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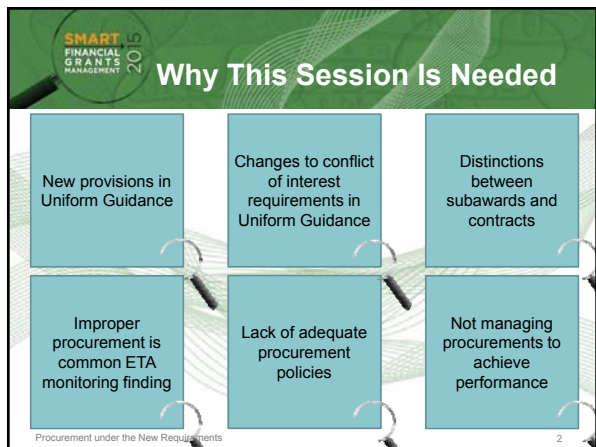
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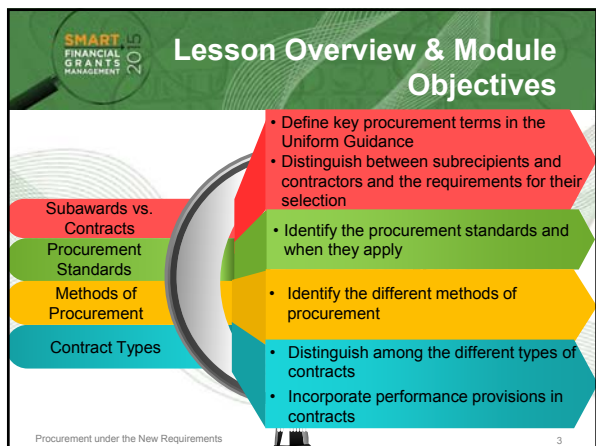
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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Key Terms

Non-Federal entity	Pass-Through entity
Any entity receiving Federal funds	Any non-Federal entity that provides a subaward to a recipient to carry out part of a Federal program
Includes for-profits and foreign entities per DOL exceptions at 2900.2	<b>Key distinction: pass-through subaward (subrecipient) vs. procurement action (contractor)</b>

Procurement under the New Requirements 7

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Subawards v Contracts (1 of 2)

Subaward	<ul style="list-style-type: none"> <li>Award provided by a pass-through entity to a subrecipient</li> <li>To carry out part of a Federal award received by the pass-through entity                             <ul style="list-style-type: none"> <li>Does not include payments to contractor or to an individual as beneficiary of Federal program</li> </ul> </li> </ul>
Subrecipient	<ul style="list-style-type: none"> <li>Non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program</li> </ul>

Procurement under the New Requirements 8

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Subawards v Contracts (2 of 2)

Contract	<ul style="list-style-type: none"> <li>Does not include subawards</li> <li>Legal instrument used to purchase property or services to carry out the project or program                             <ul style="list-style-type: none"> <li>Often the purchase of goods and services for the non-Federal entity's own use</li> </ul> </li> <li>Is competed</li> </ul>
Contractor	<ul style="list-style-type: none"> <li>Entity that receives a contract</li> <li>Replaces the term "vendor"</li> </ul>

Procurement under the New Requirements 9

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 <b>Subrecipient and Contractor Distinctions (200.330)</b>	
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

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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

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## 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
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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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 13

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Selecting Subrecipients

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

<b>Internal Controls System</b>	<b>Risk Assessment</b>
<ul style="list-style-type: none"><li>Written procedures</li><li>Conflict of interest provisions</li></ul>	<ul style="list-style-type: none"><li>Past record of performance</li><li>Cost principles: reasonable costs</li><li>Past record of compliance</li><li>Audit and monitoring results</li></ul>

Procurement under the New Requirements 15

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Selecting Subrecipients

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

Internal Controls System	Risk Assessment
<ul style="list-style-type: none"><li>Written procedures</li><li>Conflict of interest provisions</li></ul>	<ul style="list-style-type: none"><li>Past record of performance</li><li>Cost principles: reasonable costs</li><li>Past record of compliance</li><li>Audit and monitoring results</li></ul>

Procurement under the New Requirements 16

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Accountability for Pass-Through Entities

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

**THEY FAIL = YOU FAIL!**

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

Procurement under the New Requirements 17

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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 19

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Profit or Incentive (1 of 2)

**2 CFR 200.400 (g) & 200.323 (b)**

Uniform Guidance	Requirements on profit
<ul style="list-style-type: none"><li>• Non-Federal entity may not earn or keep profit unless expressly authorized by the Federal award</li></ul> <p><b>WIOA</b></p> <ul style="list-style-type: none"><li>• Does authorize profit for non-profits and for-profits<ul style="list-style-type: none"><li>- Non-profits: Treated as program income</li></ul></li><li>• Prohibited for Governmental entities</li></ul>	<ul style="list-style-type: none"><li>• Negotiate as a separate element from price<ul style="list-style-type: none"><li>- When there is no price competition</li><li>- In all cases where cost analysis is performed<ul style="list-style-type: none"><li>- Exceeds simplified acquisition threshold</li></ul></li></ul></li></ul>

Procurement under the New Requirements 20

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Profit or Incentive (2 of 2)

**Profit Considerations**

- 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

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**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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Procurement Standards

Learning objectives for this section

- Identify the procurement standards and when they apply

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## What are Procurement Actions?

Purchase of a specific product or service that is ancillary to the Federal program

Purchase of goods and services for the non-Federal entity's own use

- As distinguished from a pass-through subaward to carry out part of a Federal program
- Equipment and supplies
- Audit services
- Consulting services
- Leases
- Training

Procurement under the New Requirements 24

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**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

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**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

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**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

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**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

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**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

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**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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**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

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**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

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**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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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
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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## 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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Methods of Procurement

Learning objectives for this section

- Identify the different methods of procurement

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**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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**


## Micro Purchases

### Micro Purchase 200.320 (a)

- Acquisition of supplies or services not exceeding \$3,000 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

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**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

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### 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

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### 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

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### Qualifications-Based Procurement

Qualifications-based procurement

- Architectural/engineering (A/E) professional services
- Qualifications evaluated and most qualified selected
- Subject to negotiation of fair and reasonable compensation
- No notable changes

Procurement under the New Requirements 48

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**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

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**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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Contract Types

Learning objectives for this section

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

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**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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Contract Types (2 of 4)

**FAR 16.2-3**

**Cost Reimbursement Contract**

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

**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

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**SMART FINANCIAL GRANTS MANAGEMENT 2015**

## Contract Types (3 of 4)

**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-Plus Incentive Fee**

- Prohibited by statute and regulations
  - Fees increase with costs

Procurement under the New Requirements 54

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**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

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**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

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**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

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### 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

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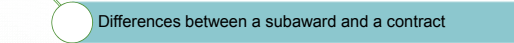
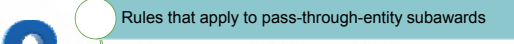
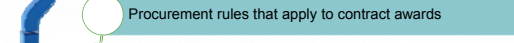
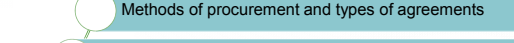
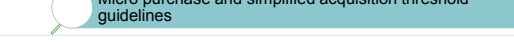
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### Knowledge Check

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.

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Procurement under the New Requirements 59

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# THANK YOU!

Please complete your evaluations.

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