

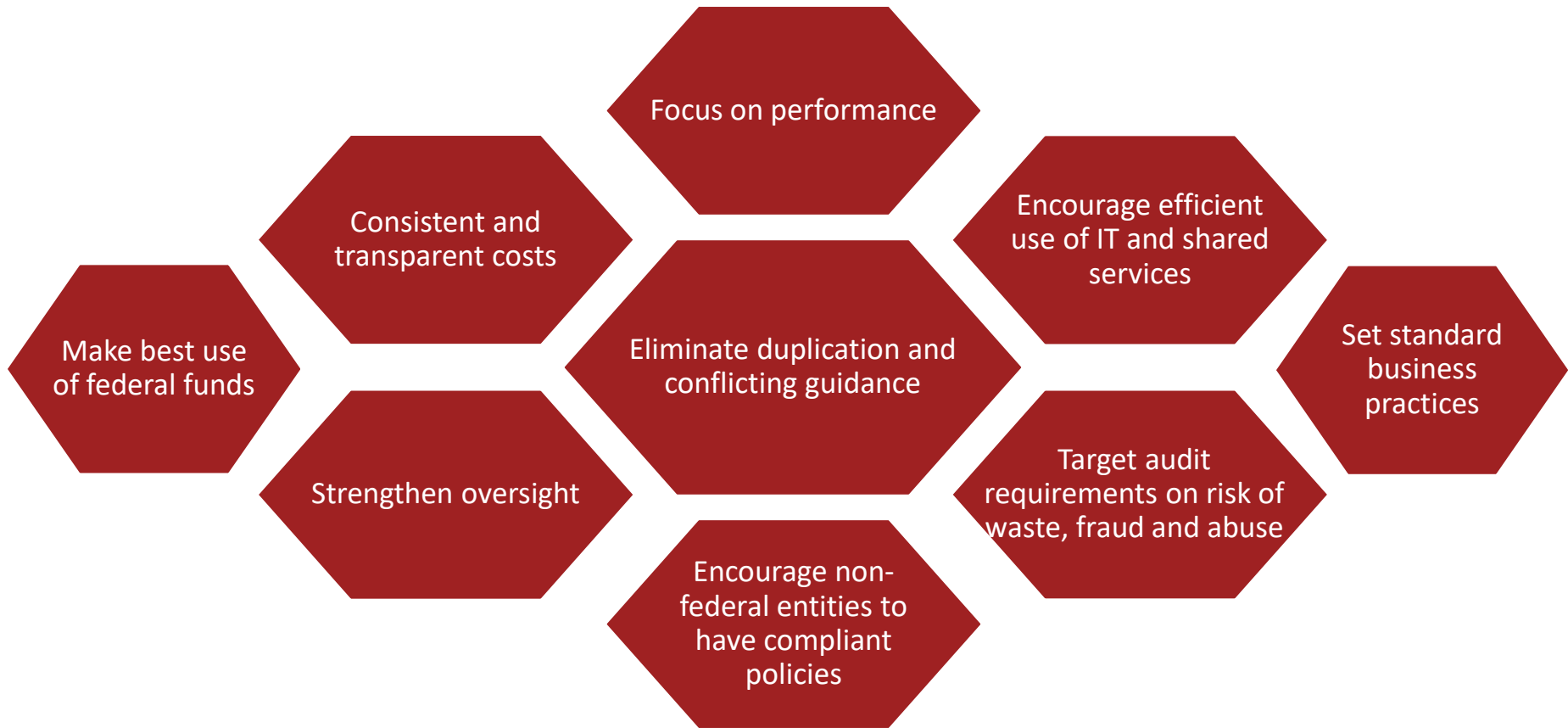
Compliant Procurement Under Federal Programs

Why Uniform Guidance?

The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards are commonly referred to as the “Omni Circular” or “Super Circular”

The Uniform Administrative Requirements consolidated and streamlines eight previous federal regulations into comprehensive guidance codified as 2 CFR Part 200 (Subparts A-F)

Objectives of Uniform Guidance



Effective Date of Procurement Standards

- Uniform Guidance Procurement Standards 200.317 - 200.326 are effective for all Grants with terms beginning July 1, 2016 and after.

Grant Compliance Components

In-depth understanding of the grant requirements and adequate resources and personnel to administer

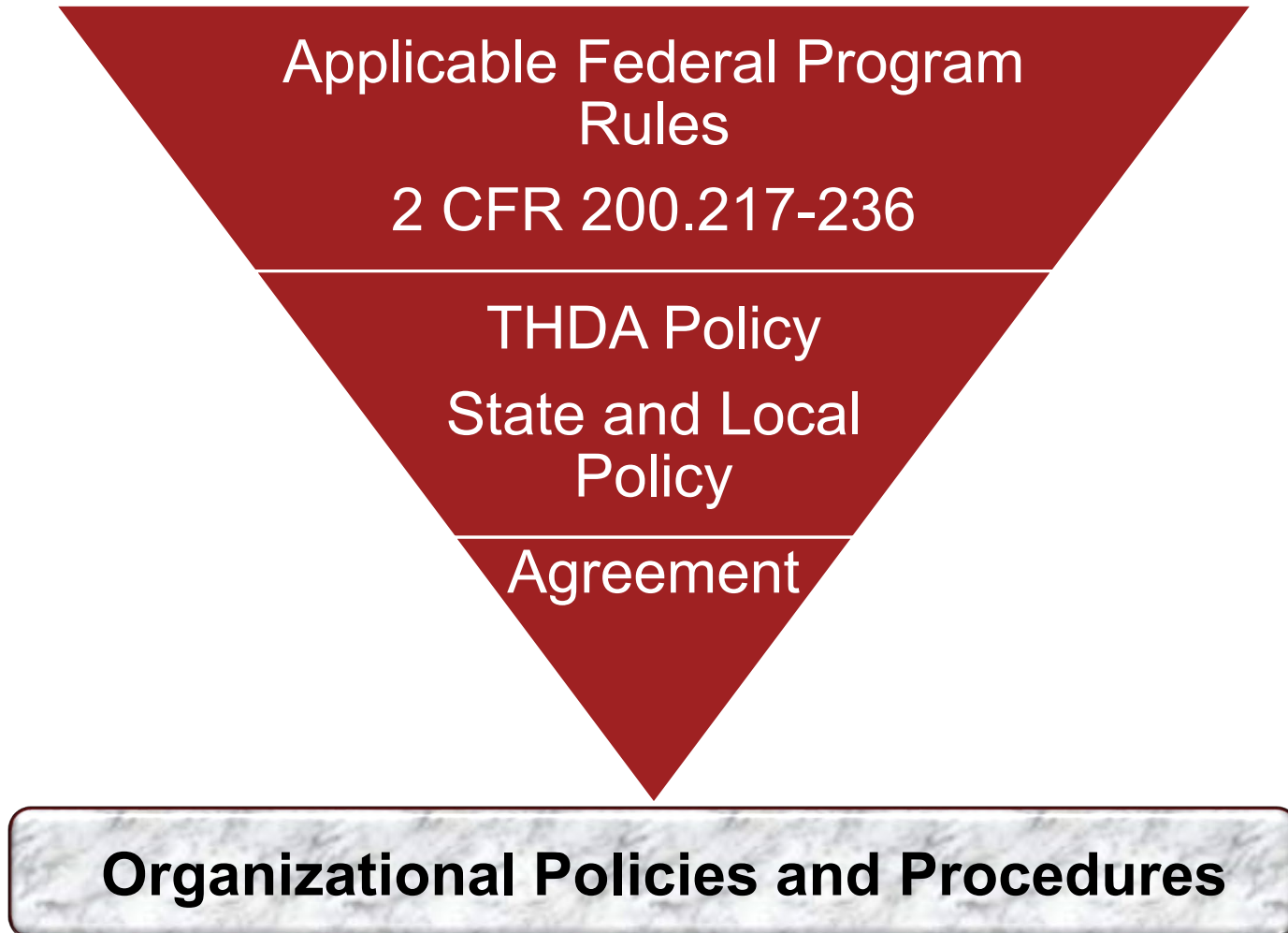
Proper polices and procedures in place with strong internal controls to assure compliance



The Risks of Non-Compliance



Sources of Procurement Compliance Requirements



Procurement Standards

2 CFR 200.317-326

All non-federal entities, including sub-recipients of a state, must follow the following Uniform Guidance provisions.

200.318 General procurement standards

200.319 Competition

200.320 Methods of procurement to be followed

200.321 Contracting with small and minority business, women's business enterprises, and labor surplus area firms

200.322 Procurement of recovered materials

200.323 Contract cost and price

200.324 Federal awarding agency or pass through entity review

200.325 Bonding requirements

200.326 Contract provisions

Procurement Standards

200.317

- **Procurement by States:** States must follow the same policies and procedures used for non-Federal procurements.
- **Local Governments:** Must comply with local governments procurement policy and all state and federal procurement requirements, which ever are more stringent.
- **Non-Profits:** Must comply with organizational procurement policy and state and federal procurement requirements, which ever are more stringent.
- **Public Housing Authorities:** Must comply with local governments procurement policy and all state and federal procurement requirements, which ever are more stringent.

Must vs Should

Must

- Requirement
- Absolute

Should

- Best Practice
- Suggestion;
Recommendation

Procurement Standards

200.318 (c) Conflicts

- **Conflict:** A conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- **Gratuities:** Officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

Procurement Standards

200.318 (c) Conflicts

Organizational Conflict

- Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the entity is unable to or appears to be unable to be impartial in conducting a procurement action involving a related organization.

Procurement Standards

200.318 (d-f)

- Organizations must avoid acquisition of unnecessary or duplicative items.
- Consideration should be given to consolidating or breaking out procurement to obtain a more economical purchase.
- **Organizations are encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.**
- Organizations are encouraged to use Federal excess and surplus property in lieu of new equipment or property.

Procurement Standards

200.318 (g-h)

- Organizations are encouraged to use value engineering clauses in construction contracts of sufficient size. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.
- Organization must award contracts only to responsible contractors possessing the ability to perform successfully. Consideration will be given to contractor integrity, compliance with public policy, past performance and financial and technical resources.

Procurement Standards

200.318 (i-k)

- Organizations must maintain records sufficient to document the rationale for the following, but not limited to:
 - Method of procurement,
 - Method of solicitation
 - Selection of contract type,
 - Contractor selection or rejection, and
 - Basis for contract price.

Procurement Standards

200.318 (i-k)

- Time and materials contracts can only be used after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at this own risk.
- Organization is solely responsible for good administrative practices and sound business judgment, and for the settlement of all contractual and administrative issues arising out of procurements.

Competition 200.319 (a-b)

- All procurements must be conducted in a manner that provides full and open competition. Situations considered to be restrictive of competition include:
 - Placing unreasonable qualifying requirements on firm
 - Requiring unnecessary experience and excessive bonding requirements
 - Noncompetitive pricing practices between firms or affiliated companies
 - Noncompetitive contracts to consultants that are on retainer
 - Organization conflicts of interest
 - Specifying on a “brand name” instead of allowing for “an equal” product consideration
 - Arbitrary actions

Contract Cost and Price 200.323

- Every procurement must have a cost or price analysis performed, including contract modifications.
 - Method and degree of analysis can vary given the situation, but as a starting point independent estimates must be made before receiving bids or proposals
 - Bids that exceed 10% of the cost analysis may be required to be re-bid and the solicitation broadened at THDA's discretion.

Competition 200.319 (a-b)

- Organizations are prohibited from using statutorily or administratively imposed state or geographical preferences (unless mandated by federal statute, or in cases where a state license, such as architectural or engineering, may be required to perform a project in the state)

Competition 200.319 (c)

Written Procedures

- Clear and accurate description of the technical requirement for material, product or services.
 - Description must not contain features which unduly restrict competition (if competitively bid)
 - Detailed product specifications should be avoided if at all possible
 - A “brand name or equivalent” description may be used to define performance or other important requirements when it is impractical or uneconomical to make a clear and accurate description of the technical requirements.
- Identify all of the requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Competition 200.319 (d)

Organization must:

- Ensure that all prequalified lists of persons, firms, or products that are used are current and include enough qualified sources to ensure maximum open and free competition.
 - Having a prequalified list does **NOT** satisfy the requirement to **publish** solicitations for individual contracts
- Not preclude potential bidders from qualifying during the solicitation period.

Procurement Methods

200.320 (a)

Procurements without competition:

- Micro-purchases, \$3,500 or less, do not require competition or a cost/price analysis, but must be distributed equitably among qualified suppliers (to the extent practicable).
- Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
- Micro purchases are cumulative over a grant term year.

Procurement Methods

200.320 (b-d)

Procurements requiring competition or cost-price analysis

- **Small purchases:** \$3,500-\$49,999, price and rate quotes must be obtained from an adequate number of qualified sources.
 - cost/price analysis required .
- **Sealed Bids:** using firm fixed price contract, require formal advertising, 14 days prior to bid opening, three or more bidders must respond, and there is public opening of the bids at the grantee's primary place of business. **(All General Construction Contracts require a sealed bid process)**
- **Competitive proposals:** used when sealed bids are not appropriate, requires advertising, includes a written method for conducting the technical evaluation, responses must be solicited from an adequate number of qualified sources, normally has more than one source submitting an offer and the award is either fixed price or cost reimbursable. (Non-construction purchases exceeding \$49,999)

Procurement Methods

Small Purchases

Procurements requiring competition or cost-price analysis

- **Small purchases:** \$3,500-\$49,999, price and rate quotes must be obtained from an adequate number of qualified sources.
 - cost/price analysis required.
- Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources

Procurement Methods

200.320 (b-d)

- **Sealed Bids:**) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the required method for procuring construction.
- In order for sealed bidding to be feasible, the following conditions should be present:
 - A complete, adequate, and realistic specification or purchase description is available;
 - Two or more responsible bidders are willing and able to compete effectively for the business; and
 - The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Procurement Methods

200.320 (b-d)

Procurements requiring competition or cost-price analysis

- **Sealed Bids:**) Cont,
- If sealed bids are used, the following requirements apply:
 - Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, public housing authorities and non-profit organizations, the **invitation for bids must be publicly advertised**;
 - The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

Procurement Methods

200.320 (b-d)

Procurements requiring competition or cost-price analysis

- **Sealed Bids:**) Cont,
- If sealed bids are used, the following requirements apply:
 - A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - Any or all bids may be rejected if there is a sound documented reason.

Procurement Methods

200.320 (b-d)

Procurements requiring competition or cost-price analysis

- **Competitive proposals:** used when sealed bids are not appropriate, requires advertising, includes a written method for conducting the technical evaluation, responses must be solicited from an adequate number of qualified sources, normally has more than one source submitting an offer and the award is either fixed price or cost reimbursable. (Non-construction purchases exceeding \$49,999)
- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - Proposals must be solicited from an adequate number of qualified sources;
 - The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

Procurement Methods

200.320 (b-d)

Competitive Proposals Cont.

- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Procurement Methods

200.320 (f)

- **Procurement by noncompetitive proposal; Sole Source:** is used when the items are only available from a single source. One or more of the following must apply:
 - The item is available only from a single source;
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - THDA expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
 - After solicitation of a number of sources, competition is determined inadequate.

Procurement Limits

Micro	Small	Simplified Acquisition Threshold / Construction	Simplified Acquisition Threshold / Non-Construction	Sole Source
< \$3,500	\$3,500 - \$49,999	= >\$10,000	= >\$50,000	Unique
No quotations	Rate quotations	Sealed Bids	Fixed price or cost reimbursement	Public emergency or no competition
Equitable distributions	Cost or price analysis required	Price is a major factor	RFP with evaluation methods	Authorized by agency

Notes on Procurement Methods 200.320

- Strategic Sourcing and Shared Services
 - Requirements for competition may be applied in the methods of procurement in broader procurement decisions in order to leverage strategic sourcing agreement, shared services arrangement, or other practices that result in more efficient use of the funds (200.318 d)
- The Uniform Guidance procurement standards only apply to goods and services that are directly charged to a Federal award, including sub-recipients of Federal awards.

Solicitation and Contract Types

- Intergovernmental Agreements
- Informal Solicitation
- Sealed Bids
- Indefinite Delivery Indefinite Quantity (IDIQ) (can be used with sealed bids)
- Firm Fixed Price (Preferred)

Procurement and Affirmative Action 200.321

- Small and Minority Businesses, Women-Owned Businesses, and Labor Surplus Area Firms
- Organization must take the following affirmative steps to ensure these firms are used when possible:
 - Place qualified small, minority, and woman-owned businesses on solicitation lists
 - Assure that such businesses are solicited when they are potential sources
 - Divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses

Procurement and Affirmative Action 200.321

- Small and Minority Businesses, Women-Owned Businesses, and Labor Surplus Area Firms
- Organization must take the following affirmative steps to ensure these firms are used when possible:
 - Establish delivery schedules, where requirements permit, which encourage such businesses to respond
 - Use service and assistance from such organizations as SBA, Minority Business Development Agency of the Department of Commerce, and
 - Require prime contractors to take the same affirmative steps.
 - State Diversity Directory: available at THDA.org [Here](#)

Procurement Review

- Organization **must** make available for review, upon request, technical specifications, solicitation materials including proof of publication, bid documents and bid tabs for all solicitations and procurements within 24 hours when requested by THDA.

Bonding Requirement

200.325

- Bonding may be required for construction/rehabilitation contracts/subcontracts exceeding the Simplified Acquisition Threshold to ensure that the Federal interest in the procurement is adequately protected. Minimum requirements:
 - A bid guarantee equal to 5% of the bid price to ensure that the successful bidder will enter into a binding agreement for the work.
 - A performance bond to secure fulfillment of the contractor's obligations for 100% of the contract price.
 - A 100% payment bond to assure payment as required by law of all persons supplying labor and materials in performance of work specified in the contract.

Contract Provisions 200.326

Appendix II to Part 200

Non-Federal entity's contracts must contain applicable provisions described in Appendix II of Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

- Contracts in excess of \$49,999 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.
- Contracts >\$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.
- Equal Employment Opportunity (all federally assisted construction contracts).
- Davis-Bacon Act (when applicable for 12 units or more).

Contract Provisions 200.326

Appendix II to Part 200 Cont.

- Contract Work Hours and Safety Standards (>\$100,000 where mechanics or laborers).
- Rights to Inventions Made Under a Contract or Agreement.
- Clean Air Act and Federal Water Pollution Control Act (>\$150,000).
- Byrd Anti-Lobbying Amendment (>\$100,000).
- Debarment and Suspension.

Questions?

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