



Fall Forum 2021

Stimulus Funds and UGG, and You and Me, So Happy (Back) Together

Twist and Shout!

EDGAR Hot Topics

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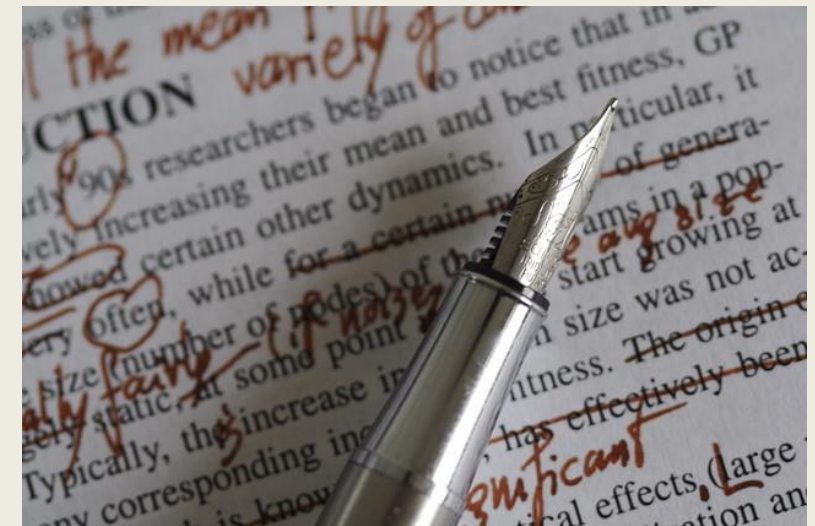
Agenda

- UGG Overview
- Current Issues:
 - *Procurement*
 - *Timely Spending*
 - *Subrecipient Monitoring*
 - *2021 Compliance Supplement*



OMB Revises the UGG – August 2020

- Proposed changes to 2 CFR Part 200
Published January 22, 2020
- Comments closed March 23, 2020
- Final Revisions published August 13,
2020





OMB Revisions to the UGG – Effective Dates

- Effective as of **November 12, 2020**
 - *Except for 200.216 and 200.340, effective August 13, 2020*
- **200.216**: Prohibition on certain telecommunications and video surveillance services or equipment
 - *Prohibits grantees from entering into contracts with certain covered entities*
- **200.340**: Termination
 - *Allows awards to be terminated “if an award no longer effectuates the program goals or agency priorities”*
 - Previously: “For cause”



OMB Revisions – Summary

- Procurement Changes to Better Target Areas of Greater Risk and Conform to Statutory Requirements
- Strengthen Merit Review and Improve Governmentwide Approach to Performance and Risk
- Standardize Terminology, Data Elements and Alignment with Other Authoritative Source Requirements
- Emphasize Machine Readable Information Format
- Eliminate References to Non-Authoritative Guidance
- Change Closeout to Reduce Burden and Support the GONE Act
- Expanded Use of De Minimis Rate
- Clarify Areas of Misinterpretation

FINAL



Procurement

2 CFR 200.317 – 200.327



Competition 200.319

(a) All procurement transactions **for the acquisition of property or services required under a Federal award** must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.

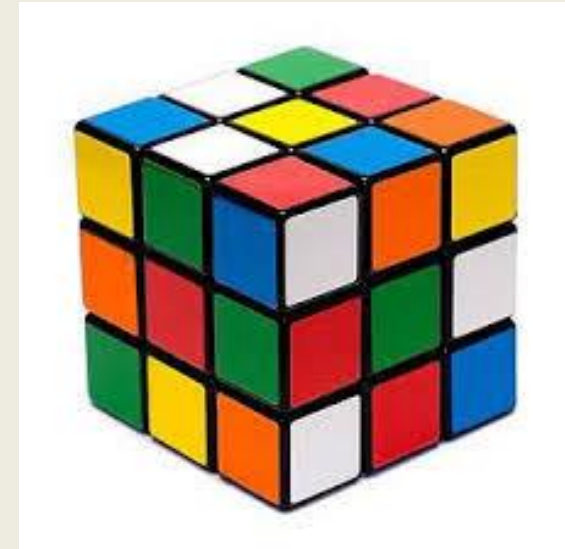
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(f) Noncompetitive procurement can only be awarded in accordance with 200.320(c).



Methods of Procurement 200.320

- Grantee **must have and use documented procurement procedures** for the following methods:
 - *(a) Informal procurement methods*
 - Micro-purchase
 - Small purchase procedures
 - *(b) Formal procurement methods*
 - Competitive sealed bids
 - Competitive proposals
 - *(c) Noncompetitive proposals*





Informal Procurement 200.320(a)

- Use when value does not exceed \$250,000 (simplified acquisition threshold), or a lower threshold established by a non-federal entity
- Procurement of property or services required under federal award
- Purpose: to expedite completion and minimize administrative burden and cost



Informal Procurement, 200.320(a)(1) – Micro-Purchases

- Distribution. “To the maximum extent practicable, the non-federal entity should distribute ... among qualified suppliers.”
- Awards. May be awarded without price or rate quotes if non-federal entity “considers the price to be reasonable based on research, experience, purchase history or other information and documents its files accordingly.”



Micro-Purchases (cont.)

- Thresholds. Determined and documented by grantee, based on internal controls, risk, and procedures. Authorized by state, local laws. May be higher than threshold in FAR (\$10,000).
 - *Nonfederal entity may self-certify threshold up to \$50,000, if:*
 - Low-risk auditee for most recent audit (200.520)
 - Annual internal institutional risk assessment to identify, mitigate and manage financial risks; or
 - For public institutions, a higher threshold consistent with state law
 - *Over \$50,000, must have approval of cognizant agency indirect costs*



Informal Procurement, 200.320(a)(2) – Small Purchases

- Used for purchases greater than micro-purchase threshold, but less than simplified acquisition threshold (\$250,000).
- Price or rate quotations from “adequate number of qualified sources” **as determined appropriate by non-federal entity**
- Thresholds. Established based on internal controls, risk and procedures, and documented. Cannot exceed the threshold in FAR (\$250,000), but may be lowered.



Formal Procurement, 200.320(b)

- Used for purchases that exceed small purchase threshold (\$250,000, or lower, if set by the non-federal entity)
 - *Require documented procedures*
 - *Require public advertising*
- Two options:
 - *(1) Sealed bids*
 - *(2) Proposals*





Noncompetitive Proposals – 200.320(c)

- Appropriate only when:
 - **Micro-purchases**
 - *The item is only available from a single source;*
 - ***There is a public emergency for the requirement that will not permit delay resulting from **publicizing** a competitive solicitation;***
 - *The Federal awarding agency or pass-through expressly authorizes noncompetitive procurement in response to a written request from non-Federal entity; or*
 - *After soliciting a number of sources, competition is determined inadequate.*



Domestic Preferences – 200.322

- “To the greatest extent practicable” must provide a preference for the purchase of goods and materials produced in the U.S.
- Must include this section in all subawards, contracts and purchase orders





Telecommunication Costs and Video Surveillance Costs 200.471

- Telecommunication and video surveillance services or equipment are allowable, *except*:
 - *“Covered” telecommunications and surveillance under 200.216*
 - *Applies to new contracts, services, equipment, and any renewals or extensions*



Question

How do I know which companies are barred when procuring telecommunications or video surveillance contracts?

- a) Fake it till you make it
- b) Just guess
- c) Always go back to the federal rule
- d) Check suspension & debarment list
- e) C&D only



Prohibition (cont.)

- OMB FAQ 47: How do you know if an entity has been added to the list of covered entities?
 - *Entities added to this list will be incorporated into the excluded parties list in the SAM (www.sam.gov). When a user conducts a search of the excluded parties list, a record will appear describing the nature of the exclusion for any entity identified as covered by this prohibition.*
- *Recommendation: Check SAM.gov for applicable contracts!*



Companies Covered

- Huawei Technologies Company
- ZTE Corporation
- Hytera Communications Corporation
- Hangzhou Hikvision Digital Technology Company
- Dahua Technology Company
- Any subsidiary or affiliate of such entities



Timely/Allowable Spending

Period of Performance/ Closeout
Indirect Costs
Food



Period of Performance 200.1

The total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award ... does not commit the awarding agency to fund the award beyond the currently approved budget period.



Period of Performance, Budget Period, Renewal

- New definitions! May have more than one budget period within period of performance; renewal starts a new period of performance. 2 CFR 200.1
- Revisions to 2 CFR 200.309: Modifications to Period of Performance.
 - If a Federal awarding agency or pass-through entity approves an extension, or if a recipient extends under §200.308(e)(2), the Period of Performance will be amended to end at the completion of the extension. If a termination occurs, the Period of Performance will be amended to end upon the effective date of termination. If a renewal award is issued, a distinct Period of Performance will begin.



Closeout 2 CFR 200.344 (formerly 200.343)

- Subrecipients must prepare closeout reports and final accounting within 90 days after period; pass-through entities have **120 days**
- Unless federal or pass-through gives extension, all financial obligations must be liquidated no later than **120 days** after period ends
 - *Effectively limit subrecipient liquidation to 90 days??*
- 2 CFR 200.343



OMB Revisions to Indirect Costs

- Expanded use of de minimis rate (includes grantees that have previously negotiated a rate)
 - *Unavailable for restricted rate programs and certain state/local gov'ts*
 - *200.414(f)*
- Rate agreements must be available on OMB-designated website
 - *200.414(h)*
- Adds program evaluation costs as a direct cost example
 - *200.413(b)*



OMB Revisions to Indirect Costs – Pass-Throughs

- If subrecipient does not have approved rate, pass through must accept:
 - *Negotiated indirect rate between pass-through and subrecipient;*
 - *Negotiated rate between different pass-through and subrecipient; or*
 - *De minimis rate*
 - *200.331(a)(4)*
- *SEAs must negotiate rates with LEAs: 34 CFR 76.561(b)
 - *May offer flat 8% restricted rate to IHEs and nonprofit subrecipients, 34 CFR 76.564*



Food

Proposed change to UGG:

- Federal agencies cannot reference non-binding guidance as part of the terms and conditions of an award. 2 CFR 200.210

Final change to UGG:

- Agencies may impose legally binding requirements on recipients only through the notice and public comment process through an approved agency process. **2 CFR 200.105(b)**
- Will this change restrictions on food?



Subrecipient Monitoring

2 CFR 200.331-332



Pass-Through Responsibilities

- Contractor vs. Subrecipient (**200.331**) (**new citation**)
- Responsibility for Subawards (**200.332**) (**new citation**)
 - *Subaward Information*
 - *Evaluate Subrecipient Risk*
 - *Specific Conditions* (**200.208**)
 - *Monitoring*
 - *Verify Subrecipient Has Single Audit; Management decisions*
 - *Enforcement* (**200.339**) (**new citation**)



OMB Change

Risk-based specific conditions: federal agencies or pass-through entities may **adjust requirements/ grant conditions** as needed.

- *2 CFR 200.208 (previously 200.207)*



Less Restrictive Requirements?

Initial proposed language indicated agencies could impose “less restrictive requirements” based on risk. After comments, changed to “adjust requirements”

- *Permit advance payments*
- *Less evidence requested on implementation*
- *Less frequent reporting*
- *Less monitoring*
- *Do not require prior approvals*



Management Decisions, 200.332(d)

- Issue management decision only for **applicable** audit finding pertaining to the subaward from the pass-through entity
- Pass-through is responsible only for **non-systemic audit findings**
 - *Audit follow-up and management decisions for systemic issues responsibility of the “auditors and cognizant agency”*
 - *Pass-through still must “manage risk through ongoing subaward monitoring,” including follow-up on finding specifically related to the subaward*



Single Audit Requirements

Subpart F of Part 200



Annual Single Audits

- Expending \$750,000 or more in federal funds in a year (200.501)
 - *Must have single audit*
 - *Follow procurement rules in selecting auditor*
 - *Implement Corrective Action Plans*
 - *Major Programs (200.518)*
- Report any material weaknesses in internal controls or questioned costs greater than \$25,000 (200.516)
- Cooperative Audit Resolution (200.1 & 200.513)
- Pass-Through Management Decisions (200.521)
 - *Within six months of report being uploaded to FAC*



2021 Compliance Supplement



2021 Compliance Supplement

- https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-2021-Compliance-Supplement_Final_V2.pdf
- Released on August 25, 2021
- 1,787 Pages



- The Compliance Supplement is a document that identifies existing, important compliance requirements that the federal government expects to be considered as part of an annual Single Audit required by the 1996 Amendments of the Single Audit Act of 1984.



Compliance Requirements

1. **Activities Allowed/Unallowed**
2. **Allowable Costs/Cost Principles**
3. **Cash Management**
4. Eligibility
5. **Equipment & Real Property Management**
6. Matching, Level of Effort, Earmarking
7. Period of Performance
8. Procurement and Suspension & Debarment
9. Program Income
10. **Reporting**
11. **Subrecipient Monitoring**
12. **Special Tests & Provisions**

Each federal program must select 6* requirements for auditors to focus on



Stimulus Funds – Time & Effort

- For all ESF funds(ESSER/GEER/etc..), auditors should note that SEAs, LEAs, IHEs, and other subrecipients must maintain time distribution records for all employees including when an individual employee is splitting their time between activities that are allowable and unallowable under all ESF programs.
- The requirements in the Uniform Guidance apply to all ESF expenditures including the requirements related to documenting personnel expenses in 2 CFR section 200.430(i).
- This would mean, for example, that an LEA maintains the records it generally maintains for salaries and wages, including for employees in leave status as permitted under CARES Act Section 18003(d)(12).



Questions?



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