# PORTLAND PUBLIC SCHOOLS

## OFFICE OF PURCHASING & CONTRACTING

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**Date:** August 23, 2018

**To:** All District Staff Involved in Expenditure of Federal Grant or Pass-Through Funds

**From:** Emily Courtnage, Director

**Subject**: New Procurement Policies for Federally-Funded Contracts and Purchases (updated with new procurement thresholds in red)

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**Brief Overview:**
Organizations and entities receiving federal funds are subject to the federal procurement guidelines in the Uniform Guidance (2 CFR Part 200). The District and other non-federal entities have operated under an optional three-year grace period allowing a delay in implementation of the Uniform Guidance until 2018. Our grace period ended July 1, 2018.

The Uniform Guidance requires competition thresholds, contract terms, and other practices that differ from the District's standard procurement and contracting policies in the PPS Public Contracting Rules. Departments and schools procuring contracts or issuing purchase orders using federal funds in whole or in part after the implementation date must comply with the Uniform Guidance in addition to applicable District procedures and policies.

### Do:

Set a meeting with Purchasing & Contracting to discuss proposed contracts or purchases using federal funds.
Assume competition will be required for all federally-funded contracts; exceptions are rare.
Plan ahead! Competition and related documentation take time.

### Don't:

Begin negotiating with a contractor without first determining competition requirements.
Assume a sole source or other exception applies without first discussing with Purchasing & Contracting.
Wait to consider a contracting process until the work is urgent.

**Applicability:**
The Uniform Guidance applies to all federally-funded contracts and purchases, including contracts and purchases funded by formula and discretionary grants. It applies to direct awards and sub-awards of federal funds from pass-through entities including the State of Oregon.

## Implementation Date:

The District must comply with the Uniform Guidance in any procurement or contract using federal funds from (1) new awards on or after July 1, 2018, or (2) funding increments on or after July 1, 2018 under pre-existing federal grants. Procurements and contracts using federal funds dispersed to the District before July 1, 2018 need not comply; however, for simplicity sake, we recommend that *any* federally-funded procurement initiated on or after July 1, 2018 comply with the procurement standards in the Uniform Guidance.

## When is Competition Required for Federally-Funded Contracts?

### Micro-purchases of $10,000 or less:

Micro-purchases do not require competition but should, whenever possible, be distributed equitably among qualified suppliers. The micro-purchase threshold is adjusted periodically and documented in the Federal Acquisition Regulation (48 CFR Subpart 2.1).

### Small purchases ($10,001-$250,000):

Purchases and contracts above the micro-purchase threshold and no more than $250,000 can be solicited by competitive quotes or informal requests for proposals.

### Sealed bids or competitive proposals ($250,001+):

Purchases and contracts above $250,000 must (with few exceptions noted below) be solicited by formal Invitation to Bid ("ITB" or "sealed bids") or Request for Proposals ("RFP" or "competitive proposals") methods. This threshold matches the District's formal procurement threshold for goods, services, and personal services, so does not require a change in procurement practice. Purchasing & Contracting will continue to run all formal solicitation processes.

### Exceptions to competition requirements:

There are very few exceptions to the competition requirements in the Uniform Guidance. Federally-funded contracts above the micro-purchase threshold must be competed unless: (1) The item is available from only one source; (2) Emergency circumstances exist (e.g., when the District declares an Emergency under the Public Contracting Rules); or (3) The federal awarding agency or pass-through entity expressly authorizes direct negotiation (i.e., no competition) in response to a written request from the District.

Thus, in most cases, competition will be required. The numerous exceptions in the District's Public Contracting Rules, including the exceptions applicable to personal services contracts, will not apply to federally-funded contracts.

## Additional Requirements for Federally-Funded Contracts

### Mandatory contract terms

The Uniform Guidance contains numerous mandatory contract provisions that must be included in all federally-funded contracts. The mandated provisions include those relating to equal employment opportunity, prevailing wages, contract work hours and safety standards, compliance with environmental laws, anti-lobbying provisions, and others. Purchasing &

Contracting has a separate contract exhibit with the required federal terms that must be attached to all federally-funded contracts after the Uniform Guidance implementation date.

### Contracting with small and minority businesses and women's business enterprises

The District must take all necessary affirmative steps to assure that minority and women's business enterprises are used in federally-funded contracts when possible. Affirmative steps include soliciting from such businesses when they are potential sources, dividing scopes into smaller portions or adjusting delivery schedules to encourage maximum participation by such businesses, and requiring prime contractors to take similar steps in soliciting subcontracts. (These requirements are similar to those in the District's own Equity in Purchasing Policy and Business Equity Administrative Directive.)

### Required cost analysis

For every federally-funded contract above $250,000, the District must perform a cost analysis which requires, at a minimum, independent cost estimates before receiving bids or proposals.

Purchasing & Contracting will incorporate in its formal solicitation procedures for federally-funded contracts processes for (1) obtaining a cost estimate from the department that initiates the procurement, and (2) documenting the cost estimate in the procurement file.

### Limited use of time and materials contracts

The Uniform Guidance discourages the use of "time and materials" contracts (e.g., contracts with fees based on hourly rates plus expenses). Time and materials contracts are permitted only if the District determines that a fixed fee is not suitable (e.g., when the volume of work or extent of engagement is unknown). Such contracts must include a maximum price that the contractor exceeds at its own risk (i.e., at no additional cost to the District).

### Prohibited conflicts of interest

The Uniform Guidance prohibits any District employee, officer, or agent from participating in the selection, award, or administration of a federally-funded contract if he or she has a real or apparent conflict of interest. A conflict of interest arises if the District employee, officer, or agent (or any member of the employee's, officer's, or agent's immediate family, his or her partner, or any organization which employs or is about to employ any such person) has a financial or other interest in or receives a tangible personal benefit from a proposed contractor. District employees, officers, and agents also are prohibited from soliciting or accepting gratuities, favors, or anything of monetary value from contractors.

### Recordkeeping

The District must make its procurement documentation available to the federal funder when requested. Purchasing & Contracting manages the procurement process for formal solicitations and will continue to keep all procurement documentation for such contracts. For federally-funded purchases or contracts between $10,001 to $250,000, evidence of quote processes, price comparisons, or informal requests for proposals must be submitted to Purchasing & Contracting with every proposed federally-funded purchase order or contract. Departments should seek guidance from Purchasing & Contracting before soliciting federally-funded contracts.