

Texas A&M AgriLife Uniform Guidance Procedures Federal and Federal Flow through Awards Overview and Guidelines for Units

Uniform Guidance 2CRF-200- Procurement (Sections 200.318 – 326)

Beginning September 1, 2018, Texas A&M AgriLife Research, Texas A&M AgriLife Extension Service(AgriLife) will implement new purchasing policies and procedures to comply with the Procurement sections ([2 CFR 200.318-326](#)) of the Office of Management and Budget’s “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards” (Uniform Guidance). Changes to requirements made in Uniform Guidance focus on increased competition and transparency in the purchasing process. **AgriLife must continue to conform to applicable Texas laws Texas A&M University System Procurement (<http://policies.tamus.edu/25-07-03.pdf>) and Contracts Policies (<http://policies.tamus.edu/25-07.pdf>) and AgriLife purchasing regulations along with the 2 CFR 200 Procurement Standards. If funding is mixed, then the more stringent procurement laws prevail.**

Requirements or changes to the Uniform Guidance Procurement section “**Methods of procurement to be followed (Section §200.320)**” are summarized below:

- **Micro-Purchase- (delegated)** Procurements up to \$10,000. Competitive quotations are not required if the prices are reasonable. Selection should be based on quality and cost. To the extent practicable, purchases must be distributed equitably among qualified suppliers including disadvantage businesses. *Contact the Purchasing dept if utilizing federal funds for alterations and renovations or construction or > \$2,000.
- **Small Purchases-** For procurements > \$10,000 up to \$250,000, and if more than one supplier exists, two or more quotes/bids must be obtained for the required documentation of basis of contractor selection and determination of the reasonableness of cost.
- **Simplified Acquisition Threshold** For procurements >\$250,000, and if more than one potential supplier exists, Procurement must advertise either formal competitive requests for sealed bids or formal requests for competitive proposals to multiple sources.
- Avoid acquisition of unnecessary or duplicative items – Maestro has an equipment search option available for PI’s to use.
- The criteria for approval of requests for **sole source** procurements are listed below (see Non-Competitive). Principle Investigators (PIs) requesting a sole source for procurements >\$10,000 must obtain prior written approval from the sponsor, complete the sole source form and attach to AggieBuy requisition.

General Procurement Standards (Section [§200.318](#))

Uniform Guidance outlines general procurement standards for purchases using federal funds. AgriLife Procurement has adopted policies and procedures to ensure compliance with all standards outlined in the Uniform Guidance.

These standards include the following:

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- Standards covering conflict of interest. Access the AgriLife and The Texas A&M University System policies on conflict of interest:
 - Regulation 15.01.03.A1 Financial Conflicts of Interest in Sponsored Research
<https://agriflifeas.tamu.edu/documents/150103a1.pdf/>
 - Regulation 15.01.03.X1 Financial Conflicts of Interest in Sponsored Research
<https://agriflifeas.tamu.edu/documents/150103x1.pdf/>
- AgriLife cannot issue a Purchase Order (PO) contract to a vendor or individual consultant where an organizational conflict of interest exists.
- PIs must avoid requesting the acquisition of unnecessary or duplicative items
 - PIs should review federal excess and surplus property inventory before issuing a request to purchase equipment or property. Searches can be performed on the following website:
<http://www.tfc.state.tx.us/divisions/supportserv/prog/fedsurplus/index.html>
- Purchase Orders may be issued only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement.
- AgriLife Procurement is required to maintain records sufficient to detail the history of each procurement and files the issued purchase order with all associated documents. PIs are required to submit all applicable supporting documentation with each request for procurement (e.g., vendor price quotations, vendor contact agreements, product specifications). PIs are responsible for documenting contractor performance in accordance with the purchase or contract.
- AgriLife Procurement, in conjunction with the PI, are responsible for the settlement of all contractual and administrative issues arising out of procurements

Competition (Section [§200.319](#))

All procurement transactions must be conducted in a manner providing full and open competition consistent with standards in this section. **To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals (bids) must be excluded from competing for such procurements.**

Situations considered restrictive to competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Specifications cannot place unreasonable requirements on firms to qualify, nor require unnecessary experience

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- Noncompetitive pricing practices between firms or between affiliated companies
- Noncompetitive contracts to consultants that are on retainer contracts
- Organizational conflicts of interest
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement
- Any arbitrary action in the procurement process. Procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws.

AgriLife Procurement maintains written policies and procedures for all types of procurement transactions. These policies and procedures include taking into consideration the items listed below for all applicable procurement transactions.

- Requests for procurements must incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such descriptions must not, in contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.
- AgriLife buyers, in conjunction with requestors, must identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- AgriLife buyers ensure that all prequalified lists of persons, firms or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. In addition, the AgriLife buyer ensures that potential bidders are not precluded from qualifying during the solicitation period.

Methods of Procurement to be Followed (Section [§200.320](#))

AgriLife Procurement is required to follow one of five procurement methods specified in the Uniform Guidance listed below. As indicated in the specifications for these procurement methods, Uniform Guidance now requires proof of competition for all procurement methods, except for procurements less than \$10,000. Procurement methods used for purchases of \$10,000 or more require two or more competitive price quotes and/or proof of a solicitation attempt. If the item/service costing \$10,000 or more is only available from a sole source, see Item 5 below for procurement by sole sources

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The five UG procurement methods are:

1. **Micro-Purchases:** Purchasing of supplies, equipment or services where the aggregate total is \$10,000. If the purchase is for renovation or construction which is subject to Davis-Bacon Act or Service Contract Act, the aggregate total may not exceed \$2,000.
 - Micro-purchases may be awarded without soliciting competitive quotations if the purchaser can defend the price as reasonable.
 - One quote/proposal is needed.
 - Micro-purchases must be distributed equitably among qualified suppliers, when practicable.
2. **Small Purchase Procedures:** Aggregate total is >\$10,000 up to \$250,000 for procurements of supplies, equipment or services.
 - If more than one supplier exists, two or more informal quotes/proposals must be obtained (to be used as the basis for the required determination of the reasonableness of cost). The same specifications must be provided to all solicited vendors to ensure quotes are comparable (see Competition: Section §200.319). Use of competitively bid TAMU Master Contracts – shared services contracts and competitive Coop contracts will meet the reasonableness of cost.
 - If only one supplier exists, the **sole source** guidelines (item 5 below) must be followed.

Purchases >\$250,000 – Agency has the option to use either competitive process

3. **Sealed Bids:** If aggregate total of the purchase is > \$250,000 (Simplified Acquisition Threshold), and more than one potential supplier exists. Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction. The following procedures and requirements apply:
 - The AgriLife buyer, in conjunction with the requestor, will determine if the procurement request lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.
 - Using the information provided on the Aggiebuy requisition, the AgriLife buyer, in accordance with applicable requirements in Uniform Guidance Sections 200.319 and 200.320, initiates the competitive bidding process by preparing and issuing the appropriate formal request for competitive proposals (RFIs and/or RFPs or RFQs). The AgriLife buyer also determines how and where to publicize the request for competitive proposals.

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- The AgriLife buyer conducts the public bid opening at the time and place prescribed in the invitation for bids.
 - A firm fixed price PO contract award will be made to the lowest responsive and responsible bidder or
4. **Competitive Proposals:** are required if the aggregate total of the purchase is \$250,000 (Simplified Acquisition Threshold) or more, and more than one potential supplier exists. Suppliers submit offers, and either a fixed price or cost-reimbursement type PO contract can be awarded. This method is generally used when conditions are not appropriate for the use of sealed bids. The AgriLife buyer will determine which method is used (Competitive Proposal or Sealed Bidding). If the Competitive Proposals procurement method is used, the following procedures and requirements apply:
- Using the information provided on the Aggiebuy requisition, the AgriLife buyer, in accordance with applicable requirements in Uniform Guidance Sections 200.319 and 200.320), initiates the competitive bidding process by preparing and issuing the appropriate formal requests for competitive proposals (RFIs and or RFPs or RFQs) and determines how and where to publicize the request for competitive proposals. Principal investigators must select the responsible bidder whose proposal is most advantageous (see Competition: Section §200.31)

Note: the Buyer may determine to use sealed bids or competitive proposal procedures if informal process will not be the agency's best method of procurement.

Non-Competitive

5. **Sole Source:** This non-competitive method is applicable to any dollar amount. However, sole source must be documented on procurements over \$10,000. It may be used only when one or more of the following applies: item is available only from a single source; public exigency or emergency (as defined by FAR Subpart 6.302-2:7) exists; sponsor expressly authorizes sole sources in response to written request; or when after solicitation from multiple sources it is determined that competition is inadequate.

PIs must contact SRS project administration when they have determined that they will be requesting a sole source procurement by the sole source method, so the project administrator can obtain the sponsor's written approval of sole source. For these procurements, PIs must complete and submit a sole source justification form and attach the sponsor's written approval for the sole source to be attached in AggieBuy. It is important to note that continuity of research will no longer be adequate justification for sole source. <https://agriflifeas.tamu.edu/forms/purchasing/>

Contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms (Section §200.321)

Uniform Guidance requires us to take "affirmative steps" to use small businesses (and socioeconomic subsets of small businesses) whenever possible. It is the policy of AgriLife Procurement to promote the

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procurement of goods and services from small, small-disadvantaged and woman-owned businesses and vendors located in labor surplus areas whenever possible. It is the responsibility of both the PI and AgriLife Procurement to direct purchases toward these types of businesses. AgriLife Procurement will take the following affirmative steps:

- Review small business lists prior to soliciting competitive proposals (see 200.319 & §200.320) and solicit quotes from small businesses and place qualified small businesses on solicitation lists as appropriate
- Review requisitions and work with PIs to determine if requirements can be divided into smaller tasks or quantities, or delivery schedules can be modified to allow increased opportunities for small businesses
- Searches may be conducted at the following websites to locate disadvantaged business. HUBs may be used but not exclusively as this would impose geographic restrictions.
 - http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm
 - <https://www.sba.gov/tools/local-assistance/districtoffices>
 - <https://mycpa.cpa.state.tx.us/tpasscmlsearch/tpasscmlsearch.do>

Procurement of Recovered Materials (Section §200.322)

PIs should search for and request procurement of items that contain the highest percentage of recovered materials practical, consistent with maintaining satisfactory levels of competition, when the purchase price exceeds \$10,000 or the value of the quantity procured by the project in the preceding fiscal year exceeded \$10,000. The AgriLife buyer will ensure compliance with the standards and requirements identified in section 200.322.

- Other requirements include procuring solid waste services in a manner that maximizes energy and resource recovery
- In AggieBuy, green or recycled products are flagged.



Green

- **Green Purchasing** is also known as “environmentally preferred purchasing (EPP), green procurement, affirmative procurement, eco-procurement, and environmentally responsible purchasing,” particularly within the U.S. Federal government agencies.



Recycled

- **Recyclable** products are considered to be environmentally friendly since they can be recycled through established recycling programs or they have been manufactured from recycled products or they can be used in ‘green chemistry’ programs

Contract Cost and Price (Section §200.323)

Uniform Guidance requires extensive supporting documentation on procurements of \$250,000 or more. PIs must contact an AgriLife buyer for any proposed procurement of \$250,000 or more **prior** to communication with potential suppliers. The AgriLife Buyer will obtain competitive proposals and perform the required cost or price analysis as described below:

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- For every procurement action of \$250,000 or more, including modifications to existing contracts, a cost or price analysis must be performed. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the requestor or PI must make independent estimates before receiving bids or proposals.
- Profit must be negotiated as a separate element of the price for all sole source procurements and in each case where a cost analysis is performed to establish a fair and reasonable profit for the procurements. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates in the surrounding geographical area for similar work.
- Costs or prices based on estimated costs are allowable only to the extent that costs incurred or included in the cost estimate would be allowable under Uniform Guidance Part 200 Subpart E- Cost Principles
- Cost plus a percentage of cost and percentage of proposals must not be used in establishing Purchase Order (PO) contracts

Federal Awarding Agency or Pass-Through Entity Review (Section [§200.324](#))

AgriLife Procurement maintains a federally approved procurement system with established policies and procedures that ensures compliance with Uniform Guidance 200 procurement guidelines. Therefore, AgriLife Procurement is exempt from pre-procurement reviews from federal awarding agencies.

Bonding Requirements (Section [§200.325](#))

This section of Uniform Guidance provides bonding requirements for construction or facility improvement procurements exceeding the Simplified Acquisition Threshold. Requestors are encouraged to contact AgriLife Procurement immediately if they will be requesting construction type or facility improvement procurement of \$250,000 or more. The AgriLife buyer will obtain any necessary bonds applicable to the procurement.

Contract Provisions (Section [§200.326](#))

As required by Uniform Guidance 200.326, the AgriLife Federal Terms & Conditions have been updated to include applicable provisions by incorporation of "Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards" for all procurements funded by federal grants. (see attached)

- AgriLife Procurement recommends that when requesting informal verbal or written price quotations (offers), you inform potential vendors that any subsequent purchase will depend upon the vendor's acceptance of the AgriLife Federal Terms & Conditions.
- If the vendor is not already registered with the Federal System for Award Management, to expedite the procurement, it will facilitate the procurement process if the vendor registers with www.sam.gov and completes the federal certifications online.