

# The Strings Attached to “Free” Federal Grant Funds

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We got some FREE money!

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# Goals and Objectives

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- Understand the background of 2 CFR 200, Uniform Guidance and other types of grant compliance requirements
- Learn the specific requirements of the Uniform Guidance Procurement Standards
- Biggest Procurement Under Grant Mistakes
- Apply best practices to procurement procedures

# Background of Uniform Guidance

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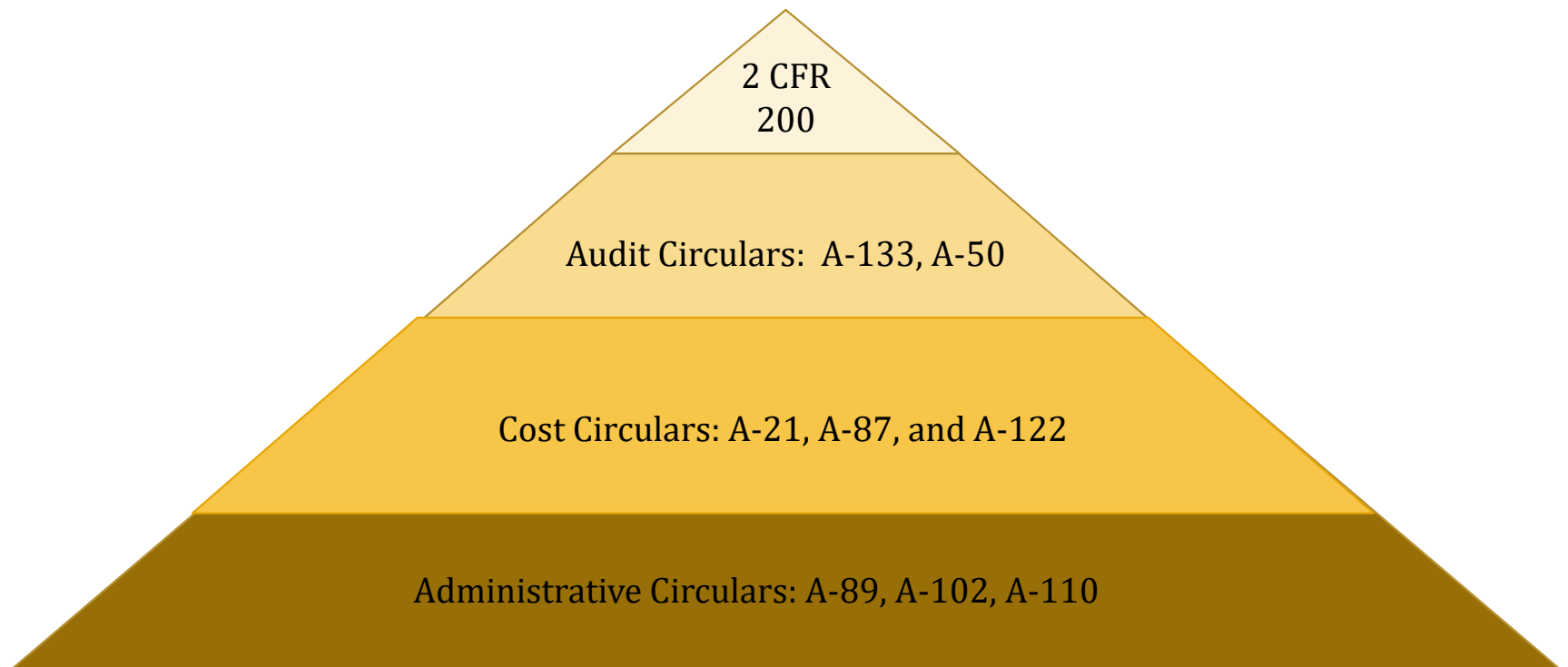
# What is Uniform Guidance?

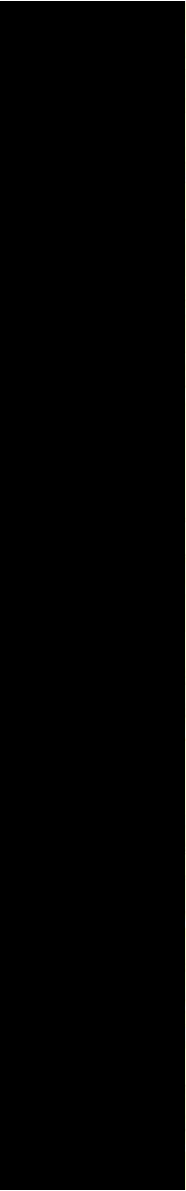
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- Office of Management and Budget
- Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
- In development, called “Super Circular”; now OMB gave it short name “Uniform Guidance”
- Officially implemented December 2014, but included grace periods – last ended June 30, 2018
- By Council on Financial Assistance Reform (COFAR – now dissolved)
- “A government-wide framework for grants management”
- Authoritative set of rules and requirements for Federal awards that synthesizes and supersedes guidance from earlier OMB circulars

# Conversion to 2 CFR 200 (Effective 12/26/14)

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The reforms that comprise the Uniform Guidance aim to reduce the administrative burden on award recipients and, at the same time, guard against the risk of waste and misuse of Federal funds.

## Uniform Guidance

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- Removes previous guidance that is conflicting and establishes standard language;
- Directs the focus of audits on areas that have been identified as at risk for waste, fraud and abuse;
- Lays the groundwork for Federal agencies to standardize the processing of data;
- Clarifies and updates cost reporting guidelines for award recipients.



# Electronic Code of Federal Regulations

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- <https://www.ecfr.gov>
- Title 2 – Grants and Agreements
- Subtitle A – Office of Management and Budget Guidance for Grants and Agreements
- Chapter II – Office of Management and Budget Guidance
- Part 200 – Uniform Administrative requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)
- Subpart D – Post Federal Award Requirements
- Sections 200.317 – 200.326 – Procurement Standards

# Who does it apply to? Who does it not apply to?

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## APPLICABLE

- Mandatory: A state or local government, institution of higher education or nonprofit organization awarded grant funds from the United States Federal Government
- Discretionary: for-profit company or foreign (non-American) entity

## NOT APPLICABLE

- Exception: Some departments have their own Circulars
  - Federal Transit Administration
- Nonfederal program

# Compliance Requirements

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## ADDITIONAL SOURCES

- Specific grant requirements
  - Assurances (obligations) that affect the procurement
- Specific Federal Department requirements
  - FEMA – Additional terms and conditions found in State Division of Emergency Management (Grants Management Guide)
  - DOJ – Administrative Manual DOJ Grant Programs
- State and Local Government Statutes and Regulations

## CONFLICTING LAWS

- When state law and federal law conflict, the more restrictive rule prevails

## Uniform Rules Dollar Thresholds

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- ≤ \$10,000 (**Micro-Purchase**) No quotations
- \$10,000 - \$250,000 (**Small Purchase**)
  - RFQ from adequate number (3) qualified sources
- >\$250,000 (**Sealed Bid or Competitive Proposal**)
- **Noncompetitive Proposal** (any amount)
  - Single source
  - Public emergency
  - Federal agency authorizes noncompetitive proposal
  - After solicitation, competition is determined inadequate

# Uniform Guidance Procurement Standards

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Sections 200.317 – 200.318

# Procurement Standards

## §200.317 - §200.326

§	Standard
§200.317	Procurement by states (NOT APPLICABLE)
§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

# General Procurement Requirements

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Requirement	CFR, Title 2, Part 200 Subpart D
Must use own documented procurement procedures which reflect applicable local purchasing laws	§200.318(a) (NFEs)* §200.317 (States) *Non-Federal Entity
Intergovernmental agreements or inter-entity agreements	§200.318(e)
Federal excess and surplus property	§200.318(f)
History of procurement	§200.318(i)



# Pre-Solicitation Considerations

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# Pre-Solicitation Considerations

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Requirement	CFR, Title 2, Part 200 Subpart D
Written standards of conduct - no employee conflict of interest in selection, award and administration of contracts, real or apparent	§200.318(c)(1)
No organizational conflict of interest	§200.318(2)
Not an unnecessary or duplicative item	§200.318(d)
Consolidating or breaking out procurements	§200.318(d)
Lease v. purchase analysis (if applicable)	§200.318(d)

## Pre-Solicitation Considerations (con't)

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<b>Requirement</b>	<b>CFR, Title 2, Part 200 Subpart D</b>
LVMPD is exempt from pre-procurement review if Federal awarding agency or pass-through entity determines that LVMPD's procurement systems comply	§200.324(c)
LVMPD may request a procurement system review	§200.324(c)(1)
LVMPD may self-certify its procurement system	§200.324(c)(2)

# Solicitation Development

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# Micro-Purchase and Small Purchase

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Requirement	CFR, Title 2, Part 200 Subpart D
<b>Micro-Purchase</b> <ul style="list-style-type: none"><li>• <math>\leq</math> \$10,000</li><li>• Distribute equitably among qualified suppliers</li><li>• Award without competitive quotations if price is reasonable</li></ul>	§200.320(a)
<b>Small Purchase</b> <ul style="list-style-type: none"><li>• <math>&gt;</math>\$10,000 to <math>\leq</math> SAT</li><li>• Simple and informal</li><li>• Quotes must be obtained from adequate number of qualified sources</li></ul>	§200.320(b)

# Sealed Bids

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Requirement	CFR, Title 2, Part 200 Subpart D
<p><b>Sealed Bid</b></p> <ul style="list-style-type: none"><li>• &gt; SAT</li><li>• Firm fixed price contract</li><li>• Lowest price responsible bidder</li><li>• Preferred method for construction</li><li>• Complete accurate and realistic specification</li><li>• 2 or more responsible bidders willing and able to compete</li><li>• Firms fixed price and selection of bidder made principally on price</li><li>• Adequate number of suppliers</li><li>• Sufficient response time</li><li>• Publically advertised</li><li>• Specs must define items or services</li><li>• Opened publicly at time and place specified in Bid</li><li>• Award in writing to lowest responsive and responsible bidder</li><li>• Any and all bids may be rejected</li></ul>	§200.320(c)(1) and (2)

# Competitive Proposals (RFP)

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Requirement	CFR, Title 2, Part 200 Subpart D
<p><b>Competitive Proposals (RFP)</b></p> <ul style="list-style-type: none"><li>• Used when conditions are not appropriate for sealed bids</li><li>• Fixed price or cost-reimbursement</li><li>• Publically advertised</li><li>• Identify all evaluation factors and relative importance (weights)</li><li>• Adequate number of qualified sources</li><li>• Written method for conducting technical evaluations</li><li>• award to responsible firm most advantageous to program, price and other factors considered</li><li>• A/E contract - price cannot be used as a selection factor</li></ul>	§200.320(d)(1) – (5)

# Noncompetitive Proposal

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Requirement	CFR, Title 2, Part 200 Subpart D
<p><b>Noncompetitive Proposal</b> Only used when one or more apply:</p> <ul style="list-style-type: none"><li>• Available only from a single source</li><li>• Public emergency</li><li>• Federal awarding agency or pass-through entity authorizes in writing noncompetitive proposal in response to written request from LVMPD</li><li>• After solicitation from a number of sources, competition is inadequate</li></ul>	§200.320(f)

# Solicitation Development

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<b>Requirement</b>	<b>CFR, Title 2, Part 200 Subpart D</b>
Full and open competition	§200.319(a)
No restrictive competition – placing unreasonable requirements on firms	§200.319(a)(1)
No restrictive competition – requiring unnecessary experience and excessive bonding	§200.319(a)(2)
No restrictive competition – noncompetitive pricing practices between firms	§200.319(a)(3)
No restrictive competition – noncompetitive retainer contracts to consultants	§200.319(a)(4)
No restrictive competition – organizational conflicts of interest – NOT APPLICABLE	§200.319(a)(5)
No restrictive competition – specifying a “brand name” instead of “an equal”	§200.319(a)(6)
No restrictive competition – any arbitrary action in the procurement process	§200.319(a)(7)



## Solicitation Development (con't)

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Requirement	CFR, Title 2, Part 200 Subpart D
LVMPD must have written procedures	§200.319(c)
All solicitations must – clear and accurate description of technical requirements <ul data-bbox="275 800 1241 1024" style="list-style-type: none"><li>• No features which restrict competition</li><li>• Essential characteristics</li><li>• Detailed product specs avoided</li><li>• A “brand name or equal” may be used</li><li>• Salient features of named brand must be clearly stated</li></ul>	§200.319(c)(1)
All solicitations must – identify all requirements and all other evaluation factors	§200.319(c)(2)
No geographical preferences <ul data-bbox="275 1208 1255 1289" style="list-style-type: none"><li>• Except A/E, must have appropriate number of qualified firms</li></ul>	§200.319(b)

## Solicitation Development (con't)

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<b>Requirement</b>	<b>CFR, Title 2, Part 200 Subpart D</b>
Procurement of recovered materials (over \$10,000)	§200.322
Contract cost and price <ul style="list-style-type: none"><li>• &gt;SAT – Independent Cost Estimate</li><li>• Profit negotiated as separate element of price when no price competition and where a cost analysis is performed</li><li>• Cost plus percentage of cost and percentage of construction cost not to be used</li></ul>	§200.323(a) (b) and (d)
Time and materials used only after no other contract suitable <ul style="list-style-type: none"><li>• Must include ceiling price</li><li>• Must assign risk score of high and provide maximum contract oversight</li></ul>	§200.318(j)

## Solicitation Development (con't)

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Requirement	CFR, Title 2, Part 200 Subpart D
Include value engineering (construction)	§200.318(g)
Bonding requirements (construction) (>SAT \$100,000 local funds) <ul data-bbox="275 857 1205 987" style="list-style-type: none"><li>• A bid guarantee from each bidder equal to 5% of bid</li><li>• A performance bond in 100% of contract amount</li><li>• A payment bond in 100% of contract amount</li></ul>	§200.325

## Solicitation Development (con't)

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Requirement	CFR, Title 2, Part 200 Subpart D
<p>S/M/WBEs and labor surplus area firms</p> <ul style="list-style-type: none"><li>• Placing S/M/WBEs on solicitation lists</li><li>• Dividing total requirements into smaller tasks or quantities to permit max participation</li><li>• Establishing delivery schedules which encourage participation</li><li>• Requiring prime contractor, if subcontracting, to take above affirmative steps</li></ul>	§200.321
Contract provisions – Appendix II	§200.326

## Appendix II

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- (A) >\$150,000 – administrative, contractual or legal remedies for contract breaches
- (B) >\$10,000 – termination for convenience and for cause
- (C) Equal Employment Opportunity
- (D) >\$2000 construction – Davis Bacon wages
- (E) >\$100,000 mechanics and laborers – standard work week and pay rate
- (F) Rights to Inventions
- (G) >\$150,000 - Clean Air Act and Federal Water Pollution Control Act
- (H) Debarment and Suspension
- (I) ≥\$100,000 – Byrd Anti-Lobbying Amendment – required certification
- (J) Procurement of recovered materials (Section 200.322)

## Solicitation Development (con't)

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Requirement	CFR, Title 2, Part 200 Subpart D
Review by Federal awarding agency or pass-through entity (upon request) – (Usually tech specs) or over SAT	§200.324(a)
Review of procurement documents or ICE by Federal awarding agency or pass-through entity (upon request) – if your procurement procedures fail to comply	§200.324(b)(1)
Review of procurement documents or ICE by Federal awarding agency or pass-through entity (upon request) - If a “brand name” is specified, solicitation must be made available	§200.324(b)(3)

# Solicitation

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# Solicitation

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Requirement	CFR, Title 2, Part 200 Subpart D
<p>S/M/WBEs and labor surplus area firms</p> <ul style="list-style-type: none"><li>• Assuring S/M/WBEs are solicited whenever potential sources</li><li>• Using S/M/WBE organizations for services and assistance</li></ul>	§200.321
<p>Prequalified lists of persons, firms or products</p> <ul style="list-style-type: none"><li>• Must included enough qualified sources</li><li>• Must not preclude potential bidders from qualifying during solicitation period</li></ul>	§200.319(d)



## Evaluation (After Proposals are Received)

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Requirement	CFR, Title 2, Part 200 Subpart D
Cost or Price Analysis (>SAT) <ul style="list-style-type: none"><li data-bbox="275 704 1041 743">• Determination of fair and reasonable price</li></ul>	§200.323(a)
Costs or prices allowable under Subpart E—Cost Principles (§200.400 – 475) <ul style="list-style-type: none"><li data-bbox="275 889 1318 977">• Used to determine allowable costs of work, where costs are used in determining the appropriate price</li></ul>	§200.323(c)
Responsibility Reviews <ul style="list-style-type: none"><li data-bbox="275 1097 562 1136">• No exceptions</li><li data-bbox="275 1143 510 1182">• SAM check</li></ul>	§200.318(h)

# Award

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Requirement	CFR, Title 2, Part 200 Subpart D
<p>Upon request, Federal awarding agency or pass-through entity review of procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:</p> <ul style="list-style-type: none"><li>• &gt;SAT and to be awarded without competition or only one bid is received</li><li>• &gt;SAT and to be awarded to other than the apparent low bidder</li></ul>	§200.324(b)(2) and (3)
<p>History of Procurement</p> <ul style="list-style-type: none"><li>• Contractor Selection or Rejection Decision Matrix</li><li>• Basis for the Contract Price Decision Matrix</li></ul>	§200.318(i)

# Contract Administration

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Requirement	CFR, Title 2, Part 200 Subpart D
Contractor oversight <ul style="list-style-type: none"><li>• Assignment of risk score (low, medium or high)</li><li>• Monitoring and documentation for contract compliance</li></ul>	§200.318(b)
Contract cost and price <ul style="list-style-type: none"><li>• &gt;SAT – Cost or Price Analysis</li><li>• Contract Modification</li></ul>	§200.323(a)
Federal awarding agency or pass-through entity pre-procurement review, procurement documents or ICE <ul style="list-style-type: none"><li>• Contract modification changes scope or increases contract amount &gt;SAT</li></ul>	§200.324(b)(5)
LVMPD alone is responsible for settlement of all contractual and administrative issues	§200.318(k)

# Biggest Procurement Under Grant Mistakes

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## Biggest Mistakes

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1. Engaging in a **noncompetitive procurement (i.e., sole-sourcing)** without carefully documenting how the situation has created an urgent need to perform the work sooner than a competitive procurement process would allow.
2. **Continuing work under a sole-source contract** after the urgent need (see #1) has ended, instead of transitioning to a competitively procured contract.
3. **Piggybacking onto another jurisdiction's contract** in a situation that doesn't allow noncompetitive procurement (see #1) or where the other contract is materially different in terms of scope or requirements. Piggybacking is rarely allowable.
4. Awarding a **"time-and-materials" contract without a ceiling price** that the contractor exceeds at its own risk and without documenting why no other contract type is suitable.
5. Awarding a **"cost-plus-percentage-of-cost" or "percentage-of-construction-cost" contract**.

## Biggest Mistakes (con't)

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6. **Not including the required contract clauses** (available online).
7. Including a **geographic preference** in a solicitation (i.e., giving an advantage to local firms).
8. **Not making and documenting efforts to solicit small businesses, minority businesses, and woman's business enterprises.**
9. Conducting a procurement exceeding \$250,000 **without conducting a detailed cost or price analysis.**
10. **Not carefully documenting all steps of a procurement to create a record if questions** arise potentially years later.
11. Awarding to **contractors that drafted solicitation documents.**
12. **Award to suspended or debarred contractors.**



# Apply Best Practices to Federal Procurements

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# Procurement Best Practices – When Using Federal Funds

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- Federal Procurement History Memo
  - Boilerplate
  - Numerical by section
- Written Procedures
- Checklists
- Sole Sources - Use sparingly and document
- Boilerplate Federal Language in boilerplates or as exhibits
- Contact List / Outlook Email group for S/M/WBEs
- Cost Analysis Template





**Las Vegas Metropolitan Police Department  
Federal Procurement History Memo**

Purchasing R	12								
	13								
Project No.	14								
Project Title	15								
Material Gro	Awarded St								
LVMPD Proj	Contract As								
(during solici	Contract As								
PM Title	Agenda Item								
PM Telephone	Micro-Purcl								
PM Email	Simplified A								
Using Bureau	Purchase Re								
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explosive or t	0								
capability. TI									
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able to show									
prosecution.									
	Completed	NO							
	RFP Evalua								
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PR Email									
PR Telephone									
Grants Analy:									
Grant Year	No. of bids								
Grant No.	received								
Solicitation Is									
No. of Plans									
Solicitation C									
	1								
	2	The followi							
	3	Regulations							
	4	Awards, Proc							
	5								
	6	Option box							
	7								
	8								
Date(s) Addd	9								
Bid / Propos	10								
Evaluation Fa	11	<b>\$200.31H</b>							

k.	LVMPD alone was responsible for the settlement of all contractual and administrative issues, including but not limited to source evaluation, protests, disputes and claims.
<b>\$200.31: COMPETITION</b>	
<input type="checkbox"/>	This procurement was conducted as a sole source; or a state or local intergovernmental agreement or inter-entity agreement; or Federal excess or surplus property procurement, so this §200.319 did not apply.
<input type="checkbox"/>	a. This procurement was conducted in a manner providing full and open competition. No contractor has developed or drafted specifications, requirements, statement of work, or invitations for bids or requests for proposals on this procurement. This procurement had no situations considered to be restrictive of competition: <ol style="list-style-type: none"> <li>1. Unreasonable requirements on firms in order for them to qualify to do business.</li> <li>2. Requiring unnecessary experience and excessive bonding.</li> <li>3. Noncompetitive pricing practices between firms or between affiliated companies.</li> <li>4. Noncompetitive contracts to consultants that are on retainer contracts;</li> <li>5. Organizational conflicts of interest;</li> <li>6. Specifying only a "brand name" products instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and</li> <li>7. Any arbitrary action in the procurement process.</li> </ol>
b.	Check one: <ul style="list-style-type: none"> <li><input type="checkbox"/> LVMPD conducted this procurement in a manner that prohibited geographical preferences in evaluation of bids and proposals received.</li> <li><input type="checkbox"/> LVMPD conducted this Architectural / Engineering (A/E) procurement in a manner that used geographical preferences in the evaluation of proposals received.</li> </ul>
c.	LVMPD has written procedures for its procurement transactions and they were followed for this procurement. <ol style="list-style-type: none"> <li>1. Clear and accurate descriptions of the technical requirements for the material, product or service to be procured were included in the solicitation. The description did not contain features which unduly restricted competition. The description may have included a statement of qualitative nature of the material, product or service to be procured and when necessary, set forth those minimum essential characteristics and standards to which it must conform, if it is to satisfy its intended use.</li> <li>2. All requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals were identified in the solicitation.</li> </ol>
<input type="checkbox"/>	d. LVMPD ensured that all prequalified lists of persons, firms or products which were used in acquiring goods and services were current and included enough qualified sources to ensure maximum open and free competition. LVMPD did not preclude potential bidders from qualifying during the solicitation period.

<b>\$200.32 METHODS OF PROCUREMENT TO BE FOLLOWED</b>	
LVMPD used the method of procurement identified in §200.318(l), Method of Procurement Decision Matrix, and followed the procedures fro that method of procurement in the LVMPD Purchasing Policies and Procedures.	

## References

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- <https://www.grants.gov/learn-grants/grant-policies/omb-uniform-guidance-2014.html>
- <https://www.ecfr.gov>
- <https://www.grfcpa.com/2016/10/what-is-uniform-guidance/>
- <http://cfo.gov/cofar>
- FEMA, “Top 10 Procurement Under Grant Mistakes Leading to Audits and Potential Loss of FEMA Public Assistance Funding, 9/28/17

# Questions?

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The End!

