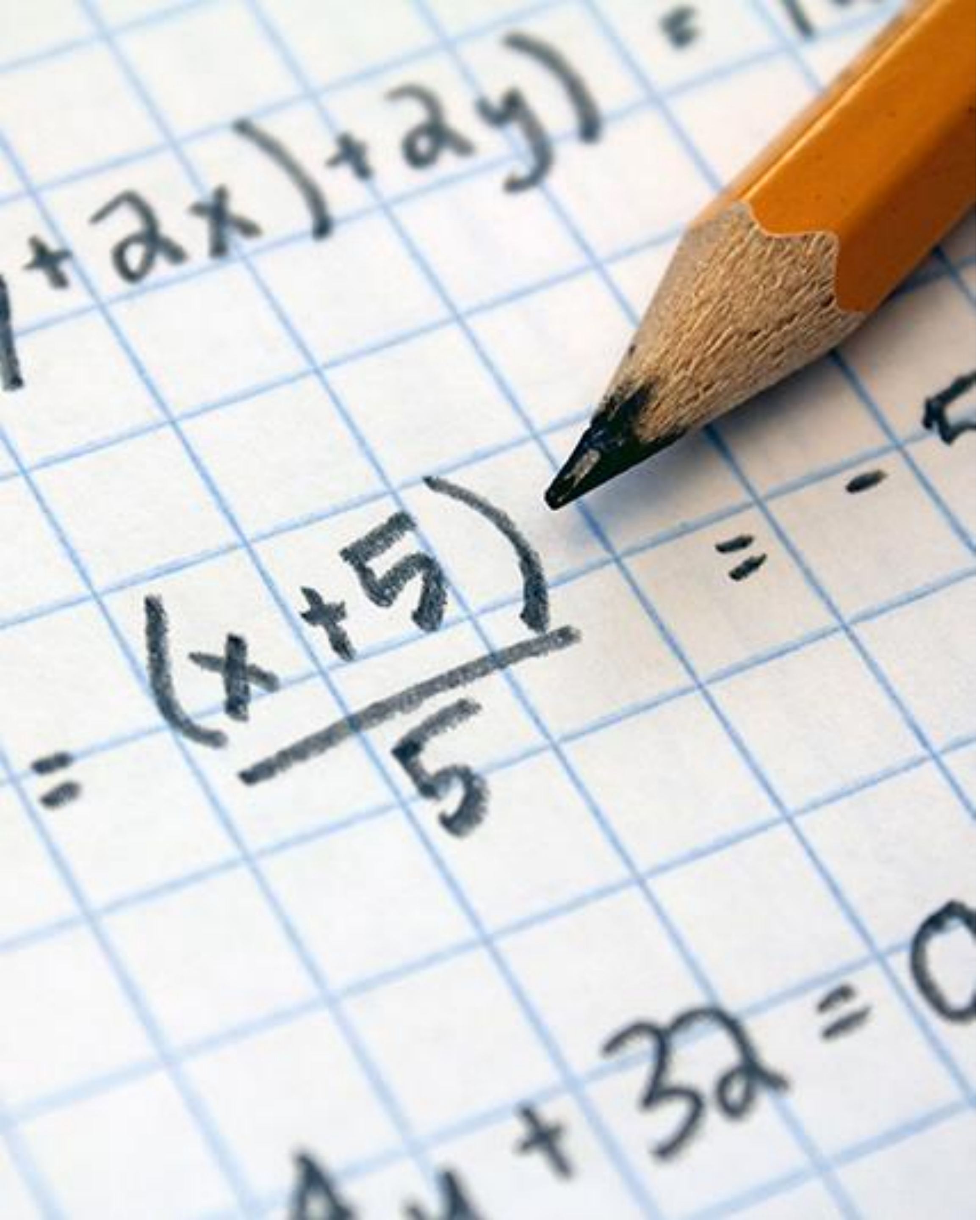

THE BRUMAN GROUP PLLC

Key Takeaways from Recent Audits

Virtual Spring Forum 2023

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Agenda

- Prepare for Auditor "Red Flags"
- Auditors and Program Offices can Disagree (and change their minds)
- Steer Clear of False Claims Territory
- Consider Cooperative Audit Resolution

Prepare for Auditor Red Flags

Noncompetitive Procurement

- Appropriate <u>only</u> when:
  - The cost is a micro-purchase
  - 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.

Case Study: University of Cincinnati

- Questioned $1.9 million in contract costs that were not competitively selected; recommended review of contracts for reasonableness, and if not reasonable; repayment of funds.
  - Did not follow internal procedures on completing bid waiver form
  - Did not document justification for using alternative procurement procedures
  - Did not document cost/price analysis for contracts over $250,000
- University Response: Had to rely on blanket and verbal approvals, given the emergency circumstances; State of Ohio Dept. of Admin. services suspended competitive procurement requirements for state agency purchases of resources and supplies to protect health and safety; University argued it likewise followed this directive

Case Study: University of Cincinnati

"With noncompetitive procurements that did not consider reasonableness of cost, the University might be paying more for the same goods and services, or receiving goods and services of inferior quality, when compared to other vendors. Lack of approval for noncompetitive procurements improperly precludes the cost and quality benefits of a competitive procurement process. Further, it is important that Federal grantees, such as the University of Cincinnati, perform a price analysis for purchases over the SAT to ensure that they do not overpay for large purchases."

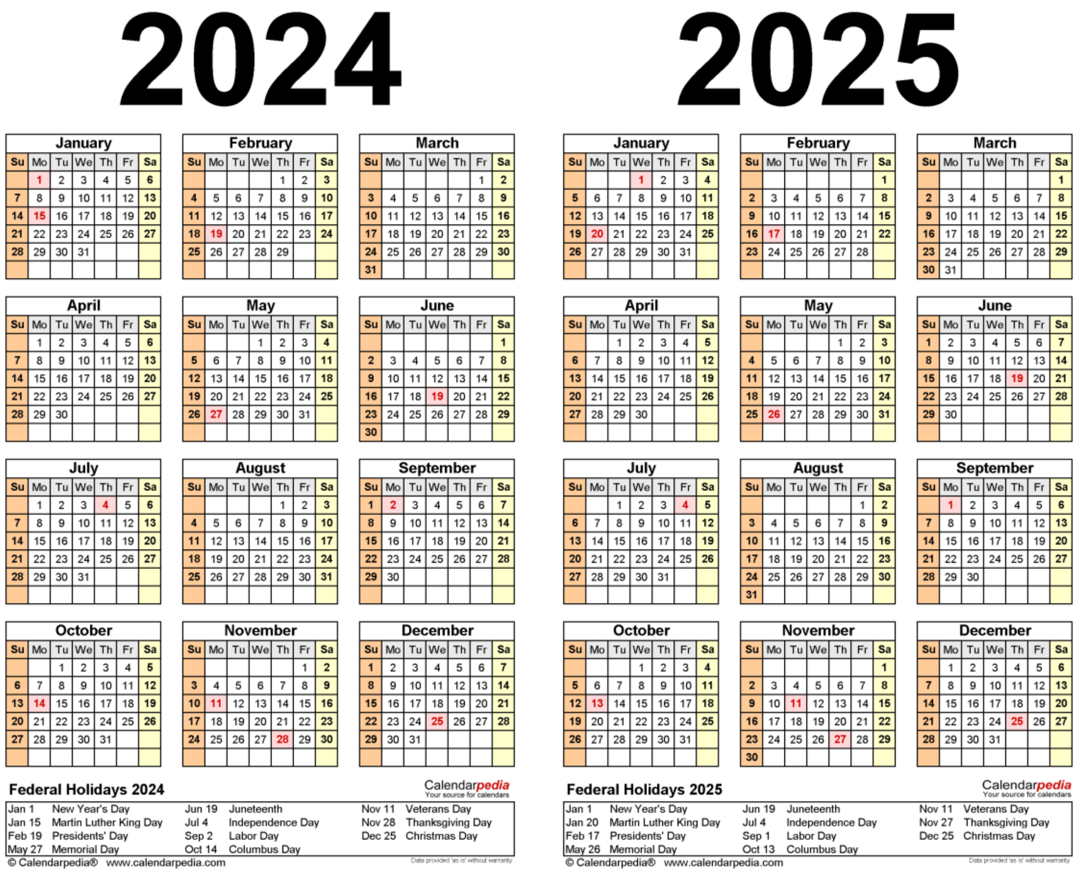
Case Study: OIG HEERF Audit – Remington College

- Finding: College entered into 4 contracts with vendors to help adjust the curriculum of certain programs to a hybrid format: Cosmetology, HVAC, Medical Assistant, and Facility Maintenance programs
- OIG: Each contract was $79,200 – exceeded micro-purchase threshold. Accordingly, should have gotten comparison quotes
- Remington: Long-term relationship, vendors knew the programs, satisfied with the work, needed to move quickly

Case Study: OIG HEERF Audit – Remington College

- OIG: "[N]one of the exceptions to a competitive procurement process available under 2 C.F.R. § 200.320(f) applied to these contracts. There were other vendors available to provide similar services or resources (not a sole-source situation) and the contracts were executed in the latter part of 2020. Because the contracts were executed 6–9 months after the coronavirus pandemic began, Remington College should have had sufficient time to use a competitive procurement process for these contracts."

Prepaying for Contracts and Multi-Year Subscriptions



Case Study: Lincoln College

- Questioned a software subscription that extended past the grant performance period:
- "While the dollar amount of costs we questioned was small, it is critical that grantees not prepay costs that extend beyond the grant performance period. Properly allocating costs to the grant performance period helps to protect taxpayer dollars; minimize the risk of fraud, waste, and abuse; and ensure Federal funds are used for allowable and intended purposes."

Case Study: Remington College

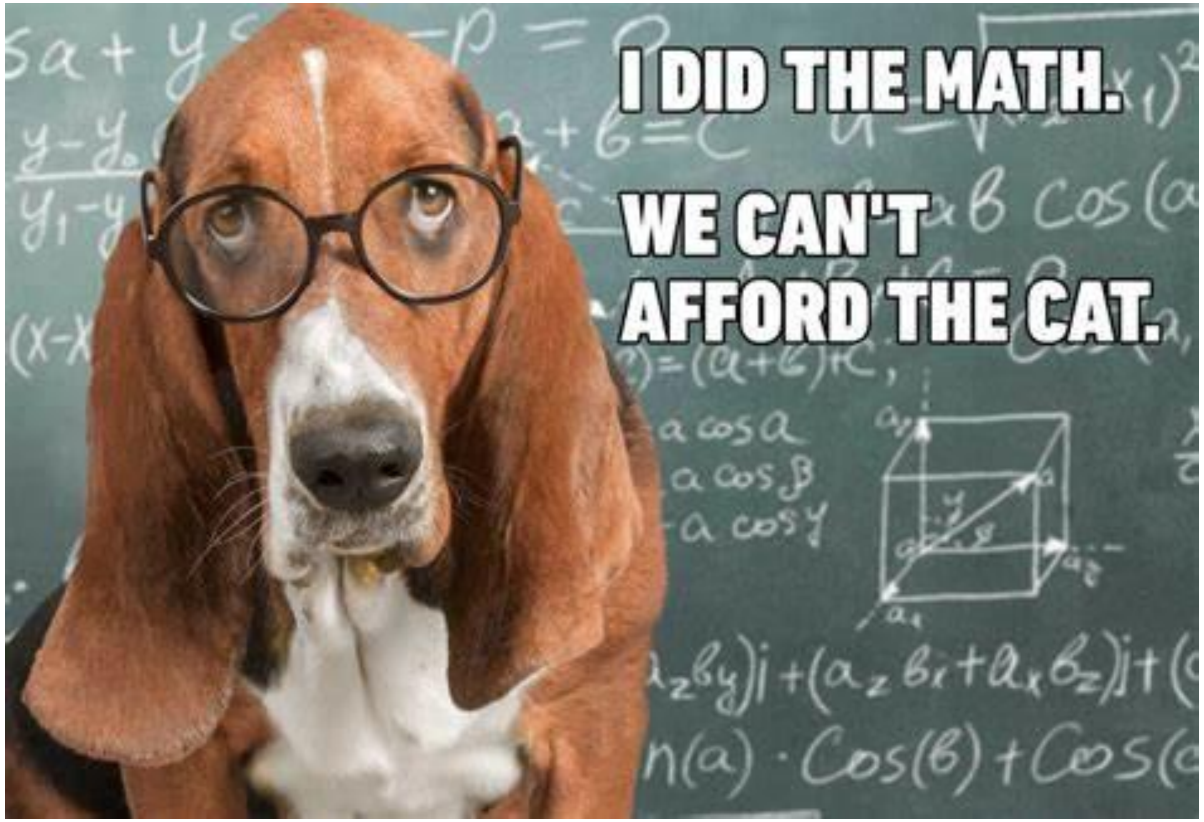
- Auditors argued that online subscription costs could not extend past the close of the grant, even just to finish the semester:
  - "However, to comply with 2 C.F.R. § 200.309, Remington College should have charged to the Institutional grant only those subscription costs through May 19, 2022. Subscription costs after that date should be paid for with other (non-HEERF) school funds."

Davis-Bacon Requirements

Davis-Bacon Requirements

- DBA requirements apply to those federally-funded contracts valued greater than **$2,000** for the actual construction, alteration, and/or repair, including painting and decorating, of a public building or public work. 29 C.F.R. Part 5, subpart A § 5.5.
- Must pay workers no less than the locally prevailing wage & fringe benefits for corresponding work in the area.
- **Requires certification of weekly payroll reports, among other requirements**. ESSER FAQ B-6
- https://www.dol.gov/agencies/whd/government-contracts/construction

Cash Management



Cash Management Case Studies

- **Remington College (HEERF):** Did not follow cash management requirements; did not minimize time between drawing down and disbursing HEERF funds, nor deposit excess funds in an interest-bearing account.
- **University of Cincinnati (HEERF):** Did not follow cash management requirements; drew all student funds on May 5, 2020; remitted imputed interest ($1,450) instead of earned interest ($36,889).
- **Lincoln College (HEERF):** Did not follow cash management requirements; did not minimize time between drawing down and disbursing HEERF funds, nor deposit excess funds in an interest-bearing account.
- **Oklahoma (GEER):** Did not follow cash management requirements; drew down its entire GEER award without any immediate cash need at the time of the draw down.

Auditors and Program Offices can Disagree (and Change their Minds)

Case Study: Gulf Coast State College OIG Audit

- "Gulf Coast recognized about $1.7 million in Emergency Assistance program funds for an estimated drop in tuition and fee revenue that it experienced during the fiscal year ending June 30, 2019, when it had suffered damage due to Hurricane Michael. Gulf Coast's estimated lost tuition revenue was determined by analyzing 20 student tuition and fee account balances."
- No state disaster relief available
- Insurance wouldn't cover

Case Study: Gulf Coast State College OIG Audit

- Submitted lost revenue claim to ED Office Postsecondary Education (OPE) in a revised budget request
- OPE reviewed and approved the claim for the Emergency Assistance Program (Disaster Relief Act)

Case Study: Gulf Coast State College OIG Audit

Auditors Disagreed:

- Statute: "[A]ssistance to institutions of higher education can be used for (1) student financial assistance; (2) faculty and staff salaries, equipment, student supplies and instruments; and (3) any purpose authorized under HEA."
- Notice for Funding: Purpose of funds "to assist activities directly related to mitigating the effects of a covered disaster"
- 2 CFR 200.405: A cost is allocable if it is assigned to a federal award "in accordance with relative benefits received" by the federal award

Case Study: Gulf Coast State College OIG Audit

"Because [the College] had received approval from OPE, Gulf Coast assumed that these activities were allowed."

Case Study: Gulf Coast State College OIG Audit

- 2 CFR 200.407, "in order to avoid subsequent disallowance or dispute based on unreasonableness of non-allocability, the non-federal entity may seek the prior written approval of … the federal awarding agency"

- 34 CFR 81.33 (mitigating circumstances), State/LEA does not have to return funding if the "violation was caused by erroneous written guidance from the department."

Case Study: Gulf Coast State College OIG Audit

- "As a result of [OIG's] independence, there are instances where we arrive at different conclusions than other Department offices based on the specific evidence we obtain in connection with the audits we conduct. We determined that the Department did not have the authority to approve the uses of funds identified in this report contrary to the statutory requirements, as explained in detail above."

Case Study: Gulf Coast State College OIG Audit

OIG Recommendations:

- Reallocate the $1.7 million prior to close out of the grant; or return the funds to the Department

Gulf Coast Response:

- Disagreed with the finding and recommendations. However, "to aid in resolving the issue, it identified about $2.0 million in salaries, wages and benefits paid to staff after the hurricane that it will reallocate to the Emergency Assistance Grant Program."

Steer Clear of False Claims Territory

Internal Controls

- 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 terms and conditions of the Federal award. 2 CFR 200.303(a)
- To assure expenditures are proper an in accordance with terms and conditions and approved project budgets, must include certification language as to the accurateness and allowability of costs for all financial reports and requests for payment. 2 CFR 200.415(a)
- Non-federal entity must disclose in writing to the Federal agency or pass-through entity all violations involving fraud, bribery, or gratuity violations. 2 CFR 200.113

Case Study: Hunter College

- Civil fraud lawsuit against Hunter College and former Hunter College Professor
- Parsons improperly invoiced personal expenses to National Institutes of Health ("NIH") funds, including expenses related to scuba diving trips, international flights for his family, a tropical birthday celebration, and travel for his work as a private consultant;
- Hunter College used NIH funds to pay Parsons over $90,000 in retention bonuses without disclosing these payments to NIH as required; and
- Parsons and Hunter then submitted false timekeeping records that misrepresented the time that staff spent working on NIH grant-related projects, resulting in the use of NIH grant funds to compensate staff for work performed for private clients.

Case Study: Hunter College

- Under the settlement Parsons, agreed to repay $375,000 and Hunter College agreed to repay $200,000 back to the United States. Both were required to make detailed factual admissions.
- "NIH provides funding to academic institutions for the purpose of furthering important research that impacts communities and improves lives. For years, Jeffrey Parsons-Hietikko obtained these funds under false pretenses, then used them to cover his personal expenses and for other purposes totally unrelated to research. Hunter College improperly used NIH funds to pay undisclosed bonuses to Parsons and for other expenses unrelated to NIH-funded work."

Case Study: School District Bookkeeper Embezzles Over $130,000 from two Districts

- In her role as bookkeeper, Burley processed payroll and handled the payment of invoices. She used her access to alter payroll information in order to cover her personal student loan payments, payments to personal creditors, and pay for an Amazon account charged to the district, but controlled by Burley.
- In total, she embezzled over $110,000 from Barnstead School District, was terminated. She then was hired as a bookkeeper at Hampton School District, and used Hampton funds to pay for credit cards and student loans, totaling $30,000.
- She pleaded guilty; and will be sentenced on June 1, 2023

Case Study: School District Treasurer Pleads Guilty to Theft of more than $550,000

- Between June 2019 and October 2021, the former Treasurer of Hulbert Public School (OK) issued excess payroll payments to herself and to another individual, above the authorized salary, and provided access to another individual to the financial accounting system.
- The former Treasurer admits these actions resulted in a loss to the district of more than $550,000, but less than $1.5 million.
- Sentencing hearing not yet scheduled.

Case Study: Director of Food Services received Kickbacks of over $100k from Contractor

- Director of Food Services secured lucrative contracts for co-defendant's company, Smart Starts, to provide prepackaged breakfast meals for Hempstead Public School students.
- In exchange, the owner of the food services provider paid more than $100k to the Director, in family bank accounts. The Director of Food Services used the kickback funds to go on international vacations, lease a vehicle, and purchase home furnishings.
- Both the ex-Director and co-defendant face up to 20 years in prison and between $120k - $160k in restitution payments.

Consider Cooperative Audit Resolution

Cooperative Audit Resolution and Oversight Initiative (CAROI)

Developed with ED and pilot states

Adopted by ED as standard audit resolution

Uniform Guidance applied it to all agencies in 2014

Why engage in CAROI?

"appropriate relief for past noncompliance when audits show prompt corrective action occurred"

Forgiveness of questioned costs?

Flexibility to Address Questioned Costs:

Consider information that was not available or presented to auditors during audit.

Consider, if appropriate, equitable offset, where allowable costs are allowed to substitute for unallowable costs.

Accept, if appropriate, alternative documentation that can substitute for missing records. As a general matter, such documentation must be prepared by individuals that have direct knowledge of the underlying facts and rely on credible contemporaneous records.

Basic principles of CAROI implementation (2 CFR 200.1)

- Audit and follow up that promotes prompt corrective action
- Improve communication
- Foster collaboration
- Promote trust
- Develop federal / nonfederal agency understanding

Typical Issues for CAROI

- Undocumented personnel costs;
- Unallowable or inadequately documented non-personnel costs;
- Improper inventory control or procurement systems;
- Inadequate oversight or documentation of federal program requirements or federal program eligibility.
- Control weaknesses such as inadequate or missing policies and procedures.

*This is not an exhaustive list, however, and CAROI can be adapted to resolve many other audit or oversight findings, even isolated findings across a subrecipient.

Examples of CAROI Activities

- Identify technical assistance activities to address the identified challenges.
- Identify a process for monitoring the implementation of the grant beyond standard processes and the roles of relevant staff.
- Discuss identified compliance concerns, determine root causes, and develop an appropriate resolution.
- Determine whether issues or processes can be generalized across grantees.
  - For example, are compliance issues grantee-specific or inherent to the federal program?

CAROI Agreements

Scope agreement:

- The issues to be resolved;
- Identification of documentation for review;
- Potential for recovery of funds;
- Timelines for reporting negotiated results; and
- Approval process for corrective action plans.

Resolution agreement:

- Acceptance of proposed corrective action plans;
- Amount of funds to be recovered, if applicable;
- Consequences of noncompliance with the agreement;
- The process to revise the agreement;
- Measures for accountability, including implementation timelines; and
- Required monitoring or technical assistance, if appropriate.

How to implement CAROI

1. Engage internal stakeholders
2. Develop CAROI policies and procedures
3. Communicate with external stakeholders
4. Implement and iterate

Questions???

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