



# Federal Regulation Compliance

Transit Subrecipient Workshop - July 16, 2018





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# TOPICS

- 2 CFR 200 – Uniform Grant Guidance Overview
- Program Income
- Cost Allocation Plans
- Third Party Contractor Procurements
- Third Party Contract Oversight



# UNIFORM GRANT GUIDANCE (FINDING INFORMATION)

- U.S. Government Publishing Office, Federal Digital System
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Year	Title	CFR	Part	Section	or	Subpart
2018	2		200			

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# UNIFORM GRANT GUIDANCE FINDING INFORMATION

- Electronic Code of Federal Regulations
- [www.ecfr.gov](http://www.ecfr.gov)
  1. Select Title 2 – Grants and Agreement
    - > Click Go
  2. Select 200



# UNIFORM GRANT GUIDANCE OVERVIEW

- Consolidated Eight (8) OMB Circulars
- Six (6) Subparts
  - Subpart D – Post Federal Award Requirements
  - Subpart E - Cost Principles
- 11 Appendixes
  - Appendix V – Central Service Cost Allocation Plans
  - Appendix VII – Indirect Cost Proposals

# SUBPART E: COST PRINCIPLES

- Applicability:
  1. State Entities
  2. Subrecipients (Subgrantee)
  3. Third Party Contractors (Transit)
    1. 2 CFR 200 – 200.101 Applicability (Paragraph c)
    2. FAR 31.2 – Allowability of Costs (also apply where applicable)
    3. FTA Master Agreement - states that cost principles under 2 CFR 200 apply

# Factors Affecting Allowability of Costs (§200.403)

1. Is the cost necessary and reasonable and allocable?
2. Does the cost conform to these Costs Principles?
3. Is the cost charged consistently with policies and procedures for both Federal and non-Federal activities?
4. Is the cost according consistent treatment regarding assignment as a direct or indirect cost?
5. Was the costs determined in according with GAAP?
6. Was the costs used to meet cost sharing or matching requirements of another federal program?
7. Is the cost adequately documented?



# Reasonable Costs (§200.404)

“A cost that in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost”

## Considerations

1. Must be recognized as ordinary and necessary
2. Made in accordance with sound business practices, arm's length bargaining, laws and regulations, and terms of federal award
3. Market prices for comparable goods or service for the geographic area

# Reasonable Costs (§200.404)

## Considerations (continued)

4. The individual involved acted prudently considering their responsibility to the following:
  - a. Non-federal entity and its employees
  - b. Students/Membership if applicable
  - c. Public at large
  - d. Federal Government
5. Established practices and policies were not significantly deviated from regarding the incurrence of cost which unjustifiably increased the Federal award's cost.

# Allocable Costs (§200.405)

“A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received”

## Considerations

1. Is incurred specifically for the Federal award;
2. Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
3. Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

# General Provisions

## Selected Items of Cost (§200.420-475)

### 5 Common Items of Cost

1. Compensation (§200.430 and §200.431)
2. Rent & Idle Facilities (§200.465 and §200.445)
3. Interest (§200.449)
4. Losses on other awards or contracts (§200.451)
5. Professional Service Cost (§200.459)
6. Maintenance and repair costs (§200.452)

# Program Income

- Program Income =
  - + Total Income (generated/earned by activity)
  - Cost of Generating Income (not charged to award)
- References
  - 2 CFR 200.80, 200.307
  - FTA Circular 5010.1E (Page VI-12)
  - FTA Circular 9040.1F (Page III-19)

# Program Income

Includes (but not limited to)

- Fees for services performed (Purchase of Service)
- Use of rental or personal property
- Sale of Commodities or fabricated items
- License fees and royalties
- Advertising/Concessions
- Payments of Principal and Interest on loans

# Program Income

Does Not Includes (unless specified by Award)

- Rebates, credits, discounts
- Taxes, special assessments, levies and fines
- Interest
- Proceeds from the sale of real property or equipment (separate requirements apply)

# Treatment of Program Income

1. Subrecipients must retain and account for program income earned in their accounting system.
2. The accounting system must be able to identify the purpose for which the program income was used.
3. May be used as local match for the current year award if earned from a human services transportation contract

**EXCEPTION:** Section 5310 or other FTA funds cannot be used as match for Section 5311 program funds



# Treatment of Program Income

4. May be used for other capital or operating public transportation expenses.
5. May be used to reduce total allowable costs to net costs on which the Federal share is determined.
6. Depending on federal statutory or regulatory restrictions, the Recipient may use the program income for the non-federal share for a future public transportation project that will receive federal assistance provided by FTA.

# Cost Allocation Plans & Indirect Cost Rates

1. Should be based on audited financial data
2. Must be negotiated with and approved by the cognizant Federal agency (or)
3. If no such rate exists, a rate may be negotiated between the pass-through entity and the subrecipient (in compliance with this part), (or)
4. A de minimus indirect cost rate (10%) may be used
  - a) If a negotiated rate has not been received.
5. Proposal must be certified by an individual at a level no lower than Vice President or Chief Financial Officer

# Allocated Central Service Costs (Adjustments)

- Annual adjustments must be made to reflect actual allowable costs versus amounts billed to federal awards (based on estimate)
- Example –
  - 2017 (based on 2016 financials) - \$200,000 (billed)
  - 2017 actual allowable amount - \$150,000
  - = an adjustment of \$50,000 must be made
- Adjustments (if  $\leq$  \$500,000)
  1. Cash Refund + interest
  2. Credits to the amount charged to the individual program
  3. Adjustments to future billing rates
  4. Adjustments to allocated central service costs

# Indirect Cost Rate Types

1. Provisional
  - a temporary indirect cost rate that is applied to a limited time period that is used until a "final" rate is established for that same period
2. Final
  - an indirect cost rate applicable to a specific time period that is based on the actual, allowable costs of that period. Once established, a final, audited rate cannot be adjusted
3. Predetermined
  - rate applies to a specific current or future time period. Except under very unusual circumstances, a predetermined rate cannot be adjusted.
  - Predetermined rates may be used with cooperative agreements and grants only. There is reasonable assurance that the rate is not likely to exceed a
  - rate based on the organization's actual costs
4. Fixed – Carry Forward –
  - rate is based on estimated costs for a set, future time period. When the actual costs for that period become available, a carry forward adjustment is used

# Third Party Procurements (Federal Funds)

- 200.317-318 Subrecipient of a state must follow General Procurement Standards:
  1. Use its own document procurement procedures (if they conform to applicable Federal law and standards identified in this part)
  2. Must maintain oversight of contractors
  3. Must have written standards of conduct covering conflicts of interest and governing employees involved in the selection, award, and contract administration process
  4. Parent, affiliate, or subsidiary organization must also have procedures covering organizational conflicts of interest.
  5. The procedures must avoid acquisition of unnecessary or duplicative items.
  6. Records must be sufficiently maintained to detail the history of the procurement.

# Third Party Procurements (Federal Funds)

- 200.319 Competition
  1. Full and open competition is required!
  2. State, local, or tribal geographical preferences are prohibited.
  3. Written procedures for procurement transactions are required.
  4. Prequalification lists must be current and include enough qualified sources to ensure maximum and open competition.

# Third Party Procurements

- 200.323 Contract Cost and price
  1. A cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250,000) including contract modifications must be performed.
  2. Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
  3. To establish a fair and reasonable profit, consideration must be given to the following:
    1. the complexity of the work to be performed,
    2. the risk borne by the contractor,
    3. the contractor's investment,
    4. the amount of subcontracting,
    5. the quality of its record of past performance, and
    6. industry profit rates in the surrounding geographical area for similar work

# Third Party Procurements

- 200.323 Contract Cost and price (continued)
  1. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part.
  2. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used



# Third Party Contract Oversight

- Oversight must be maintained to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- Must ensure costs cost charged to the grant meet applicable Cost Principles for allowability
- Adequate documentation must be maintained to support that the costs billed to the federal award were allowable in accordance with Cost Principles.
  - This applies to direct and indirect costs.

# Questions?

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