

Uniform Grants Guidance, Subawards, Procurement Contracts, and Loans

REGION 1 BROWNFIELDS RLF WORKSHOP
APRIL 6 AND 7 2017
RLF 101



Uniform Administrative Requirements

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- Previously located at 40 CFR Parts 30 and 31 and are applicable to awards made after 12/26/14.
- EPA-specific regulations:
 - Supplement 2 CFR 200 in cases where EPA has more specific requirements (statutory or regulatory requirements and long standing EPA policy).
 - Codified at 2 CFR 1500 and effective 12/26/14.

Cost Principles

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- Consolidates Cost Principles previously located at:
 - A-21 (no longer at 2 CFR 220) for Educational Institutions:
http://www.whitehouse.gov/omb/circulars_a021_2004/
 - A-87 (no longer at 2 CFR 225) for State, Local & Tribal Recipients:
http://www.whitehouse.gov/omb/circulars_a087_2004/
 - A-122 (no longer at 2 CFR 230) for Non-Profits:
http://www.whitehouse.gov/omb/circulars_a122_2004/
- Codified at 2 CFR 200 Subpart E, and effective 12/26/14.
- NOTE: Fundraising costs for the purposes of meeting the objectives of the RLF grant (ie, leveraging) are now allowable with prior EPA approval. 2 CFR 200.442.

Audit Requirements

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- Before 12/26/14, non-federal recipients require an A-133 audit if they expend \$500,000+ in federal funding annually.
- As of 12/26/14, recipients will only require A-133 audit if they expend \$750,000+ in federal funding annually.
- Codified at 2 CFR 200 Subpart F and effective 12/26/14.

Other Important Regulatory Requirements

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- Payment or “Draw Down” under 2 CFR 200.305. EPA pays recipients in advance but recipients must minimize the time elapsing between draw downs and disbursements.
 - Brownfield RLF Terms and Condition describe methods of disbursement that include both actual cost and schedule or progress payment method.
 - Recipients may not “bank” EPA funds by premature draw downs.
- Source documentation requirements for financial management under 2 CFR 200.302.
 - Accurate accounting records are crucial.
 - Records must cover program income as well as expenditures.
- Internal controls to ensure compliance with statutory, regulatory and cooperative agreement requirements under 2 CFR 200.303.

EPA Specific Regulations

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- **Subpart A – Acronyms and Definitions – Reserved**
- **Subpart B – General Provisions**
 - 1500.1 Adoption of 2 CFR 200
 - 1500.2 Applicability
 - 1500.3 Exceptions
 - 1500.4 Supersession
- **Subpart C - Pre-Federal Award Requirements and Contents of Federal Awards**
 - 1500.5 Fixed Amount Awards
- **Subpart D - Post Federal Award Requirements**
 - Standards for Financial and Program Management
 - 1500.6 Retention requirements for records
 - 1500.7 Program Income
 - 1500.8 Revision of budget and program plans

Subawards, Procurement Contracts and Loans

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The following slides provide an overview of financial transaction you may enter into as a Brownfields RLF Recipient

Differences Between Procurement Contracts, Loans and Subawards

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- Why the differences are important.
 - Competition
 - Allowability of profit
 - Flow down of statutory and regulatory requirements.
 - Assessment of risk.
 - Content of agreements.
- Monitoring responsibilities.
- Brownfields RLF Recipients are authorized by statute to make subawards and loans for site cleanup.

EPA Subaward Policy

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- **Grants Policy Issuance (GPI) 16-01: EPA Subaward Policy provides EPA's policies and procedures for implementing UGG subaward requirements:**
 - Identifying “pass-through entities” who make subawards;
 - Distinguishing between subrecipients and procurement contractors;
 - Determining subrecipient eligibility; Overseeing pass-through entity monitoring and management of subawards; and
 - Understanding EPA's role in selecting subrecipients.

Policy Attachments

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- **The [EPA Subaward Policy](#) has several appendices, including:**
 - Appendix A: [Distinctions Between Subrecipients and Contractors](#)
 - Appendix B: [National Term and Condition for Subawards](#)
 - Appendix C: [Model Programmatic Subaward Reporting Requirement](#)
 - Appendix D: [Subaward Agreement Template](#)
 - [EPA Subaward Policy Frequently Asked Questions](#)

Procurement Regulations

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- Micro-Purchases (<\$3,500) do not require solicitation, if the price is considered reasonable, but should be equitably distributed among qualified suppliers. 2 CFR 200.320(a).
- Small Purchases (<\$150,000) require price or rate quotations from an adequate number of qualified sources. 2 CFR 200.320(b). Generally, offers from at least three sources should be solicited.
- Competitive Sealed Bids (>\$150,000) will involve solicitations in which there is a high degree of specificity relating to the characteristics of the goods or services to be obtained and where there is an expectation of the award of a firm fixed price contract. 2 CFR 200.320(c).
- Competitive Proposals (>\$150,000) require more than one proposal and result in a fixed price or cost reimbursement contract. Requests for Proposals (RFPs) must be publicized and include factors to be evaluated and the relative importance of the factors. 2 CFR 200.320(c).
- States follow their own procurement procedures. 2 CFR 200.317

Procurement Cont.

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- Documented cost or price analysis not required for micro-purchases or for competitively awarded small purchases. 2 CFR 200.323(a).
- Recipients must negotiate profit as a separate element of cost if there is no price competition. 2 CFR 200.323(c).
- Cost plus percentage of construction cost contracting prohibited. 2 CFR 200.323(d).
- Required contract clauses are in Appendix B, to 2 CFR Part 200.
- **NOTE:** Procurement Regulations apply to subrecipients **BUT NOT TO BORROWERS** unless the RLF Recipient decides to require the borrower to follow Federal rules.

Sole Source??

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- As provided at 2 CFR 200.320(f), Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - The item is available only from a single source;
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
 - After solicitation of a number of sources, competition is determined inadequate.
- EPA's position is that "single source" procurements are justified by copyrights, patents, equipment maintenance agreements with manufacturers or similar arrangements.
 - XYZ contractor is familiar with our program and we have "partnered" with the firm or individual for years does not pass muster.

What is NOT Considered a Subaward?

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- **In addition to procurement contracts, subawards do not include:**
 - Transactions between recipients and Federal agencies;
 - Funding transfers between departments of the same unit of government;
 - Loans;
 - Loan guarantees;
 - Interest subsidies and principal forgiveness;
 - Purchases of insurance or similar transactions entered into with borrowers by recipients of Revolving Loan Fund capitalization grants; or
 - Stipends for interns/fellows/trainees.

Partnership Agreements

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Q. Does EPA consider all “partnership agreements” that establish funding relationships to be subawards?

A. NO.

- The UGG does not characterize financial transactions as “Partnership Agreements”.
- Transactions are either subawards, procurement contracts, intergovernmental/interentity agreements for common procurement, interagency service agreements or services, or participant support costs.
- Characterizing the transactions consistently with the terms used in the UGG is important for determining what rules govern the agreement. It is the substance of the transaction and the financial structure of the “Partnership” that matters.
- Some recipients refer to their contractors (particularly consultants) as “Partners” so the label the recipient places on the transaction is not determinative.

Subaward vs Procurement Contracts

- **The chart shows which option is most likely, based on the entity type that will be receiving funds from the pass-through entity.**

- Remember – you still need determine whether a subaward or contract is the appropriate vehicle for your cooperative agreement.
- The UGG at 2 CFR 200.330(c) and Appendix A of EPA’s Subaward Policy emphasize the need to exercise judgment based on the substance of the agreement.

Subrecipient Type	Subaward	Procurement Contract	Neither	Resources to Help Make Determination
Non-Profit	✓			
For-Profit		✓		2 CFR 200.330 and Subaward Policy Appendix A, Distinctions Between Subrecipients and Contractors
Individual Consultant		✓		
Institute of Higher Education	✓			
Non-Federal Government	✓			
Federal Agency			✓	
Another Department of the Same Unit of Government			✓	These are generally considered Intra-governmental Transfers
Federally Funded Research & Development Center		✓		

- **Remember, approval by EPA’s Grants Management Office is required before making a subaward to a for profit firm on individual.**

Brownfields RLF Subawards

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- Recipients may make cleanup subawards to “eligible entities” described at CERCLA 104(k)(1) and non-profit organizations.
 - Eligible entities are primarily units of government or other entities established by state legislatures.
 - Nonprofit organizations must be recognized as such by state law.
 - Federal tax exempt status (e.g. 501(c)(3)) is one way to document tax exempt status but is not a requirement per se.
- Flow down requirements include administrative cost prohibition competitive procurement, Davis-Bacon, National Historic Preservation Act, Endangered Species Act, and Civil Rights.

National Term and Condition

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- EPA has established a National Term and Condition for Subawards that is applicable to all assistance agreements, regardless of whether they contain subawards.
- The National Term and Condition for Subawards:
 - Included in the EPA General Terms and Conditions (T&Cs), that are applicable to every grant.
 - Can be found in Appendix B of the EPA Subaward Policy.
- The next 4 slides highlight important terms.

System for Documenting Subawards

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- **Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.331(a).**
- **EPA has developed a voluntary template that pass-through entities may use to document the “subaward content” requirements in 2 CFR 200.331. This template is available in Appendix D of the EPA Subaward Policy.**

Unique Entity Identifier

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- **Prior to making subawards, ensure that each subrecipient has a “unique entity identifier.” This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR 200.331(a)(1).**
- **The unique entity identifier currently is the subrecipient’s Data Universal Numbering System (DUNS) number.**
- **Information regarding obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity’s agreement with EPA entitled “Central Contractor Registration/System for Award Management and Universal Identifier Requirements”.**

Evaluating Risk of Subrecipient Noncompliance

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- **Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.331(b) and document the evaluation. Risk factors may include:**
 - a) Prior experience with same or similar subawards;
 - b) Results of previous audits;
 - c) Whether new or substantially changed personnel or systems, and;
 - d) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

Monitoring Performance

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- **Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.331(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.**

Subaward Reporting Requirement

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- When EPA determines that a recipient is a pass-through entity for subawards, EPA will include:
 - the Model Programmatic Subaward Reporting Requirement; or
 - Appendix C of the EPA Subaward Policy
 - A program specific requirement in the performance reporting terms and conditions of the award such as the Assessment, Cleanup and Redevelopment Exchange System (ACRES) Property Profile in the RLF T&Cs.

Brownfields RLF Loans

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- Recipients may make loans to “eligible entities”, nonprofit organizations and for-profit firms.
 - One important eligibility restriction is that the loan recipient and its contractors must not be suspended, debarred or otherwise ineligible.
 - List of excluded parties available at <http://www.sam.gov>.
- Statutory requirements such as the Administrative Cost Prohibition, Davis-Bacon, National Historic Preservation Act, Endangered Species Act, Civil Rights flow down to loan recipients.
- Regulatory requirement such as competitive procurement do not apply to borrowers unless the loan terms provide otherwise.

EPA Specific Regulations

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- Program Income – 2 CFR 1500.7
 - 2 CFR 1500.7(c) provides:

(c) Brownfields Revolving Loan. To continue the mission of the Brownfields Revolving Loan fund, recipients may use grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.
 - This provision applies to RLF Grants awarded after 12/16/14, amended to add supplemental funding after that date, or amended to reference 2 CFR Parts 200 and 1500 rather than 40 CFR Part 31.