

***Federal Grants Administrative
Rules under EDGAR
(Procurement, Record Keeping, & Cost Principles)***

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Learning Objectives

- What is EDGAR and how does it relate to the Uniform Grant Guidance?
- What are the procurement rules for federal programs and to whom do they apply?
- What are the federal rules regarding documentation and record retention?
- What are the most common compliance issues under the federal cost principles?

EDGAR



EDGAR & The UGG

- The Education Department General Administrative Regulations (EDGAR) includes various grants management rules applicable to all federal awards issued by the U.S. Department of Education (ED).
- The Uniform Grant Guidance (UGG) are federal grants management rules that apply to all awards issued by all federal awarding agencies.
- EDGAR adopted the UGG back in 2014

Key Parts of the EDGAR

- **Title 34**

- Part 75 – Direct Grant Programs
- Part 76 – State-Administered Programs
- Part 77 – Definitions
- Part 81 – General Education Provisions Act (GEPA)

- **Title 2**

- Part 200 – Cost/Administrative/Audit Rules
- Part 3474 – USDE Exceptions – Adopts Part 200
- Part 3485 – Nonprocurement Debarment and Suspension
 - Incorporates 2 CFR Part 180, OMB's Guidelines on Debarment and Suspension

PART 200

UNIFORM ADMINISTRATIVE

REQ, COST PRINCIPLES, AND

AUDIT REQUIREMENTS FOR

FEDERAL AWARDS

Formerly know as the “Uniform Grants Guidance”, the “Omni Circular” and the “Super Circular”

2 CFR Part 200

- Subpart A – Definitions
- Subpart B – General Provisions
- Subpart C – Pre Award Requirements
- Subpart D – Post Award Requirements
- Subpart E – Cost Principles
- Subpart F – Audit Requirements

Compliant Written Policies and Procedures

- Written policies and procedures required by the UGG
(all non-federal entities must have these)
 - Written Cash Management Procedure - § 200.302(b)(6) & § 200.305
 - Written Allowability Procedures - § 200.302(b)(7)
 - Written Conflicts of Interest Policy - § 200.318(c)
 - Written Procurement Procedures - § 200.319(c)
 - Written Method for Conducting Technical Evaluations of Proposals and Selecting Recipients - § 200.320(d)(3)

Additional Policies & Procedures

(all non-federal entities must have these)

- Written Travel Policy - § 200.474(b) & (d)
 - Otherwise, non-federal entity is held to the rates and amounts established under 5 U.S.C. 5701-11

- Inventory Management - § 200.313(d)
 - Although written procedures are not expressly required by the rules, the UGG makes references to such procedures
 - Lacking such procedures has also resulted in audit exceptions

Time & Effort Procedures

- The ED's draft Cost Allocation Guide suggests that all non-federal entities should maintain written procedures on time & effort documentation.
- 2 CFR § 200.430(i)(1)(i): Time distribution records must be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated.
 - ED has often considered written policies & procedures to be a strong internal control.
 - So any non-federal entity receiving funds from ED needs written procedures for maintaining time & effort under 200.430.

PROCUREMENT



Contracts vs. Subawards (200.330)

- A Pass-through entity must make a case-by-case determination whether each agreement casts the party as a subrecipient or contractor. Look at the nature of the relationship. It does not matter what the agreement is called.

<u>Subaward</u>	<u>Contract</u>
<ul style="list-style-type: none">■ Allowable activities based on applicable statute, local plan, State rules■ Management rules<ul style="list-style-type: none">■ UGG; and■ State law/policies and procedures	<ul style="list-style-type: none">■ Allowable activities based on terms and conditions of contract■ Management rules<ul style="list-style-type: none">■ Terms of the contract; and■ State contract law

Procurement by States

200.317

- OSSE simply must follow the same policies and procedures it uses for procurements from its non-federal funds.
- All other non-federal entities must follow, at a minimum, the requirements of Sections 200.318-200.326.
 - All of OSSE's subrecipients must follow the most restrictive requirements between DC law and Uniform Grant guidance.
 - This includes local educational agencies and community-based organizations.

General Procurement Standards

200.318(a)

- All non-federal entities must have documented procurement procedures which reflect applicable Federal, State, and local laws and regulations, and must include:
 - Conflicts & Gratuities Policies (can be separate document)
 - Protest procedures (per ED guidance)
- Such procedures should include, among other things, as a best practice:
 - How the non-federal entity initiates procurement actions
 - Procurement thresholds for different methods of procurement
 - Mandatory approvals for all procurements actions

Contract Administration 200.318(b)

- Nonfederal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract
 - Are contractors delivering on time?
 - Are all invoices verified before they are paid?
 - Are goods inspected upon delivery?

Conflict of Interest

200.318(c)(1)

- Must maintain written standard of conduct, including conflict of interest policy.
- A conflict of interest arises when any of the following has a financial, other interest, or a tangible personal benefit, in the firm considered/selected for an award:
 - Employee, officer or agent
 - Any member of that person's immediate family
 - That person's partner
 - An organization which employs, or is about to employ, any of the above or has a financial interest in the firm selected for award
- Such individuals may not participate in the selection, award, or administration of a contract supported by a federal award

Conflict of Interest (cont.)

200.318(c)(1)

- Must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors/ subcontractors.
- However, may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- Standards of conduct must include disciplinary actions applied for violations.



Conflict of Interest (cont.)

200.318(c)(2)

- If the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state or local government the entity must also maintain written standards of conduct covering organization conflicts of interest
 - Is there arms-length bargaining?
 - How will non-federal entity ensure all contracts are awarded in a way that avoids conflicts/appearance of conflict?
 - Are dealings between parent and subsidiary subject to internal monitoring?

Conflict of Interest (cont.)

200.112

- All non federal entities must disclose in writing any potential conflict to federal awarding agency in accordance with applicable Federal awarding agency policy.
- In the case of any state-administered program, such disclosure must also be made to the pass-through entity.
- Even if further investigation shows no actual conflict, written notice must be given to OSSE.

Mandatory Disclosures

200.113

- Must disclose in writing, in a timely manner:
 - All violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.
 - Failure to make disclosures can result in remedies in 200.338 (remedies for noncompliance) including suspension and debarment.
- For examples, if an LEA official receives courtside Wizards tickets from a vendor that is being considered for a contract paid with federal funds:
 - If the non-federal entity fails to disclose such a gratuity violation, not only can the entire procurement action be thrown out, but OSSE can take enforcement actions including terminating the federal award.

Vendor Selection Process

200.318(h)

- Must award contracts only to responsible contractors possessing the ability to perform successfully:
 - Contractor integrity
 - Compliance with public policy
 - Record of past performance
 - Financial and technical resources
- In other words, if the vendor has a history of delinquency, malfeasance, or acting in bad faith/unethical, the non-federal entity must find a different vendor.

Competition

200.319(a)

- All procurement transactions must be conducted with full and open competition.
 - Per ED guidance, non-federal entities must have protest procedures to handle disputes
 - See ED FAQs (Question 18 on page 12):
<https://www2.ed.gov/policy/fund/guid/uniform-guidance/edfaqs1216.pdf>
- To eliminate unfair advantage, contractors that develop or draft specifications, requirements, statement of work, and invitations for bids or RFPs must be excluded from competing for such procurements.

Competition (cont.)

200.319(a)

■ Situations that restrict competition:

1. Unreasonable requirements on firms to qualify to do business
2. Requiring unnecessary experience or excessive bonding
3. Noncompetitive pricing practices
4. Noncompetitive awards to consultants on retainer
5. Organizational conflicts of interest (see 200.318(c)(2))
6. Specifying a brand name instead of allowing “an equal”
7. Any arbitrary action in the procurement process

Competition (cont.)

200.319(b)

- Must prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposal, except where applicable Federal statutes expressly mandate or encourage geographic preference.
- Does not preempt state licensing laws.
- Exception: architectural and engineering services (if it provides appropriate number of qualified firms).

Competition (cont.)

200.319(c)

- Written procedures for procurement must ensure all solicitations:
 - Incorporate a clear and accurate description of the technical requirements for materials, product or service to be procured; and
 - “Brand name or equivalent” may be used as needed, but the specific features of the named brand which must be met by the offers must be clearly stated
 - Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Methods of Procurement

200.320

- Method of procurement:
 - Micro-purchase
 - Small purchase procedures
 - Competitive sealed bids
 - Competitive proposals
 - Noncompetitive proposals

Federal Procurement Thresholds

- Micro-Purchase Threshold (200.67): Supplies & services of \$10,000 or less
- Small Purchase Procedures: Allowed at the simplified acquisition threshold (\$250,000) or less (200.88)
- Competitive Proposals required for all purchases over \$250,000 (includes sealed bids).
- Sole-Source (200.320(f)): Non-competitive proposals

Micro-Purchase

200.320(a)

- Acquisition of supplies and services for **\$10,000** or less.
- May be awarded without soliciting competitive quotations if nonfederal entity considers the cost reasonable.
- To the extent practicable must distribute micro-purchases equitably among qualified suppliers.
- All micro-purchase contracts must be for purchases that are necessary & reasonable
 - To ensure the price is reasonable, non-federal entities should document how the agreed-upon price was reviewed
 - Did the LEA compare prices with other vendors? Review prior purchases? Search for online deals?

Small Purchase Procedures

200.320(b)

- Good or service that costs \$250,000 or less
 - \$250,000 (a.k.a. the Simplified Acquisition Threshold) was raised under NDAA 2018
 - Organization may set lower threshold
- Must obtain price or rate quotes from an adequate number of qualified sources
 - At least two, but three is a best practice
- “Relatively simply and informal”

Sealed Bids 200.320(c)



- Over \$250,000
 - Organization may set lower threshold
- Bids are publically solicited.
- Appropriate when:
 - A complete, adequate and realistic specification or description of good or service is available;
 - Two or more responsible bidders are willing and able to compete effectively for the business
 - Selection of vendor can be made principally based on price and it's a firm fixed price contract.

Competitive Proposals

200.320(d)

- Over \$250,000
 - Organization may set lower threshold
- Award contract to responsible vendor whose proposal is most advantageous to the program, considering price and other factors.
- Generally used when sealed bid is not appropriate.



Noncompetitive Proposals

200.320(f)



- Appropriate only when:
 - The item is only available from a single source;
 - There is a public emergency that will not permit delay;
 - After soliciting a number of sources, competition is determined inadequate; or
 - The Federal awarding agency or pass-through expressly authorizes noncompetitive proposals in response to a written request from non-Federal entity;
 - Written requests should provide reasons for sole-sourcing.
 - OSSE has complete discretion in responding to these requests.
 - If there are apparent conflicts or other “red flags” OSSE will likely deny.

Contract Cost and Price

200.323



- Must perform a cost or price analysis in connection with every procurement action over the simplified acquisition threshold, including contract modifications
- Independent estimate before receiving bids or proposals.
 - Price analysis generally means evaluating the total price
 - 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/price analysis is performed.

Suspension and Debarment

Appendix II(H)

- Cannot contract with vendor who has been suspended or debarred
 - Excluded Parties List System in the System for Award Management (SAM)
 - 2 CFR Part 180 (OMB Debarment Suspension Rules) and 2 CFR 3485 (USDE Rules)

Suspension and Debarment

2 CFR 180.300

- For contracts over \$25,000 you must verify that the person with whom you intend to do business is not excluded or disqualified.
- This MUST be done by either:
 - a. Checking SAM; or
 - b. Collecting a certification from that person; or
 - c. Adding a clause or condition to the covered transaction with that person.

Recordkeeping and Retention

Records

34 CFR 76.730 & 76.731

- A State and subgrantee shall keep records that fully show:
 - The amount of funds;
 - How funds were used;
 - Total cost of the project;
 - Share of the cost provided from other sources;
and
 - Other records to facilitate an effective audit.



Accounting Records

200.302(b)(3)

- Source Documentation Must Be Kept On:
 - Federal Awards
 - Authorizations
 - Obligations
 - Unobligated balances
 - Assets
 - Expenditures
 - Income
 - Interest

Record Storage (200.335)

- When original records are electronic and cannot be altered, there is no need to create and retain paper copies.
- When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided they:
 - Are subject to periodic quality control reviews,
 - Provide reasonable safeguards against alteration; and
 - Remain readable.

Record Retention (200.333)

- EDGAR says to keep records for 3 years
(200.333)

BUT...

- Keep records for 5 years from the last expenditure report (as stated in OSSE assurances) because of “Statute of Limitation” under GEPA Section 81.31(c)

SUBPART E – COST PRINCIPLES



Factors Determining Allowability

200.403

All Costs Must Be:

- **Necessary, Reasonable and Allocable (200.405)**
- Conform with federal law & grant terms
- Consistent with state and local policies
- Consistently treated
- In accordance with GAAP
- Not included as match
- **Net of applicable credits (moved to 200.406)**
- Adequately documented

Reasonable

200.404

- Consideration must be given to:
 - Whether cost is a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award;
 - The restraints or requirements imposed such as:
 - Arms length bargaining (hint: procurement processes);
 - Federal, state and local laws; and
 - Terms of the grant award.
- Market Prices for comparable goods or services in the geographical area;
- Whether the individuals acted with prudence under the circumstances considering their responsibilities; and
- No significant deviation from established prices.

Reasonable (cont.)

- Practical Questions (best practice)
 - Do I really need this?
 - Is the expense targeted to valid programmatic/administrative need?
 - Is this the minimum amount I need to spend to meet my need?
 - Do I have the capacity to use what I am purchasing?
 - Did I pay a fair rate?
 - If I were asked to defend this purchase, would I be able to?

Allocable 200.405

- A cost is allocable to a Federal award or cost objective if the goods or services involved are chargeable or assignable in accordance with relative benefits received.
 - Incurred specifically for the award;
 - Benefits both award and other work and can be distributed in proportions that may be approximated using reasonable methods; and
 - Necessary to the overall operation of the entity and assignable to the award in accordance with this Part.
- Can only charge in proportion to the value received by the program
 - Example: Agency purchases a computer to use 50% on the Federal grant program and 50% on a state program – can only charge half the cost to the grant.

Applicable Credits

200.406

- Those receipts or reduction-of-expenditure type transaction that offset or reduce expense items – must be credited to the Federal award as either cost reduction or cash refund, as appropriate.
- Examples: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, adjustments of overpayments

Direct vs. Indirect

200.413(c)

- Salaries of administrative and clerical staff should be treated as “indirect” unless all of following are met:
 - Such services are integral to the activity
 - Individuals can be specifically identified with the activity
 - Such costs are explicitly included in the budget
 - Costs not also recovered as indirect

SELECTED ITEMS OF COST

There are 55 specific items of cost!

Starts at 200.420

Selected Items of Cost Examples

- **Alcohol 200.423**
 - Not allowable
- **Entertainment 200.438**
 - Not allowable UNLESS Prior Written Approval of Federal Awarding Agency.
 - Field Trips & Pizza Parties are common examples



Advertising/Public Relations 200.421

- Allowable for programmatic purposes including:
 - Recruitment
 - Procurement of goods
 - Disposal of materials
 - Program outreach
 - Public relations (in limited circumstances)

Conferences

200.432

- **Generally Allowable**

- To be a conference, must disseminate technical information beyond the non-federal entity
- Allowable conference costs include rental of facilities, costs of meals and refreshments, transportation, unless restricted by the federal award
- Costs related to identifying, but not providing, locally available dependent-care resources
- Conference hosts must exercise discretion in ensuring costs are appropriate, necessary and managed in manner that minimizes costs to federal award

Travel

200.474

- Travel costs may be charged on actual, per diem, or mileage basis
- Travel charges must be consistent with entity's written travel reimbursement policies
- Allows costs for “above and beyond regular dependent care”
- Grantee must retain documentation that participation of individual is necessary for the project

TIME AND EFFORT DOCUMENTATION



Tracking Personnel Expenses

200.430(i)

- ❖ All employees must maintain documentation showing that their salaries are allocable to a federal program 200.403(a).
- ❖ That documentation must be based on records that accurately reflect the work performed.

The Prior A-87 Rule (SEAs and LEAs)

Semi-Annual Certifications

- If an employee works on a single cost objective:
 - After the fact
 - Account for the total activity
 - Signed by employee **or** supervisor
 - Every six months (at least twice a year)

Personnel Activity Report (PAR)

- If an employee works on multiple cost objectives:
 - After the fact
 - Account for total activity
 - Signed by employee
 - Prepared at least monthly and coincide with one or more pay periods

Documentation Requirements

200.430(i)(1)

These records MUST:

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and allocable;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting policies and practices;
and
6. Support distribution among specific activities or cost objectives.

Cost Objective

200.28

- What is a cost objective?
 - Program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc.
- Any federal money that you need to track separately (admin cap, minimum set-aside, etc...) will be its own cost objective, such as:
 - Title I Parent & Family Engagement
 - Title II Admin
 - Title I Neglected & Delinquent

Reconciliation

200.430(i)(1)(viii)(C)

All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

Compliance 200.430(i)(2)



- For records which meet the standards, the non-federal entity will not be required to provide additional support or documentation for the work performed.

Noncompliance 200.430(i)(8)

For a non-Federal entity where the records do not meet these standards:

- USDE may require personnel activity reports (PARs), including prescribed certifications or equivalent documentation that support the records as required in this section.
 - PARs are not defined!!



Time & Effort Example

Peter Parker School District

Time and Effort Certification

Name: Spiderman

Date: From January 1, 2019 through June 30, 2019

Office: Title I Programs

I hereby certify that I spent 100% of my time working on Title I admin during the time period
(cost objective)

indicated above.

Spiderman, Title I coordinator

Name, Position

7/1/2019

Date

Time & Effort Example

Themiscyra High School

Personnel Activity Report

Employee: Wonder Woman

Office: Federal Programs

Reporting Period: May 1-May 31, 2019

I hereby certify that this report is an accurate representation of the total activity expended during the period indicated.

Cost objective	Account number	Distribution of time
Title II Admin	200	30%
Title III Admin	600	70%

Signature: Wonder Woman

Date: 6/1/2019

DC and PCSB

- DC Regs:
 - “Micro-purchases” \$10,000 or less.
 - Small Purchases: \$10,001 - \$100,000.
 - Competitive Bid/Proposal for contracts over \$100,000.
- PCSB:
 - Competitive Bid for all contracts over \$25,000
 - Some exceptions

QUESTIONS?



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