



**FEDERAL GRANTS  
PROCUREMENT  
PROCEDURES**

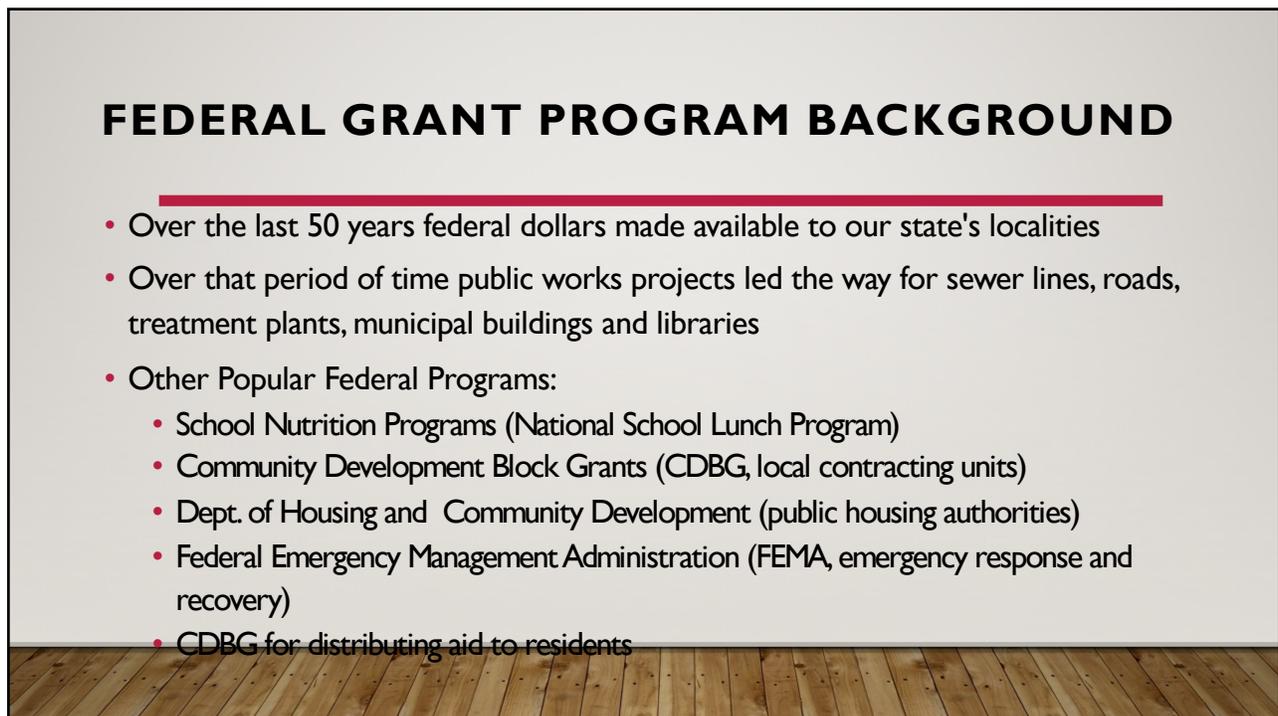
**MARC PFEIFFER, BLOUSTEIN  
LOCAL GOVERNMENT RESEARCH  
CENTER**

RUTGERS UNIVERSITY  
**JOSEPH A. VALENTI, LOCAL  
MANAGEMENT SERVICE BUREAU  
CHIEF (RET.)**

NJ DIVISION OF LOCAL GOVERNMENT  
SERVICES

**NJ STATE LEAGUE OF  
MUNICIPALITIES MINI-  
CONFERENCE**

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**FEDERAL GRANT PROGRAM BACKGROUND**

- Over the last 50 years federal dollars made available to our state's localities
- Over that period of time public works projects led the way for sewer lines, roads, treatment plants, municipal buildings and libraries
- Other Popular Federal Programs:
  - School Nutrition Programs (National School Lunch Program)
  - Community Development Block Grants (CDBG, local contracting units)
  - Dept. of Housing and Community Development (public housing authorities)
  - Federal Emergency Management Administration (FEMA, emergency response and recovery)
  - CDBG for distributing aid to residents

## **DEVELOPMENT OF A BODY OF FEDERAL LAW**

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- Over time the body of federal law gave "non-federal entities" (NJ LPCL & PSCL) better direction on how to manage the fiscal and operational aspects of grants
- Still different rules were being issued by individual grant agencies

## **THE "MOST RESTRICTIVE" LAW OR RULE**

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- When there were federal conflicts with state and local laws, the basic general theme was apply the "most restrictive" law or rule
- Historically, NJ local contracting laws and rules have been, generally, more restrictive than federal rules
- This challenge was further complicated by different laws in different states

## **RESOLUTION OF THE ONGOING DILEMMA**

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- Resolved in late 2014, by issuance of "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" by federal Office of Management and Budget
- Rules are now known as the "Uniform Grant Guidelines" or Uniform Guidelines or UGG or UG respectively
- Most importantly the UG is codified in the Code of Federal Regulations as 2 CFR 200.0 to 200.521
- The procurement related UG is codified at **2 CFR 200.317 through .326**

## **APPLICATION OF THE OMB UNIFORM GUIDANCE**

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## OVERVIEW

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- Took affect in 2018 – even though adopted in late 2014
- Compliance with LPCL and PSCL comes first: UG applies when it is stricter or more detailed
- Specific grants may have some variations on the theme that apply to their projects. Always check with the agency grant personnel to find out about that. Most will have written guidelines or rules.
- Federal agencies are serious about it: they have internal audits and Inspector General's look at ensuring their grantees comply
- You will need to documents policies and include provisions in your bid specs and contracts. Attention to details is important.

## PROCUREMENT THRESHOLDS: FIRST COMPLY WITH THE LPCL OR PSCL AS APPROPRIATE

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- Use the federal threshold (i.e., \$3,500 in 2018) for “micro-procurements” for under 15% of threshold purchases.
- Do not use cooperative purchasing contracts for procurements over the contracting unit's bid threshold; and only as a quote for items that require quotations.
- Use competitive contracting for professional services and goods and services that are exempt from bidding.

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- Ensure bid specification and contract documents include the required federal requirements (“Appendix II”).
  - Ensure that procurement documentation is complete.
  - Document in writing as policy internal procurement practices, ensuring that the federal requirements are part of that. Not just a reference to the LPCL
  - Keep up-to-date on changes to the Uniform Guidelines
  - Integrate UG procurement activities with other elements of the UG.

## PROCUREMENT PROCESS REQUIREMENTS

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1. Procurement procedures must be documented and maintained.
  - Must be specific for federal grant spending, not just referencing the LPCL/PSCL
2. Focus on the most economical solution during the procurement process
  - Must avoid using federal funds for the acquisition of unnecessary items.
  - OK to use shared services and intergovernmental agreements to foster greater economy and efficiency, but not co-ops
3. Written conflict-of-interest policies consistent with UG policy

## MORE PROCESS REQUIREMENTS

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- Document the procurement steps and activities required to be completed.
  - Includes the basis for the type of procurement, contract type, and the basis for the contractor selection and price;
  - Applies overall and for individual purchases
- Maintain an appropriate level of oversight to ensure that contractors perform in accordance with the terms of their contract.

## BRIEFLY: FEDERAL PROCUREMENT THRESHOLDS AND PRACTICES

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- Less than \$3,500 = Micro-purchases (or \$2,000 for construction). Apply under 15% procedures
- Up to \$150,000 = “Small purchases” Quote-like process for federal “Simplified Acquisition Threshold (SAT). So it’s irrelevant for us, since LPCL/PSCL is stricter. P2P applies as well at this level.
- Over \$150,000 = Sealed bids (formal advertising). Apply LPCL/PSCL rules; but expects at least two bidders. If only one, follow re-bid and then negotiate as per LPCL/SPCL if not two bidders.
  - This is consistent with the UC “Non-competitive process”

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- “Competitive Process” – used when sealed bids are not appropriate. This effectively mimics Competitive Contracting for services and can be used for services. But not for goods or professional services
  - “Non-competitive proposals” aka, “sole source” but conditions that apply NJ proprietary process, emergency, or failed bidding would override their process.
    - Except for some other circumstance not covered under state law and the agency grants permission to use an alternative that would or violate state law.
  - Bid “exceptions” do not exist in UG – this NJ exceptions have to follow UG requirements

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- A&E contracts: permits use of a two envelope process. Since it’s more rigorous than the NJ bid exception, UG practices and award standard has to be followed:
    - “on the basis of demonstrated competence and qualifications for the type of professional services required and negotiation of fair and reasonable compensation for the services provided.”
  - Cooperative Purchasing: contracts worth more than \$150K cannot use a co-op bid (any kind).
    - But can be used as a micro-purchase under \$3,500, or as a quote for contracts under \$150k.
  - Boilerplate in bid specs: Appendix 2 of UG lists 10 requirements that must be in bid specs.

## ABOUT PAY-TO-PAY

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- P2P can be a problem. Some agencies conclude that some state P2P elements conflicts with a UG provision that prohibit “unreasonable requirements on firms in order for them to qualify for business.”
  - However, this should not be an issue unless using a “required disclosure contract” (aka, non-fair an open)

## THERE ARE OTHER THINGS...

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- Which are mostly secondary and we are not going into them here.
- Which means if you are buying goods and service or performing construction with federal funds, you need to get your head around this.
- Schools are generally ahead of this since most of them get US Dept of Agriculture Student Nutrition grants that apply to this.

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- In the meantime, if you have grant work with your federal agency or find a peer that has started it.
  - CGS will soon release a new section of PPP2 that covers this in more detail. Continuing ed courses on it will also be popping up.
  - BUT, start on documenting policies: Hopefully some agencies will adopt good models than can used as boilerplate policies and bid specs



## GUIDELINES FOR CDBG ASSISTED CONSTRUCTION/REHABILITATION ACTIVITIES

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### HUD'S POSITION

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- HUD: CDBG assisted-construction activities do not apply to the contracting by private parties where the **contract is not** entered into by the grant recipient (public entity) itself
- The determining factor regarding the applicability of the UGG is based on whether the private party (owner) or the contracting unit (grantee) is the actual procurer of the rehabilitation contract.
- If the contracting unit is the procurer, the procurement requirements of UG shall apply. If the owner carries out the procurement transactions, UG does not apply.

## OWNER REQUIRES ASSISTANCE OF CONTRACTING UNIT IN RETAINING A CONTRACTOR

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- Contracting unit may assist the owner by providing technical assistance as follows:
  - Preparing or reviewing cost estimates
  - Collecting and summarizing contractors' proposal
  - Advising owner on how to evaluate a contractor's proposal

## CONTRACTING UNIT ASSUMES RESPONSIBILITY FOR CONTRACTOR SELECTION

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1. Selecting the contractor
2. Negotiating the price
3. Notwithstanding the owner's signature on the contract, the contracting unit would be the actual procurer of materials and/or services -- the UG would apply
4. Distinction between controlling contractor selection for their rehabilitation clients and assisting clients to choose and work with their rehabilitation contractors
  - Level of involvement may trigger the application of the UG

**ATTORNEY GENERAL OPINION  
(M-79-4258, ISSUED IN 1983)**

"...In conclusion, you are advised that a municipality, or a neighborhood preservation agency designated by a municipality pursuant to the Neighborhood Preservation Housing Rehabilitation Loan and Grant Act of 1975, can make loans or grants of funds received under the Community Development Block Grant Program to private home owners for the rehabilitation of their homes. You are further advised that, upon receipt of such funds through such a loan or grant, such home owners can expend such funds for the purchase of materials, supplies, or services for the rehabilitation of their homes.

Finally, you are advised that the expenditure of such funds by such private home owners would not be subject to the requirements of the Local Public Contracts Law."

