

## I. PROCUREMENT AND SUSPENSION AND DEBARMENT

### Compliance Requirements - Procurement

#### 1. Procurement—Grants and Cooperative Agreements

##### *States*

When procuring property and services, States must use the same policies and procedures they use for procurements from their non-Federal funds (2 CFR section 200.317).

##### *Non-Federal Entities Other than States*

Non-Federal entities other than States, including those operating Federal programs as subrecipients of States, must follow the procurement standards set out at 2 CFR sections 200.318 through 200.326. They must use their own documented procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal statutes and the procurement requirements identified in 2 CFR part 200. A non-Federal entity must:

1. Meet the general procurement standards in 2 CFR section 200.318, which include oversight of contractors' performance, maintaining written standards of conduct for employees involved in contracting, awarding contracts only to responsible contractors, and maintaining records to document history of procurements.
2. Conduct all procurement transactions in a manner providing full and open competition, in accordance with 2 CFR section 200.319.
3. Use the micro-purchase and small purchase methods only for procurements that meet the applicable criteria under 2 CFR sections 200.320(a) and (b). Under the micro-purchase method, the aggregate dollar amount does not exceed \$3,500 (\$2,000 in the case of acquisition for construction subject to the Wage Rate Requirements (Davis-Bacon Act)). Small purchase procedures are used for purchases that exceed the micro-purchase amount but do not exceed the simplified acquisition threshold. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable (2 CFR section 200.320(a)). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources (2 CFR section 200.320(b)). See discussion regarding higher thresholds for micro-purchase and small purchase methods in the NDAA 2017 and 2018 sections in this Part.
4. For acquisitions exceeding the simplified acquisition threshold, the non-Federal entity must use one of the following procurement methods: the sealed bid method if the acquisition meets the criteria in 2 CFR section 200.320(c); the competitive proposals method under the conditions specified in 2 CFR section 200.320(d); or the noncompetitive proposals method (i.e., solicit a proposal from only one source) but only when one or more of four circumstances are met, in accordance with 2 CFR section 200.320(f).

5. Perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications (2 CFR section 200.323(a)). The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used (2 CFR section 200.323(d)).
6. Ensure that every purchase order or other contract includes applicable provisions required by 2 CFR section 200.326. These provisions are described in Appendix II to 2 CFR part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.”

## **2. Procurement—Cost-Reimbursement Contracts under the Federal Acquisition Regulation**

When awarding subcontracts, non-Federal entities receiving cost-reimbursement contracts under the FAR must comply with the clauses at 48 CFR section 52.244-2 (consent to subcontract), 52.244-5 (competition), 52.203-13 (code of business ethics), 52.203-16 (conflicts of interest), and 52.215.12 (cost or pricing data); and the terms and conditions of the contract. The FAR defines “subcontracts” as a contract, i.e., a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

### **Source of Governing Requirements – Procurement**

The requirements that apply to procurement under grants and cooperative agreements are contained in 2 CFR sections 200.317 through 200.326, program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The requirements that apply to procurement under cost-reimbursement contracts under the FAR are contained in 48 CFR parts 03, 15, 44 and the clauses at 48 CFR sections 52.244-2, 52.244-5, 52.203-13, 52.203-16, and 52.215-12; agency FAR Supplements; and the terms and conditions of the contract.

### **Compliance Requirements – Suspension and Debarment**

Non-Federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred. “Covered transactions” include contracts for goods and services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed \$25,000 or meet certain other criteria as specified in 2 CFR section 180.220. All non-procurement transactions entered into by a pass-through entity (i.e., subawards to subrecipients), irrespective of award amount, are considered covered transactions, unless they are exempt as provided in 2 CFR section 180.215.

When a non-Federal entity enters into a covered transaction with an entity at a lower tier, the non-Federal entity must verify that the entity, as defined in 2 CFR section 180.995 and agency adopting regulations, is not suspended or debarred or otherwise excluded from participating in the transaction. This verification may be accomplished by (1) checking the *Excluded Parties List System (EPLS)* maintained by the General Services Administration (GSA) and available at <https://governmentcontractregistration.com/sam-registration-and-renewal/>, (2) collecting a

certification from the entity, or (3) adding a clause or condition to the covered transaction with that entity (2 CFR section 180.300).

Non-Federal entities receiving contracts from the Federal Government are required to comply with the contract clause at FAR 52.209-6 before entering into a subcontract that will exceed \$30,000, other than a subcontract for a commercially available off-the-shelf item.

### **Source of Governing Requirements – Suspension and Debarment**

The requirements for nonprocurement suspension and debarment are contained in OMB guidance in 2 CFR part 180, which implements Executive Orders 12549 and 12689, “Debarment and Suspension;” Federal awarding agency regulations in Title 2 of the CFR adopting/implementing the OMB guidance in 2 CFR part 180; program legislation; and the terms and conditions of the award.

Most of the Federal agencies have adopted or implemented 2 CFR part 180, generally by relocating their associated agency rules in Title 2 of the CFR. Appendix II to the Supplement includes the current CFR citations for all agencies adoption or implementation of the nonprocurement suspension and debarment guidance.

Government-wide requirements related to suspension and debarment and doing business with suspended or debarred subcontractors under cost reimbursement contracts under the FAR are contained in 48 CFR section 9.405-2(b) and the clause at 48 CFR section 52.209-6.

### **National Defense Authorization Act (NDAA) of 2017 and 2018**

The following information is provided regarding timing and impact of the NDAA of 2017 and 2018. Additional guidance to the auditor is provided in Appendix VII-A – “Other Audit Advisories” of the Supplement.

#### *NDAA of 2017*

The NDAA of 2017, Section 217 (Pub. L. No. 114-328, 130 Stat. 6 (2016)) and 41 USC 1902(a)(2) contained the following provisions.

- Raise the micro-purchase threshold to \$10,000 for procurements under grants and cooperative agreements to institutions of higher education or related or affiliated nonprofit entities, independent research institutes and nonprofit research organizations.
- Allow a threshold higher than \$10,000 as determined appropriate by the head of the relevant executive agency.

The provisions of this Act are specific to institutions of higher education or related or affiliated nonprofit entities, independent research institutes and nonprofit research organizations. Official OMB guidance M-18-18 (<https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf>) was issued on June 20, 2018, and indicated that the effective date of this Act was when the NDAA 2017 was signed into law on December 23, 2016. It also states that the non-Federal entity must document this decision in its internal procurement policies.

Note that the exception for higher micro-purchase threshold is *not available to ALL auditees* and that when implemented by eligible auditees, it would apply to procurements purchased under ALL federal grants and cooperative agreements.

Institutions of higher education, or related or affiliated nonprofit entities, independent research institutes and nonprofit research organizations also can request micro-purchase threshold higher than \$10,000, but in accordance with OMB M-18-18, it would need a formal approval from the entity's cognizant Federal agency for indirect cost rates. Once approved, the non-Federal entity must document this decision to use the higher threshold in its internal procurement policies.

### *NDAA of 2018*

The NDAA of 2018, Sections 805 (41 USC 134) and 806 (41 USC. 1902 (a) (1)), increased the simplified acquisition threshold to \$250,000 and the micro-purchase threshold to \$10,000, respectively. These changes effectively redefine the level for the simplified acquisition threshold (section 200.88 of the Uniform Guidance) and the micro-purchase threshold (section 200.67 of the Uniform Guidance). These changes will become effective when they are formally codified in the Federal Acquisition Regulations (FAR).

Once codified, the higher thresholds will be available to all auditees. The non-Federal entity must document this decision to use the higher thresholds in its internal procurement policies.

OMB M-18-18 allows the Federal agencies to permit the use of the higher thresholds by the grant recipients and states that "agencies should apply this exception to all recipients." This action allows the maximum flexibility to grant recipients for early implementation, effectively June 20, 2018, with the approval of the Federal cognizant agency for indirect costs rates. Grant recipients should document any change based on this exception in its internal procurement policies. Also see Appendix VII related to audit findings.

### **Availability of Other Information**

2 CFR section 200.110(a), Effective/Applicability Date was amended on May 17, 2017 to allow non-Federal entities to continue to comply with the procurement standards in OMB Circular A-110 or the A-102 common rule, as applicable, through December 25, 2017, extending the grace period from 2 years to 3 years. Implementation of the procurement standards in 2 CFR sections 200.317 through 200.326 is now required for auditee fiscal years beginning on or after December 26, 2017. For example, for a non-Federal entity with a June 30th year end, implementation is required for its fiscal year beginning July 1, 2018.

If a non-Federal entity chooses to use the previous procurement standards for the additional three fiscal years before adopting the procurement standards in 2 CFR part 200, the non-Federal entity must document this decision in its internal procurement policies.

Auditors will review procurement policies and procedures based on the documented standard. Once the grace period ends, all non-Federal entities will be required to comply fully with the procurement standards in the uniform guidance.

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
2. Determine whether procurements under Federal awards were made in compliance with applicable Federal regulations and other procurement requirements specific to an award or subaward.
3. For covered transactions determine whether the non-Federal entity verified that entities are not suspended, debarred, or otherwise excluded.

**Suggested Audit Procedures – Internal Control**

1. Perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.
2. Plan the testing of internal control to support a low assessed level of control risk for procurement and suspension and debarment requirements and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in 2 CFR section 200.514(c)(4), including assessing the control risk at the maximum and considering whether additional compliance tests are required because of ineffective internal control.
3. Consider the results of the testing of internal control in assessing the remaining risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

**Suggested Audit Procedures – Compliance**

*(Procedure 1 applies only to States under grants and cooperative agreements.)*

1. Test a sample of procurements to ascertain if the State's laws and procedures were followed and that the policies and procedures used were the same as for non-Federal funds (2 CFR section 200.317).

*(Procedures 2 – 5 apply to non-Federal entities other than States.)*

2. Obtain the entity's procurement policies and verify that the policies comply with the compliance requirements highlighted above.
3. Verify that the entity has written standards of conduct that cover conflicts of interest and govern the performance of its employees engaged in the selection, award, and administration of contracts (2 CFR section 200.318(c) and 48 CFR sections 52.203-13 and 52.303-16).

4. Ascertain if the entity has a policy to use statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. If yes, verify that these limitations were not applied to federally funded procurements except where applicable Federal statutes expressly mandate or encourage geographic preference (2 CFR section 200.319(b)).
5. Select a sample of procurements and perform the following procedures:
  - a. Examine contract files and verify that they document the history of the procurement, including the rationale for the method of procurement, selection of contract type, basis for contractor selection, and the basis for the contract price (2 CFR section 200.318(i) and 48 CFR part 44 and section 52.244-2).
  - b. For grants and cooperative agreements, verify that the procurement method used was appropriate based on the dollar amount and conditions specified in 2 CFR section 200.320. Current micro-purchase and simplified acquisition thresholds can be found in the FAR (48 CFR subpart 2.1, “Definitions”)
  - c. Verify that procurements provide full and open competition (2 CFR section 200.319 and 48 CFR section 52.244-5).
  - d. Examine documentation in support of the rationale to limit competition in those cases where competition was limited and ascertain if the limitation was justified (2 CFR sections 200.319 and 200.320(f) and 48 CFR section 52.244-5).
  - e. Ascertain if cost or price analysis was performed in connection with all procurement actions exceeding the simplified acquisition threshold, including contract modifications, and that this analysis supported the procurement action (2 CFR section 200.323 and 48 CFR section 15.404-3).

**Note:** A cost or price analysis is required for each procurement action, including each contract modification, when the total amount of the contract and related modifications is greater than the simplified acquisition threshold.)
  - f. Verify consent to subcontract was obtained when required by the terms and conditions of a cost reimbursement contract under the FAR (48 CFR section 52.244-2).

**Note:** If the non-Federal entity has an approved purchasing system, consent to subcontract may not be required unless specifically identified by contract terms or conditions. The auditor should verify that the approval of the purchasing system is effective for the audit period being reviewed.
  - g. Refer to Appendix VII for guidance on reporting audit test results during the implementation periods for the National Defense Authorization Acts of 2017 and 2018.

*(Procedures 6 and 7 apply to all non-Federal entities.)*

6. Review the non-Federal entity's procedures for verifying that an entity with which it plans to enter into a covered transaction is not debarred, suspended, or otherwise excluded (2 CFR sections 200.212 and 200.318(h); 2 CFR section 180.300; 48 CFR section 52.209-6).
7. Select a sample of procurements and subawards and test whether the non-Federal entity followed its procedures before entering into a covered transaction.