# Federal Procurement – Lessons Learned

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## Objectives

- Discuss procurement under the final rule (ARPA).
- Dive into the importance of documentation.
- Detail common deficiencies noted with procurement
- Key takeaways

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## Final Rule – ARPA

- Non-revenue loss dollars – federal procurement rules apply.
- Revenue loss dollars – federal procurement rules do not apply.
  - Interim rule – it was assumed all UG requirements must be followed, including procurement.
  - FAQ 13.15 (7/27/2022) – the only UG requirement that applies to the "revenue loss" category is allowable costs.
    - Link: https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf
  - Internal policies – an entity should still follow its own internal policies and procedures, including the Ohio Revised Code.
- If revenue loss does not apply to your entity (i.e., school district), you must follow all UG requirements, including procurement.

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## Documentation – UG policies

- Uniform Guidance (UG) – any entity that receives and spends federal money is required to have certain policies in place.
  - Do you have policies?
  - Do you follow them?
  - Do you provide training to key personnel that implement these policies?
- What type of information should your federal procurement policy include?
  - Required terminology and UG references (2 CFR Sections 200.317 – 327).
  - Five different procurement methods and the related thresholds.
  - Required documentation under each procurement method – this can be entity specific.
  - File location and format – this should be a central location if possible.
  - Internal controls – procurement should become part of your nonpayroll control procedures.

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## Documentation – procurement methods

- Micro-purchase – all purchases under $10,000 (UG allows this to be $50,000 if certain criteria are met)
- Small purchase (most common) – purchases from $10,000 to $250,000.
  - Informally gather quotes from multiple vendors.
  - Awarded based on combination of price and ability
- Competitive sealed bidding/formal advertising – purchases over $250,000.
  - Typically used for construction projects
  - Request for proposal (RFP) must be publicly advertised
  - Awarded based on price

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## Documentation – procurement methods, cont.

- Competitive proposals/negotiation – purchases over $250,000.
  - Used when a sealed bid does not make sense - anything other than construction projects
  - Commonly used for professional services (architectural and engineering)
  - Request for proposal (RFP) must be publicly advertised
  - Awarded based on factors other than price
- Noncompetitive proposals – should be used when the other methods are infeasible.
  - Noncompetitive proposals are highly scrutinized by auditors.
  - MUST have a legit reason (i.e., single source provider or public emergency).
  - COVID 19 does not qualify as a public "emergency." If procurement is in response to COVID 19, you still must go through the procurement process.
  - MUST document reason why a service/good was not procured. Keep this in your **procurement file**.

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## Documentation – procurement file

- Consistent documentation is the key to compliance
- How do you accomplish this?
  1. Outline what type of documentation is required for each procurement method.
  2. Document how support is to be maintained (department level or central location; physical or digital)
  3. Provide scoring matrices that staff can use to assist in documentation.
  4. Create a procurement point-person to answer employee questions and ensure support is adequate
  5. Document the key areas that should be included as support.
  6. Communicate this to necessary personnel.

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## Documentation – procurement file, cont.

- What items should be documented within the procurement file?
  - Rationale for the method of procurement
    - Mainly based on price
    - Must chose one of the five procurement methods
  - Selection of contract type
    - Firm-fixed price – more preferred
    - Cost-reimbursement price – least preferred
  - Public advertisement of procurement, if applicable.
    - Only applicable to competitive proposals/bids
    - Can use the newspaper or your website

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## Documentation – procurement file, cont.

- What items should be documented within the procurement file?
  - Contractor selection or rejection
    - Consider using a scoring matrix – create a matrix that can be applied throughout the organization.
    - Small purchase matrix example
    - Competitive proposal, sealed bid example – "construction" matrix example
    - Competitive proposal, negotiation example – "non-"construction matrix example
  - The basis for the contract price
    - Based on the bids or quotes received.
    - Should be similar to the estimate prepared
  - SAM.gov search – this documents the vendors bidding are in good standing.
    - REQUIRED for federal projects!
  - Signed agreement between the contractor and governing body

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## Documentation – small purchase

## Documentation – competitive proposal, sealed bid

## Documentation – competitive proposal, negotiation

## Documentation – common issues

What are some common issues I've noted during my audit testing?
1. No procurement file
   a) Support is thrown together "after the fact"
   b) Department doesn't know where the information is
2. No rationale for the vendor selected
   a) Avoid handshake agreements
   b) Avoid only considering the same vendor you've used in the past
3. No search on SAM.gov
   a) A screenshot of the search should go into your procurement file
   b) Should be done for all vendors that wish to submit a bid

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## Documentation – common issues, cont.

What are some common issues I've noted during my audit testing?
4. ORC competitive bid thresholds are not considered
   a. Must continue to follow ORC competitive bid requirements "if" more restrictive
   b. Most internal policies align with ORC for counties/cities; schools can typically follow the UG requirements.
5. Using the wrong procurement method
   a. Not common but does happen.
   b. Pay attention to the estimated cost and select the correct method, per your UG policies
6. No estimated cost of procurement
   a. Consider developing this before you go out for bid or request quotes
   b. Gives you more leverage with vendors.
7. Attempts to bid split
   a. Absolutely do not do this!

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## Documentation – common issues, cont.

- Use of a cooperative purchasing organization (co-op), or state purchasing site
  - This does not take the place of federal procurement requirements.
  - If you find a price through state purchasing, you need to compare this to other vendors through the applicable procurement method.
    - State purchasing co-ops can be used in lieu of **non-federal** bidding
  - Oversight agency – be sure to check with your oversight agency about using co-ops.
    - Some may allow you to use the co-op in lieu of federal procurement.
    - Conservative approach – assume co-ops cannot bypass the **federal** bid process

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## Citation examples

**Lack of a procurement policy:**
- Citation example:
  - Due to deficiencies in internal controls and procedures over federal requirements, the City did not create or have in place a written procurement policy that complies with the Uniform Guidance requirements. Lack of an approved procurement policy in place could result in noncompliance with procurement requirements.
- Most common procurement cite we issue.
- Policy must document:
  - Thresholds for each level of procurement
  - Number of quotes needed
  - Required documentation
- Consider having this policy approved by the governing body
- **Severity** – management letter comment

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## Citation examples

**Federal project/transaction did not follow the correct procurement method:**
- Citation examples:
  - The project cost of the Sanitary Sewer Extension Project, which was paid for using State and Local Fiscal Recovery Fund (Assistance Listing #21.027) dollars, exceeded the Township's simplified acquisition threshold of $250,000 but was not subjected to formal procurement procedures. Rather than subjecting the project to proposal procedures, the Township used the engineer on record, the original lead entity on the project.
  - The School District ordered pizza to be served in the school cafeteria from Dominos as the company meets the USDA requirements for the National School Lunch Program. While the School District claimed that Dominos was the sole source for obtaining pizza locally that met the USDA requirements, it was determined that other vendor(s), such as Pizza Hut, also offered a school lunch program claiming to meet the requirements. As a result, Dominos would not have been a sole source of the School District and price quotes should have been obtained in accordance with the School District's written procurement procedures.
  - The District hired a vendor to replace an old freezer; however, the District did not maintain three price and/or rate quotations as required under the small purchase procedures documented within the District's policy.
- Must allow for "free and open competition"
- Noncompetitive procedures – must maintain excellent support documenting why procurement procedures were "not" necessary.
- Must follow internal policy to ensure obtaining best combination of price and ability.
- **Severity** – report citation, control deficiency

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## Citation examples

**No documentation is maintained:**
- Citation example:
  - The entity purchased two Ford 450 vans for $133,438 each, two small vans for $63,940 each, and expended $22,500 for the Beam Design for the Parking Lot Project for a total of $417,256 which was 15.8% of the total expenditures from the Federal Transit Cluster; however, the entity did not maintain records sufficient to detail the history of the procurement: rationale for the method of procurement, section of contract type, contractor selection or rejection, and the basis for the contract price.
- Make sure you maintain a procurement file that includes all required documentation.
  - Public advertisement
  - Contractor selection (use a scoring matrix)
  - SAM.gov search results
  - Signed agreement
- **Severity** – report citation, control deficiency

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## Key Takeaways

- Procurement rules do not apply for ARPA expenditures under the revenue loss category.
- You must maintain an updated procurement policy. Make sure the information within your policy is being followed and is appropriate for your current situation.
- Use consistent documentation across the organization to assist with compliance.
- Be aware of purchasing cooperatives. Make sure you're still meeting the federal procurement requirements.

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## Questions?

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## Contact information

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