
Coates' Canons Blog: Raising the Federal Micro-Purchase Threshold: Self-Certification for Units of Local Government in North Carolina

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[6/17/21 Update: This post and resolution has been updated to clarify that for contracts subject to the Mini-Brooks Act (Article 3D of Chapter 143 of the General Statutes), a unit is advised to establish a micro-purchase threshold of \$0 in the event that it fails to exercise the exemption to the Mini-Brooks Act contained in G.S. 143-64.32. In that case, the generally applicable micro-purchase threshold contained in the FAR (\$10,000, as adjusted for inflation) is less restrictive than the threshold contained in North Carolina law. Therefore, units failing to exercise the exemption should follow the qualifications-based selection process of the Mini-Brooks Act in all cases.]

On August 13, 2020, the Office of Management and Budget (“OMB”) published revisions to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200) (the “Uniform Guidance”). Among other things, the revisions to the Uniform Guidance allow some non-Federal entities to raise, via annual self-certification, the generally applicable micro-purchase threshold of \$10,000 to a “higher threshold consistent with State law.”

This post provides background information for units of local government in North Carolina interested in self-certifying micro-purchase thresholds above \$10,000, and contains a link to a sample resolution that a governing board may use to self-certify such higher thresholds.

Background

Many units of local government in North Carolina receive federal funding subject to the procurement standards in Subpart D of the Uniform Guidance (“Subpart D”). Those procurement standards enumerate three categories of procurement methods: (1) informal; (2) formal; and (3) noncompetitive.

A “micro-purchase” is both an informal procurement method and a noncompetitive procurement method. And when spending federal funds subject to Subpart D, a non-Federal entity may, on a noncompetitive basis, acquire supplies or services, the aggregate dollar amount of which does not exceed the “micro-purchase threshold” (as defined in the Uniform Guidance). A non-Federal entity need not solicit competitive price or rate quotations when awarding a micro-purchase if it considers the price to be “reasonable based on research, experience, purchase history or other information and documents [that] it files accordingly.”

What is the “Micro-Purchase Threshold”?

Prior to the 2020 Uniform Guidance revisions, the Federal Acquisition Regulation set forth the primary definition of “micro-purchase threshold”. And in 2018, OMB set the micro-purchase threshold at \$10,000.

Rather than set forth a uniform “micro-purchase threshold” for all non-Federal entities, the revised Uniform Guidance requires each individual non-Federal entity to “determin[e] and document[t] an appropriate micro-purchase threshold” on its own. Under the new definition of “micro-purchase threshold”, OMB has indicated that “[g]enerally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the [Federal Acquisition Regulation] at 48 CFR Part 2, Subpart 2.1[.]” As of this writing, that amount is \$10,000 (subject to limited exceptions and periodic adjustments for inflation).

Ability to Increase the Micro-Purchase Threshold

Despite the continued existence of the generally applicable micro-purchase threshold, the 2020 revisions to the Uniform Guidance permit non-Federal entities, for some types of contracts, to raise the micro-purchase to a level not to exceed \$50,000.

A non-Federal entity may self-certify a threshold of up to \$50,000 on an annual basis if (1) it maintains documentation to be made available to a Federal awarding agency or pass-through entity and auditors in accordance with 2 C.F.R. 200.334, and (2) within the self-certification, it:

- (1) includes a justification for the threshold;
- (2) clearly identifies the threshold; and
- (3) includes supporting documentation of any of the following:
 - (A) a qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
 - (B) an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or
 - (C) for public institutions, a higher threshold consistent with State law.

For certain categories of local government contracts, North Carolina law establishes competitive bidding thresholds higher than those currently identified in the Federal Acquisition Regulation.

Under North Carolina law, units of local government need not engage in a competitive bidding process for either the purchase of “apparatus, supplies, materials, or equipment” or the purchase of “construction or repair work” unless the cost of each such purchase exceeds \$30,000. See G.S. 143-131(a) (informal bidding statute); G.S. 143-129 (formal bidding statute). North Carolina law also does not require units of local government to engage in a competitive bidding process for the purchase of services other than services subject to the qualifications-based selection process set forth in Article 3D of Chapter 143 (the “Mini-Brooks Act”) (e.g., architectural, engineering, surveying, and certain construction services).

The newly promulgated micro-purchase threshold regulation suggests that a unit of local government in North Carolina may raise its micro-purchase threshold via annual self-certification to \$30,000 for the purchase of “apparatus, supplies, materials, or equipment” or the purchase of “construction or repair work,” and to \$50,000 for service contracts other than those subject to the Mini-Brooks Act.

State law enables units of local government to exercise an exemption to the qualifications-based selection process in the Mini-Brooks Act, in writing, for particular projects where the aggregate cost of services does not exceed \$50,000. G.S. 143-64.32 does not authorize use of a “blanket” exemption for all projects costing less than \$50,000—instead, a unit must exercise an exemption on a project specific basis. In conjunction with the increased micro-purchase threshold flexibility in 2 C.F.R. 200.320(a)(1)(iv)(C), a unit could set a micro-purchase threshold of \$50,000 for services subject to the Mini-Brooks Act as long as the unit exempts the project, in writing, from the qualifications-based selection process in the Mini-Brooks Act. Such an action and higher threshold would be “consistent with State law.”

Each unit should note that it is not required to raise any micro-purchase threshold above the generally applicable threshold in the Federal Acquisition Regulation, but may do so if it chooses.

Limitation on Applicability

If a unit adopts higher micro-purchase thresholds, it may not apply such thresholds to Federal financial assistance awards issued to the unit prior to November 12, 2020 (the effective date of the applicable revisions). A unit’s newly adopted micro-purchase threshold can apply to Federal financial assistance awards issued after that date. A unit must adopt the self-certification on an annual basis, and units making a self-certification should do so once per fiscal year.

Method of Adoption

The revisions to the Uniform Guidance do not explicitly require that a non-Federal entity's governing board self-certify a higher micro-purchase threshold in an adopted resolution. The non-Federal entity might take such action in the form of a filed memorandum. As a best practice, however, units should obtain governing board approval of this change, as the revision necessarily requires a revision to a unit's written purchasing policies.

The Uniform Guidance continues to require non-Federal entities to have and use their own documented procurement policies, consistent with state law, local policy, and the procurement standards in Subpart D of the Uniform Guidance. Therefore, any change made pursuant to a self-certifying resolution must be integrated into a unit's generally applicable purchasing policy.

Self-Certification Resolution Template

I have prepared a sample self-certification resolution (along with a copy of the explanation in this blog post) that units can consider for adoption: SOG – Micropurchase Threshold Certification Revised.

Note that all local government entities, regardless of audit findings, are eligible to raise the micro-purchase thresholds to the levels identified below, which are consistent with North Carolina law:

1. \$30,000, for the purchase of "apparatus, supplies, materials, or equipment"; and
2. \$30,000, for the purchase of "construction or repair work"; and
3. \$50,000, for the purchase of services not subject to competitive bidding under North Carolina law; and
4. \$50,000, for the purchase of services subject to the Mini-Brooks Act (Article 3D of Chapter 143), but only where the unit of local government exercises, in writing, an exemption to the Mini-Brooks Act for a particular project pursuant to G.S. 143-64.32. Where the unit does not exercise an exemption to the Mini-Brooks Act for a particular project, the micro-purchase threshold shall be **\$0**.

Contact and Questions

Thank you to Lisa Fox and Lisa Outlaw of the NC Pandemic Recovery Office, Shirley McFadden at NCDPI, Kathryn Van Tol at the NCDPS Division of Emergency Management, and Laura Jones with Onslow County for their review of the sample resolution and the information contained in this post. If you have questions or suggested revisions to the template resolution, please let me know.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_143/Article_3D.html
- www.govinfo.gov/content/pkg/FR-2020-08-13/pdf/2020-17468.pdf
- www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=4a7f1e1dd9eb30318cd17d70539be85d&mc=true&n=sp2.1.200.d&r=SUBPART&ty=HTML#se2.1.200_1320
- www.ecfr.gov/cgi-bin/text-idx?SID=9c207a2d80d378cbdd5c0c1ad06f4319&mc=true&node=se2.1.200_11&rgn=div8
- www.ecfr.gov/cgi-bin/text-idx?SID=9c207a2d80d378cbdd5c0c1ad06f4319&mc=true&node=se2.1.200_1320&rgn=div8
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- www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf
- www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=4a7f1e1dd9eb30318cd17d70539be85d&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_11
- www.ecfr.gov/cgi-bin/text-idx?node=sp48.1.2.2_11&rgn=div6
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-131.html



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