

PUBLICATION

OMB Seeks Comments on Proposed Changes to 2 C.F.R. Part 200

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On January 22, 2020, OMB released proposed revisions to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200. These regulations govern administration of virtually all federal grants – including non-entitlement grants of the Departments of Education, Health and Human Services, Homeland Security (such as FEMA's Preparedness, Public Assistance, and Hazard Mitigation Grant programs), and Housing and Urban Development (such as its Community Development Block Grant – Disaster Recovery program). The regulations contain critical procurement requirements and cost principles applicable to purchases and contracting funded by federal grants. Key changes proposed to the existing regulations are highlighted below, although OMB has advised that comments on portions of 2 C.F.R. Part 200 for which no change is proposed will still be accepted. Comments are due on or before March 23, 2020.

- The revisions clarify that the use of the term "must" indicates a requirement, whereas the terms "should" or "may" indicate a best practice or recommended approach for which discretion is permitted. This is an important clarification, as is evident in some of the changes described below.
- 2 C.F.R. § 200.19(a) is revised to indicate non-federal entities "should" (but are not required to) distribute purchases less than the micro-purchase threshold equitably among qualified suppliers. It also clarifies that purchase cards may be used to make these purchases. The section is also revised to indicate that non-federal entities can set lower thresholds than that set by the FAR at 48 C.F.R. subpart 2.1, but can also request approval of a higher threshold from the "cognizant federal agency for indirect cost rates". This could be significant to lessen the burden of competition on entities who are able to demonstrate they are "low risk" and thus worthy of a higher threshold.
- Similarly, the revisions state a non-federal entity is responsible for determining its own simplified acquisition threshold, but it may not exceed the threshold established by the FAR and there is no mechanism for requesting a higher threshold as with micro-purchases.
- The revisions refer to sealed bidding and competitive proposals as "formal procurement methods" and state that non-federal entities will be required to use them for purchases above the simplified acquisition threshold set by the FAR or the threshold established by the non-federal entity. This is not a significant change, as the current version of the regulations require that non-federal entities follow the most restrictive procedure, whether it be the federal procurement requirements or their own internal requirements.
- The circumstances under which non-competitive procurements are permitted is revised to include purchases below the micro-purchase threshold.
- Most significantly, the revisions add a new section to the procurement standards called "Domestic preferences for procurements." This section provides that "As appropriate and to the extent consistent with law, the non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials

produced in the United States..." This phrasing results in a recommended approach or best practice that is not a requirement. Non-federal entities are required, however, to include the same recommendation in all contracts and purchase orders for work under grant awards.

- OMB proposes to change the closeout procedures at 2 C.F.R. § 200.343 to provide recipients 120 days (rather than 90 days) to submit closeout reports and liquidate all financial obligations. Subrecipients will be required to submit reports to recipients within 90 days. The revised regulations also require the federal awarding agency "to make every effort to complete closeout actions no later than one year after the end of the period of performance".