

Application of the Consolidated Procurement Code to Grants

June 20, 2013

Consolidated Procurement Code References

SECTION 11-35-40. Application of Procurement Code.

(2) Application to State Procurement. This code applies to every procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal Requirements) and except that this code does not apply to gifts, to the issuance of grants, or to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations). It also shall apply to the disposal of state supplies as provided in Article 15 (Supply Management). No state agency or subdivision thereof may sell, lease, or otherwise alienate or obligate telecommunications and information technology infrastructure of the State by temporary proviso and unless provided for in the general laws of the State.

(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body also shall comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not presently reflected in this code. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement by a governmental body as defined in Section 11-35-310(18), this code, including any requirements that are more restrictive than federal requirements, must be followed, except to the extent such action would render the governmental body ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law. In those circumstances, the solicitation must identify and explain the impact of such federal laws on the procurement process, including any required deviation from this code.

Definition of Grant

SECTION 11-35-310. Definitions.

(19) "Grant" means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law. It does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract:

Conclusion of Law

Every procurement or expenditure of funds irrespective of the source of the funds, including federal assistance monies is subject to the Code.

A Little History Regarding Procurements Funding by Grants

Back in the day, circa before 1993, Audit and Certification accepted an agency's sole source on the basis that "the Feds made me do it." That ended when DSS sole sourced a \$1 million mainframe computer because "the Feds made me buy it from this company." The Charlotte Observer contacted the federal agency and asked them why they made DSS buy the mainframe computer from that particular company when competition was available. The Feds responded, "We didn't. In their grant application, DSS specified the company they had chosen to buy the mainframe computer from, not us. All we did was approve their grant request." (A loose quote from memory) The stuff hit the proverbial fan. This office announced it would no longer accept a sole source determination, based solely, on "the Feds made me do it."

Lesson learned: If you plan a sole source because the Feds made me do it – You had better have that in writing from the Feds. Approval of your grant request is not sufficient.

The Exemption for Grant Related Procurements

1994.03.22

The Board, in accordance with Code Section 11-35-710, exempted procurements made by a requesting agency for the purchase of grant-specified and approved major equipment, subcontracts, and consultants the agency determines to be essential to the successful completion of the grant-funded project if those procurements are made in accordance with procedures approved by the Office of General Services on an agency-by-agency basis.

We approved Florence-Darlington Technical College's procedure January 31, 2013

Operational Application of the Exemption:

- This exemption applies only to grants from public entities.
- Use of the exemption is limited to agencies for which MMO has approved the required procedure.
- The approved procedure must be followed during the grant application process
- You can't start using it until we approve your agency's procedures
- You can't use it for any procurement without a certification signed by the grant requestor as a part of the grant application that a contractor, equipment or product is "essential to the success of the grant".
- That certification must be co-signed by higher officials of your institution/agency AND the grantor agency has to approve the grant request.
- Contractors, equipment, or products determined "Essential to the success of the grant" must qualify as what we refer to as "light sole sources"
- You can't use the grant exemption to justify any procurement after the fact