13th Annual Federal Grants Management Update Webcast
Questions & Answers

1. What does it mean by oversight of contractors? Per UG (2 CFR 200.318(b) - Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase.

2. Do we need to keep evidence of our monitoring of contractors? Yes, you should retain documentation as part of your internal control. At a minimum, I would recommend that your policy recognizes responsibility for contractor oversight, but size and type of purchase may dictate more formal post-contract evaluations, etc.

3. We have our Procurement Rules approved by BOD in 2015? Is it okay? Are these rules compliant with UG for purchases of goods and services charged to federal awards? Did you amend them to take advantage of new thresholds for UG procurement methods? I suspect the policy needs some updating.

4. What are the penalties if you did not adopt the policy at the correct time? The main risk is a finding in your audit or as the result of oversight agency review. I suspect the government will be willing to work with those that stumbled out of the blocks but sometimes it depends on the agency.

5. Is there any specific format prescribed for Procurement Policies? No. The organization has discretion to draft its policies so long as they address the required elements of UG.

6. Regarding procurement thresholds, didn't some agencies not push these through yet (i.e., EPA and NOAA)? My understanding is that the OMB memo applies to all agencies. However, you should play it safe and contact your cognizant/oversight agency if there are lingering questions.

7. What is your opinion on when we can start using these new thresholds? You may adopt immediately (but retroactive adoption may not be permissible).

8. Do we need to increase our existing thresholds for Micro Purchases and simplified Acquisitions to these thresholds? Yes, if you want to take advantage of the higher thresholds.

9. Do vendors on micro purchases have to be registered in SAM.gov and use E-Verify? Not that I am aware of. Covered transactions for purchases of goods and services begins at $25,000, which is higher than the new micro purchase threshold of $10,000.
10. Any specific guidance for non-profit organization? Sorry, I don’t know the context of the question but if you are referring to procurement in general, I would say to be very careful with reading the rules and seek help if any provisions seem confusing. Other than that, please strive to follow the rules with respect to purchases of goods and services charged to federal awards.

11. How do you handle the procurement of services as the actual spending increases toward the threshold of the next level (say, from Micro to Small Purchase)? For example, you hire a CPA as a consultant. If you don’t know how long you will need their services, this is very painful to stop the work being done so that we can get other quotes, write up our evaluation (which is supposed to be done contemporaneously and in writing) and make our decision even though we really made it at the beginning, we just didn’t realize how much help we needed or for how long. This is a great question and one not directly addressed in the standards. The standards assume you have a good idea on what the contract value may be (including amendments). My advice would be to take a conservative approach. If the initial contact value is at $9,000 and there is any chance for a modification, you should approach it as a small purchase (i.e. $10,000 to $250,000 level purchase). If the purchase is approach the simplified acquisition threshold, do the same exercise and do full-blown proposals. Otherwise, you may be forced to re-do procurement for the modification or seek advice from your cognizant agency.

12. Please mention the different agencies not recognizing the $250K simplified acquisition threshold yet—also what about differences subject to Davis-Bacon act? I believe the OMB memo is for all the agencies. I am not aware they had a choice to not accept it (this falls under NDAA 2018 – law!). Any doubt, seek clarity from your agency. Davis-Bacon is very unique so I would refer that question to your cognizant as well.

13. Can one use the competitive bid process for a construction project? I am sure it is possible but read UG that describes the new methods (sealed bids and competitive proposals) to make sure you don’t run afoul.

14. Can you set a lower level only for non-USG funds and use these for USG/grant funding? I believe you need to be careful here. UG says you should have consistent policies except that the rules of UG need to be incorporated. Typically, the government wants to benefit from your policies so a situation where you do more for non-federal funding may not sit well. Rules of thumb is to be consistent and then have greater scrutiny for federal funds (not less).

15. Tom, what is the risk that OMB will not officially adopt the new levels as outlined in the NDAA memo? Is there any risk OMB will not follow this? I don’t think so. NDAA is an act of law and the Memo was to tell the agencies to allow for it now as the regs are being updated.

16. Don’t federal agencies have to issue a statement/clarification in absence of a Congressional change to the law? I can’t answer legal questions. I can only tell you what the memo does and the guidance put out by OMB, AICPA, etc. with how the levels can be viewed now. Please contact your cognizant agency if you have any concerns.
17. Do you have a list of the 54 MUSTs? Go to UG procurement section (hyperlinked in your materials) and do a “Control/Find on “must” – you will then see the population of “musts” highlighted on the screen.

18. Does "procurement" mean supplies or just capital purchases? All purchases of goods and services whether capital or non-capital in nature. Pretty much every direct cost of a federal award is covered by the procurement rules with the exception of salaries/benefits and subrecipient costs.

19. We have not been subject to audit in the past, but believe we are butting up to limits this year. What deadlines apply? First of all, if you have ANY federal awards, you are subject to the rules of UG. When you meet the audit threshold of $750,000 of federal expenditures in your organization’s fiscal year, you will then have the pleasure of a UG audit. You have 9 months to get that audit completed and submitted to the government.

20. Instead of listing all the musts...can we simply say something akin to "if grant, follow also 2CFR 200|"? Yes, you have discretion on how to set up your policy but some of the "musts" require specific language to be in the policy so in those cases, a general statement may not work.

21. If you are in the middle of a 5 year contract with a Vendor -- say one from whom you are leasing copiers/printers -- and the auditors choose that vendor for testing. How can you be expected to have followed rules retroactively? The new rules apply to “new” procurements. Procurements made under the old rules can play out without issue (assuming you followed the old rules, as applicable).

22. Are public state universities subject to requirements of section 200.317 as well? Yes, UG applies to States, local governments and nonprofit organizations. A public state university falls under the State rules for UG.

23. For INGOs, is "minority" still defined in US population terms? Great question. I am sure the rules are targeted for domestic use (and did not contemplate international use) but I think she can still have a policy that gives consideration to disadvantaged groups.

24. Do we need a price analysis if there are more than 1 price proposals? Yes, if the purchase will be above the simplified acquisition threshold. This is done before getting the bids back.

25. Are the 54 "Musts" (previously mentioned) in procurement found in section 200.318? Not just 200.318, but 200.317 through 200.326.

26. When will auditors be checking on the UG sub-recipient requirements? Please respond!!!! They should have already been checking if they apply to the major programs they are testing. The UG subrecipient rules apply to all prime awards issued on or after 12/26/14 from which subrecipient agreements were entered into. For example, an organization receives a direct award on 3/22/15. On 4/22/15, the organization using funding from the new award to enter into a subrecipient agreement with another entity. That 4/22/15 agreement would have to follow the UG subrecipient rules (content of the agreement, risk assessment, monitoring plan, on-going monitoring activities, etc.)

27. We get fed funds to make loans. How do you have a "procurement" process on making loans? In your case, the loan recipient probably does not qualify as a “contractor”. However, they may qualify as a subrecipient if they are subject to on-going compliance rules.
28. Hi. Will this audio be saved so that it can be shared with another individual in my organization? The day before this webcast, I had a recording session to produce the “on-demand” version. The slides were the same but the script was not 100% word for word the same as the live version (I don’t script)

29. Does UG Procurement apply to eligible Admin expenses such as accounting software, IT consulting services? It does not apply to items that will go into an indirect pool (admin or facilities) but if you are allowed to direct charge such items to the award, UG procurement would apply

30. What section of the 2CFR200 lists the rule about "covered transaction" being over $25,000? I want to be able to refer to the specific section. 200.213 is the UG section – it then sends you to 2 CFR 180 (see 2 CFR 180.220 for the $25,000 reference)

31. Must the procurement policies be applied consistently across the organization, including non-federal projects? The organization should have consistent policies covering federal and non-federal purchases but tailored to make sure the applicable provisions of UG are applied. I take this to mean that federal purchases must be the same or more restrictive than non-federal purchases but not the other way around (i.e. can’t have more restrictive non-federal rules that the feds don’t get the benefit)

32. Would MWBE in NYS fall under the 'policy to use in-state or local geographic....' that UG does not like? This is where our NYS contracts (have Federal pass thru) require us to use Minority Women-owned Businesses which would restrict us from who we can use. Sounds like it. I would recommend reviewing the provisions for geographic preference to make sure you stay within the guidelines. Certainly, specific provisions of your agreements are likely to rein supreme

33. What do you mean by i’s dotted and t’s crossed when it comes to geographic preferences? We have a lot of rural activities where the prospective contractors are limited--are we wrong in targeting solicitation to those contractors in that geographic area? Maybe yes, maybe no. Please refer to UG provision on this topic and clarify with your cognizant agency if you feel you are at risk based on the interpretation

34. What does it mean by "limit competition’? The goal of UG procurement is NOT to limit competition. Geographic preference can be viewed as a means to limit such competition.

35. Do you have to complete cost analysis for commercial items? No

36. Greater than simplified acquisition threshold - per policy or the maximum allowable threshold? The regulations just site the simplified acquisition threshold not the lesser of

37. Where can you find specifications or guidance for the development of a purchasing system? Depending on your size and complexity, this is likely a contacted solution with a specialist. That may not be the case for smaller, less complex environments

38. Even if a contractor is not registered in SAM.gov, will they show up as debarred? Yes, that is my understanding as that is where the government list such individuals/entities

39. Will a failure to comply with existing policies automatically imply questioned costs? Not automatically. This will be a judgement call on the part of the auditor and be based on specific facts and circumstances
40. Are these also applicable for organizations receiving under the $750K? Yes. Applies to all federal awards (received on or after 12/26/14) administered by the organization (whether you are audited or not or the program is audited as major)

41. What timeframe is the purchases measured? RE: ongoing purchases with a vendor (one yrs.? each individual purchase? ongoing?) The measurement is based on the likely procurement action.

42. Where are the regulations on the written standards of conduct 200.112 (you have discretion on how to write these up)

43. Tom, the OMB is already working on the 2019 supplement. They plan for it to be comprehensive and issued earlier than normal. Great – thanks for the heads-up for everybody

44. Would these funds fall into the donor restricted category under the new financial reporting guidelines? Sorry, don’t have the full context for the question so I will have to guess. Assuming you are asking how federal awards would be accounted for under ASU 2018-08 and ASU 2016-14, the vast majority of federal awards would be considered contributions, but meet the definition of “conditional”. As such, recognition would not flow through restricted net assets but recorded to unrestricted as simultaneously released along with the condition – i.e. $300,000 of federal expenditures for the grant for the period would relate to $300,000 of unrestricted grant income even if the award were for a higher amount (the remainder would be recognized as spent in subsequent years)

45. Pre-UG: Does it refer to OMB Circular? Yes – pre-UG for procurement would be OMB Circular A-110 for most nonprofit organizations