

# Uniform Guidance

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## Policies and Procedures

- 2 CFR 200.302 – Financial Management – Written Procedures (Allowable Costs)
- 2 CFR 200.305 – Payment – Written Procedures (Cash Management)
- 2 CFR 200.313 – Equipment – Written Procedures (Equipment & Real Property)
- 2 CFR 200.318 – General Procurement Standards – Written Policy (Conflict of Interest) (Procurement)
- 2 CFR 200.320 – Methods of Procurement to be Followed – Written Procedures (Procurement)
- 2 CFR 200.430 – Compensation – Written Policy (Time and Effort)
- 2 CFR 200.431 – Fringe Benefits – Written Policy (Time and Effort)
- 2 CFR 200.474 – Travel Costs – Written Policy (Allowable Costs)

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### 2 CFR 200.302 – Financial Management (Allowable Costs)

- 2 CFR 200.302 (b) (7) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.
- Considerations – Procedures that outline authorization of expenses, what happens if an expense is questioned, what documentation is approved and maintained.

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### 2 CFR 200.305 – Payment (Cash Management)

- 2 CFR 200.302 (b) (6) - Written procedures to implement the requirements of §200.305 Payment.
- The requirements in 2 CFR 200.305 mainly deal with advanced funding situations, however best practice would be cash management procedures for both reimbursement and advanced funding.
- Considerations – How are drawdown requests made, who approves the request, how is the determination made for timing of request, how do you ensure advances are spent timely

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## 2 CFR 200.313 – Equipment (Equipment & Real Property)

- 🔑 (d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:
  - (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
  - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
  - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

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## 2 CFR 200.430 – Compensation (Time and Effort)

- 🔑 2 CFR 200.430 (a) Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:
  - (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;
- 🔑 Considerations – how is time and effort tracked, who approves, how is that applied to the pay period allocation

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## 2 CFR 200.431 – Fringe Benefits (Time and Effort)

- 🔑 2 CFR 200.431 (a) Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

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## 2 CFR 200.474 – Travel Costs (Allowable Costs)

- 🔑 2 CFR 200.474 (a) Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies.

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## Where are the risks?

- 🔑 Decentralized entity with multiple grant administrators
  - Do departments within your entity have their own board and policies?
  - Developing the proper policies but not implementing. Developing the policies and procedures is only the 1<sup>st</sup> step.
    - Auditors will audit to your policies and procedures

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## Components of Internal Control

- 🔑 5 components of I/C
  - Control Environment - What is management's attitude about internal control?
  - Risk Assessment - How did management determine that (control activity) was necessary to ensure compliance?
  - Control Activities - How are you certain your organization is in compliance with the requirement)?
  - Information & Communication - How and when do you notify people the (control activity) is required?
  - Monitoring - What is the process used to ensure the (control activity) is performed correctly and consistently?

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## Internal Control Considerations

- 🔑 Entity level vs. specific controls
- 🔑 Entity level controls
  - for my D&M compliance areas, which of the 5 I/C components happen here?
- 🔑 Specific controls - operational-level controls which operate within divisions, operational units and functions, processes and activities
  - for my D&M compliance areas, which of the 5 I/C components happen here?
- 🔑 Similarity of processes and controls among major programs and D&M compliance areas in those major programs
- 🔑 Centralized vs. decentralized environments

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## Audit Requirements

- 🔑 Evaluate entity level controls (both UG compliance related and Financial Statement level)
- 🔑 UG - Assess Control risk at low for each of the direct and material compliance requirements (test effectiveness of internal control.
- 🔑 FS – Evaluate design and implementation of internal controls for each significant transaction cycle

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## Ramifications

- 🕒 UG Sampling requirements are based on 0 expected deviations.
  - Typical sample size could be 40 transactions
  - 1 failure of controls out of the sample of 40 would result in a significant deficiency or material weakness (finding in audit report)
  - Applies to expenditure controls, payroll controls, PCR controls etc.

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## 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.
- 🕒 12/31 year ends – effective 1/1/18
- 🕒 6/30 year ends – effective 7/1/18

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## Acceptable Procurement Methods

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

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## 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

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## 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

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## 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)

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## 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.)

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## 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")

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## 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

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## 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.

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## 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.

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## 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.

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### §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.

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### §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.

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### §200.318 General procurement standards highlights

- (j) 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.

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### §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

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## §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.

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## §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.

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## Schedule of Expenditures of Federal Awards (SEFA)

- 2 CFR 200.510(b)
  - (b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with §200.502 Basis for determining Federal awards expended. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:
    - (1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.
    - (2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.
    - (3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available. For a cluster of programs also provide the total for the cluster.
    - (4) Include the total amount provided to subrecipients from each Federal program.
    - (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.
    - (6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in §200.414 Indirect (F&A) costs.

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## SEFA Internal Controls

- Do you have controls to ensure your SEFA is complete and accurate?
  - How do you communicate with outside departments?
  - How do you track direct vendor payments?
  - Do you have a process for determining loans that need to be reported on the SEFA?

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## SEFA Internal Controls

- 🕒 Increase in the number of findings related to SEFA preparation and adjustments
- 🕒 Audit Requirements
  - In-relation-to Opinion
    - Is SEFA presented fairly in all material respects in relation to the financial statements presented for audit
    - Includes the concept of materiality which may differ from oversight agency's materiality

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## SEFA Internal Controls

- 🕒 Risks of a misstated SEFA
  - Material Weakness in Internal Controls over Financial Reporting
  - Recall and Reissue SEFA and UG reports
  - High Risk Auditee resulting in additional testing and additional costs
  - Loss of federal funding

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## Contact Information

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