement Standards</p> <p>j. NFE may use Time-and-Material contracts, <u>only</u> after determining:</p> <ul style="list-style-type: none">➤ no other contract type is suitable,➤ there is a ceiling price above which supplier has the risk, <u>and</u>➤ NFE asserts strong oversight that supplier uses efficient methods and cost controls	<p>OSU does not have OSU Procurement Standards or policies that restrict Time-and-Materials contracts.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.319 - Competition</p> <p>a. Full and open competition is required.</p> <p>Suppliers that develop specs, requirements, Statement/Scope of Work (SOW), or solicitations must be excluded from competing for such procurements.</p>	<p>OSU Procurement Standards and policies do not specifically address this.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.319 – Competition</p> <p>Any situations that restrict competition would not allow open and fair competition, including:</p> <ul style="list-style-type: none">✓ Unreasonable requirements✓ Unnecessary supplier experience✓ Excessive bonding✓ Noncompetitive pricing practices✓ Noncompetitive contracts to consultants on retainer✓ Organizational conflicts of interest✓ Specifying brand name without “or equal”✓ Any arbitrary action in the process	<p>OSU Procurement Standards will need to be strengthened and brand name allowance will need to be changed.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.319 – Competition</p> <p>b. No geographic preferences except where Federal law expressly allows or mandates it</p> <p><i>Note:</i> OK for Architect & Engineer (A&E) services as long as there is an appropriate number of qualified firms, given the nature and size of the project</p>	<p>OSU Procurement Standard 580-061-0125 (2)(b) allows for preference of Oregon entity as second resolution point in case of a low tie bid.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.319 – Competition</p> <p>c. NFE must have written procedures for Procurement. Solicitations must:</p> <ul style="list-style-type: none">✓ Incorporate clear and accurate description of technical requirements✓ No features that unduly restrict competition✓ <u>May</u> include qualitative statements✓ When necessary, include minimum essential characteristics and standards✓ When necessary, OK to use “brand name or equivalent” <u>But</u> the specific features of the named brand must be clearly stated✓ Identify ALL requirements that respondents must fulfill and all other factors that will be used in evaluation	<p>OSU Procurement Standards and policies do not specifically cover these requirements.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.320 – Methods of procurement to be followed</p> <p>a. Micro-purchases</p> <ul style="list-style-type: none">✓ Defined at §200.67 // Set by FAR 48 CFR Subpart 2.1✓ Threshold currently *\$3,000 (\$2,000 for construction subject to Davis-Bacon Act)✓ Do not require competitive quotations if NFE considers price reasonable✓ NFE must distribute equitably among qualified suppliers to the extent practicable <p><i>*Note: Current pressure for increase to \$5,000-\$10,000.</i></p>	<p>OSU Direct Purchase (micro-purchase) level is \$25,000 established in OSU Standard 580-062-0015(1)(a)</p> <p>How might this impact the current Pcard threshold?</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.320 – Methods of procurement to be followed</p> <p>b. Small purchase procedures</p> <ul style="list-style-type: none">✓ Aggregate dollar amount less than <u>Simplified Acquisition Threshold</u><ul style="list-style-type: none">➤ Simplified Acquisition Threshold is currently \$150,000;✓ Relatively simple and informal✓ Price or rate quotations must be obtained from an adequate number of qualified sources<ul style="list-style-type: none">➤ “Adequate” and Method (written, oral, price list, web search) is determined by the NFE	<p>OSU Standards 580-062-0015(1)(a) and OAR 580-062-0020(2) are in conflict. Currently advertising is required to provide publicly open business opportunities, intended in particular for MWESB’s.</p>

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<p>§200.320 – Methods of procurement to be followed</p> <p>c. Sealed bids</p> <ul style="list-style-type: none">✓ Publicly solicited✓ Sufficient specifications or descriptions✓ Firm fixed price (lump sum or unit)✓ Awarded to lowest conforming bid / responsible bidder✓ Two or more responsible, willing and able bidders✓ Preferred for construction	<p>OSU Procurement Standards and policy do not indicate 2 or more “willing and able” or for firm fixed price</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.320 – Methods of procurement to be followed</p> <p>c. Sealed bid requirements</p> <ul style="list-style-type: none">✓ Publicly advertised and bids solicited from an adequate number of known suppliers, providing them sufficient response time✓ Publicly opened at time and place prescribed in the solicitation✓ Firm-fixed price contract award will be made in writing to lowest responsive and responsible bidder✓ Bids can be rejected – document reason	<p>OSU Procurement Standards don't require firm-fixed price contract award. Also not required to solicit from adequate number of known suppliers.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.320 – Methods of procurement to be followed</p> <p>c. Competitive Proposals – technique usually includes:</p> <ul style="list-style-type: none">✓ Normally, more than one source responding✓ Normally, fixed price or cost-reimbursement type contract is awarded✓ Used when conditions are not appropriate for sealed bids	<p>OSU Procurement Standards don't require that RFPs result in fixed price or cost reimbursement contract award.</p>

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Regulation	Are changes to OSU Standards or Policies needed?
<p>§200.320 – Methods of procurement to be followed</p> <p>c. Competitive Proposals - if used, requirements include:</p> <ul style="list-style-type: none">➤ RFPs must be publicized➤ RFPs must identify all evaluation factors <u>and</u> their relative importance➤ <u>Any</u> response must be considered to the maximum extent practical➤ Proposals must be solicited from an adequate number of qualified sources➤ There must be a written method for conducting technical evaluations of responses and for selecting recipients➤ Contracts must be awarded to the responsible source whose proposal is most advantageous to the program, with price and other factors considered➤ When soliciting qualifications-based A&E <u>professional</u> services subject to negotiation, cannot solicit <u>other</u> types of services even though a firm may be able to provide them	<p>OSU Procurement Standards or policies don't require:</p> <ul style="list-style-type: none">➤ all evaluation factors and relative importance identified;➤ proposals be solicited from an adequate number of known suppliers;➤ have a written method for conducting technical evaluations and for selecting recipients; or➤ not soliciting other types of services even if an A/E firm can provide them.

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<p>§200.320 – Methods of procurement to be followed</p> <p>f. Non-Competitive</p> <ul style="list-style-type: none">➤ Only one source, or➤ Awarding agency expressly authorizes, or➤ After soliciting, competition is inadequate	<p>OSU Standards and policies will need to be changed. No allowance for exemptions.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.323 – Contract Cost and Price</p> <p>Must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold</p> <ul style="list-style-type: none">✓ Method and degree depends on facts surrounding the procurement✓ As a starting point, must make independent estimates before receiving bids or proposals	<p>OSU Procurement Standards and Policy do not address this requirement.</p> <p>Note - Independent estimates before receiving bids or proposals is a significant deviation from current practice.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.323 – Contract Cost and Price</p> <p>Must negotiate profit as a separate element of price for each contract in which there is no price competition and in all cases where cost analysis is performed</p> <ul style="list-style-type: none">✓ Must consider <u>all</u> of the following:<ul style="list-style-type: none">➤ Complexity of the work to be performed➤ Risk borne by the contractor➤ Contractor’s investment➤ Amount of subcontracting➤ Quality of record of past performance➤ Industry profit rates in the geographical area for similar	<p>OSU Procurement Standards and Policy do not include these requirements.</p>

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Regulation	Changes to OSU Standards, Policies or Procedures
<p>§200.323 – Contract Cost and Price</p> <ul style="list-style-type: none">➤ Costs or prices based on estimated costs are allowable only to the extent that costs incurred or cost estimated included in negotiated prices would be allowable under Cost Principles. NFE may reference its own cost principles that comply with Federal cost principles.➤ Must <u>not</u> use cost plus percentage of cost and percentage of construction cost methods	<p>OSU Procurement Standards and Policy do not include these requirements.</p>

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<p>§200.326 – Contract Provisions (Appendix II)</p> <p>All contracts made by the NFE under the Federal award must contain certain required provisions. These are listed in Appendix II.</p>	<p>There are at least 5 provisions that OSU does not currently include in standard procurement terms and conditions.</p>

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Decision Point:

Apply UG Procurement Standards to:

All procurements

OR

Federally funded procurements

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Application of UG to all procurements

Pros:

- Simplicity – one set of rules is easier to follow
- Reduce risk of after-the-fact issues on mixed funding or funding that is transferred from E&G to restricted indexes

Cons:

- Departments that have little or no federal funding are subject to rules that conform to the UG
- Administrative burden for departments, BC's and PCMM

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	Federally funded	All funding	Undecided	Will use eProcurement System to aid compliance
University of Washington	X			X
Texas Tech	X			X
University of New Mexico	X			
Tennessee Board of Reagents (oversee 46 institutions)	X			X
University of Utah	X			
Washington University	X			
Penn State		X		
Indiana University		X		
University of Chicago		X		X
University of Oklahoma		X		
Emory		X		
Northeastern		X		
Yale			X	

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Review Spend Data

FY12-FY14

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Other Questions:

- How would current contracts that expire after July 1, 2016 be managed?
- What are the impacts to university resources?
- Will the Pcard limit need to be adjusted if the micro-purchase threshold remains at \$3,000?

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Draft timeline for implementation

8/10-9/30	10/1-10/23	10/23-11/6	11/9-12/15	12/15-1/30	2/1/ - 2/28	3/1 - 6/15
Develop Draft Changes to OSU Standards & Policies.	UG Procurement Committee review and comment.	Make adjustments to Standards and Policies. UG Procurement Committee Review.	Finalize Standards and Policies. Review by the Executive Standards Review Committee.	Develop Impact Statement for Assoc. VP and FP for F & A. Board Review (if needed).	Finalize any further changes, share final version with Committee and get VP for F & A approval.	Work with GC to update standard T's and C's. Develop & provide training for OSU community, change forms, update web information.

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Next Steps:

1. Proposal from Huron
2. Make decision on application to all vs. only federally funded procurements and get VP's approval
3. Schedule next meeting

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Questions?