

# NORTHERN WESTMORELAND CAREER AND TECHNOLOGY CENTER

No. 626

SECTION: FINANCES

TITLE: FEDERAL FISCAL COMPLIANCE

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REVISED: April 21, 2022

## Authority

The Joint Operating Committee shall ensure federal funds received by the center are administered in accordance with federal requirements, including but not limited to the federal Uniform Grant Guidance.<sup>[1]</sup>

The Joint Operating Committee shall review and approve all applications for federal funds submitted by the center.

## Delegation of Responsibility

The Joint Operating Committee designates the Administrative Director and Business Manager as the center contacts for all federal programs and funding.

The Administrative Director or designee and Business Manager, shall establish and maintain a sound financial management system to include internal controls and federal grant management standards covering the receipt of both direct and state-administered federal grants, and to track costs and expenditures of funds associated with grant awards.<sup>[1]</sup>

The Administrative Director, to assist in the proper administration of federal funds and implementation of this policy, may approve additional procedures as attachments to this policy.

## Guidelines

The center's financial management system shall be designed with strong internal controls, a high level of transparency and accountability, and documented procedures to ensure that all financial management system requirements are met.

Financial management standards and procedures shall assure that the following responsibilities are fulfilled:

1. Identification – The center must identify, in its accounts, all federal awards received and expended, and the federal programs under which they were received.
2. Financial Reporting – Accurate, current, and complete disclosure of the financial results of each federal award or program must be made in accordance with the financial reporting requirements of the Education Department General Administrative Regulations (EDGAR).

## 626. INVESTMENT OF FUNDS

3. Accounting Records – The center must maintain records which adequately identify the source and application of funds provided for federally-assisted activities.
4. Internal Controls – Effective control and accountability must be maintained for all funds, real and personal property and other assets. The center must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
5. Budget Control – Actual expenditures or outlays must be compared with budgeted amounts for each federal award. Procedures shall be developed to establish determination for allowability of costs for federal funds.
6. Cash Management – The center shall maintain written procedures to implement the cash management requirements found in EDGAR.
7. Allowability of Costs – The center shall ensure that allowability of all costs charged to each federal award is accurately determined and documented.

### Standards of Conduct

The center shall maintain standards of conduct covering conflicts of interest and the actions of employees and center officials engaged in the selection, award and administration of contracts.[2]

All employees shall be informed of conduct that is required for federal fiscal compliance and the disciplinary actions that may be applied for violation of Joint Operating Committee policies, administrative regulations, rules and procedures.[3]

### Employees - Time and Effort Reporting

All school (center) employees paid with federal funds shall document the time they expend in work performed in support of each federal program, in accordance with law. Time and effort reporting requirements do not apply to contracted individuals.[4]

Center employees shall be reimbursed for travel costs incurred in the course of performing services related to official business as a federal grant recipient.[5]

The center shall establish and maintain employee policies on hiring, benefits and leave and outside activities, as approved by the Joint Operating Committee.[6][7][8][9][10][11]

### Record Keeping

The center shall develop and maintain a Records Management Plan and related Joint Operating Committee policy and administrative regulations for the retention, retrieval and disposition of manual and electronic records, including emails.[12][13]

## 626. INVESTMENT OF FUNDS

The center shall ensure the proper maintenance of federal fiscal records documenting:[13][14][15]

1. Amount of federal funds.
2. How funds are used.
3. Total cost of each project.
4. Share of total cost of each project provided from other sources.
5. Other records to facilitate an effective audit.
6. Other records to show compliance with federal program requirements.
7. Significant project experiences and results.

All records must be retrievable and available for programmatic or financial audit.

The center shall provide the federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, the right of access to any documents, papers, or other center records which are pertinent to the federal award. The center shall also permit timely and reasonable access to the center's personnel for the purpose of interview and discussion related to such documents.[16]

Records shall be retained for a minimum of five (5) years from the date on which the final Financial Status Report is submitted, or as otherwise specified in the requirements of the federal award, unless a written extension is provided by the awarding agency, cognizant agency for audit, oversight agency for audit or cognizant agency for indirect costs.[17]

If any litigation, claim or audit is started before the expiration of the standard record retention period, the records shall be retained until all litigation, claims or audits have been resolved and final action taken.[17]

As part of the Records Management Plan, the center shall develop and maintain a records retention schedule, which shall delineate the record retention format, retention period and method of disposal.[13]

The Records Management Plan shall include identification of staff authorized to access records, appropriate training, and preservation measures to protect the integrity of records and data.[13]

The center shall ensure that all personally identifiable data protected by law or regulations is handled in accordance with the requirements of applicable law, regulations, Joint Operating Committee policy and administrative regulations.[18][19][20]

## 626. INVESTMENT OF FUNDS

### Subrecipient Monitoring

In the event that the center awards subgrants, the center shall establish procedures to:[\[21\]](#)

1. Assess the risk of noncompliance.
2. Monitor grant subrecipients to ensure compliance with federal, state, and local laws and Joint Operating Committee policy and procedures.
3. Ensure the center's record retention schedule addresses document retention on assessment and monitoring.[\[13\]](#)

### Compliance Violations

Employees and contractors involved in federally funded programs and subrecipients shall be made aware that failure to comply with federal law, regulations or terms and conditions of a federal award may result in the federal awarding agency or pass-through entity imposing additional conditions or terminating the award in whole or in part.[\[22\]](#)[\[23\]](#)

## 626. INVESTMENT OF FUNDS

### Legal

1. 2 CFR Part 200

2. Pol. 827

3. Pol. 317

4. 2 CFR 200.430

5. Pol. 626.1

6. Pol. 304

7. Pol. 319

8. Pol. 336

9. Pol. 337

10. Pol. 624

11. Pol. 813

12. 2 CFR 200.333-200.337

13. Pol. 800

14. 34 CFR 75.730-75.732

15. 34 CFR 76.730-76.731

16. 2 CFR 200.336

17. 2 CFR 200.333

18. Pol. 113.3

19. Pol. 216

20. Pol. 324

21. 2 CFR 200.330-200.331

22. 2 CFR 200.338

23. 2 CFR 200.339

34 CFR Part 75

34 CFR Part 76

Pol. 610

Pol. 611

Pol. 612

Pol. 613

Pol. 625

## **Allowability of Costs – Federal Programs**

Expenditures must be aligned with approved budgeted items. Any changes or variations from the state-approved budget and grant application need prior approval from the state.

### **Delegation of Responsibility**

When determining how the center) will spend its grant funds, the Business Manager will review the proposed cost to determine whether it is an allowable use of federal grant funds *before* obligating and spending those funds on the proposed good or service.

### **Allowability Determinations**

All costs supported by federal education funds must meet the standards outlined in EDGAR, 2 CFR Part 3474 and 2 CFR Part 200, Subpart E, which are listed below. The Business Manager must consider these factors when making an allowability determination. A section entitled, *Helpful Questions for Determining Whether Costs are Allowable*, is located at the end of this document.

Part 200 sets forth general cost guidelines that must be considered, as well as rules for specific types of items, both of which must be considered when determining whether a cost is an allowable expenditure of federal funds. The expenditure must also be allowable under the applicable program statute (e.g., Title I of the Elementary and Secondary Education Act (ESEA), or the Carl D. Perkins Career and Technical Education Act (Perkins)), along with accompanying program regulations, nonregulatory guidance and grant award notifications.

Restrictions in state and local rules or policy also must be considered. For example, travel and other job-related expenses incurred by employees are not allowable unless they also are in compliance with Joint Operating Committee Policy 331 (Job Related Expenses) and related administrative regulations.

Whichever allowability requirements are stricter will govern whether a cost is allowable.

General allowability determination factors include the following:

1. **Be Necessary and Reasonable for the performance of the federal award.** A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the cost was made. For example, **reasonable** means that sound business practices were followed, and purchases were comparable to market prices.

When determining reasonableness of a cost, consideration must be given to:

- Whether the cost is a type generally recognized as ordinary and necessary for the operation of the center or the proper and efficient performance of the federal award.

- The restraints or requirements imposed by factors, such as: sound business practices; arm's-length bargaining; federal, state and other laws and regulations; and terms and conditions of the federal award.
- Market prices for comparable goods or services for the geographic area.
- Whether the individual incurring the cost acted with prudence in the circumstances considering responsibilities to the center, its employees, its students, the public at large, and the federal government.
- Whether the center significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the federal award's cost. (2 CFR Sec. 200.404)

Whether a cost is **necessary** will be determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the center can demonstrate that the cost addresses an existing need, and can prove it. For example, the school entity may deem a language skills software program necessary for a limited English proficiency program.

When determining whether a cost is necessary, consideration may be given to:

- Whether the cost is needed for the proper and efficient performance of the federal award program.
  - Whether the cost is identified in the approved budget or application.
  - Whether there is an educational benefit associated with the cost.
  - Whether the cost aligns with identified needs based on results and findings from a needs assessment.
  - Whether the cost addresses program goals and objectives and is based on program data.
2. **Allocable to the federal award.** A cost is allocable to the federal award if the goods or services involved are chargeable or assignable to the federal award in accordance with the relative benefit received. This means that the federal grant program derived a benefit in proportion to the funds charged to the program. (2 CFR Sec. 200.405)

For example, if fifty percent (50%) of a teacher's salary is paid with grant funds, then that teacher must spend at least fifty percent (50%) of his/her time on the grant program.

3. **Consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the school entity.**

4. **Conform to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the federal award.**
5. **Consistent treatment.** A cost cannot be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned as an indirect cost under another award.
6. **Adequately documented.** All expenditures must be properly documented.
7. **Be calculated in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in Part 200.**
8. **Not included as a match or cost-share, unless the specific federal program authorizes federal costs to be treated as such.** Some federal program statutes require the nonfederal entity to contribute a certain amount of nonfederal resources to be eligible for the federal program.
9. **Be the net of all applicable credits.** The term “applicable credits” refers to those receipts or reduction of expenditures that operate to offset or reduce expense items allocable to the federal award. Typical examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the state relate to the federal award, they shall be credited to the federal award, either as a cost reduction or a cash refund, as appropriate. (2 CFR Sec. 200.406)

### **Selected Items of Cost**

Subpart E of Part 200 sets forth principles to be applied in establishing the allowability of fifty-five (55) specific cost items (commonly referred to as Selected Items of Cost), at 2 CFR Sec. 200.420-200.475. These specific cost items are listed in the chart below along with the citation to the section of Subpart E addressing the allowability of that item. These principles are in addition to the other general allowability standards, and apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Meeting the specific criteria for a listed item does not by itself mean the cost is allowable, as it may be unallowable under other standards or for other reasons, such as restrictions contained in the terms and conditions of a particular grant or restrictions established by the state or in Joint Operating Committee policy. If an item is unallowable for any of these reasons, federal funds cannot be used to purchase it.

Center personnel responsible for spending federal grant funds and for determining allowability must be familiar with and refer to the Part 200 selected items of cost section. These rules must be followed when charging these specific expenditures to a federal grant. When applicable, employees must check costs against the selected items of cost requirements to ensure the cost is allowable, and also check state, center and program-specific rules.

The selected item of cost addressed in Part 200 includes the following (in alphabetical order):



<b>Item of Cost</b>	<b>Citation of Allowability Rule</b>
Advertising and public relations costs	2 CFR § 200.421
Advisory councils	2 CFR § 200.422
Alcoholic beverages	2 CFR § 200.423
Alumni/ae activities	2 CFR § 200.424
Audit services	2 CFR § 200.425
Bad debts	2 CFR § 200.426
Bonding costs	2 CFR § 200.427
Collection of improper payments	2 CFR § 200.428
Commencement and convocation costs	2 CFR § 200.429
Compensation – personal services	2 CFR § 200.430
Compensation – fringe benefits	2 CFR § 200.431
Conferences	2 CFR § 200.432
Contingency provisions	2 CFR § 200.433
Contributions and donations	2 CFR § 200.434
Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	2 CFR § 200.435
Depreciation	2 CFR § 200.436
Employee health and welfare costs	2 CFR § 200.437
Entertainment costs	2 CFR § 200.438
Equipment and other capital expenditures	2 CFR § 200.439
Exchange rates	2 CFR § 200.440
Fines, penalties, damages and other settlements	2 CFR § 200.441
Fund raising and investment management costs	2 CFR § 200.442
Gains and losses on disposition of depreciable assets	2 CFR § 200.443

General costs of government	2 CFR § 200.444
Goods and services for personal use	2 CFR § 200.445
Idle facilities and idle capacity	2 CFR § 200.446
Insurance and indemnification	2 CFR § 200.447
Intellectual property	2 CFR § 200.448
Interest	2 CFR § 200.449
Lobbying	2 CFR § 200.450
Losses on other awards or contracts	2 CFR § 200.451
Maintenance and repair costs	2 CFR § 200.452
Materials and supplies costs, including costs of computing devices	2 CFR § 200.453
Memberships, subscriptions, and professional activity costs	2 CFR § 200.454
Organization costs	2 CFR § 200.455
Participant support costs	2 CFR § 200.456
Plant and security costs	2 CFR § 200.457
Pre-award costs	2 CFR § 200.458
Professional services costs	2 CFR § 200.459
Proposal costs	2 CFR § 200.460
Publication and printing costs	2 CFR § 200.461
Rearrangement and reconversion costs	2 CFR § 200.462
Recruiting costs	2 CFR § 200.463
Relocation costs of employees	2 CFR § 200.464
Rental costs of real property and equipment	2 CFR § 200.465
Scholarships and student aid costs	2 CFR § 200.466
Selling and marketing costs	2 CFR § 200.467
Specialized service facilities	2 CFR § 200.468
Student activity costs	2 CFR § 200.469

Taxes (including Value Added Tax)	2 CFR § 200.470
Termination costs	2 CFR § 200.471
Training and education costs	2 CFR § 200.472
Transportation costs	2 CFR § 200.473
Travel costs	2 CFR § 200.474
Trustees	2 CFR § 200.475

*Helpful Questions for Determining Whether Costs are Allowable -*

In addition to applying the cost principles and standards described above, center staff involved in expending federal funds should ask the following questions when assessing the allowability of a particular cost:

1. Is the proposed cost allowable under the relevant program?
2. Is the proposed cost consistent with an approved program plan and budget?
3. Is the proposed cost consistent with program specific fiscal rules? For example, the school entity may be required to use federal funds only to supplement the amount of funds available from nonfederal (and possibly other federal) sources, or only as a match for funds from nonfederal sources.
4. Is the proposed cost consistent with EDGAR?
5. Is the proposed cost consistent with specific conditions imposed on the grant (if applicable)?
6. Is the proposed cost consistent with the underlying needs of the program? For example, program funds must benefit the appropriate population of students for which they are allocated. This means that, for instance, funds allocated under Title III of the Elementary and Secondary Education Act (ESEA) governing language instruction programs for Limited English Proficient (LEP) students must only be spent on LEP students and cannot be used to benefit non-LEP students.
7. Will the cost be targeted at addressing specific areas of weakness that are the focus of the program, as indicated by available data?

Any questions related to specific costs should be forwarded to the Business Manager, who shall consult with the school solicitor for clarification as appropriate.

## **Cash Management – Federal Programs**

Generally, the center receives payment from the Pennsylvania Department of Education (PDE) on a reimbursement basis. In some circumstances, the center may receive an advance of federal grant funds. This attachment addresses responsibilities of the center and center staff under those alternative payment methods. In either case, the center shall maintain accounting methods and internal controls and procedures that assure those responsibilities are met.

### **Payment Methods**

#### **Reimbursements -**

The center will initially charge federal grant expenditures to nonfederal funds.

The Business Manager will request reimbursement for actual expenditures incurred under the federal grants quarterly.

Such requests shall be submitted with appropriate documentation and signed by the requestor.

Requests for reimbursements will be approved by the Business Manager.

Reimbursement will be submitted on the appropriate form to the PDE portal. All reimbursements are based on actual disbursements, not on obligations. PDE will process reimbursement requests within the timeframes required for disbursement.

Consistent with state and federal requirements, the center will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for PDE to review upon request.

Reimbursements of actual expenditures do not involve interest calculations.

#### **Advances -**

When the center receives advance payments of federal grant funds, it must minimize the time elapsing between the transfer of funds to the center and the expenditure of those funds on allowable costs of the applicable federal program. (2 CFR Sec. 200.305(b)) The center shall attempt to expend all advances of federal funds within seventy-two (72) hours of receipt.

When applicable, the center shall use existing resources available within a program before requesting additional advances. Such resources include program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds. (2 CFR Sec. 305(b)(5))

The center shall hold federal advance payments in insured, interest-bearing accounts.

The center is permitted to retain for administrative expense up to \$500 per year of interest earned on federal grant cash balances. Regardless of the federal awarding agency, interest earnings exceeding \$500 per year shall be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either

Automated Clearing House (ACH) network or a Fedwire Funds Service payment. (2 CFR Sec. 200.305(b)(9))

Pursuant to federal guidelines, interest earnings shall be calculated from the date that the federal funds are drawn down from the G5 system until the date on which those funds are disbursed by the center. Consistent with state guidelines, interest accruing on total federal grant cash balances shall be calculated on cash balances per grant and applying the actual or average interest rate earned.

Remittance of interest shall be responsibility of the Business Manager.

## Administration of Federal Funds

### Type of Costs, Obligations and Property Management

The center establishes and maintains Joint Operating Committee policies, administrative regulations and procedures on administration of federal funds in federal programs as required by the Uniform Grant Guidance and other federal, state and local laws, regulations and requirements. The center's financial management system includes internal controls and grant management standards in the following areas.

#### Direct and Indirect Costs

**Direct costs** – costs that can be identified specifically with a particular final cost objective, such as a federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

**Indirect costs** – costs incurred for a common or joint purpose benefiting more than one (1) cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs. (2 CFR Sec. 200.405, 200.413)

Identification with the federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs.

Direct and indirect costs shall be determined in accordance with law, regulations, the terms and conditions of the federal award, and the school's (center's) negotiated indirect cost rate.

The school (center) shall develop an indirect cost rate proposal and cost allocation plan in accordance with law, regulations and the terms and conditions of the federal award.

#### Timely Obligation of Funds

**Obligations** – orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the school (center) during the same or a future period.

The following table illustrates when funds must be obligated under federal regulations:

<b>Obligation is for:</b>	<b>Obligation is made:</b>
Acquisition of property	On the date on which the school (center) makes a binding written commitment to acquire the property
Personal services by a school (center) employee	When the services are performed

Personal services by a contractor who is not a school (center) employee	On the date on which the school (center) makes a binding written commitment to obtain the services
Public utility services	When the school (center) receives the services
Travel	When the travel occurs
Rental of property	When the school (center) uses the property
A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR Part 200, Subpart E - Cost Principles	On the first day of the project period

34 CFR §75.707; 34 CFR §76.707

All obligations must occur between the beginning and ending dates of the federal award project, which is known as the period of performance. The period of performance is dictated by law and regulations and will be indicated in the federal award. Specific requirements for carryover funds may be specified in the federal award and must be adhered to by the school (center). (2 CFR Sec. 200.77, 200.309)

The center will handle obligations and carry over of state-administered and direct grants in accordance with state and federal law and regulations, and the terms and conditions of the federal award. Carryover will be calculated and documented by the Business Manager.

The center may exercise an extension of the period of performance under a direct grant in accordance with law, regulations and the terms and conditions of the federal award when written notice is provided to the federal awarding agency at least ten (10) calendar days prior to the end of the period of performance. (2 CFR Sec. 200.308(d)(2))

The Business Manager will decide when an extension of the period of performance is necessary and will recommend that the Administrative Director approve this process.

The Administrative Director will develop the required written notice, including the reasons for the extension and revised period of performance; the notice will be issued no later than ten (10) calendar days prior to the end of the currently documented period of performance in the federal award.

The center must seek approval from the federal awarding agency for an extension of the period of performance when the extension is not contrary to federal law or regulations, and the following conditions apply:

1. The terms and conditions of the federal award prohibit the extension;
2. The extension requires additional federal funds; or
3. The extension involves any change in the approved objectives or scope of the project. (2 CFR Sec. §200.308)

The Business Manager will determine when an extension must be requested for approval by the federal awarding agency, draft the written request and notify the Administrative Director of the requested extension.

### Management of Property Acquired With Federal Funds

#### *Contract and Purchasing Administration -*

The center maintains internal controls, administrative regulations and procedures to ensure that contractors deliver goods and services in accordance with the terms, conditions and specifications of the designated contract, purchase order or requisition.

#### *Property Classifications -*

Property shall be classified as **equipment, supplies, computing devices and capital assets** as defined and specified in accordance with law, regulations and Joint Operating Committee policy. (Pol. 622)

#### *Inventory Control/Management -*

All property purchased with federal funds, regardless of cost, will be inventoried as a safeguard.

Inventory will be received by the department or program requesting the item; designated staff will inspect the property, compare it to the applicable purchase order or requisition, and ensure it is appropriately logged and tagged in the center's property management system.

Items acquired will be physically labeled by source of funding and acquisition date.

Inventory records of equipment and computing devices must be current and available for review and audit, and include the following information:

1. Description of the item, including any manufacturer's model number.
2. Manufacturer's serial number or other identification number.
3. Identification of funding source.
4. Acquisition date and unit cost.
5. Source of items, such as company name.
6. Percentage of federal funds used in the purchase.
7. Present location, use, condition of item, and date information was reported.
8. Pertinent information on the ultimate transfer, replacement or disposition of the item and sale price of the property.

Inventory will be updated as items are sold, lost or stolen, or cannot be repaired, and new items are purchased.



### *Physical Inventory -*

Physical inventory of property will be completed by designated center staff in accordance with applicable federal and state law and regulation and Joint Operating Committee policy. (Pol. 622, 706)

The physical inventory of items will be conducted annually, and the results will be reconciled with the inventory records and reported to the federal awarding agency.

### *Maintenance -*

The center establishes adequate maintenance procedures to ensure that property is maintained in good condition in accordance with law, regulation and Joint Operating Committee policy. (Pol. 704, 708, 710)

### *Safeguards -*

The center ensures that adequate safeguards are in place to prevent loss, damage or theft of property:

1. Any loss, damage or theft will be reported to the Administrative Director, and investigated and fully documented, and may be reported to local law enforcement.
2. If stolen items are not recovered, the center will submit copies of the investigative report and insurance claim to the federal awarding agency.
3. The center may be responsible for replacing or repairing lost, damaged, destroyed or stolen items.
4. Replaced equipment is property of the originally funded program and should be inventoried accordingly.
5. Center property may only be loaned in accordance with Joint Operating Committee policy and administrative regulations. (Pol. 707, 708, 710)

### *Disposition of Property Acquired with Federal Funds –*

When the center determines that real property, including land, land improvements structures and accessories thereto, acquired under a federal award is no longer needed for the originally authorized purpose, the center must obtain disposition instructions from the federal awarding agency or pass-through entity administering the program, in accordance with applicable law and regulations. (2 CFR Sec. 200.311)

When the center determines that equipment or supplies acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Administrative Director will contact the federal awarding agency or pass-through entity administering the program to obtain disposition instructions, based on the fair market value of the equipment or supplies.

Generally, items with a fair market value of \$5,000 or less that are no longer effective may be retained, sold, purged, or transferred to the center. For items with a fair market value greater than \$5,000, the federal awarding agency is entitled to the federal share of the current market value or sales proceeds.

If the center will be replacing the equipment or supplies, the school (center) may use the existing equipment or supplies as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

The Administrative Director will be responsible for contacting the federal awarding agency and determining the process for disposition of equipment or supplies.

The center may use the following methods in disposing of unnecessary equipment or supplies acquired with federal funds:

- Public auction and/or online sale – generally conducted by a licensed auctioneer.

- Salvage – scrap sold to local dealers.

- Negotiated sale – normally used when disposing of items of substantial value.

- Sealed bid – normally used for items of substantial value or unique qualities.

- Pre-priced sale – large quantities of obsolete or surplus equipment or supplies may be sold by this method.

- Donation to charitable organizations, for equipment or supplies with little to no value.

- Disposition to trash for equipment or supplies with no value.

The Business Manager will be responsible for maintaining records of obsolete and surplus property disposed of, and will report to the federal awarding agency when required.

## **Procurement – Federal Programs**

This document is intended to integrate standard center purchasing procedures with additional requirements applicable to procurements that are subject to the federal Uniform Grant Guidance regulations and/or U.S. Department of Agriculture (USDA) regulations governing school food service programs. The center maintains the following purchasing procedures, in accordance with federal and state laws, regulations and Joint Operating Committee policy. (2 CFR 200.318-200.325; 7 CFR 210.16, 210.19, 210.21, 215.14a, 220.16; 24 P.S. 120, 24 P.S. 504, 24 P.S. 508, 24 P.S. 521, 24 P.S. 607, 24 P.S. 609, 24 P.S. 751, 24 P.S. 807.1; 62 Pa. C.S.A. 4601 et seq; Pol. 610, 611, 612, 613, 808)

### **Responsibility for Purchasing**

The Joint Operating Committee has outlined standard center purchasing responsibility, methods of purchasing, price quotations and bid requirements in the following Joint Operating Committee policies and their accompanying administrative regulations or procedures:

Policy 610. Purchases Subject to Bid/Quotation

Policy 611. Purchases Budgeted

Policy 612. Purchases Not Budgeted

Policy 613. Cooperative Purchasing

### **Purchase Methods**

When a request for purchase of equipment, supplies or services has been submitted and approved as outlined below, the procurement method to be used will be determined based on the total cost of the purchase as further outlined below. This procedure outlines how the cost thresholds for determining when the quote or formal bidding procedures that are required by state law as reflected in Policy 610 must be modified when making purchases for federally funded purposes to which the Uniform Grant Guidance or USDA regulations apply, so as to comply with both state and federal requirements. At each point where requirements for food service-related procurement under USDA regulations differ, a note will refer to the Food Service Program Notes at the end of this procedure. Final determination of which purchasing procedures are to be applied is delegated to the Business Manager under the authority of the Joint Operating Committee.

### **Standard Procurement Documents and Purchase Request Process**

The center shall use purchase orders for purchase requests in accordance with the applicable purchase method.

The center shall use paper and electronic purchasing records, which are pre-numbered and are accessible to designated purchasing staff in the Business Office.

Purchase requests by an employee must be submitted to the business office. Purchase of all budgeted items or items approved by the administrator and must be initiated by use of a purchase order or requisition submitted to the Business Manager.

Purchase orders and requisitions shall contain information including, but not limited to:

1. Description of the services to be performed or goods to be delivered.
2. Location of where services will be performed or goods will be delivered.
3. Appropriate dates of service or delivery.

Documentation on purchase orders and requisitions shall be maintained in accordance with the center's Records Management Policy and records retention schedule. (Pol. 800)

Contracts shall be reviewed by the Business Manager prior to submission to the Joint Operating Committee for approval.

Contracts to which the Uniform Grant Guidance apply shall contain the clauses specified in Appendix II to 2 CFR Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), when applicable.

#### Micro-Purchases Not Requiring Quotes or Bidding (up to \$3,500)

For purposes of this procedure, **micro-purchase** means a purchase of equipment, supplies or services for use in federally funded programs using simplified acquisition procedures, the aggregate amount of which does not exceed a base amount of \$3,500. The micro-purchase dollar threshold is adjusted periodically by the federal government, and the threshold most recently established and published in the Federal Register shall apply if other than \$3,500.(48 CFR Subpart 2.1)

**Note: The micro-purchase maximum for federal purposes is lower than the amount below which the School Code allows purchase for nonfederal purposes to be made without obtaining at least three (3) written or telephonic quotes or using formal competitive bidding.**

The micro-purchase method is used in order to expedite the completion of its lowest dollar small purchase transactions and minimize the associated administrative burden and cost. Procurement by micro-purchase is the acquisition of equipment, supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

To the extent practicable, the center distributes micro-purchases equitably among qualified suppliers when the same or materially interchangeable products are identified and such suppliers offer effectively equivalent rates, prices and other terms. The Business Manager will be responsible to determine the equitable distribution of micro-purchases.

Micro-purchases may be awarded without soliciting competitive quotations if the center considers the price to be reasonable. The center will maintain evidence of this reasonableness in the records of all micro-purchases. **Reasonable** means that sound business practices were followed and the purchase is comparable to market prices for the geographic area. Such determinations of reasonableness may include comparison of the price to previous purchases of the same item or comparison of the price of items similar to the item being purchased.

Even if the cost of a purchase qualifies it as a micro-purchase, bidding or small purchase procedures may be used optionally when those procedures may result in cost savings.

#### Small Purchase Procedures (between \$3,500 and \$19,400)

For purposes of this procedure, **small purchase procedures** are those relatively simple and informal procurement methods for securing equipment, services, or supplies that cost more than the amount qualifying as a micro-purchase and do not cost \$19,400 or more. Small purchase procedures cannot be used for purchases of equipment or supplies or for construction, repair or maintenance services costing \$19,400 or more because the School Code requires formal competitive bidding at that level of cost.

The base amount at which bidding is required under state law is adjusted for inflation annually, and the amount most recently established and published in the Pennsylvania Bulletin shall apply if other than \$19,400. (24 P.S. Sec. 120)

Because state law does not require bidding for the purchase of services other than construction, maintenance or repairs on school facilities regardless of total cost, small purchase procedures, including a request for proposal (RFP) procedure, may be used for procurement of such other services except when the estimated total cost will be at or over the federal threshold at which formal competitive bidding is required (\$150,000).

If small purchase procedures are used, written or telephonic price or rate quotations are obtained from at least three (3) qualified sources and records of quotes are maintained as provided in Policy 610. (Pol. 610)

#### Formal Competitive Bidding (\$19,400 or more)

##### **Publicly Solicited Sealed Competitive Bids:**

For purchases of equipment or supplies, or of services for construction, maintenance or repairs of school facilities, sealed competitive bids are publicly solicited and awarded to the lowest responsive and responsible bidder as provided in Policy 610 when the total cost is estimated to be \$19,400 or more. (Pol. 610)

**Note: The amount at which formal competitive bidding is required by federal regulations is much higher than the base amount at which the School Code requires competitive bidding. Therefore, the lower base amount specified by the School Code, as annually adjusted, is used to determine when bidding will be used for purchases of equipment or**

**supplies, or for obtaining services for construction, maintenance or repairs on school facilities. (24 P.S. Sec. 120)**

State law does not require bidding for the purchase of services other than construction, maintenance or repairs on school facilities regardless of total cost. For procurement of such other services for federally funded purposes to which the Uniform Grant Guidance applies, formal competitive bidding will be used when the estimated total cost will be at or over the federal threshold of \$150,000.

The federal competitive bidding dollar threshold is adjusted periodically by the federal government, and the threshold most recently established and published in the Federal Register shall apply if other than \$150,000. (48 CFR Subpart 2.1)

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

Competitive Proposals

State law does not require public school entities to solicit competitive bids for services other than construction, repairs or maintenance of school facilities, for which competitive bidding is required if the cost will be a base amount of \$19,400 or more. State law allows competitive proposals relating to work on facilities in lieu of bidding only in the context of guaranteed energy savings contracts.

Federal regulations allow the use of competitive proposals as an alternative when formal bidding would otherwise be required only to procure architectural and engineering services. Other types of services for federally funded purposes to which the Uniform Grant Guidance applies, professional or otherwise, must be procured using competitive bidding when the cost would meet or exceed the federal threshold for competitive bidding (\$150,000).

In the case of services other than for construction, repairs or maintenance of school facilities costing less than that threshold, the center may use small purchase procedures or micro-purchase procedures as applicable based on total cost. A request for proposal (RFP) process can also meet or exceed the small purchase competition requirements under state law and Policy 610 for the acquisition of services other than for construction, repairs or maintenance of school facilities, and can be used if the total cost will be less than \$150,000.

When permitted, the technique of competitive proposals is normally conducted with more than one (1) source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The center shall comply with other applicable state and federal law and regulations, Joint Operating Committee policy and administrative regulations regarding purchasing; the center may consult with the center solicitor

or other qualified counsel in determining the required process for purchasing through competitive proposals when necessary.

If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
2. Proposals must be solicited from an adequate number of qualified sources.
3. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Competitive proposals shall be evaluated by the Business Manager based on factors including but not limited to:

Cost.

Experience of contractor.

Availability.

Personnel qualifications.

Financial stability.

Minority business, women's business enterprise, or labor surplus area firm status.

Project management expertise.

Understanding of center needs.

Evaluations shall be completed in a timely manner, documented and shall be reviewed by the Business Manager.

### **Contract/Price Analysis:**

The center performs a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. (2 CFR Sec. 200.323(a)).

A **cost analysis** generally means evaluating the separate cost elements that make up the total price, while a **price analysis** means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the Administrative Director or designee must come to an independent estimate prior to receiving bids or proposals. (2 CFR Sec. 200.323(a)). As part of the analysis, the Administrative Director or designee will enact established business practices which may include evaluation of similar prior procurements and a review process.

When performing a cost analysis, the Business Manager negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (2 CFR Sec. 200.323(b)).

#### Noncompetitive Proposals (Sole Sourcing)

**Procurement by noncompetitive proposals** means procurement through solicitation of a proposal from only one (1) source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. An **emergency** exists whenever the time required for the Joint Operating Committee to act in accordance with regular procedures would endanger life or property or threaten continuance of existing school classes.
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the center.
4. After solicitation of a number of sources, the center determines the competition is inadequate.

In addition to standard procurement policy and procedures, the center will document the grounds for using the noncompetitive method in lieu of an otherwise required competitive method of procurement, which may include written confirmation from the contractor as the sole source of the item. Documentation must be submitted to and maintained by the Business Office.

All noncompetitive proposals will ultimately be approved by the Joint Operating Committee. The center may utilize legal advice from the solicitor regarding noncompetitive proposals.

A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$150,000.



### **Full and Open Competition**

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR Sec. 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies.
4. Noncompetitive contracts to consultants that are on retainer contracts.
5. Organizational conflicts of interest.
6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.
7. Any arbitrary action in the procurement process.

EDGAR further requires the following to ensure adequate competition.

### **Minority Businesses, Women’s Business Enterprises, Labor Surplus Area Firms**

The center must take necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (2 CFR Sec. 200.321)

1. Placing qualified small and minority business and women’s business enterprises on solicitation lists.
2. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
3. Dividing total purchasing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women’s business enterprises.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises.

5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the prime contractor, if subcontracts are let, to take the affirmative steps listed above.

### **Geographical Preferences Prohibited**

The center must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

### **Prequalified Lists**

The center must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the center must not preclude potential bidders from qualifying during the solicitation period.

### **Solicitation Language**

The center must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

### **Avoiding Acquisition of Unnecessary or Duplicative Items**

The center must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration must be given to consolidating or breaking out procurements to obtain a more economical purchase; and, where appropriate, an analysis must be made of leases versus

purchase alternatives, and any other appropriate analysis to determine the most economical approach.

These considerations are given as part of the process to determine the allowability of each purchase made with federal funds. Such considerations are accessible in the procedure attached to Policy 626: Allowability of Costs – Federal Programs.

### **Use of Intergovernmental Agreements and Cooperative Purchasing**

To foster greater economy and efficiency, the center enters into state and local intergovernmental agreements where appropriate for cooperative purchasing or use of common or shared goods and services, as permitted by the Intergovernmental Cooperation Act and the Commonwealth Procurement Code. (Pol. 613; 53 Pa. C.S. Ch. 23; 62 Pa. C.S. Ch. 19)

When procuring supplies or services for federally funded purposes to which the Uniform Grant Guidance applies, the center shall verify that the organization conducting the procurement pursuant to such agreements complies with the applicable requirements and standards of the Uniform Grant Guidance as outlined in this procedure.

### **Use of Federal Excess and Surplus Property**

The center considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

### **Debarment and Suspension**

The center awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The center may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the center verifies that the contractor with whom the center intends to do business is not excluded or disqualified. (2 CFR Part 200, Appendix II, and 2 CFR Sec. 180.220 and 180.300).

All successful contractors must provide written certification that they have not been suspended or debarred from federal projects. The Business Manager will be responsible for verification. Such verification may include accessing the online federal System for Award Management (SAM) to determine whether any relevant party is subject to any suspension or debarment restrictions.

### **Maintenance of Procurement Records**

The center must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of

procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

Maintenance of records of procurement will be governed by Joint Operating Committee policy 800 Records Management and established administrative regulations. (Pol. 800)

### **Time and Materials Contracts**

The center may use a time and materials type contract only: (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. **Time and materials type contract** means a contract whose cost to the center is the sum of: the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the center must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

### **Settlements of Issues Arising Out of Procurements**

The center alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the center of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

### **Protest Procedures to Resolve Dispute**

The center maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Protest procedures will be acted on in accordance with current state law and regulations, established center administrative regulations and the advice of the solicitor. (Pol. 610)

### **Food Service Program Notes:**

#### *Exemption from Bidding for Perishable Food Items -*

The School Code exempts purchases of perishable food items from bidding requirements. Bidding for perishable food items is required only if the cost would be at or over the federal threshold at which formal competitive bidding is required (\$150,000). Small purchase procedures may be used for purchases below \$150,000, or micro-purchase procedures for

purchases below \$3,500. Use of bidding should be considered as an option if it is feasible and likely to result in cost savings. (24 P.S. Sec. 504(d))

#### *Geographic Preferences -*

The center is permitted to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When a geographic preference is applied, the center has discretion to determine the local area to which the geographic preference option will be applied.

**Unprocessed locally grown or locally raised agricultural products** means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two (2) or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk. (7 CFR Sec. 210.21, 215.14a, 220.16)

#### *Buy American -*

The center shall purchase, to the maximum extent practicable, domestic commodities or products for food service purposes. The term **domestic commodity or product** means: (7 CFR Sec. 210.21, 220.16)

1. An agricultural commodity that is produced in the United States; and
2. A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

#### *Mandatory Contract Clauses -*

The following provisions shall be included in all cost reimbursable contracts for food services purchases, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: (7 CFR Sec. 210.21, 215.14a, 220.16)

1. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;
2. (a) The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be

paid from the nonprofit school food service account); or

(b) The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

3. The contractor's determination of its allowable costs must be made in compliance with the applicable departmental and program regulations and Office of Management and Budget cost circulars;
4. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the state agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
5. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and
6. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the state agency, or the department.

#### *Contracts with Food Service Management Companies -*

Procedures for selecting and contracting with a food service management company (FSMC) shall comply with guidance provided by the Pennsylvania Department of Education, Division of Food and Nutrition, including standard forms, procedures and timelines for solicitation, selection and approval of proposals and contracts. (7 CFR Sec. 210.16, 210.19, 210.21, 215.14a, 220.16)

#### *Pre-Plated Meals -*

Procedures for selecting and contracting with contractors of pre-plated meals shall comply with guidance provided by the Pennsylvania Department of Education, Division of Food and Nutrition, including standard forms, procedures and timelines for solicitation, selection and approval of proposals and contracts. (7 CFR Sec. 210.16, 210.19, 210.21, 220.16)

## **Grant Subrecipient Monitoring Procedures – Federal Programs**

In the event the center disperses federal funds received through a federal award to other entities and assigns responsibilities to the outside entity to conduct a portion of the work, the center shall be responsible for determining, on a case-by-case basis, whether the agreement with such entity places the outside entity in the role of a subrecipient receiving a subaward of federal funding, or the role of a contractor.

If the center grants subawards of federal funding to other entities as subrecipients, the center shall be responsible for:

1. Evaluating the entity for risk of noncompliance to determine appropriate monitoring practices.
2. Monitoring the subrecipient entity's implementation to ensure compliance with federal, state and local laws, conditions of the federal funding award, and Joint Operating Committee policy and procedures.
3. Notifying the subrecipient entity of identified deficiencies found during the monitoring process and ensuring that identified deficiencies are corrected.
4. Documenting and retaining records on subrecipient identification, notification, evaluation, monitoring and corrective actions taken.

### Definitions

For purposes of policies and procedures related to federal programs, the following definitions shall apply:

**Contract** – a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used here does not include a legal instrument, even if the entity considers it a contract, when the substance of the transaction meets the definition of a federal program award or subaward. (2 CFR 200.22)

**Contractor** – an entity that receives a contract, as defined in law and regulations, by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. (2 CFR 200.23)

**Pass-through entity** – a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. The center serves as the pass-through entity in cases where it awards federal funding to a subrecipient as defined in this procedure. (2 CFR 200.74)

**Subaward** – an award provided by a pass-through entity to a subrecipient in order to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (2 CFR 200.92)

**Subrecipient** – a non-federal entity that receives a subaward to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. (A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.) (2 CFR 200.93)

#### Subrecipient Versus Contractor

The center must determine, on a case-by-case basis, whether an entity receiving funds from the center as part of a federal funding program serves in a role of subrecipient or contractor. (2 CFR 200.330)

The Administrative Director shall be responsible for analyzing the criteria listed in the chart below and evaluating the relationship with the entity based on the substance of the legal agreement, rather than the form of the agreement. The Administrative Director may consult with the center solicitor or other qualified counsel in making such determination.

<b>Subrecipient</b>	<b>Contractor</b>
Creates a Federal assistance relationship	Purpose is to obtain goods and services for the non-Federal entity's own use and creates a procurement relationship
Determines who is eligible to receive what Federal assistance	Provides the goods and services within normal business operations
Has its performance measured in relation to whether objectives of a Federal program were met	Provides similar goods or services to many different purchasers
Has responsibility for programmatic decision making	Normally operates in a competitive environment
Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and	Provides goods or services that are ancillary to the operation of the Federal program; and
In accordance with its agreement, uses the Federal funds to carry out 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 (PTE)	Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons

\*chart provided by © American Institute of CPAs (AICPA)

The center shall notify subrecipients that they have been identified as a subrecipient and that the funding qualifies as a subaward. The center shall provide the subrecipient with the following information as specified at 2 CFR Sec. 200.331(a) regarding the federal funding award, and any subsequent changes:

- 1) Federal Award Identification information, including:
  - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
  - (ii) Subrecipient's unique entity identifier;



- (iii) Federal Award Identification Number (FAIN);
  - (iv) Federal Award Date (see §200.39 federal award date) of award to the recipient by the federal agency;
  - (v) Subaward Period of Performance Start and End Date;
  - (vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
  - (vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;
  - (viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
  - (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
  - (x) Name of federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity;
  - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each federal award and the CFDA number at time of disbursement;
  - (xii) Identification of whether the award is R&D; and
  - (xiii) Indirect cost rate for the federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).
- 2) All requirements imposed by the pass-through entity on the subrecipient so that the federal award is used in accordance with federal statutes, regulations and the terms and conditions of the federal award;
  - 3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the federal awarding agency including identification of any required financial and performance reports;
  - 4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f);
  - 5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through

entity to meet the requirements of this part; and

- 6) Appropriate terms and conditions concerning closeout of the subaward.

#### Evaluation of Risk

The center shall evaluate each subrecipient's risk of noncompliance with law, regulations and the terms and conditions of the subaward to determine appropriate monitoring practices. (2 CFR 200.331)

The Administrative or designee shall be responsible for evaluating risk based on the following factors:

1. The subrecipient's prior experience with the same or similar subawards;
2. The results of previous audits, including whether the subrecipient receives a single audit and the extent to which the same or similar subaward has been audited;
3. Whether the subrecipient has new personnel, or new or substantially changed systems and processes;
4. The extent and results of any federal award agency's monitoring of the subrecipient.

The Administrative Director or designee shall request adequate documentation from the subrecipient to conduct the evaluation of risk; such documentation may include, but shall not be limited to,

audit reports

financial reports

policies and procedures

detailed descriptions or users' guides of current systems and processes.

The center shall evaluate subrecipients for risk of noncompliance as specified in the legal agreement or contract.

Based on the results of the risk evaluation, the center may consider imposing specific conditions on implementation of the subaward, in accordance with applicable law and regulations. (2 CFR 200.207, 200.331)

#### Monitoring

The center shall monitor the implementation and activities of each subrecipient as necessary to ensure that the subaward is used for authorized purposes, in accordance with law, regulations and the terms and conditions of the subaward. The center shall notify subrecipients of monitoring

requirements, and may provide technical assistance to subrecipients in complying with monitoring requirements.

As part of the monitoring process, the center shall complete the following steps: (2 CFR 200.331)

1. Review financial and performance reports required by the center.
2. Follow-up and ensure that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the subaward detected during monitoring through audits, on-site reviews and other means.
3. Issue a management decision for audit findings pertaining to the subaward provided to the subrecipient, in accordance with applicable law and regulations. (2 CFR 200.521)

*Monitoring –*

The Administrative Director or designee shall be responsible for monitoring of subrecipients. Monitoring activities may include, but shall not be limited to:

1. Review of progress reports, financial reports and data quality.
2. On-site visits.
3. Review of federal or state debarment lists.
4. Review of other agreed-upon procedures specified in the legal agreement or contract. (2 CFR 200.425)

The center shall verify that subrecipients are audited as required by applicable law and regulations. (2 CFR 200.331, 2 CFR 200.500-200.521, Pol. 619)

*Follow-Up Actions –*

The Administrative Director or designee shall provide subrecipients with written documentation detailing their monitoring results and listing any identified deficiencies. The center shall consider whether the results of monitoring indicate the need to revise existing center policy and procedures. (2 CFR 200.331)

The center shall require subrecipients to take immediate action on issues involving ineligible or illegal use of federal funding, and notify the center of corrective action taken.

The center shall require subrecipients to develop a corrective action plan to address other identified deficiencies or noncompliance issues; such plan shall be submitted to the as specified in the agreed-upon procedures,

and the center shall evaluate and monitor the activities taken by the subrecipient under the corrective action plan. The center may provide technical assistance and/or training to subrecipients in complying with corrective action requirements.

The Administrative Director or designee shall maintain all documentation on monitoring of subrecipients and corrective action taken during the monitoring process.

The center shall report issues of noncompliance to the appropriate federal agency where required by law, regulations, or requirements of the federal funding program.

#### *Remedies for Noncompliance –*

When monitoring activities identify issues of noncompliance that are not addressed through corrective action, the center may take the following actions: (2 CFR 200.331, 200.338)

1. Impose specific conditions on the subrecipient, in accordance with applicable law and regulations. (2 CFR 200.207)
2. Temporarily withhold cash payments, in accordance with applicable law and regulations.
3. Disallow or deny use of funds for all or part of the cost of the activity or action not in compliance.
4. Wholly or partially suspend or terminate the agreement for the federal award.
5. Recommend that the federal agency initiate suspension and debarment proceedings.
6. Withhold further awards or agreements for the project or program.
7. Take other remedies legally available, in consultation with the center solicitor or other qualified counsel.

#### Record Retention

The Administrative Director or designee shall ensure that all documentation regarding subrecipient identification, notification, evaluation, monitoring activities and corrective action is maintained in accordance with Joint Operating Committee policy and procedures. (Pol. 800)

Records shall be retained in accordance with applicable law, regulations, specific requirements of the federal program and the center's records retention schedule. (2 CFR 200.333-200.337, Pol. 800)