

The letters S, M, A, R, and T are arranged vertically. Each letter is inside a circle. The circles are connected by a dashed line that starts with a small circle at the top and ends with a small triangle at the bottom. The background features a pattern of overlapping circles in light blue and orange.

S
M
A
R
T

Strategies

Monitoring

Accountability

Risk Mitigation

Transparency

Procurement Standards and Methods

SMART 4.0

Hosted by the Office of Grants Management
Division of Compliance Assistance and Policy
Employment and Training Administration
U.S. Department of Labor

SMART 4.0 Training Series

- The training modules are focused on: **S**trategies for sound grant management that includes **M**onitoring, **A**ccountability, **R**isk mitigation and **T**ransparency.
- **4.0 focuses on Risks Identification and SMART Practices!**



Disclaimer

SMART 4.0 is part of the catalog of SMART grant management tools. This conference and its materials should be viewed primarily as a support resource. It is not intended to be comprehensive, but rather to provide an understanding of 2 CFR 200, 2 CFR 2900, and the management of ETA grants. The use of these SMART 4.0 modules does not ensure compliance. Any omission of an applicable Federal requirement does not waive a grant recipient or subrecipient's responsibility to comply with that requirement.

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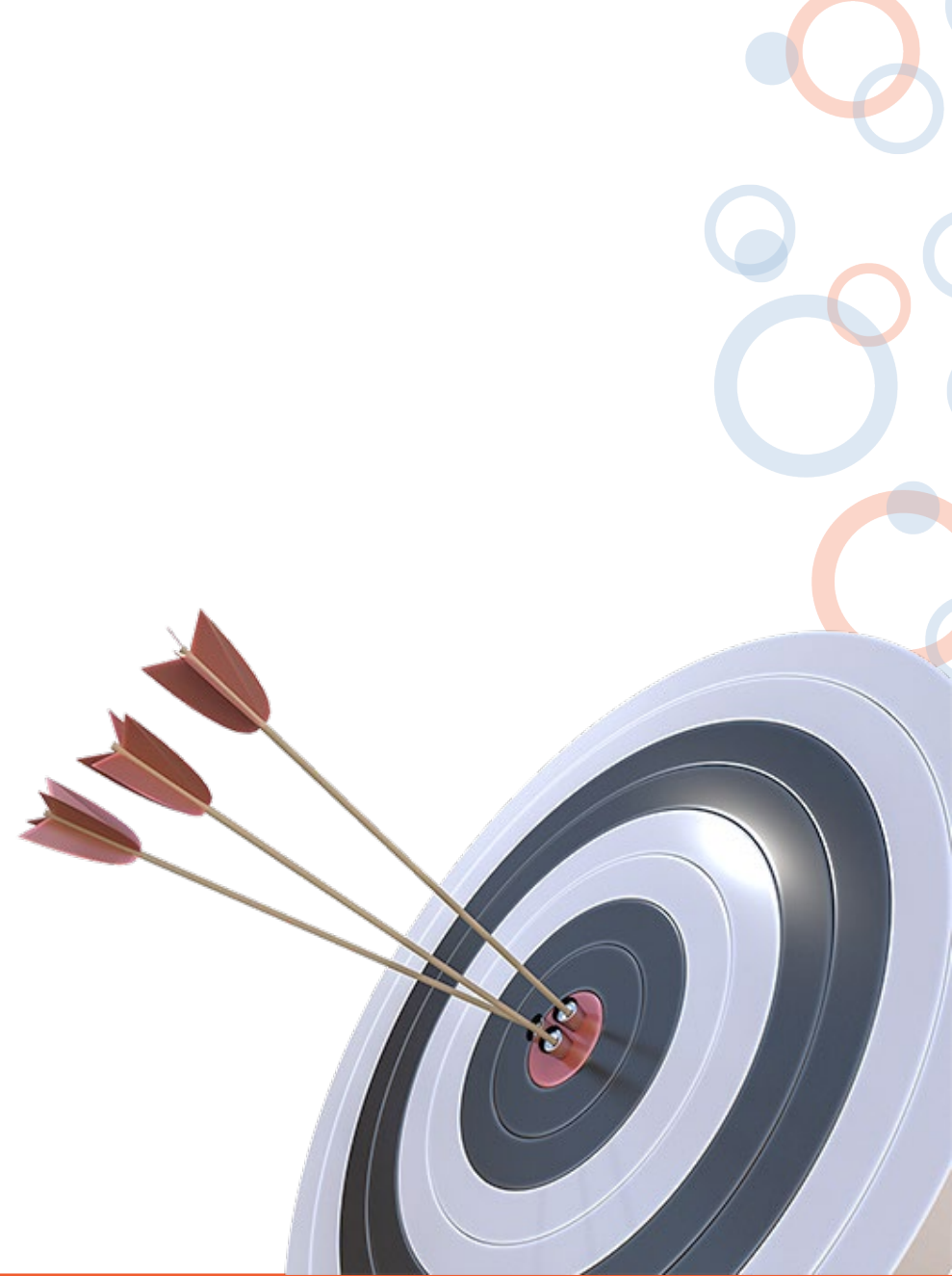
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Module Overview

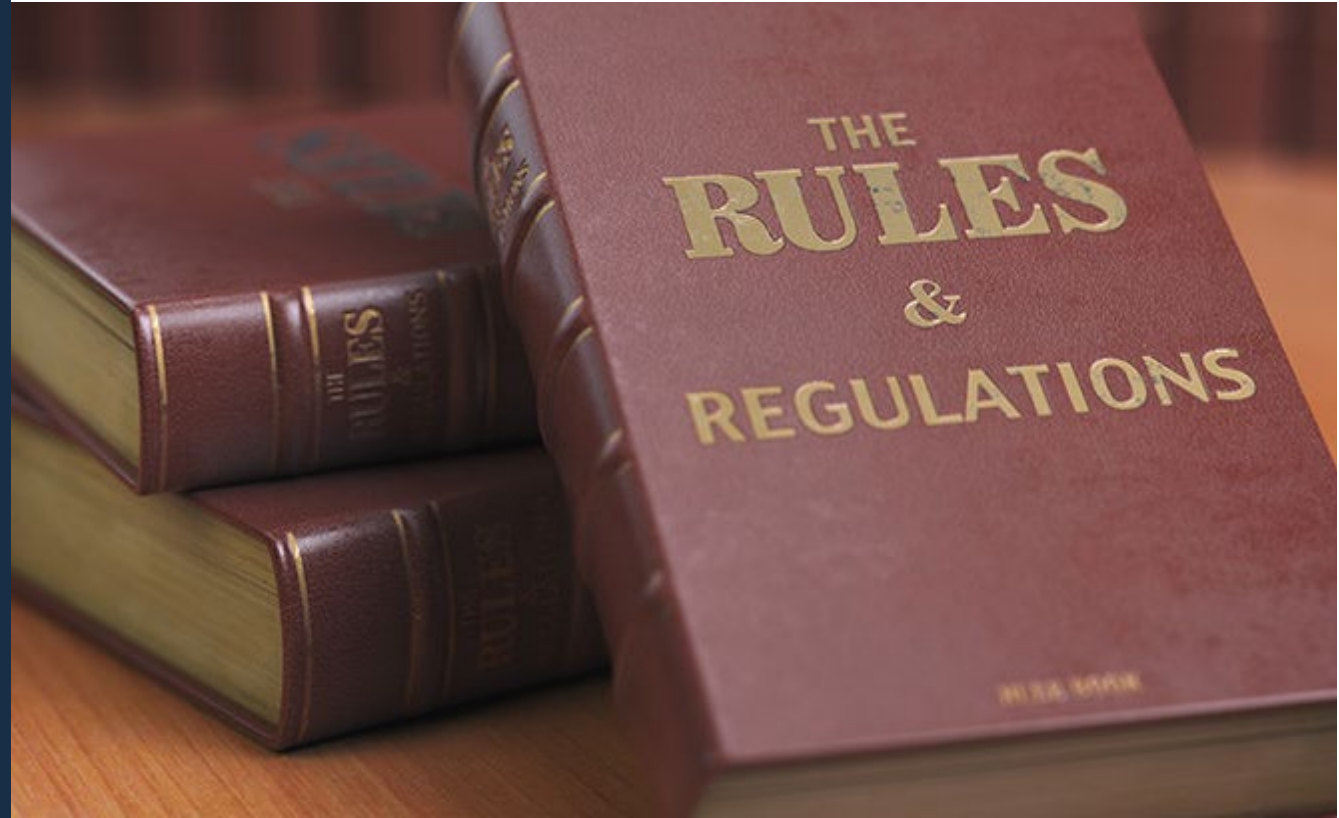
- Procurement Standards.
 - Applicability.
 - General Procurement Standards.
- Procurement Methods.
- Risks and SMART Practices.





Procurement Standards

Applicability



Applicability

- For Federal awards, including grants and cooperative agreements:
 - **States** must follow the **same** policies and procedures it uses for procurement from its **non-Federal funds**.
 - › [20 CFR 678.605\(b\)](#) and [2 CFR 200.317](#)
 - All other non-Federal entities (excluding States), including **subrecipients** of a State, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).
- Uniform Guidance revisions expanded applicability to include for-profits, foreign public entities, and foreign organizations ([2 CFR 200.101](#) and [2 CFR 2900.1](#)).

Subawards and Contracts (1)

- Grant recipients must make case-by-case determinations whether each agreement casts each party in the role of a contractor or a subrecipient ([2 CFR 200.331](#)).
- Grant recipients must review the nature of the work and the substance of the agreement to determine whether that entity is a subrecipient or contractor.

Calling it a 'contractor' doesn't mean it is a contractor if it performs the duties and functions of a subrecipient.

Subawards and Contracts (2)

■ Subaward

- Award provided by a pass-through entity (a grant recipient that provides a subaward to a subrecipient to carry out part of a Federal program) to a subrecipient. Utilizes Subrecipient Agreement or MOU.

■ Subrecipient

- A grant recipient that receives a subaward from a pass-through entity to carry out part of a Federal program.

■ Contract

- Legal instrument used to purchase property or services needed either to carry out a project or program, or for the entity's own use and consumption. Does not include subawards.

■ Contractor

- Entity that receives a contract for goods and services. Replaces the term "vendor."

Subrecipient vs. Contractor

Subrecipient

- Determines who is eligible to receive Federal assistance.
- Performance is measured by whether the objectives of the Federal program are met.
- Has responsibility for programmatic decision making.
- Responsible for adhering to applicable Federal program requirements.
- Uses Federal funds to carry out a program for a public purpose.
- Funded by a subaward.

Contractor

- Provides similar goods or services to many different purchasers.
- Provides the goods and services within normal business operations.
- Provides goods or services that are ancillary to the operation of the Federal program.
- Not subject to the compliance requirements of the Federal program.
- Provides goods and services for the grant recipient's own use, creating a procurement relationship.
- Funded by a procurement contract.

Selection of Subrecipients

What guides the selection of subrecipients when a competitive procurement process is not required?

ETA recommends using a competitive procurement process when feasible.

- Internal Controls System ([2 CFR 200.303](#)).
 - Written procedures.
 - Conflict of interest provisions.
- Service provider's track record ([2 CFR 200.206](#) & [2 CFR 200.332\(b\)](#)).
 - Past record of performance.
 - Cost principles: reasonable costs.
 - Past record of compliance.
 - Audit and monitoring results.
- Procurement Policies for Subrecipients: Pass-through entities must have a written method for conducting technical evaluations of the proposals and for selecting subrecipients [2 CFR 200.320 \(b\)\(2\)\(ii\)](#).

WIOA Procurement (1)

General Requirements

- The local workforce investment plan must describe the competitive process used to award grants and contracts under all programs funded under WIOA Title I.

Special Considerations

- Eligible training provider list ([20 CFR 680.450](#)).
- WIOA Youth Service Providers.
 - ETA encourages the use of competitive procurement processes when selecting WIOA Youth Service providers.

WIOA Procurement (2)

American Job Center (One-Stop) Operators

- Local WDBs are required by WIOA to use a competitive process for the selection of one-stop operators.
 - › Example of when Federal law/ statute has precedence over the Uniform Guidance.
- Local WDBs must support continuous improvement through the evaluation of one-stop operator performance.
- Re-competition of one-stop operators every four years is required.
- In situations in which the outcome of the competitive selection process is the selection of the Local WDB itself as the one-stop operator, the Governor and CEO must approve the selection.

Procurement for Property and Services

Property

Supplies,
equipment,
building space,
leases

Curricula, and/or
Intangible property

Services

Auditing services,
consultation
services,
professional
services

IT services,
training, temporary
or HR staffing

Renovation or
repairs of leased or
owned real
property

Check Your Knowledge in 60 Seconds

Answer True or False

1. Uniform Guidance procurement standards apply to both contracts and subawards.
2. A contract is a legal instrument used to purchase goods or services needed to carry out the project or program.
3. All non-Federal entities must follow the Uniform Guidance procurement standards at 2 CFR 200.318-327.





General Procurement Standards

General Procurement Standards

Written Policies and Procedures (1)

Grant recipients are required to have the following written procurement policies and procedures in place.

- General procurement standards system ([2 CFR 200.318\(a\)](#)).
 - Note: Uniform Guidance Revisions: OMB clarified (2 CFR 200.318(a)).
- A written code of conduct for employees engaged in the award and administration of contracts ([2 CFR 200.318\(c\)\(1-2\)](#)).
- Procedures that avoid purchase of unnecessary or duplicate items, including analysis of lease versus purchase alternatives ([2 CFR 200.318\(d\)](#)).
- A process that promotes the use of intergovernmental agreements ([2 CFR 200.318\(e\)](#)).
- A process to ensure that purchases are made only to responsible contractors with the ability to perform successfully ([2 CFR 200.318\(h\)](#)).

General Procurement Standards

Written Policies and Procedures (2)

- Documentation of the procurement history.
- Mandatory disclosure of violations.
- A settlement process whereby recipients and subrecipients are solely responsible for the settlement of all procurement actions, including those related to source evaluation, protests, claims, and disputes.
- Protest procedures to handle disputes related to both award and administration of contracts.

General Procurement Standards

KEEP IN MIND – Written procurement and purchasing policies and procedures must:

- Be sound, efficient, fair, and cost-effective.
- Identify the different procurement methods from services to products.
- Identify the phases or stages of a procurement process.
- Outline history and recordkeeping requirements.
- Define individuals with authority to initiate and approve actions.
- Outline ethical practices.

General Procurement Standards

Conflicts of Interest

- No employee, officer, or agent must 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 ([2 CFR 200.318\(c\)\(1\)](#)).
- **Organizational** conflict of interest ([2 CFR 200.318\(c\)\(2\)](#)).
 - Grant recipients must maintain **written standards** of conduct covering organizational conflicts of interest.
- Grant recipients have an obligation to **disclose** conflicts of interest and avoid the appearance of impropriety.
- Contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements ([2 CFR 200.319\(b\)](#)).

Conflict of Interest – WIOA (1)



[20 CFR 683.200\(c\)\(5\)](#)

In addition to the requirements at [2 CFR 200.318](#), which address codes of conduct and conflict of interest, the following applies:

- (i) A State WDB member, Local WDB member, or WDB standing committee member **must neither cast a vote on, nor participate in any decision-making capacity**, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or that member's immediate family.

Conflict of Interest – WIOA (2)

[20 CFR 683.200\(c\)\(5\)](#)

- (ii) Neither membership on the State WDB, the Local WDB, or a WDB standing committee, nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.
- (iii) In accordance with the requirements of [2 CFR 200.112](#), **recipients** of Federal awards **must disclose in writing** any potential conflict of interest to the Department. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

General Procurement Standards

Full and Open Competition

- Written procedures must allow sufficient time for all phases of the procurement process to be carried out in a manner that does not unduly restrict competition.
- To the extent practicable, the grant recipient must distribute micro-purchases equitably among qualified suppliers.
- For small purchase procedures, price or rate quotations must be obtained from an adequate number of qualified sources.

General Procurement Standards

Prohibited Restrictions (1)

2 CFR 200.319

- Placing unreasonable requirements on firms for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing “an equal” product.
- Any arbitrary action in the procurement process.

General Procurement Standards

Prohibited Restrictions (2)

■ **Geographic preferences**

- Offerors and bidders may come from different zip codes and cities outside of the local area.

■ **Outdated pre-qualified lists**

- Pre-qualified lists are a result of a competitive procurement process. Review and updates to this list must be done frequently.

■ **Noncompetitive pricing practices**

- Grant recipients and subrecipients cannot issue a Request for Proposal (RFP) or Invitation for Bid (IFB) with no or zero funds.
- Noncompetitive procurements can only be awarded in accordance with [2 CFR 200.320\(c\)](#).

General Procurement Standards

Transparency and Responsibility

■ Responsible Entities.

- Awards must be made only to **responsible entities** that possess the ability to successfully perform under the terms and conditions of the proposed procurement.
- Consideration must be given to the entity's **integrity, compliance** with public policy, **record of past performance**, and **financial and technical resources** ([2 CFR 200.318\(h\)](#)).
- Entities must **not** be debarred, suspended, or otherwise excluded from or made ineligible for participation in Federal assistance programs or activities ([2 CFR 200.214](#)).
- Recipients and subrecipients must **NEVER** contract with the enemy ([2 CFR 200.215](#)).
- Recipients and subrecipients are **prohibited** from entering a contract to procure or obtain equipment services or systems that uses telecommunication equipment and video surveillance services ([2 CFR 200.216](#)).

■ WIOA Sunshine Provisions.

- Requirement to make all information available to the public, auditors, and Federal reviewers ([WIOA secs. 107\(e\) and 101\(g\)](#)).

General Procurement Standards



Recordkeeping (1)

- Documentation must be retained for **all** phases of the competitive procurement process.
 - [2 CFR 200.318\(i\)](#) requires the maintenance of records sufficient to detail the procurement history.
- Documentation is key to ensure that the procurement process is transparent and objective.
- Standards for documentation are high if the procurement results in a noncompetitive procurement (sole source selection).

General Procurement Standards

Recordkeeping (2)

- Procurement history file should contain, at a minimum:
 - All proposals/bids received.
 - Ratings of those proposals.
 - Rationale for the method of procurement.
 - Selection of agreement or contract type.
 - Selection or rejection of proposals/bids.
 - Appeals and disputes.
 - Basis for the contract price.

Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

2 CFR 200.321

Must take all necessary affirmative steps to ensure that small, minority, women's and labor surplus area firms are used whenever possible, to include:

- Placing qualified businesses on solicitation lists.
- Soliciting them whenever they are potential sources.
- Dividing total requirements into smaller tasks or quantities when economically feasible.
- Establishing delivery schedules to encourage their participation.
- Using services of SBA and MBDA of the Department of Commerce.
- Requiring prime contractors to take these same steps.

Domestic Preferences

As appropriate and to the extent consistent with law, grant recipients and subrecipients should, **to the greatest extent practicable** under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products ([2 CFR 200.322](#))).

Produced

- Means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured

- Items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products.

Made in America Laws - IIJA and Build America, Buy America Act

- All federal financial assistance awards made **after May 14, 2022**, are subject to the **NEW** Build America, Buy America Act provisions.
- Section 70914 of the IIJA requires the following Buy America preference for federal financial assistance awards that fund infrastructure projects (or activities):
 - For iron and steel, all manufacturing processes, from the initial melting stage forward, must occur in the United States.
 - For manufactured products, the final manufacturing process must occur in the United States and the cost of components mined, produced, or manufactured in the United States must be greater than 55 percent.
 - For construction materials, “all manufacturing processes must occur in the United States”—OMB has provided preliminary guidance.
- **DOL Resource:** <https://www.dol.gov/agencies/oasam/centers-offices/office-of-the-senior-procurement-executive>.

Check Your Knowledge in 60 Seconds

Answer True or False

1. All procurements should be conducted to promote full and open competition.
2. WIOA requires Local WDBs to use a competitive process to select one-stop operators and youth service providers.
3. ETA encourages the use of competitive procurement processes for the selection of all service providers.
4. Grant recipients may award sole-source contracts to consultants that are on retainer contracts.





Procurement Methods

Methods of Procurement – Overview

[2 CFR 200.320](#) Methods of procurement to be followed

Informal Methods:

- Micro-purchase - < \$10,000.
- Small Purchase - \$10,000 and \$250,000.

Formal Methods:

- Sealed bids (> \$250k).
- Proposals.
 - Including Professional or Qualifications Based Services.
- Non-Competitive Procurement.
 - Thresholds are set by the Federal Acquisition Regulations ([FAR](#)) at [48 CFR Subpart 2.1](#) and [41 U.S.C 1908](#) and are subject to change.

Micro-Purchases

[2 CFR 200.320\(a\)\(1\)](#)

- May be awarded without soliciting competitive price or rate quotations if price is **reasonable**.
 - Based on research, experience, purchase history, or other information and documentation.
- Purchase cards can be used for micro-purchases.
 - Must have policies and procedures.
 - Documentation of approval process.
- To the extent practicable, distribute equitably among qualified suppliers.

Micro-Purchases Threshold

- Acquisition of supplies or services not exceeding \$10,000 (adjusted for inflation) in the aggregate.
 - See Federal Acquisition Regulation at [48 CFR Subpart 2.1](#).
- The grant recipient is responsible for determining and documenting an appropriate micro-purchase threshold based on purchase cards that can be used for micro-purchases:
 - Internal controls.
 - An evaluation of risk.
 - Documented procurement procedures.
 - Not prohibited under State, local, or tribal laws or regulations.

Small Purchases

Informal procurement methods for securing services, supplies, or other property.

- Grant recipients may adopt small purchase procedures to expedite the purchase of items at or below the Simplified Acquisition Threshold (SAT).
- The Simplified Acquisition Threshold (SAT):
 - Adjusted for inflation at FAR at [48 CFR Subpart 2.1](#).
 - Currently \$250,000.
- If the procurement value exceeds the SAT or a lower threshold was established, the grant recipient must use formal procurement methods.

Price or rate quotations must be obtained from an adequate number of qualified sources as determined by the grant recipient.

Small Purchases – Simplified Acquisition Threshold

■ **Grant recipient must determine the appropriate threshold.**

- Based on internal controls, evaluation of risk and its documented procedure for procurement must not exceed the threshold established by FAR.
- However, in no circumstances can this threshold exceed the dollar value established by the FAR ([48 CFR Subpart 2.1](#)) for the Simplified Acquisition Threshold.
- Recipients should determine if local government laws on purchasing apply.

■ **A grant recipient may establish a simplified acquisition threshold lower than the Federal threshold.**

- Based on internal controls, risk evaluations, and procurement procedures as authorized or not prohibited under State, local, or tribal laws or regulations.

Formal Procurement Method – Sealed Bids

Requires formal advertising

- Bids publicly solicited.
- Firm fixed price contract is awarded.
- Successful bid conforms to all material terms and conditions of the invitation for bids.
 - And is lowest in price.
- Preferred method for procuring construction.

Formal Procurement Method – Proposals

Requirements

- Publicize Request for Proposals (RFPs) and identify all evaluation factors.
- Solicit from an adequate number of qualified offerors.
- Written method for evaluating and selecting proposals.
- Award to responsible offerors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
 - Consideration should be given to account for: contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- A fixed-priced or cost-reimbursement type is awarded.
- This method can be used for professional services such as:
 - Audit, consulting, and legal.

Formal Procurement Methods – Proposals

Qualifications, technical or professional services

- Auditing services.
- Consulting services.
- Qualifications evaluated and most qualified selected.
- Subject to the negotiation of fair and reasonable compensation.
 - In those instances where the required skills are not found at the grant recipient, rates must be consistent with those paid for similar work in the labor market in which the contractor competes for the services involved.

Non-Competitive Procurement

- Recipients **may** select a contractor through a non-competitive procurement if one or more of the following conditions apply [2 CFR 200.320\(c\)](#):
 - **The aggregate dollar amount does not exceed the micro-purchase threshold for the acquisition of the property or services. (New)**
 - The item or service is available only from a single source.
 - Public exigency or emergency.
 - The Federal awarding agency expressly authorizes noncompetitive proposals in response to a written request.
 - After solicitation of many sources, competition is determined inadequate.

Earning Profit – Prohibition and Exception

Uniform Guidance

- For all programs, [2 CFR 200.400\(g\)](#) prohibits grant recipients from earning and retaining profit on Federal financial assistance unless **expressly authorized by the terms and conditions of the Federal award**.

Exception – WIOA

- At [20 CFR 683.295](#) and programs authorized by WIOA under secs. 121(d), 122(a), and 134(b) allows awardees of Federal financial assistance, such as one-stop operators, service providers, or Eligible Training Providers, to earn profit. The pass-through entity must follow [2 CFR 200.324](#) to assess reasonableness.

Earning a Profit – WIOA Only

- You must negotiate profit as a separate element from price:
 - When there is no price competition.
 - In all cases where cost analysis is performed.
- Profit considerations:
 - Complexity of work performed.
 - Risk borne by contractor.
 - Contractor's investment.
 - Amount of subcontracting.
 - Quality of past performance.
 - Industry profit rate in surrounding area for similar work.
- Federal Acquisition Regulations (FAR) suggest less than 10 percent.
- Department of Health and Human Services (HHS) limits profit to 8 percent.

*CMG Indicator 2.d.4:
Cost or Price Analysis*

Earning Profit – Limitations

Governmental Entities

- Awards must be on a cost-reimbursement basis.
 - Profit is not allowable under those agreements.

Nonprofit organizations

- Revenue in excess of costs.
 - May not be retained by the organization as profit.
 - Any profit earned must be treated as program income and reported on the 9130.
 - › Must be used for allowable purposes under the award.
- **MUST BE REASONABLE** – Consider FAR – 5% to 10% limits.

Check Your Knowledge in 60 Seconds

Answer True or False

1. Grant recipients must have a written code of conduct for personal and organizational conflicts of interest.
2. The threshold for micro-purchase is \$50,000.
3. The Simplified Acquisition Threshold for small purchase is between \$50,001 and \$150,000.
4. Grant recipients may select a contractor through sole-source selection in case of public exigency or emergency.





Risks and SMART Practices

Common Risks

Examples:

- Conflict of interest signed statements are outdated (old) or incomplete.
- No review to ensure that your organization is working with responsible entities.
- Lack of grievance policy for contractors, service providers, and other entities not selected during the procurement process.
- Procurement history file is not complete.
- Lack of documentation demonstrating equitable consideration for Federal funds and equal opportunity.
- No procedures to consider domestic purchasing.

SMART Practices

- Maintain written standards of conduct covering conflicts of interest and include annual updates of those signed statements. Incorporate or develop policies on the expanded (real, apparent, and organizational) conflict of interest requirements found in the Uniform Guidance.
- For States only, ensure that you follow the same policies and procedures for federal funds that you use for procurement with non-Federal funds. For all other grant recipients, update documented policies and procedures to conform to applicable Federal laws and the procurement standards identified in the Uniform Guidance.
- Update or develop policies that reflect the methods of procurement contained in the Uniform Guidance and cover all types of purchases from A to Z – small purchases to technical services.
- Establish written purchasing policies that outline the steps and processes the organization will take to address all types of procurements.

Questions?



Testing For Compliance - Core Monitoring Guide

The purpose of ETA monitoring is to assess for compliance using the Core Monitoring Guide (CMG). Here is a list of indicators that were discussed during the module's topic.

■ Objective 2.d: Procurement and Contract Administration

- The grant recipient maintains an adequate procurement/purchasing system that includes written procedures and ensures that all contracting, or procurement actions are performed in a manner that provides for full and open competition.
 - › Indicator 2.d.1 – Procurement Standards
 - › Indicator 2.d.2 – Competition
 - › Indicator 2.d.3 – Methods of Procurement

Procurement Standards Resources

- [Core Monitoring Guide](#)
 - [Objective 2.D Procurement and Contract Administration](#)
- [One – Stop Comprehensive Financial Management Technical Assistance Guide Part II](#)
 - Chapter 10 Procurement
- Executive Order 13985
- [U.S Code 41 U.S.C 1908](#)
- Federal Acquisition Regulations (FAR)
 - [48 CFR Subpart 2.1](#)
 - [48 CFR Part 16](#)
- [Uniform Guidance FAQs](#)
- [Uniform Guidance Crosswalk](#)
 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [2 CFR Part 200](#)
 - › [2 CFR 200.206](#)
 - › [2 CFR 200.214 – 2 CFR 200.216](#)
 - › [2 CFR 200.303](#)
 - › [2 CFR 200.317-2 CFR 200.327](#)
- Department of Labor Exceptions [2 CFR Part 2900](#)
 - [2 CFR 2900.2](#)
- Competitive Selection of One-Stop Operators TEGL
 - [TEGL No. 15-16](#)
- WIOA Administrative Provisions
 - [20 CFR 678.605](#)

Thank You!