

Contract Information



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As we go through our discussion today remember State Planning and Research programs act as grantee or grant recipient, and State DOTs may then use those funds to carry out transportation activities identified in their research program. State DOTs may sub-grant funds to or enter into contracts with universities and other entities to carry out the transportation research program and other eligible activities.

General Updates



1. Changed Grants and Agreements to Federal Financial Assistance.
2. Changed Non Federal Entity (NFE) [formally state DOT] to Recipient or Subrecipient [except in Subpart F].
3. Updated specific sections that apply to Federal Agencies or Pass Through Entities.
4. Removed outdated acronyms and added new ones.
5. Changed Federal awarding agency to Federal Agency.
6. *Changed DUNS Numbers to Unique Entity Identifier (UEI) [2 CFR 25.300]
7. *All subawardees must also have Unique Entity Identifiers. [2 CFR 25.300]
8. *Went from the OMB designated government system to using actual system names: SAM.gov, USAspending.gov, CPARs, Grants.gov. [2 CFR 25.105, 110, 205, 300, and App A to Part 25]
9. *Deleted the need for recipients to receive formal approval from Federal agencies to implement changes to comply with the 2024 revisions. (January 15, 2025 Memorandum for Federal Financial Assistance from COFFA).
10. *Sets out specifically which sections apply to Federal Agency and which apply to pass through entities.

Keep in mind that the term Non Federal Entity, though no longer meaning state DOT, may still appear in statutes that have not be changed, and as such, will still mean state DOT. Remember Non Federal Entity and Recipient/Subrecipient may be used interchangeable in those circumstances.

Specific Updates



1. Notice of Funding [2 CFR 200.204]
2. Risk Assessment [2 CFR 200.206 and 208]
3. Recipient and Subrecipient [2 CFR 200.1 and 2 CFR 25.400]
4. Pass through entity defined [2 CFR 200.1]
5. Cost Share and match [2 CFR 200.306]
6. Contract [2 CFR 200.1]
7. Period of performance, Budget Period, Closeout [multiple clauses]
8. Termination [2 CFR 200.1, 200.340, 200.343]
9. Equipment [2 CFR 200.1 and 2 CFR 200.313]
10. Supplies [2 CFR 200.1 and 2 CFR 200.314]
11. Intangibles [2 CFR 200.1 and 2 CFR 315]
12. *De minimis* Rate (IDC) [2 CFR 200.414] and Indirect Costs [2 CFR 200.414]
13. Audit threshold [2 CFR 200.501]
14. Performance Goals [2 CFR 200.329]

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Equipment from \$5000 to 10000
Supplies from 5000 to 10000
Fixed Amount 250000 to 500000
Indirect Costs 10% to 15%
Audit \$750000 to 1 million
MTDC above 25,000 to 50,000

Notice of Funding 2 CFR 200.204 and 205



Updated Requirement:

- a) Announce specific funding opportunities that will be openly competed.
- b) Scope and requirements for programs.
- c) *Use Plain language.
- d) *Specific award date.
- e) *Availability period for Federal Funds.
- f) *Merit review panels (2 CFR 200.205).
- g) Keep announcement limited in length and complexity to only necessary information.

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Merit review panels should have policies which include:

Number of people the agency requires to participate in the merit process.

Should allow diverse group of participants, including underserved communities.



Pass through entity 2 CFR 200.1

1. A recipient or subrecipient that provides a subaward to a subrecipient to carry out part of a Federal program.
2. The duties of a pass through now includes:
 - a) determining whether an entity is a subrecipient, contractor, or recipient.
 - b) Federal agencies do not have a direct legal relationship with subrecipients and contractors.
3. State governments are defined as pass through entities that:
 - a) Passes funds to subrecipient through subaward.
 - b) Passes funds to contractor for good and/or services.

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A pass through entity is defined as a recipient or subrecipient that provides a subaward to a subrecipient to carry out part of a Federal Program. State governments are defined as the pass through entity. The pass through entity can either allocate funds to a subrecipient through subawards, or through contracts for goods and services.

A key distinction is that pass-through entities make subawards to subrecipients, while they may also enter into contracts with contractors for goods or services. The determination of whether an agreement is a subaward or a contract is based on the substance of the relationship, not just the form of the agreement.

An entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor. The pass-through entity is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor. "The authority of the pass-through entity flows through the subaward agreement between the pass-through entity and subrecipient."

2 cfr 200.331 Added additional language emphasizing that Federal agencies do not have a direct legal relationship with subrecipients and contractors of pass-through entities. Clarified that the characteristics indicative of a subrecipient or contractor determination are not limited to the sample characteristics currently provided in the guidance.

An entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor. The pass-through entity is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor.

2 CFR 200.332 Added an additional requirement for pass-through entities to confirm that potential subrecipients are not suspended, debarred, or otherwise excluded from receiving Federal funds.

(a) Subrecipients. A subaward is for the purpose of carrying out a portion of the Federal award and creates a Federal financial assistance relationship with a subrecipient. See the definition of Subaward in § 200.1. Characteristics that support the classification of the entity as a subrecipient include, but are not limited to, when the entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether the objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision-making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) Implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) Contractors. A contract is for the purpose of obtaining goods and services for the recipient's or subrecipient's use and creates a procurement relationship with a contractor. See the definition of contract in § 200.1. Characteristics that support a procurement relationship between the recipient or subrecipient and a contractor include, but are not limited to, when the contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the implementation of a Federal program; and
- (5) Is not subject to compliance requirements of a Federal program as a result of the agreement. However, similar requirements may apply for other reasons.

Recipient Defined 2 CFR 200.1 and 2 CFR 25.400



1. An entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program.
2. Does not include subrecipients or individuals that are participants or beneficiaries of the award
3. The term Recipients used to mean a non-Federal entity or Federal Agency that received a Federal Award.
4. The term now replaces the term non federal entity.

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A state may expend funds to either a recipient, subrecipient and/or contractor. The next 3 slides will discuss the differences.

Subrecipient 2 CFR 200.1



1. An entity that receives a subaward from a pass-through entity to carry out part of a Federal award.
2. Does not include a beneficiary or participant.
3. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency.

Part that was added is to carry out and part about beneficiary and participant.

Contract 2 CFR 200.1



Contract definition now includes being a legal instrument by that a recipient or subrecipient "conducts procurement transactions".

Procurement relationships include:

1. Providing goods and services.
2. Normally competitive
3. Provides ancillary services

Cost Share and Match – 2 CFR 200.306



The Standard removes the term matching because matching now falls under the definition of Cost Share.

Budget Period 2 CFR 200.1 and 308



Changed expending funds to incurring the financial obligation of the funds awarded.

Expending:

1. Paying out or using up.
2. Act of paying or spending.

Incur:

1. Taking responsibility for the payment of something.
2. All expenses are the funding agencies liability even if the expense has not been paid.

Period of Performance 2 CFR 200.1 and 309



1. Period of performance means the time interval between the start and end date of a Federal award, which may include one or more budget periods.
2. All end dates for performance period must now be exact, no longer allowed to estimate.

Close Out 2 CFR 200.1 and 344



1. Close out periods are now mandatory after all administrations required actions are completed.
2. Budget office now have the authority to close awards if termination action is not taken by the contact manager.
3. All reports and financial statements from the recipient must be provided within 120 days after the conclusion of the period of performance. The subrecipient has 90 days to provide the documents.
4. Recipient must fully liquefy all financial obligations within 120 days. Subrecipient has 90 days.
5. Closeout extensions can not go any longer than 1 year.

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State budget offices now must provide in FMIS/FHWA all closeout documents within 120 days of the finalization of the project.

Research Centers must close every thing within 90 days – explain how WYDOT does it.

Termination of Contract 2 CFR 200.1



Termination of a contract no longer includes discontinuing a federal award due to the lack of available funding.

Equipment 2 CFR 200.313



- Increased the threshold value for equipment from \$5,000 to \$10,000.
- Added additional guidance on the meaning of a “conditional title.”
- Revised to allow Indian Tribes to dispose of equipment in accordance with tribal law.
- Clarified that agencies may permit the recipient to retain equipment with no further obligation to the Federal government when it is not prohibited by Federal statute or regulation.
- Clarified the responsibility of recipients to maintain updated records regarding equipment.

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A "conditional title" means the recipient, subrecipient or contractor, or other entity that gains ownership of an item (like equipment or a vehicle) but is subject to certain conditions or requirements specified in a contract or agreement. These conditions often involve the recipient's use of the item for a specific purpose, adherence to certain regulations, or the ability of the government to reclaim the item if the conditions are not met. Discuss WYDOT K language.

Supply 2 CFR 200.314



- Increased threshold from \$5,000 to \$10,000.
- Clarified that the requirements for unused supplies apply to the aggregate value of all supply types, and not just like-item supplies.
- Included a definition of “unused supplies.”
 - New, unopened.
 - Includes all types of supplies, not just like item supplies.
- Standard sets out how to calculate compensation for supplies sold by the contractor.
- Computing devices can be supplies, only if the acquisition cost is BELOW \$10,000. There is no depreciation value for computing devices.

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2 CFR 200.1

Supply means all tangible personal property other than those described in the equipment definition. A computing device is a supply if the acquisition cost is below the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes or \$10,000, regardless of the length of its useful life. See this section’s definitions of computing devices and equipment.



Intangible Property 2 CFR 200.1 and 315

1. Adds data (including data licenses), websites, intellectual property licenses, trade secrets, patents, patent applications, and other instruments of property ownership of either tangible or intangible property, such as intellectual property, software, or software subscriptions or licenses.
2. Vests the title to intangible property to the recipient or subrecipient.
3. The recipient or subrecipient may not encumber the property without the approval of the Federal agency or pass-through entity.
4. Disposition of the intangible property must occur just like equipment.
5. To the extent permitted by law, the recipient or subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award.
6. Pass through may require recipients and subrecipients to make intellectual property available through public access plans with proper security.
7. Clarified the potential requirement for recipients and subrecipients to make intangible property publicly available on agency-designated websites.

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More Detail on 315

Indirect Cost Rates 2 CFR 200.332, 414, Appen. III



1. Pass through entities must accept all negotiated indirect cost rates set out by Federal Agencies.
2. Pass through entities cannot require a recipient or subrecipient to use a rate lower than the *de minimis* rate of 15 percent.
3. Recipients and subrecipients have the right to negotiate a rate higher than the *de minimis* rate with the Pass through entity.
4. Agencies do not have authority to set their own indirect cost rate with out support from statute or regulations.
5. *De minimis* rates can be changed to a negotiated indirect cost rate if one is established after the contract is signed.

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All negotiated indirect cost rates that were in affect prior to the amendment must stay in affect.



2 CFR 200.500-521 Audit Requirements

- 2 CFR 200.303 Internal controls now include Cybersecurity
- Single Audit thresholds are effective regardless of whether the Federal agency takes any action to amend its existing awards.
- The new threshold is raised from \$750,000 to \$1 Million



Performance Goals 2 CFR 200.329

1. Performance goals must be measurable.
2. Must monitor all project functional activities.
3. Progress reports and invoices should be received at the same time, if possible.
4. Site visits can be virtual.
5. The final report is due no later than 120 days after end of performance period.
6. Must have quarterly performance progress reports.
 - a) Set out significant developments like milestones and objectives.
 - b) If there are different beneficial results than what was originally planned.
 - c) Set out delays or adverse conditions.
 - d) Set out negative impacts.
 - e) Set out cost or time overruns.
 - f) Contain comparison between proposal objectives and what was accomplished.
 - g) Include performance trend data.
 - h) Set out why if objects are not met.
 - i) Should include cost information to demonstrate cost effective practices if set out in contract.



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