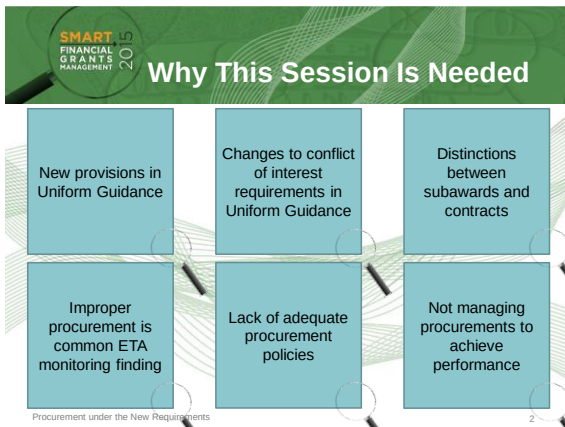
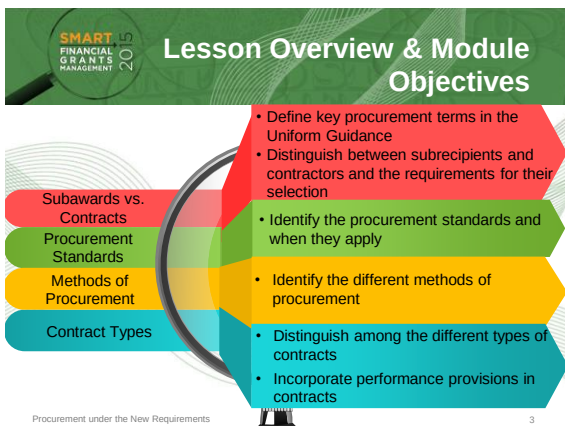








Knowledge Check

On a scale of 1 (lowest) to 5 (highest), rate your knowledge and understanding of the following by circling the appropriate number in the middle column of the sheet, labeled Pre-Training, for each of the statements.

- Differences between a subaward and a contract
- Rules that apply to pass-through-entity subawards
- Procurement rules that apply to contract awards
- Methods of procurement and types of agreements
- Micro purchase and simplified acquisition threshold guidelines

Procurement under the New Requirements
4

Subawards v Contracts

Learning objectives for this section

- Define key procurement terms in the Uniform Guidance
- Distinguish between subrecipients and contractors and the requirements for their selection

Grace Period for Implementation

2 CFR 200.317 – 200.326

- Grace period to implement procurement standards in 200.317 through 200.326
 - For two fiscal years that begin after the 12/26/2014 effective date of Uniform Guidance (*Federal Register* 9/10/15)

- Need to specify in documented policies and procedures that non-Federal entity will continue to comply with the applicable OMB Circulars during the grace period

Procurement under the New Requirements
6

Key Terms

Non-Federal entity

- Any entity receiving Federal funds
- Includes for-profits and foreign entities per DOL exceptions at 2900.2

Pass-Through entity

- Any non-Federal entity that provides a subaward to a recipient to carry out part of a Federal program
- Key distinction: pass-through subaward (subrecipient) vs. procurement action (contractor)

Procurement under the New Requirements

Subawards v Contracts (1 of 2)

Subaward

- Award provided by a pass-through entity to a subrecipient
- To carry out part of a Federal award received by the pass-through entity
 - Does not include payments to contractor or to an individual as beneficiary of Federal program

Subrecipient

- Non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program

Procurement under the New Requirements

Subawards v Contracts (2 of 2)

Contract

- Does not include subawards
- Legal instrument used to purchase property or services to carry out the project or program
 - Often the purchase of goods and services for the non-Federal entity's own use
- Is competed

Contractor

- Entity that receives a contract
- Replaces the term "vendor"

Procurement under the New Requirements

 Subrecipient and Contractor Distinctions (200.330)	
Subrecipient	Contractor
Determines who is eligible to receive what Federal assistance	Provides similar goods or services to many different purchasers
Performance is measured by whether objectives of Federal program are met	Provides the goods and services within normal business operations
Has responsibility for programmatic decision making	Provides goods or services that are ancillary to the operation of the Federal program
Responsible for adhering to applicable Federal program requirements	Not subject to the compliance requirements of the Federal program
Uses Federal funds to carry out a program for a public purpose	Provides goods and services for the non-Federal entity's own use, creating a procurement relationship
Funded by a Subaward	Funded by a Procurement Contract



Document Type of Agreement

2 CFR 200.330 & 200.331

- Determine whether each agreement establishes role as a subrecipient or contractor


- If subaward to subrecipient (200.331)
 - Clearly identify as such
 - Include required information

Procurement under the New Requirements



Pass-Through Entity (PTE)

All non-Federal entities are pass-through entities when making subawards to subrecipients to carry out part of a Federal program

Including Partner and Cooperative Agreements:

These subawards are not procurement actions, but they will follow the procurement rules when:

Required by statute (WIOA Operators and Youth)

Required by own policies and procedures

Awarded on competitive basis

Procurement under the New Requirements

Competitive Subaward Selection

When subrecipients are selected on a competitive basis, follow the procurement rules at 200.318-326

- Uniform Guidance does not prohibit the use of a competitive process to select subrecipients
 - ETA encourages the use of a competitive process to select subrecipients



Procurement under the New Requirements

14

Selecting Subrecipients

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

Internal Controls System

- Written procedures
- Conflict of interest provisions

Risk Assessment

- Past record of performance
- Cost principles: reasonable costs
- Past record of compliance
- Audit and monitoring results

Procurement under the New Requirements

15

Accountability for Pass-Through Entities

- Pass-through entity is as accountable as if it were providing the services itself



- Structure award instrument to promote performance
- Conduct vigorous oversight and monitoring

Procurement under the New Requirements

17

Managing Risk

Due diligence before the award

- Systems, procedures, staff in place
- Clear and measurable deliverables, interim and final

Oversight during the period of performance

- Track actual vs. plan
- Identify problems early
- Require timely corrective action

Verify results

- Monitor on site

Procurement under the New Requirements

18

Profit or Incentive (1 of 2)

2 CFR 200.400 (g) & 200.323 (b)

Uniform Guidance

- Non-Federal entity may not earn or keep profit unless expressly authorized by the Federal award
- **WIOA**
- Does authorize profit for non-profits and for-profits
 - Non-profits: Treated as program income
- Prohibited for Governmental entities

Requirements on profit

- Negotiate as a separate element from price
 - When there is no price competition
 - In all cases where cost analysis is performed
 - Exceeds simplified acquisition threshold

Procurement under the New Requirements

20

Profit or Incentive (2 of 2)

- Complexity of work performed
- Risk borne by recipient
- Recipient's investment
- Amount passed through to subrecipients
- Quality of past performance
- Industry profit rate in surrounding area for similar work
- FAR suggests that it be less than 10%

Procurement under the New Requirements

21

SMART FINANCIAL GRANTS MANAGEMENT 2015

Status Check

- What factors determine whether an award qualifies as a pass-through transaction or a procurement action?
- What are some of the differences that distinguish a subrecipient from a contractor?
- By what processes are subrecipients and contractors selected?
- What does a risk assessment entail?

Procurement under the New Requirements

22

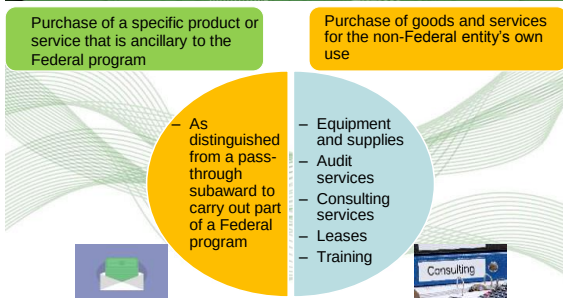
SMART FINANCIAL GRANTS MANAGEMENT 2015

Procurement Standards



SMART FINANCIAL GRANTS MANAGEMENT 2015

What are Procurement Actions?



Procurement under the New Requirements

24

SMART FINANCIAL GRANTS MANAGEMENT 2015

Competitive Selection of Subrecipients

Competitive Selection of Subrecipients

- When selecting subrecipients on a competitive basis, you must follow the procurement rules
- When required by statute
- E.g. WIOA Youth Programs



- When required by own policies and procedures
- When required by the Funding Opportunity Announcement (FOA) and/or grant terms and conditions



Procurement under the New Requirements

25

SMART FINANCIAL GRANTS MANAGEMENT 2015

What Procurement Standards Apply? (1 of 2)

States



Follow the same policies and procedures as for procurements using their non-Federal Funds



Comply with 200.322 of Procurement of Recovered Materials



Ensure that every purchase order or other contract includes the required contract provisions in 200.326

Procurement under the New Requirements

26

SMART FINANCIAL GRANTS MANAGEMENT 2015

What Procurement Standards Apply? (2 of 2)

All other non-Federal Entities

Develop and use own documented procurement procedures

Follow the general procurement standards 200.318-326

Reflecting applicable State/local laws and regulations

Conforming to applicable Federal law and standards of the Uniform Guidance

Procurement under the New Requirements

27

SMART FINANCIAL GRANTS MANAGEMENT 2015

General Procurement Standards (1 of 5)

2 CFR 200.319

- Full and open competition
 - Restrictions on competition generally prohibited, including geographic preferences
 - Pre-qualified lists must be current and include enough qualified sources to ensure open and free competition
 - Must not preclude bidders from qualifying during solicitation period



- Written procurement policies and procedures
- Written standards of conduct

Procurement under the New Requirements

28

SMART FINANCIAL GRANTS MANAGEMENT 2015

General Procurement Standards (2 of 5)

Use most economical approach

Cost principles apply

Oversight of contractor performance regarding contract terms, conditions, specifications

Procurement under the New Requirements

29

SMART FINANCIAL GRANTS MANAGEMENT 2015

General Procurement Standards (3 of 5)

Award only to responsible contractors (200.318 (h))

Prohibited organizations and individuals

- Ability to perform successfully
- Past performance, compliance with public policy, financial and technical resources, contractor integrity

- Debarred or suspended
- Tax liability
- Felons

Procurement under the New Requirements

30

General Procurement Standards (4 of 5)

Maintain records sufficient to detail the history of the procurement, including:

Rationale for method of procurement

Selection of contract type

Basis for contractor selection or rejection

Basis for contract price

Procurement under the New Requirements

31

General Procurement Standards (5 of 5)

2 CFR 200.323

Contract Cost and Price Analysis

- Every procurement action in excess of the Simplified Acquisition Threshold, including modifications, MUST include an independent estimate of costs before receiving bids or proposals
- Cost plus percentage of cost contracts not allowable
- Procedures for settlement of all contractual and administrative issues {200.318(k)}
 - Non-Federal entity alone responsible for resolving disputes

Procurement under the New Requirements

32

5 Essential Elements of a Contract (1 of 2)

Offer

- A conditional promise made by the offeror to the offeree giving the offeree the ability to accept

Consideration

- The giving of something of value in return for something of value

Authorized Officials and Purpose

- Parties involved must have the authorization to make an offer, and the purpose should be a legal and authorized purpose and during an authorized period of time

Procurement under the New Requirements

33

SMART FINANCIAL GRANTS MANAGEMENT 2015

5 Essential Elements of a Contract (2 of 2)



Acceptance

- Unconditional agreement with the terms of the offer



Additional elements

- In writing (signed by both parties)
- Includes essential terms and conditions
- Specifies a period of performance

Procurement under the New Requirements

34

SMART FINANCIAL GRANTS MANAGEMENT 2015

Required Contract Clauses (1 of 3)

2 CFR 200.326 & Appendix II



Administrative, contractual, or legal remedies for breach of contract if contract exceeds Simplified Acquisition Threshold (currently \$150,000)



Termination for cause and for convenience if contract exceeds \$10,000



Equal Employment Opportunity provisions

Procurement under the New Requirements

35

SMART FINANCIAL GRANTS MANAGEMENT 2015

Required Contract Clauses (2 of 3)

2 CFR 200.326 & Appendix II



Must include EEO notice in recruiting materials



Davis-Bacon Act for construction contracts > \$2,000



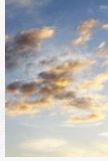
Contract work hours and safety standards for contracts over \$100,000 employing mechanics or laborers

Procurement under the New Requirements

36

Required Contract Clauses (3 of 3)

- ✓ Right to inventions for non-profit organizations and small business firms where applicable
- ✓ Clean Air Act for contracts > \$150,000
- ✓ Energy efficiency standards per State plan
- ✓ Byrd Anti-lobbying certification for contracts > \$100,000
- ✓ Procurement of recovered materials for States
- ✓ DOL Exception on creative commons licensing
- ✓ Not a contract clause, but Uniform Guidance prohibits use of debarred, suspended, and other excluded parties
- ✓ Grant terms and conditions may identify additional requirements



Procurement under the New Requirements

37

Expanded Disclosure of Violations

2 CFR 200.113

Mandatory Disclosures

- Non-Federal entity or applicant must disclose in writing to Federal agency or pass-through entity
 - All violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award
- Penalties for failure to make required disclosures
 - Remedies in 200.338 including termination, suspension or debarment
 - See also 2 CFR Part 180, 31 U.S.C. 3321



Procurement under the New Requirements

38

Expanded Disclosures

2 CFR 200.112 & 200.318 (c)

Conflict of Interest
(200.112 and 200.318 (c))



Disclose in writing any potential conflict to Federal agency or pass-through entity

Procurement under the New Requirements

39

Standards of Conduct, Conflict of Interest

2 CFR 200.112 & 200.318 (c)

Must establish policies for Federal awards

Written standards of conduct for anyone who touches process (selection, award, administration of contracts)

Real or apparent conflict of interest—personal or organizational

Neither solicit nor accept anything of monetary value

Staff, family member, partner, or employer organization has financial or other interest in or tangible benefit from awardee or bidder

Status Check

Are the statements true or false?

?

The purchase of equipment and supplies for the entity's own use is a procurement action requiring compliance with the procurement standards

?

You must follow the procurement rules when establishing pre-qualified lists of contractors

?

A cost or price analysis is required for every procurement action.

Procurement under the New Requirements

41

Methods of Procurement

Learning objectives for this section

- Identify the different methods of procurement

SMART FINANCIAL GRANTS MANAGEMENT 2015

Methods of Procurement

2 CFR 200.320

Methods of Procurement to be Followed

- Micro Purchase
- Small Purchase
- Sealed Bids
- Competitive Proposals
- Non-Competitive Proposals



Procurement under the New Requirements

43

SMART FINANCIAL GRANTS MANAGEMENT 2015

Micro Purchases

Micro Purchase 200.320 (a)

- Acquisition of supplies or services not exceeding \$3,500 in aggregate
- May be awarded without soliciting competitive quotations if price is reasonable
- Distribute equitably among qualified suppliers to extent practicable



Notable Changes

- Micro purchase procedures not previously authorized

Procurement under the New Requirements

44

SMART FINANCIAL GRANTS MANAGEMENT 2015

Small Purchases

Small purchase procedures 200.320 (b)

- Informal procurement methods for securing services, supplies, or other property
- Cost is less than the Simplified Acquisition Threshold (SAT)
- SAT set by the FAR at 48 CFR 2.1
- Increased from \$100,000 to \$150,000 in 2010
- Price or rate quotations must be obtained from an adequate number of qualified sources

Notable changes

- Threshold linked to Simplified Acquisition Threshold
- Future changes in FAR threshold will apply

Procurement under the New Requirements

45



Sealed Bids

Sealed Bids (formal advertising) 200.320 (c)

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

No notable changes

Procurement under the New Requirements

46



Competitive Proposals

Requirements

2 CFR 200.320 (d)



Publicize RFP and identify all evaluation factors



Contract awarded to responsible firm



Solicit from an adequate number of qualified sources



- Most advantageous proposal
- Price and other factors considered



Written method for evaluating and selecting proposals

Procurement under the New Requirements

47



Qualifications-Based Procurement



Procurement under the New Requirements

48

SMART FINANCIAL GRANTS MANAGEMENT 2015 Non-Competitive Proposals

2 CFR 200.320 (f)

Solicitation from only one source (sole source)

- Allowable only when one or more circumstances apply:
 - Item available only from a single source
 - Public exigency or emergency will not permit a delay
 - Awarding agency authorizes non-competitive proposals in response to a written request
 - After solicitation from a number of sources, competition is determined inadequate

Procurement under the New Requirements

49

SMART FINANCIAL GRANTS MANAGEMENT 2015 Small, Minority, Women's, Labor Surplus Area Businesses

Must take all necessary affirmative steps to assure 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 participation
 Using services of SBA and MBDA of Dept. of Commerce	 Requiring prime contractor to take these same steps

Procurement under the New Requirements

50

SMART FINANCIAL GRANTS MANAGEMENT 2015 Contract Types

Learning objectives for this section

- Distinguish among the different types of contracts
- Incorporate performance provisions in contracts

SMART

FINANCIAL

GRANTS

MANAGEMENT

2015

Contract Types (1 of 4)

COST REIMBURSEMENT

EFFORT ≠ PERFORMANCE

FIRM FIXED PRICE CONTRACT

PRE-SET PRICE → PERFORMANCE

FIRM FIXED PRICE INCENTIVE

COST REDUCTION = PROFIT INCENTIVE

COST-PLUS INCENTIVE FEE

COST INCREASE = EXTRA PROFIT

TIME AND MATERIAL

TIME + MATERIAL

Procurement under the New Requirements

52

SMART

FINANCIAL

GRANTS

MANAGEMENT

2015

Contract Types (2 of 4)

FAR 16.2-3

EFFORT ≠ PERFORMANCE

Cost Reimbursement Contract

- Not recommended for contracts
- Pay for effort, not performance
- Performance risk borne by awarding agency

PRE-SET PRICE → PERFORMANCE

Firm Fixed Price Contract

- Purchase of goods and ancillary services
- Reasonably definite performance or design requirements
- Pay pre-set price for each unit of deliverable regardless of actual costs incurred
- Performance risk borne by contractor

Procurement under the New Requirements

53

SMART

FINANCIAL

GRANTS

MANAGEMENT

2015

Contract Types (3 of 4)

COST REDUCTION = PROFIT INCENTIVE

Fixed Price Incentive

- Cost uncertainties exist and there is the possibility of cost reduction by giving contractor:
 - A degree of cost responsibility
 - Positive profit incentive

COST REDUCTION = PROFIT INCENTIVE

Cost-Plus Incentive Fee

- Prohibited by statute and regulations
 - Fees increase with costs

Procurement under the New Requirements

54

Procurement Under the New Requirements

17

SMART FINANCIAL GRANTS MANAGEMENT 2015 Contract Types (4 of 4)

Time and Material (Labor Hour)

- Not possible to initially estimate extent or duration of work
 - E.g. engineering and design services
 - Repair and maintenance
- Fixed price per unit of materials used
- Direct labor hours at specified hourly rates that include wages, overhead, general and administrative expenses, and profit

Procurement under the New Requirements

55

SMART FINANCIAL GRANTS MANAGEMENT 2015 Performance Considerations (1 of 2)



Performance requirements are defined in measurable mission-related terms



Performance standards (i.e., quality, quantity, timeliness) tied to performance requirements



Quality Assurance (QA) plan describes how the contractor's performance will be measured against the performance standards



Positive and negative incentives appropriate if critical to accomplishing performance

(Source: White House: Best Practices for Performance-Based Contracting)

Procurement under the New Requirements

56

SMART FINANCIAL GRANTS MANAGEMENT 2015 Performance Considerations (2 of 2)

FAR 37.6

- Describe the requirements in terms of results required rather than the methods of performance of the work
- Use measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans (see 46.103(a) and 46.401(a))
- Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see 46.407)
- Include performance incentives if appropriate.

Procurement under the New Requirements

57

Key Concepts

New procurement-related terms

Expanded responsibilities for pass-through entities

Changes to procurement standards, contract provisions, and disclosures

Differences in agreement types and methods of procurement

Uniform Guidance places greater emphasis on performance

Procurement under the New Requirements

58

Knowledge Check

On a scale of 1 (lowest) to 5 (highest), rate your knowledge and understanding of the following by **circling** the appropriate number in the column of the sheet labeled Post-Training for each of the statements.

- Differences between a subaward and a contract
- Rules that apply to pass-through-entity subawards
- Procurement rules that apply to contract awards
- Methods of procurement and types of agreements
- Micro purchase and simplified acquisition threshold guidelines

Procurement under the New Requirements

59



THANK YOU!

Please complete your evaluations.
