

# Uniform Grant Guidance Update – How It Impacts Your Entity

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Rea & associates  
*a brighter way*



# Agenda

- 🌀 Timeline of changes and implementation
- 🌀 Audit requirements
- 🌀 Compliance requirements/Cost Principles
- 🌀 Planning considerations



# Key Sections of the Uniform Guidance

## **6 Subparts A through F**

- Subpart A, 200.XX – Acronyms & Definitions
- Subpart B, 200.1XX – General
- Subpart C, 200.2XX – Pre Award - Federal
- Subpart D, 200.3XX – Post Award – Recipients
- Subpart E, 200.4XX – Cost Principles
- Subpart F, 200.5XX – Audit

## **11 Appendices - I through XI**

- SF-SAC Appendix X
- *Compliance Supplement* Appendix XI



# Uniform Grant Guidance

- ☉ Goal of new audit requirements
  - **Right-sizes the footprint of oversight and single audit requirements to strengthen oversight and focus audits where there is greatest risk of waste, fraud, and abuse of taxpayer dollars.**
  - **Improves transparency and accountability by making single audit reports available to the public online, and encourages federal agencies to take a more cooperative approach to audit resolution in order to more conclusively resolve underlying weaknesses in internal controls.**
- ☉ Per the Government Audit Quality Center, the new requirements maintain oversight on 99.7% of federal dollars currently subject to single audit and reduces the audit burden for approximately 5,000 entities
- ☉ Per the Ohio Auditor of State, Ohio will retain 86.89% of single audits and 99.54% of total federal dollars subject to single audit

# Sec. 200.5XX, Audit Requirements

## Basic structure of single audit process unchanged:

- Audit threshold (200.501)
- Subrecipient vs. Contractor (200..501(f) & 200.330)
- Program-specific (200.507) and biennial audits (200.504)
- 9 month due date (set in law) (200.512(a))
- Auditee prepares basic financial statements & Schedule of Expenditures of Federal Awards (SEFA) (200.510)
- Major program determination based on risk (200.518)
- Compliance Supplement overall format (Appendix XI)
- Reporting to Federal Audit Clearinghouse(FAC).(200.512)
- Audit follow-up and corrective action. (200.511 & 200.521)

# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.500 – 200.521 Audit Requirements

- (a) *Audit required.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part



# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.516 Audit Findings

- (a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs
- (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
  - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.



# Uniform Grant Guidance – Specific Changes

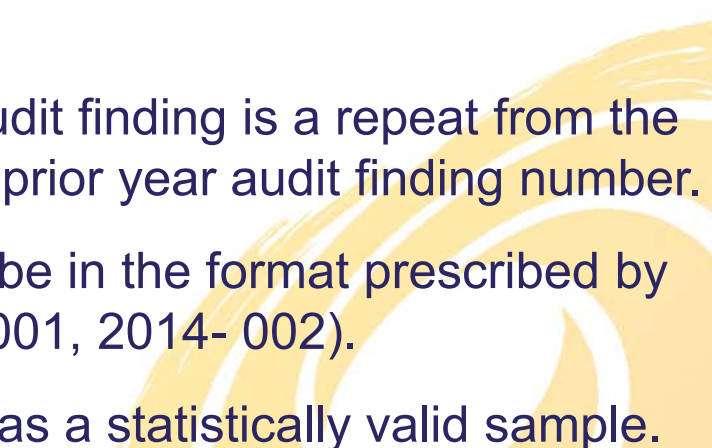
## 2 CFR 200.516 Audit Findings

- (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program.
- (4) Known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program.



# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.516 Audit Findings (Summary)

- Increases the threshold for reporting known and likely questioned costs from \$10,000 to \$25,000.
  - Requires that questioned costs be identified by CFDA number and applicable award number.
  - Requires Identification of whether audit finding is a repeat from the immediately prior audit and if so the prior year audit finding number.
  - Provides that audit finding numbers be in the format prescribed by the data collection form (e.g., 2014-001, 2014- 002).
  - Should indicate whether sampling was a statistically valid sample.
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# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.518 Major Program Determination

- (a) *General*. The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section must be followed.
- (b) *Step one*.
  - (1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.518 Major Program Determination

Total Federal awards expended	Type A/B threshold
Equal to \$750,000 but less than or equal to \$25 million	\$750,000.
Exceed \$25 million but less than or equal to \$100 million	Total Federal awards expended times .03.
Exceed \$100 million but less than or equal to \$1 billion	\$3 million.
Exceed \$1 billion but less than or equal to \$10 billion	Total Federal awards expended times .003.
Exceed \$10 billion but less than or equal to \$20 billion	\$30 million.
Exceed \$20 billion	Total Federal awards expended times .0015.

- (2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

### → (c) *Step two.*

- (1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in §200.519 Criteria for Federal program risk paragraph (c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.518 Major Program Determination

- (i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under §200.515 Audit reporting, paragraph (c);
  - (ii) A modified opinion on the program in the auditor's report on major programs as required under §200.515 Audit reporting, paragraph (c); or
  - (iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.
- (d) *Step three.* (1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in §200.519 Criteria for Federal program risk. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2.

# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.518 Major Program Determination

→ (2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (\$187,500) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

- (e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:
  - (1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).
  - (2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

# High-Risk Type A Program

## Uniform Guidance:

- **SAME “two year look-back”**
- In most recent period had a **High Risk Audit Finding** identified as:
  - Modified opinion
  - Material weakness in internal control
  - Known or likely questioned costs exceeding 5% of total program expenditures

## Auditor only considers risk related to:

- Federal or PTE oversight
- Results of audit follow-up
- Changes in personnel or systems.

**Key – An entity with strong internal controls and few audit findings will have fewer high-risk Type A programs**



# High-Risk Type B Program

## Uniform Grant Guidance:

- Perform risk assessments on Type B programs until high-risk Type B programs have been identified **up to at least 1/4<sup>th</sup>** of number of low-risk Type A programs
- Type B program de minimis consideration (new criteria is 25% of Type A threshold)





# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.520 Criteria for low-risk auditee

- An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with §200.518 Major program determination.
  - (a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in §200.512 Report submission.
  - (b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's opinion on the schedule of expenditures of Federal awards were unmodified.
  - (c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

# Uniform Grant Guidance – Specific Changes

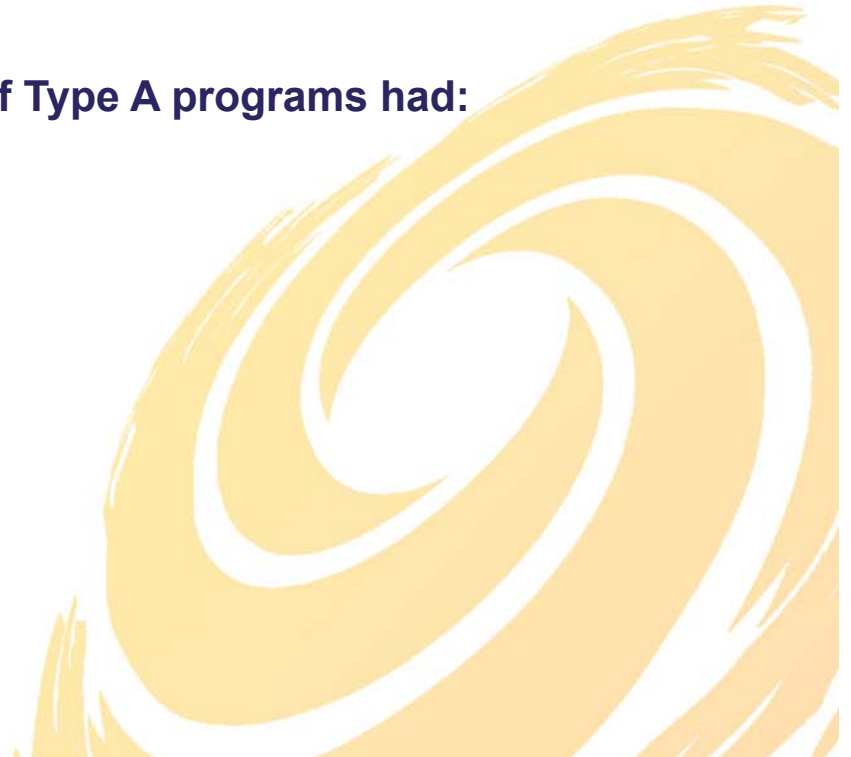
## 2 CFR 200.520 Criteria for low-risk auditee

- (d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.
- (e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:
  - (1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under §200.515 Audit reporting, paragraph (c);
  - (2) A modified opinion on a major program in the auditor's report on major programs as required under §200.515 Audit reporting, paragraph (c); or
  - (3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

# Low-Risk Auditee

## Uniform Grant Guidance (2 prior years):

- Annual single audits
- Unmodified opinion on financial statements in accordance with GAAP or basis of accounting required by state law
- Unmodified SEFA in-relation-to opinion
- No GAGAS material weaknesses
- In either of preceding two years, none of Type A programs had:
  - Material Weakness
  - Material noncompliance
  - QC that exceed 5%
- Timely filing with FAC
- No auditor reporting of going concern
- No waivers



# Uniform Grant Guidance – Specific Changes

## 2 CFR 200.518(f) Coverage rule

- (f) *Percentage of coverage rule.* If the auditee meets the criteria in §200.520 Criteria for a low-risk auditee, the auditor need only audit the major programs identified and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent of total Federal awards expended. Otherwise, the auditor must audit the major programs identified and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent of total Federal awards expended.

# Uniform Grant Guidance – Highlighted Updates

## 2 CFR 200.510(b)(5) Loan Programs

→ (5) For loan or loan guarantee programs described in §200.502 Basis for determining Federal awards expended, paragraph (b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

- (1) Value of new loans made or received during the fiscal year; plus
- (2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus
- (3) Any interest subsidy, cash, or administrative cost allowance received.



## Sec. 200.510(b) SEFA Additions

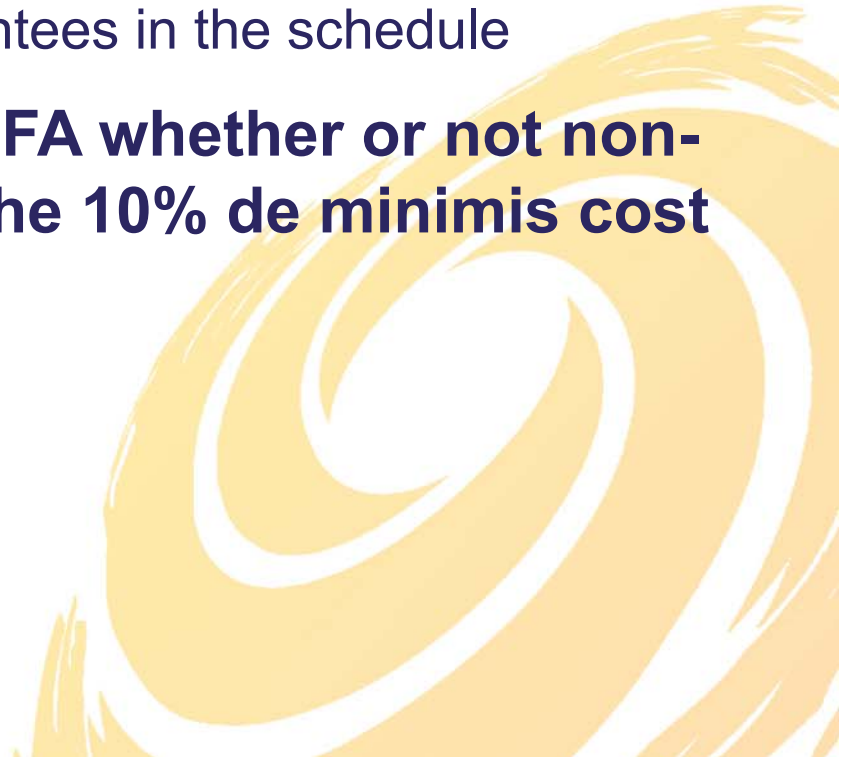
- 🌀 Federal awards expended as determined in 200.502
- 🌀 Provide cluster of programs total (200.510(b)(3))
- 🌀 Total amount provided to subrecipients from each federal program (200.510(b)(4)):
  - Previous guidance only required “to the extent practical”

Federal Grantor/Pass Through Grantor/Program Title	Federal CFDA Number	Pass Through Entity Identifying Number	Federal Expenditures	Expenditures to Subrecipients
Department of Education Direct Program – Title I Grants to Local Educational Agencies	84.010	N/A	\$1,000,000	\$800,000



## **Sec. 200.510(b) SEFA Additions**

-  **For loans and loan guarantees, identify in the notes to the SEFA loan balances outstanding at the end of the audit period (200.510(b)(5)):**
  - This is in addition to including the total federal awards expended for loan or loan guarantees in the schedule
-  **Include in the notes to the SEFA whether or not non-federal entity elected to use the 10% de minimis cost rate (200.510(b)(6)).**





# Common Audit Deficiencies: SEFA

- 🌀 Federal schedule is incomplete (missing grants, missing CFDA numbers, missing payments)
- 🌀 Inclusion of transfer/advance amounts in receipts and expenditures
- 🌀 Incorrect reporting of commodity values
- 🌀 Recommendations:
  - Review ledgers for all grant revenue
  - Utilize CCIP to verify information
  - Federal Subsidy Report



# Uniform Grant Guidance – Highlighted Updates

## 2 CFR 200.512 Report Submission

- Explicitly states that the Federal Audit Clearinghouse is the authoritative source for single audit reports
- Federal agencies, pass-through entities, and others interested in obtaining audit reports should obtain it by accessing the clearinghouse, rather than requesting it from the non-federal entity
- (a) *General.* (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day

# Uniform Grant Guidance – Highlighted Updates

## 2 CFR 200.303 Internal Controls

→ The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity's compliance with statute, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

# Uniform Grant Guidance – Highlighted Updates

## 2 CFR 200.318 General Standards

- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

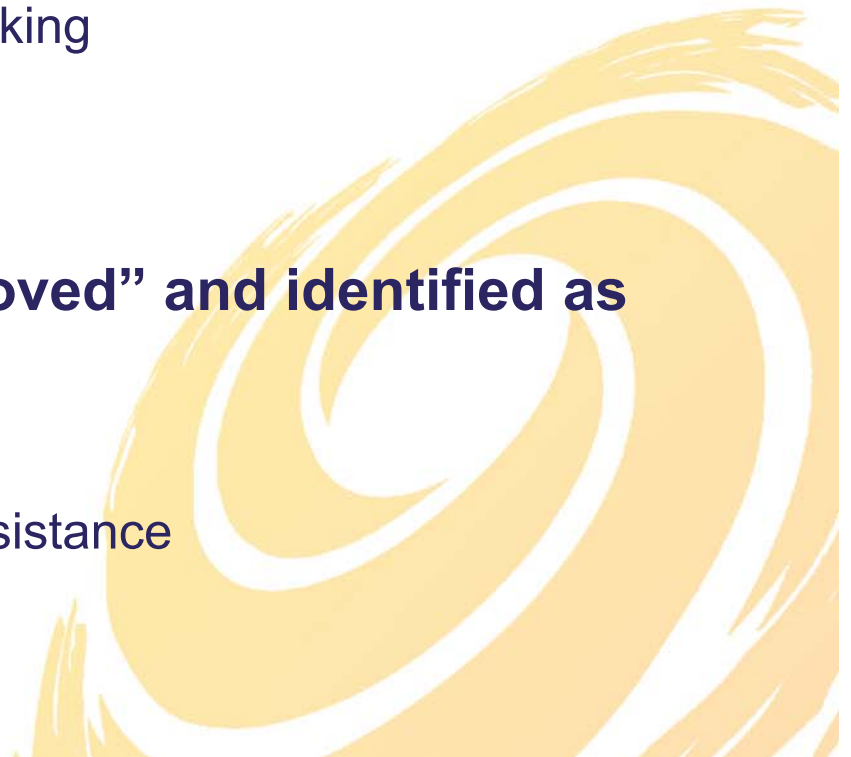
# Compliance Requirements

## **Compliance requirements with no significant changes in audit objectives or suggested audit procedures**

- A. Activities Allowed/Unallowed
- E. Eligibility
- G. Matching, Level of Effort, Earmarking
- L. Reporting
- N. Special Tests and Provisions

## **Compliance requirements “removed” and identified as “reserved” in Part 3.2**

- D. Davis Bacon Act
- K. Real Property and Relocation Assistance



# Compliance Requirements

## Compliance requirements with more substantive changes

- B. Allowable Costs/Cost Principles
- C. Cash Management
- F. Equipment and Real Property Management
- H. Period of Performance
- I. Procurement and Suspension and Debarment
- J. Program Income
- M. Subrecipient Monitoring





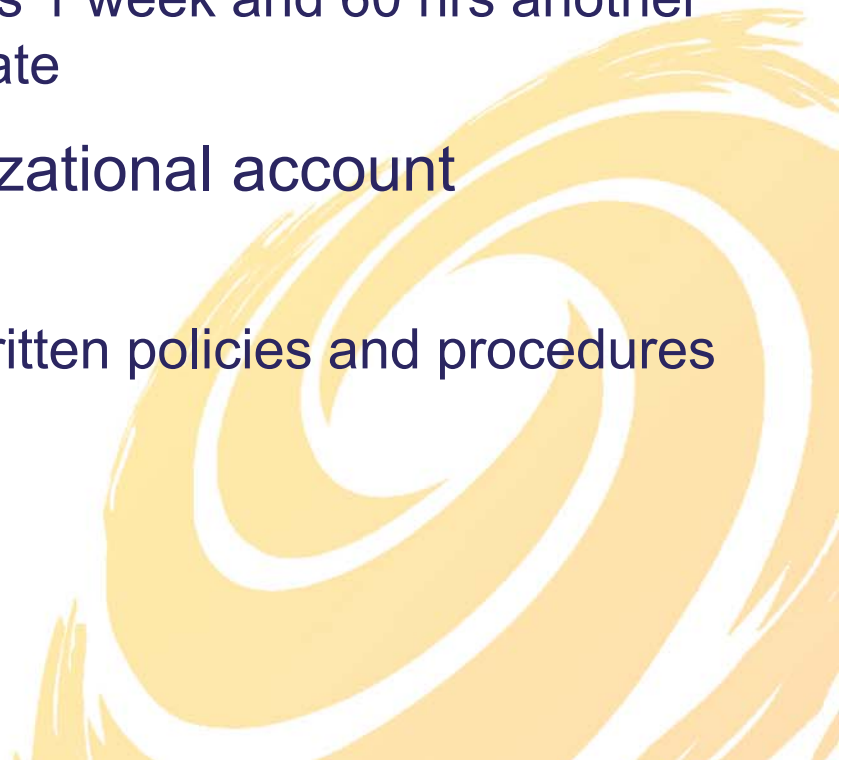
# Allowable Costs & Cost Principles

- ☉ “Time and Effort” now called “Standards for Documentation of Personnel Expenses”
- ☉ 2 CFR 200.430 Compensation – personal services
  - Purpose was to reduce the administrative burden of documenting time and effort
  - Less prescriptive on documentation and places more emphasis on internal control over personnel-related costs
  - Requirement that charges must be based on records that accurately reflect the work performed
  - Records must be “supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated.”



# Allowable Costs & Cost Principles

- ☪ Records must constitute official records of the organization
- ☪ Must reflect 100% of compensation
  - If salaried employee works 40 hrs 1 week and 60 hrs another have to be able to properly allocate
- ☪ Comply with established organizational account practices
  - Entities need to start adopting written policies and procedures



# Allowable Costs & Cost Principles

🌀 Budgets can be used for “interim accounting purposes” if:

- Estimating system produces reasonable approximations of actual activity performed
- Significant changes are identified and recorded in a timely manner
- All necessary adjustments are made to final amounts charged

🌀 If these standards are met no need for additional documentation of work performed

- However to make adjustments to final amounts still need after the fact documentation.

# Allowable Costs & Cost Principles

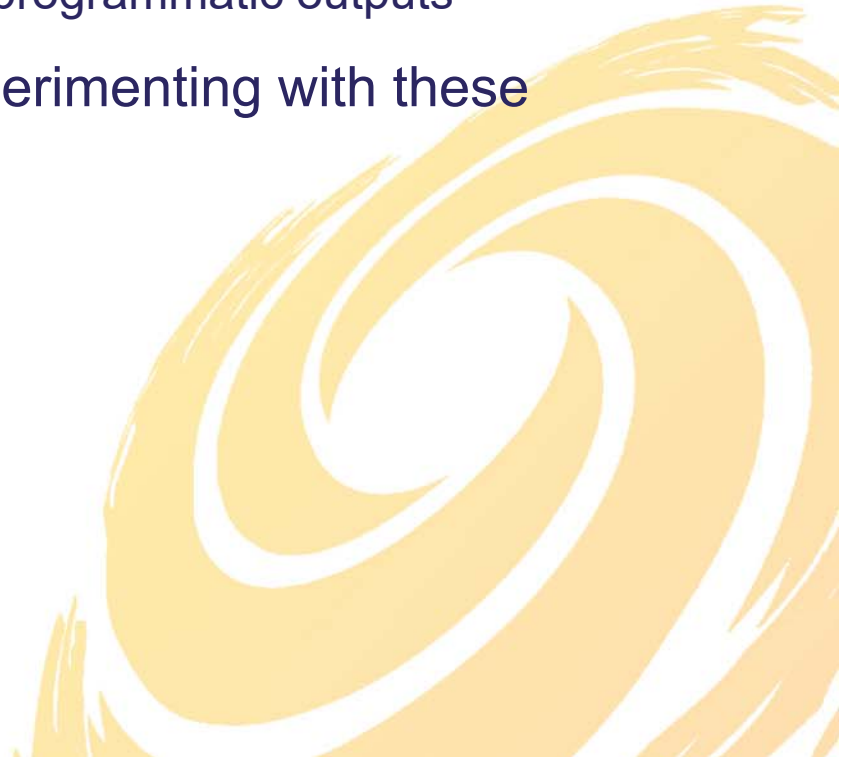
## Services provided on a third party, in-kind basis

- Services donated or volunteered to the non-Federal entity may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor.
- Value of these services may not be charged to the Federal award either as a direct or indirect cost, however value of services may be used to meet cost-sharing or matching requirements.
- “to the extent feasible supported by the same methods used internally by the non-Federal entity”

# Allowable Costs & Cost Principles

 Where is it headed?

- Performance based alternatives
  - Milestones of program performance
  - Shift away from financial inputs to programmatic outputs
- Federal Agencies may begin experimenting with these initiatives.



# Allowable Costs & Cost Principles

## 2 CFR 200.510(b)(6) Indirect Cost Rate

- Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the non-Federal entity elected to use the 10% de minimis cost rate as covered in 200.414 Indirect facility and administration (F&A) costs.

## 2 CFR 200.414 Indirect (F&A) Costs

- (f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (d)(1)(B) may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in §200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

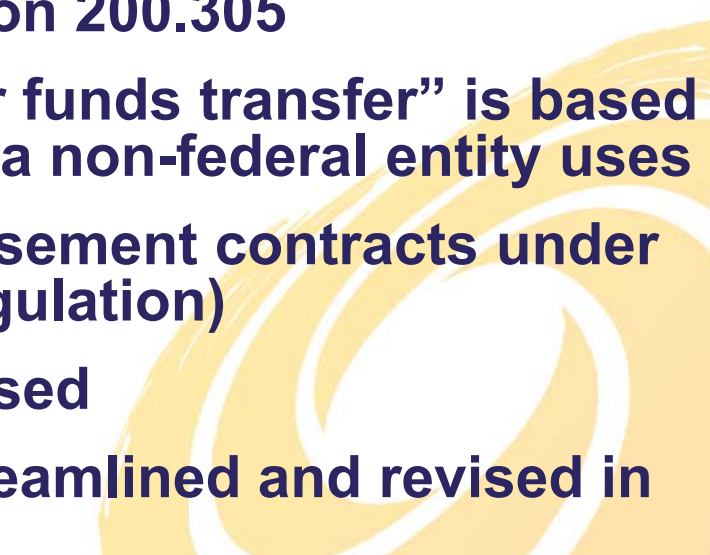
# Allowable Costs & Cost Principles

## De minimis indirect cost rate - Applies to non-federal entities, whether as recipient or subrecipient

→ Includes suggested audit procedures such as:

- Determine entity has not previously claimed indirect costs on the basis of a negotiated rate (only for the 3 prior fiscal years)
- Test a sample of transactions for conformance with 2 CFR section 200.414(f)
- Select a sample of claims for reimbursement of indirect costs and verify that:
  - the de minimis rate was used consistently,
  - the rate was applied to the appropriate base, and
  - the amounts claimed were the product of applying the rate to a modified total direct costs base

# Cash Management

- ☪ **Description of compliance requirements and suggested audit procedures noted by type of transaction and States versus other non-federal entities**
  - ☪ **For grants and cooperative agreements, all non-federal entities must establish written procedures to implement the requirements of 2 CFR section 200.305**
  - ☪ **The “minimized elapsed time for funds transfer” is based on the payment system/method a non-federal entity uses**
  - ☪ **More emphasis on cost-reimbursement contracts under the FAR(Federal Acquisition Regulation)**
  - ☪ **Audit objectives similar but revised**
  - ☪ **Suggested audit procedures streamlined and revised in some cases**
- 



# Equipment and Real Property

- 🌀 **Reorganized compliance topic areas and suggested audit procedures for additional clarity**

- 🌀 **Disposition of Equipment**

- Suggested audit procedures for dispositions of equipment acquired under grants and cooperative agreements has been separated from dispositions of equipment acquired under cost-reimbursement contracts



# Period of Performance

- ☪ Performance period beginning dates during audit period. Test transactions recorded during beginning of period of performance
- ☪ Performance period ending dates during audit period. Test transactions during latter part and after
- ☪ Performance period ending dates during audit period. Test transactions for which obligation had not been liquidated
  - **EXCLUDES STATEMENT THAT AUDITOR MAY TEST WITH SAME TEST ITEMS USED TO TEST OTHER COMPLIANCE REQUIREMENTS SUCH AS ALLOWABLE COSTS**
  - **SEPARATE POPULATION/SAMPLE FOR EACH NOTED ABOVE.**

# Effective Dates and Grace Period for Procurement

- 🌀 Federal Register 2017-09909 effective May 17, 2017 allowed an additional 1 year grace period for non-federal entities on top of initial 2 year grace period.
- 🌀 **6/30 year ends – effective 7/1/18**



# Acceptable Procurement Methods

- 🌀 Micro Purchases
- 🌀 Small Purchases
- 🌀 Sealed Bids
- 🌀 Competitive Proposals
- 🌀 Noncompetitive Proposals



# Micro Purchases

## 🌀 Purchases of \$10,000 or Less

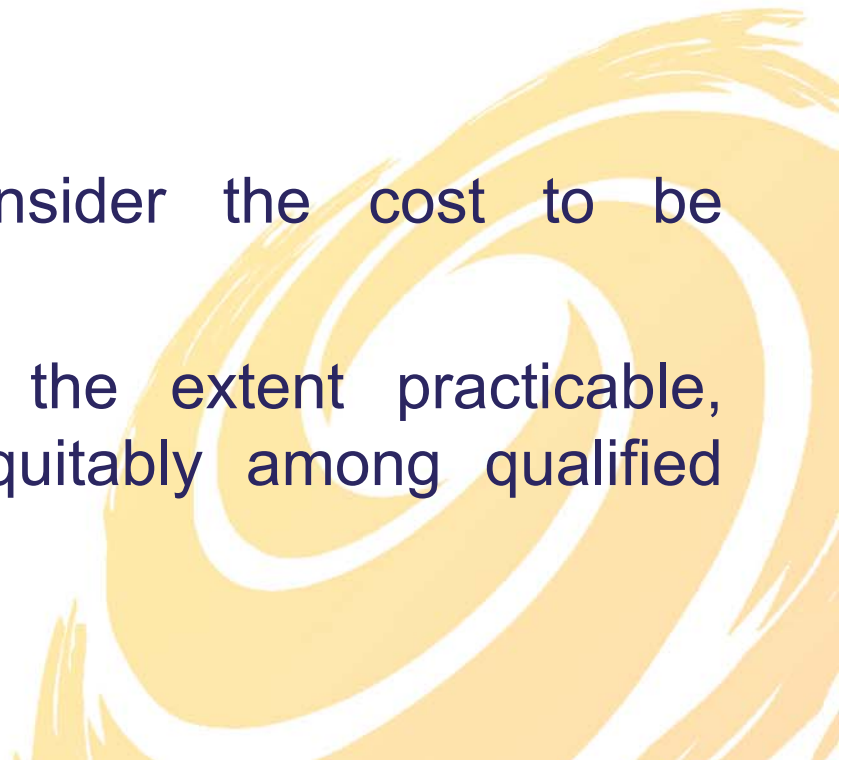
→ Previously \$3,500 (changed by OMB Memo M-18-18 dated 6/20/18)

## 🌀 Davis-Bacon Act Exception

## 🌀 No Need to Solicit Competition

## 🌀 Non-Federal entity must consider the cost to be reasonable

## 🌀 Non-Federal entity must, to the extent practicable, distribute these purchases equitably among qualified suppliers

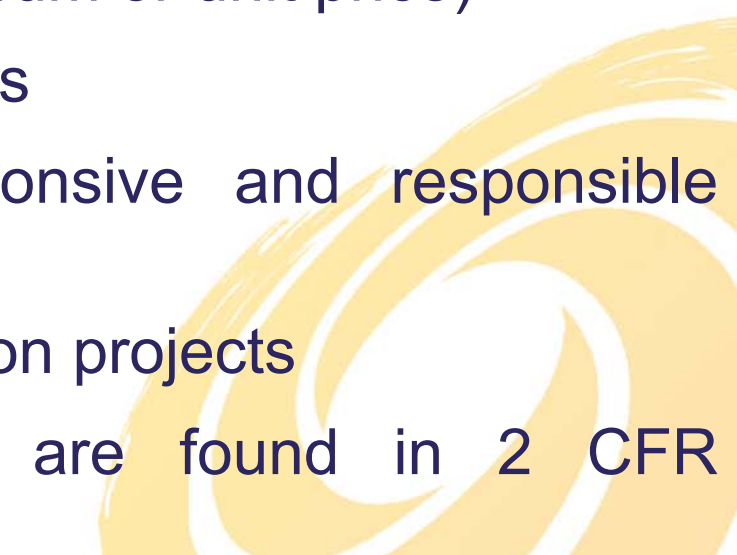


# Small Purchases

- ☉ Purchases between \$10,000 and \$250,000
- ☉ Non-federal entity's prior policy likely has much lower threshold, however, it can be increased
- ☉ Under the simplified acquisition threshold
- ☉ Price or rate quotations must be obtained from an adequate number of qualified sources
  - UG leaves the discretion of the non-Federal entity written policy to determine the “adequate” number of qualified sources (number greater than one) and the methods of obtaining the price or rate quotations (i.e. in writing, orally, price list on website, etc.)
- ☉ Excluded from any requirements for cost or price analysis

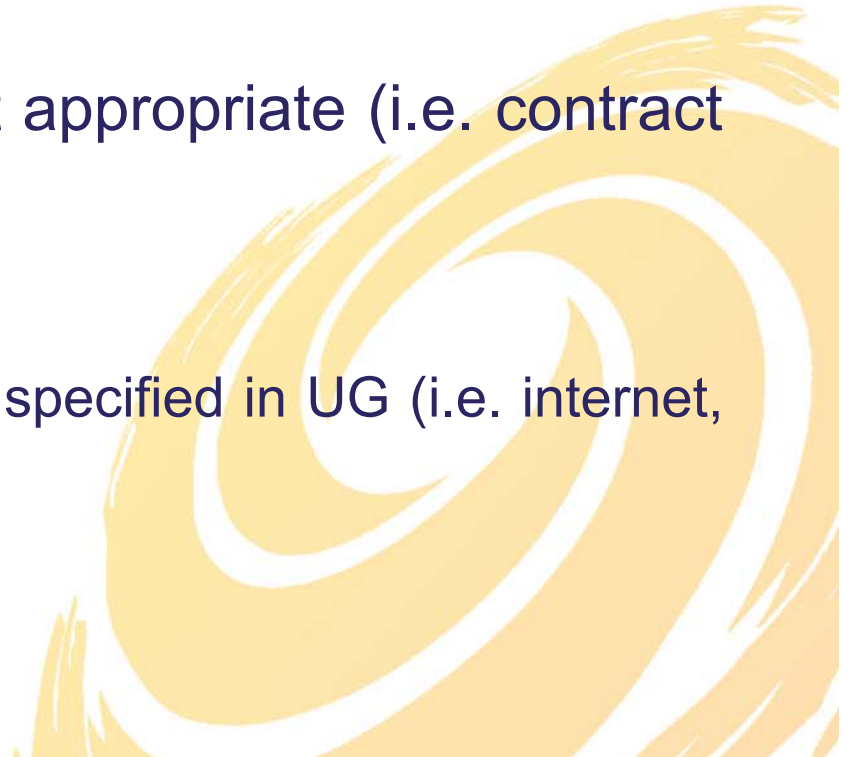


# Sealed Bids

- ☪ Purchases over \$250,000
  - ☪ Bids are publicly solicited from an adequate number of known suppliers
  - ☪ Firm fixed price contract (lump sum or unit price)
  - ☪ Two or more responsible bidders
  - ☪ Awarded to the lowest responsive and responsible bidder
  - ☪ Preferred method for construction projects
  - ☪ Conditions required for use are found in 2 CFR 200.320(c)(1) and (2)
- 

# Competitive Proposals

- ☪ Purchases over \$250,000
- ☪ More than one source is expected to make an offer
- ☪ Either fixed price or cost-reimbursement type contract is awarded
- ☪ Used when sealed bids are not appropriate (i.e. contract services)
- ☪ RFP must be publicized
  - How this is accomplished is not specified in UG (i.e. internet, radio, newspaper, etc.)



# Competitive Proposals (continued)

- ✪ Written procedures required for conduct of technical evaluation
- ✪ Awarded to the most advantageous offer with price and other factors considered
- ✪ MUST be used for Architectural/Engineering services and price CANNOT be used as a selection criterion (AKA “Brooks Bill”)



# Noncompetitive Proposals

- ☪ Also known as Sole-Source procurement
- ☪ Appropriate ONLY when certain criteria are met
  - Only available from a single source
  - Public exigency or emergency
  - Federal awarding agency authorization
  - Inadequate competition
- ☪ “JOFOC”
  - Justification for Other than Free and Open Competition is required



# Purchasing Cooperatives

 Do you use a purchasing cooperative for your food service program?

- The School remains responsible for compliance for UG Compliance on all purchases made from the food service fund (program income).
- Auditors should be testing procurement at the Co-Op level
- If non-compliance is found will be reported at School level. Possible questioned costs.
- Communicate with your co-op. Make sure they are in compliance to avoid a finding at your School.



# Common Questions

🌀 Is adopting Board policies for procurement alone adequate?

→ No, Non-federal entities are required to have written procedures that conform to the applicable federal law. These should be in addition to board adopted procurement policy.

🌀 If I entered into a contract prior to 7/1/18 but expenditures will be after that date will UG procurement apply?

→ No, determining if UG procurement is applicable is based on the date of the procurement activity not the date of the expenditures.

🌀 Do ESC contracts qualify for sole source procurement?

→ TBD, ODE is making a determination.



# Common Questions

- 🌀 Does UG Procurement apply to expenditures that will qualify for Medicaid Reimbursement?
  - Yes, if you enter into a contract that will be submitted on the cost report it should follow UG procurement guidance. Medicaid AUPs are performed a year in arrears so this will not be tested until 2020. Potentially could result in cost report adjustment.
- 🌀 What are the potential ramifications for not complying?
  - Non-compliance could result in modified opinion over compliance and questioned costs reported in audit depending on materiality.
- 🌀 What if a change order results in the contract moving to a new procurement threshold?
  - This is subjective. The non-federal entity should have an estimate of what the total control amount will be and if determination is originally based on a reasonable estimate of the contract cost this should not be an issue. Do not intentionally estimate lower then apply change orders to avoid competition.

## §200.318 General procurement standards highlights

- 🌀 (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- 🌀 (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- 🌀 (c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

## §200.318 General procurement standards highlights

- ✪ (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- ✪ (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- ✪ (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

# §200.318 General procurement standards highlights

- 🌀 (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- 🌀 (j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
  - 🌀 (i) The actual cost of materials; and
  - 🌀 (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- 🌀 (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- 🌀 (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

## §200.319 Competition

- 🌀 (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - 🌀 (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - 🌀 (2) Requiring unnecessary experience and excessive bonding;
  - 🌀 (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - 🌀 (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - 🌀 (5) Organizational conflicts of interest;
  - 🌀 (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

# §200.319 Competition (continued)

- ⦿ (7) Any arbitrary action in the procurement process.
- ⦿ (b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- ⦿ (c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
  - ⦿ (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
  - ⦿ (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- ⦿ (d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.



## §200.323 Contract cost and price

- ✪ (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- ✪ (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- ✪ (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- ✪ (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

## Case Study

- 🌀 Food service director is requesting to purchase 3 new stoves at an estimated price of \$5,000 each including installation. Which method of procurement is required?
- 🌀 Title I Director is requesting to enter into a contract for tutors at an estimated cost of \$50,000. \$41,000 will be paid from the general fund and only \$9,000 will be paid from the Title I fund. Which method of procurement is required?

# Program Income

- ☉ Provides more detail on what program income includes and does not include
- ☉ Explains the 3 methods for using program income
  - Deduction
  - Addition
  - Cost Sharing or Matching
- ☉ Terminology and references in the audit objectives and suggested audit procedures are revised to conform to 2 CFR 200
- ☉ No significant changes to the suggested audit procedures

# Subrecipient Monitoring

## 2 CFR 200.501 Audit Requirements

- (f) *Subrecipients and Contractors*. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 200.330 Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

## 2 CFR 200.330 Subrecipient and contractor determinations:

- The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor

# Subrecipient Monitoring

- (a) *Subrecipients*. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient.
  - Determines eligibility, has performance measured to determine whether objectives were met, has responsibility for programmatic decisions, responsible for adherence to program requirements.
- (b) *Contractors*. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor.
  - Provides good or service within normal business operation, provides similar goods or services to many purchasers, operates in a competitive environment, goods or services are ancillary to operation of a program and not subject to compliance requirements.
- (c) *Use of judgment in making determination*. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

# Uniform Grant Guidance

## Electronic Code of Federal Regulations

→ [http://www.ecfr.gov/cgi-bin/text-idx?SID=831ea8e900508e4e8e7da0325e5a5435&node=pt2.1.200&rqn=div5#\\_top](http://www.ecfr.gov/cgi-bin/text-idx?SID=831ea8e900508e4e8e7da0325e5a5435&node=pt2.1.200&rqn=div5#_top)





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