**COMPARISON: 2000 MODEL PROCUREMENT CODE vs.** [**OMB UNIFORM GRANTS GUIDANCE**](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1)

**(Reflects final April 2024 updates, effective 1 October 2024[[1]](#footnote-1))**

The ABA Model Procurement Code (MPC) was drafted in important part to afford federal grants recipients a uniform set of rules that the grantees might adopt to bring their procurement practices into line with Office of Management and Budget (OMB) guidance to federal grantees. *See, e.g.*, F. Trowbridge vom Baur, *A Personal History of the Model Procurement Code*, 25 Pub. Cont. L.J. 149, 161 (1996). OMB’s grants guidance (what is known as the “[OMB Uniform Guidance](https://www.grants.gov/learn-grants/grant-policies/omb-uniform-guidance-2014.html)”) has changed a good deal since the 2000 version of the Model Procurement Code was published. Sections 200.317 *et seq*. of the OMB Uniform Guidance set forth procurement guidance for federal grantees, including guidance regarding (for example) organizational conflicts of interest, competition requirements, socioeconomic preferences and domestic content requirements. To ensure that the MPC remains a useful tool for federal grantees that seek to use federal funds in conformance with the OMB Uniform Guidance, the MPC may be revised to ensure that it conforms to that current federal guidance. The chart below identifies key points of possible reform, to align the MPC’s procurement-specific requirements with the current OMB grants guidance. **As the chart reflects, cumulatively all of the MPC 2000 articles are implicated by the amended OMB guidance.**

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|  | [**OMB Grants Guidance**](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d) **- 2 CFR** | **MPC Revision Issue -- Key Issues Highlighted in Yellow** | [**MPC Provisions**](https://publicprocurementinternational.com/wp-content/uploads/2019/04/2000-ABA-Model-Procurement-Code.pdf) **At Issue** |
| **States** | § 200.317 Procurements by states and Indian tribes | States and tribes left to own procurement methods. MPC 11-301 defers to federal requirements. | **MPC 11-301**  Compliance with Federal Requirements |
| **Other Recipients aipients** | § 200.318 General procurement standards. | Per Guidance, recipient must maintain documented procurement procedures in accordance with law and OMB guidance; personal conflict of interest rules required; OCI rules required; must consider contractor responsibility, i.e., integrity, public policy compliance, FLSA compliance (no MPC provision), past performance and contractor resources ; no time and materials (T&M) contracts (unclear whether this relates to IDIQ contracts) absent determination; oversight required; should consider lease versus buy ; entering into state-level shared procurement vehicles encouraged; recipient must address administrative and contractual issues, including protests and disputes, and must report violations of law; recipient may use labor agreements, if in accordance with law (no MPC provision). | **Article 2** Procurement Organization  **Art. 3, Part B** Methods of Source Selection  **Art. 3, Part D**  Qualifications and Duties  **Article 4**  Specifications  **Article 9**  Legal and Contractual Remedies  **Article 10 (Intergovernmental Relations): MPC 10-201**  Cooperative purchasing  **Article 12**  Ethics in Public Contracting |
| § 200.319 Competition. | Exclude those with OCIs (no OCI provision in MPC); full and open competition; technical specifications clear; geographic preferences now allowed; prequalification must be open; may give scoring preference to those creating U.S. jobs (no MPC provision). | **Article 3, Part D** Qualifications and Duties |
| § 200.320 Methods of procurement to be followed. | Informal (micro-purchases or simplified). Formal (sealed-bid or proposals). Non-competitive. | **Article 3, Part B** Methods of Source Selection |
| § 200.321 Contracting with small and minority businesses, women's business enterprises, veteran-owned businesses and labor surplus area firms. | Guidance suggests methods for *facilitating* participation by firms in referenced categories. | **Article 11**  Assistance to Small and Disadvantaged Businesses; Federal Assistance or Contract Procurement Requirements |
| § 200.322 Domestic preferences for procurements. OMB: “As appropriate . . . [the recipient] should, to the greatest extent practicable under a Federal award, provide a preference for . . . goods, products, or materials produced in the United States . . .” | No MPC provision. | **Article 11**  Assistance to Small and Disadvantaged Businesses; Federal Assistance or Contract Procurement Requirements |
| § 200.323 Procurement of recovered materials. Should use environmentally sustainable materials to extent practical. | No MPC provisions. | **Article 8**  Supply Management  **Article 11**  Assistance to Small and Disadvantaged Businesses; Federal Assistance or Contract Procurement Requirements |
| § 200.324 Contract cost and price. OMB: independent estimate before bids required. | No MPC provision. | **MPC 3-403** Substantiation of Offered Prices  **Article 7**  Cost Principles |
| § 200.325 Federal awarding agency or pass-through entity review; procurement documents must be made available by recipient on demand. | No MPC provisions on procurement data standards or open contracting -- these are issues implicated by the OMB guidance. | **Article 1, Part D**  Public Access  **Article 2**  Procurement Organization |
| § 200.326 Bonding requirements. Unless recipient bonding requirements approved, must have bid, performance and payment bonds. | MPC provision on point focuses on infrastructure. | **Article 5**  Procurement of Infrastructure Facilities and Services - Part C - Bonds, Insurance, Guarantees |
| § 200.327 Contract provisions. Per Appendix II, need remedy-granting clauses, T/C, T/D, EEO, Davis-Bacon, Contract Work Hours, Rights to Inventions, debarment, Byrd Anti-Lobbying, Huawei/ZTE. | MPC does not include clauses; in ancillary MPC materials. | **Article 5: MPC 5-401**  Contract Clauses and Their Administration  **Article 6**  Modification and Termination of Contracts for Supplies and Services |

1. For a summary of the updates to the OMB guidance which took effect on October 1, 2024, see, e.g., Daniel Ramish & Jonathan Shaffer, [Feature Comment: Key Takeaways From OMB’s 2024 Revisions To The Uniform Guidance For Federal Financial Assistance](https://www.haynesboone.com/-/media/lawyer-publications/govtcont_66_35_254.pdf?rev=3adf92dd6c2a4242a949339658f179d4&hash=1D1BF15F115E2187DF319F8FB3616E3A), 66 Gov. Contractor ¶ 254 (Sept. 25, 2024). For a comparison that shows the new text of the OMB guidance’s procurement-related provisions, see <https://www.ecfr.gov/compare/current/to/2024-09-30/title-2/subtitle-A/chapter-II/part-200/subpart-D>. [↑](#footnote-ref-1)