

LV-CLARK COUNTY LIBRARY DISTRICT FOUNDATION



Federal Grants Procurement Manual

October 16, 2023

7060 West Windmill Lane

Las Vegas, NV 89113

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I. INTRODUCTION

Las Vegas Clark County Library District Foundation (LVCCLDF) intends to use this Procurement Manual to support the administration of its federal grants. This Procurement Manual establishes policies and procedures for procurement of goods and services for federal awards. LVCCLDF designates this Procurement Manual as the prime resource for Grants Specialists in the administration and management of the procurement process for their respective grant programs. This Procurement Manual lists and explains relevant federal laws and policies regarding procurement for federal grant administration and contains sample forms most commonly used throughout the procurement lifecycle.

The Procurement Manual organizes the information in the following manner:

- ✓ Section II: Background about the procurement function
- ✓ Section III: A glossary of terms related to procurement for federal grants
- ✓ Section IV: Rules concerning federal grant procurement
- ✓ Section V: Information on managing procurements through the lifecycle of the federal award

Additionally, in Section VI, the Appendices include examples of a variety of relevant forms and other sample documents commonly used for managing procurement for federal grants.

▪ EFFECTIVE DATE

LVCCLDF will implement the procurement standards in 2 CFR Part 200 for fiscal years beginning on January 1, 2024 which is on or after December 26, 2017, as required.

▪ REMINDER TO EMPLOYEES

Employees must follow our documented procurement procedures that conform to applicable Federal, state, local and tribal law and the procurement standards in the Uniform Guidance when making purchases with federal funds.

Failure to follow our policies regarding federal requirements can result in a wide range of sanctions for the organization, including disallowed costs, denied reimbursement requests, debarment of our organization from all federal funding, including federal student aid, and, in some circumstances, criminal charges could result. Therefore, it is critically important to our organization that the procurement policies are followed carefully. Violation of this policy may result in disciplinary action, including termination of employment.

II. ABOUT THE PROCUREMENT PROCEDURE

A. FOUNDATION BOARD OF DIRECTORS

▪ DESCRIPTION OF PROCUREMENT OFFICE

The LVCCCLDF is a sole and separate entity that currently adheres to many of the policies and procedures as set forth by the LVCCCLDF at this time. However, procurement, grant administration and budgeting are set forth and approved by the LVCCCLDF Board of Directors.

B. RESPONSIBILITIES

▪ OUR RESPONSIBILITIES

As a federal grant recipient, the LVCCCLDF Board of Directors is responsible for the development, approval and administration of the budget. Once the budget is approved, then the Board will assign or contract staff to execute the procurement.

C. KEY CONTACTS

▪ KEY CONTACTS

Title	Phone	Email
JoAnn Prevetti, MBA Development and Government Relations Director	702.507.6179	JoAnn.Prevetti@thelibrarydistrict.org
Fred James Foundation Treasurer	702.249.2272	Fj8014@aol.com
Lashea West Development Coordinator	702.507.6181	Lashea.West@thelibrarydistrict.org
Tamar Hoapili Foundation Chair	702.210.1340	Tamar.Hoapili@cox.com
Briana Martinez Foundation Attorney	702.792.7000	bmartinez@kcnvlaw.com

III. GLOSSARY OF TERMS

Term	Definition
Administrative Requirements	Administrative requirements mean matters common to grants in general, such as financial management, types, and frequency of reports, procurement and property management, and retention of records.
Award	Award means financial assistance that provides support to accomplish a public purpose. Awards include grants and other agreements in the form of money or property instead of money by the Federal Government to an eligible recipient. The term does not include technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and contracts which are required to be entered into and administered under procurement laws and regulations.
Budget Period	Budget Period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
CFR	CFR means the Code of Federal Regulations where federal regulations are cataloged.
Claim	Claim means a written demand by one of the parties to a federal award seeking the payment of money, or an adjustment of the terms and conditions of the federal award or other relief relating to a federal award, or a request for payment that is not in dispute when submitted.
Closeout	Closeout means the process by which a federal awarding agency determines that all applicable administrative actions and all required work of the award was completed by the recipient and federal awarding agency. Closeout includes many actions, including final reporting for the award, disposition of property, and record retention requirements.

Term	Definition
Contract	Contract means, for the purpose of federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award.
Contractor	Contractor means an entity that received a procurement contract as defined in the Uniform Guidance.
Debarment	Debarment means a punitive action taken by a federal agency against an award recipient or contractor. The debarment prohibits participation in procurement contracts and non-procurement transactions such as grants and cooperative agreements.
Disallowed Costs	Disallowed costs mean those charges to a federal award that the federal awarding agency or pass-through entity determines to be unallowable, consistent with the applicable federal statutes, regulations, or the terms and conditions of the federal award.
Draw Down	Drawdown means the action of requesting and receiving grant funds to cover obligated expenditures under the grant.
Excluded Parties	Excluded parties mean persons or parties who are excluded or disqualified from covered transactions such as federal awards or contracts supported by a federal award.

Term	Definition
Expenditures	<p>Expenditures mean charges made to the project or program. The charges may be reported on a cash or accrual basis.</p> <p>For reports prepared on a cash basis, expenditures are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third-party in-kind contributions applied, and the amount of cash advances and payments made to subrecipients.</p> <p>For reports prepared on an accrual basis, expenditures are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.</p>
Grant	<p>Grant means an award of financial assistance where the principal purpose is to carry out a public purpose authorized by a law of the United States and not to procure property or services for the federal awarding agency or pass-through entity's direct benefit or use.</p>
Grant Life Cycle	<p>Grant life cycle means the entire process of grant administration: applying for a grant, receiving a grant, managing a grant, and closing out a grant.</p>
Improper Payment	<p>Improper payment means any payment that should not have been made or that was made in an incorrect amount. Improper payments also include any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received, any payment that does not account for credit for applicable discounts, and any payment where insufficient documentation prevents a reviewer from discerning whether a payment was proper.</p>

Term	Definition
Internal Controls	Internal controls mean the processes implemented by the organization to provide reasonable assurance about the effectiveness and efficiency of operations, reliability of reporting for internal and external use, and compliance with applicable laws and regulations so that grant resources are protected from fraud and waste.
Micro-purchase	Micro-purchase means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-federal entity's small purchases as defined in § 200.320. The micro-purchase threshold for procurement activities administered under federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, currently, \$10,0000, unless a higher threshold is requested by the non-federal entity as described in § 200.320 and approved by the cognizant agency for indirect costs as required.
Non-Federal Entity	Non-federal entity means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that administers a federal award as a recipient or subrecipient.
Obligations	Obligations, now called financial obligations, when referencing a recipient's or subrecipient's use of funds under a federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment during the same or a future period.
Pass-through Entity	Pass-through entity (PTE) means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.
Period of Performance	Period of performance means the total estimated time interval between the start of an initial federal award and the planned end date, which may include one or more funded portions or budget periods. Identification of the period of performance in the federal award does not commit the awarding agency to fund the award beyond the currently approved budget period.

Term	Definition
Programmatic Requirements	Programmatic requirements mean matters relevant on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.
Questioned Cost	Questioned cost means a cost that is questioned by the auditor because of an audit finding which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a federal award, including for funds used to match federal funds, where the costs, at the time of the audit, are not supported by adequate documentation; or where the costs incurred appear unreasonable.
Recipient	Recipient means a non-federal entity awarded a federal grant and held accountable for the use of the funds provided. The recipient is the entire legal entity, even if only a particular component of the entity is designated in the award document.
RFP	RFP means a request for proposal from a contractor.
Selected Items of Cost	Selected items of cost mean an itemized list over of allowable costs contained 2 CFR Part 200 Subsections §200.420-200.476.
Simplified Acquisition Threshold	Simplified acquisition threshold means the dollar amount below which a non-federal entity may purchase property or services using small purchase methods (see § 200.320). Non-federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The non-federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold, currently \$250,000. Local government laws on purchasing may further limit this threshold.

Term	Definition
Subaward	Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor.
Subrecipient	Subrecipients are usually but not limited to non-federal entities that receive a subaward from a pass-through entity to carry out part of a federal award but do not include an individual that is a beneficiary of such award.
Suspension	<p>Suspension means:</p> <p>(1) Temporary withdrawal of the authority to obligate grant funds pending corrective action by the recipient or subrecipient or a decision to terminate the grant</p> <p>(2) An action was taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.</p> <p>(3) An action by a federal awarding agency that temporarily withdraws federal sponsorship under an award, pending corrective action by the recipient, or pending a decision to terminate the award by the federal awarding agency.</p>
Uniform Guidance	Uniform Guidance means the set of federal regulations contained in 2 CFR Part 200, also known as the “Super Circular.”
Unliquidated Obligations	Unliquidated obligations mean for financial reports prepared on a cash basis; obligations incurred by the non-federal entity that has not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-federal entity for which an expenditure has not been recorded.

Term	Definition
Unobligated Balance	Unobligated balance means the amount of funds under a Federal award that the non-federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-federal entity's unliquidated obligations and expenditures of funds under the federal award from the cumulative amount of the funds that the federal awarding agency or pass-through entity authorized the non-federal entity to obligate

IV. FEDERAL GRANT PROCUREMENT RULES

The Federal Government provides rules for how all grantees must spend, track, and report on federal funds. These rules are located in 2 CFR Chapter I, Part 200, titled the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, also known as the “Uniform Guidance.” For procurement, all non-federal entities must follow 2 CFR Part 200 Subsections §200.318 General procurement standards through §200.327 Contract provisions

In this Procurement Manual, the set of federal rules particularly relevant to procurement are divided into four major categories:

- General procurement standards
- Standards of Conduct
- Other rules

A. GENERAL PROCUREMENT STANDARDS

The general procurement standards for grant management can be found in [2 CFR Part 200, Subpart D Subsection §200.318](#) accessible online.

The general procurement standards cover a variety of topics, including:

Oversight Responsibilities:	Our organization is required to maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
Use of Good Judgement:	Our organization is required to use good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements.

B. STANDARDS OF CONDUCT

The general procurement standards for grant management in 2 CFR Part 200, Subpart D Subsection §200.318 require written Standards of Conduct for non-federal entities to avoid conflicts of interest related to their federal awards and at a minimum govern the performance of its employees engaged in the selection, award and administration of contracts supported by federal awards.

We take ethical behavior seriously at our organization as failure to follow our policies regarding federal requirements can result in a wide range of sanctions for the organization, including disallowed costs, denied reimbursement requests, debarment of our organization from all federal funding, including federal student aid and, in some circumstances, criminal charges could result.

The Library's Standards of Conduct is located in the employee handbook Chapter III, Section C, Page 13.

C. OTHER RULES

Other rules governing grants administration are found in various sections of the Code of Federal Regulations.

▪ COST PRINCIPLES

Cost principles govern how LVCCCLDF can spend federal grant funding. Federal cost principles can be found in [2 CFR Part 200 Subpart E](#), accessible online.

These laws discuss allowable costs, direct and indirect costs, reasonable costs, and unallowable costs associated with grant administration. The cost principles reference specific items, such as compensation for personal services, equipment, or advertising, in the [Selected Items of Cost in Subsections §200.420-200.476](#).

All procurement actions for contracts supported by federal awards must also follow the cost principles and be:

- Necessary and reasonable for the performance of the federal award
- Conform to any limitations or exclusions outlined in the cost principles or the terms and conditions of the federal award
- Adequately documented

▪ DEBARMENT AND SUSPENSION

2 CFR 180, *OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)*, governs debarment and suspension. Debarment and suspension can occur if federal grantees use federal funds wastefully or fraudulently. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise

excluded from or ineligible for participation in federal assistance programs or activities. See more online [2 CFR Part 180](#).

- **CONTRACT PROVISIONS**

LVCCCLDF contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

For an in-depth discussion of these contract provisions, reference [2 CFR Part 200 Appendix II](#) accessible online.

Other federal agencies may also have requirements for contract provisions contained in the terms and conditions of the federal award.

The General Services Director oversees all procurement policies. The procurement policy is located [here](#).

- **OTHER RULES**

In addition to the requirements in the Uniform Guidance, individual federal agencies also supply guidance for grant administration. Agency-specific rules are found under the federal agency's CFR title. For example, administration of Head Start grants under the Department of Health and Human Services are found under 45 CFR Part 1301.

To find CFR titles for agency-specific grant administration rules, look for the grant administration manual or agency CFR title referenced in the award terms and conditions or search the CFR online at the US Government Printing Office (GPO) [website](#). In the past, a chart of individual federal agencies was provided by OMB.

This chart is currently archived at https://obamawhitehouse.archives.gov/omb/grants_chart/.

V. PROCUREMENT LIFECYCLE

A. GETTING STARTED

▪ REQUESTING A PURCHASE

Consistent with organizational practice, staff may request the purchase of goods and services that required processing by the LVCCCLDF General Services Office by creating a purchase requisition, receiving required approvals for the purchase, and then submitting the purchase requisition to the General Services Department. The General Services Director oversees all procurement policies. The procurement policy is located in the Library's Purchasing Policy.

Purchase requisition forms must be used for all purchases over: any goods or services over \$75,000 and must be presented to and approved by the Foundation Board of Directors as well as reviewed by LCFFLCF legal counsel.

All contracts must be approved by the Board of Directors for the LVCCCLDF and reviewed by their attorney prior to contract execution.

The most current Purchasing Policy that the LVVCLDF currently adheres to can be found [here](#):

▪ AUTHORIZING A PURCHASE—

All purchase requisitions should be reviewed for approval by a designated official before submittal to the Procurement Office to ensure the requisition is necessary for the project or program, reasonable given the circumstances in place at the time the decision is made, and allowable to be paid for with federal funds and within the budget for the project or program.

We use the following signatory authorization matrix in Appendix B for approvals of Purchase Requisition Forms.

The Development and Government Relations Director will send Purchase Requisition forms to counsel for review. After review, the Development and Government Relations Director present the form to the Board for approval

▪ REVIEWING A PURCHASE

Once an appropriate designated official approves the purchase requisition, the purchasing agent shall review the terms and conditions of the funding agreement to ensure that there are not additional procurement conditions related to that award that would affect the allowability of the procurement.

Next, the purchasing agent will review the scope of work to determine the proper classification of the procurement as a subaward or a contract consistent with § 200.331 Subrecipient and contractor determinations. A pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. (See Appendix I.

Subawards must have prior approval of the funding agency and are not procurement transactions.)

Finally, the purchasing agent will determine the approximate price of the procurement and follow the appropriate purchase method and choose an appropriate contract type for the procurement.

Purchases should not be split into multiple small purchases just to avoid the approval and documentation process.

The General Services Director oversees all procurement policies.

B. REQUIREMENTS FOR GRANTS

▪ ADEQUATE DOCUMENTATION

LVCCLDF shall maintain adequate documentation to demonstrate compliance with federal statutes, regulations, and the terms and conditions of the federal award. The records must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions. And the documentation must be sufficient to trace the funds to a level of expenditure adequate to establish that such funds were used according to the federal statutes, regulations, and the terms and conditions of the federal award.

Examples of adequate documentation include records that show:

- How the funds were spent
- When the spending occurred
- Who made the purchase
- Who authorized the spending
- When the authorization took place

The Procurement Office must also maintain records sufficient to detail the history of the procurement. These records will include but are not necessarily limited to the following:

- The rationale for the method of procurement
- Selection of contract type
- Contractor selection or rejection
- The basis for the contract price.

The amount of documentation required is influenced by the procurement method. For example, micro-purchases would have less documentation than a competitive procurement.

▪ AVOID UNNECESSARY PURCHASES

LVCCLDF must avoid the acquisition of unnecessary or duplicative items.

- **CONTRACTOR EVALUATION**

LVCCLDF must award 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, a record of past performance, and financial and technical resources. See also §200.214 Suspension and debarment.

- **ECONOMICAL PURCHASES**

LVCCLDF shall consider consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

- **EXCESS AND SURPLUS PROPERTY**

LVCCLDF encourages the use of federal excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

- **SHARED SERVICES**

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, LVCCLDF encourages entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. The Foundation receives shared office spaces and employees from the library district to the Foundation.

- **VALUE ENGINEERING**

LVCCLDF encourages the use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at an overall low cost.

C. PROHIBITED PROCUREMENTS

- **CONFLICT OF INTEREST**

Organizations must avoid conflicts of interest in the procurement of goods and services supported by federal awards. Conflicts of interest are part of the Standards of Conduct required by 2 CFR Part 200, Subpart D Subsection §200.318. General procurement standards.

Standards of Conduct policy is located in the employee handbook – Chapter III, Section c, page 13.

What is a Conflict of Interest?

A conflict of interest arises when the employee, officer, or agent, any member of their immediate family, their partner, or an organization that employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

When a real or apparent conflict of interest occurs, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award.

Who is Covered?

These requirements govern the actions of all employees engaged in the selection, award, and administration of contracts supported by federal awards.

This is the minimum requirement; you may choose to cover board and loan employees.

Prohibition on Soliciting or Accepting Items of Monetary Value

The officers, employees, and agents of the non-federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Our organization defines an *unsolicited* item of the nominal value of a gift to be an item of less than \$25.00. We also define a non-substantial interest to be less than the following:

If the item of monetary value meets our definition of an *unsolicited* item of the nominal value of a gift or a non-substantial financial interest, we do not consider this a conflict of interest.

All real or apparent conflicts of interest must be disclosed to:

You should report any real or apparent conflicts of interest for loaned Library employees to the LVCCLD Human Resources Director: Jeff Serpico, at Jeff.Serpico@thelibrarydistrict.org or at 702.507.6206.

You should report any real or apparent conflicts of interest for Board members to LVCCLD legal counsel: Briana Martinez, Kaempfer Crowell, at bmartinez@kcnvlaw.com or at 702.792.7000.

Disciplinary Action

It is critically important to a grant-funded organization that all employees follow the Standards of Conduct. Failure to comply with these standards can result in disciplinary action, including termination of employment.

▪ SUSPENSION AND DEBARMENT

To ensure federal funds do not flow to excluded parties, we must verify that the party with whom we intend to do business with, in a covered transaction, is not excluded or disqualified from receiving federal funds. Common types of covered transactions include:

- All non-procurement contracts such as subawards
- All procurement contracts requiring the consent of an official of a federal agency
- Other procurement contracts for goods or services expected to equal or exceed \$25,000
- A principal person in a covered transaction, such as a principal investigator or program director

The method we use to verify the parties in the covered transaction are not excluded or disqualified from receiving federal funds is:

- (a) Checking SAM Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person

Names of debarred or suspended parties can be found by searching the System for Award Management (SAM) for exclusion records, active or excluded at <https://sam.gov/content/home> (Records that were contained in the Excluded Parties List System have been moved to SAM)

Adequate documentation of who was checked, when they were checked, and the results of the search must be maintained as well.

The loaned staff records all files on the Library District's secured T drive, and it is backed up daily.

D. ALLOWABLE COSTS

▪ GENERAL CRITERIA

In addition to the procurement standards in the Uniform Guidance, procurement with federal funds must also be allowable for the federal award based on the cost principles and subsection §200.403 Factors affecting allowability of costs. Except where otherwise authorized by statute, costs must meet the following general criteria to be allowable under federal awards:

- (a) Be necessary and reasonable for the performance of the federal award and be allocable under these principles.
- (b) Conform to any limitations or exclusions outlined in these principles or the federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period. See also § 200.306 Cost sharing or matching paragraph (b).

(g) Be adequately documented. See also Subsection §200.300 Statutory and National Policy Requirements through § 200.309 Modifications to Period of Performance of this part.

To avoid subsequent disallowance or dispute based on unreasonableness or non-allocability, the organization may seek the prior written approval of the cognizant agency for indirect costs or the federal awarding agency in advance of the incurrence of special or unusual costs.

▪ **NECESSARY AND REASONABLE**

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 was made to incur the cost. The question of reasonableness is particularly important when the non-federal entity is predominantly federally funded. In determining the reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the proper and efficient performance of the federal award

(b) The restraints or requirements imposed by such factors as sound business practices; arms-length bargaining; federal, state, and other laws and regulations; and terms and conditions of the federal award

(c) Market prices for comparable goods or services for the geographic area

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government

(e) Whether the non-federal entity significantly deviated from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the federal award's cost

▪ **ALLOCABLE**

(a) A cost is allocable to a particular federal award or another cost objective if the goods or services involved are chargeable or assignable to that federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the federal award;

(2) Benefits both the federal award and other work of the non-federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-federal entity and is assignable in part to the federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular federal award under the principles provided for in this part may not be charged to other federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or terms and conditions of the federal awards, or for other reasons. However, this prohibition would not preclude the non-federal entity from shifting costs that are allowable under two or more federal awards in accordance with existing federal statutes, regulations, or the terms and conditions of the federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost should be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a federal award, the costs are assignable to the federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.439 Equipment and other capital expenditures.

(e) If the contract is subject to CAS, costs must be allocated to the contract under the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

▪ **NOT LIMITED BY COST PRINCIPLES**

The cost principles include a variety of costs, some of which are limited or unallowable to charge the federal award. For additional details, review 2 CFR Part 200 Sections 200.420 thru 200.476 titled General Provisions for Selected Items of Cost. In addition, Section § 200.407 Prior written Approval (prior approval) lists types of costs that may require the prior approval of the funding agency.

▪ **NET OF APPLICABLE CREDITS**

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the federal award as direct or indirect (F&A) costs. Examples of such transactions are purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-federal entity relate to allowable costs, they must be credited to the federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-federal entity should be treated as applicable credits.

Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to the federal award. (See §§ 200.436 Depreciation and 200.468 Specialized service facilities for areas of potential application in the matter of federal financing of activities.)

E. PROCUREMENT METHODS

▪ **SUMMARY OF PROCUREMENT METHODS**

LVCCCLDF must use one of the five methods for procurement of goods and services with federal funds.

LVCCCLDF must use documented procurement procedures that conform to applicable federal law and procurement standards covered in 2 CFR Part 200 Sections 200.317-200.327 and procedures that echo applicable State and local laws and regulations.

2 CFR Part 200 Section 200.320 specifies five methods of procurements to be followed, as illustrated in the table below:

Method	Aggregate Dollar Amt.	Notes 1:	Notes 2:
1. Micro-Purchase	Not to exceed the micro-purchase threshold (currently \$10,000)	No quotations are required if the price is considered reasonable based on research, experience, purchase history, or other information adequately documented	To the extent practicable, distribute equitably among qualified suppliers.
2. Small Purchase	Up to \$250,000	Rate quotations from an adequate number of qualified sources.	No cost or price analysis required
3. Sealed Bid	>\$250,000	Primarily construction projects-Firm fixed price contract.	Price is a major factor-formal process for bidding

4. Competitive Proposals	>\$250,000	Fixed price or cost reimbursement	RFP with evaluation methods for an adequate number of qualified sources.
5. Sole Source	It can only be used if one or more of the circumstances in 200.320 (c) (1)-(5) apply	Noncompetitive procurement can only be used in specific circumstances	Examples: <ul style="list-style-type: none"> • Only available from a single source • Unique or public emergency

The five specified procurement methods must comply with:

- The organizations' documented procurement procedures
- The necessity of the purchase
- Open competition to the extent required
- The organization's conflict of interest policy
- Sufficient and proper documentation of the purchase

Here are more details on the five procurement methods.

▪ **MICRO-PURCHASE**

The micro-purchase method is an informal method for the acquisition of supplies or services when the aggregate dollar amount does not exceed the micro-purchase threshold as defined in 200.1, currently \$10,000. To the extent practicable, the non-federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the price to be reasonable based on research, experience, purchase history, or other information documented accordingly.

Note: Recent Updates Provide a Framework for Higher Micro-Purchase Thresholds

The appropriate micro-purchase threshold should be based on internal controls, an evaluation of risk, and its documented procurement procedures.

The micro-purchase threshold must be authorized or not prohibited under State, local, or tribal laws or regulations.

A micro-purchase threshold higher than the federal threshold established in the Federal Acquisition Regulations (FAR) may be established if the conditions listed in §200.320 (a) (1) (iv) are met.

Up to \$50,000: An annual self-certification is required for a micro-purchase threshold increase up to \$50,000 with documentation made available to the federal awarding agency and auditors

in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- Qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
- An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- For public institutions, a higher threshold is consistent with State law.

Over \$50,000: An increase in the micro-purchase threshold over \$50,000 must be approved by the cognizant agency for indirect costs. The request must meet the same requirements as a request to increase up to \$50,000. Once approved, the increased threshold is valid until there is a change in status in which the justification was approved.

▪ **SMALL PURCHASE**

The small purchase method is for those relatively simple and informal procurements for securing services, supplies, or other property that the total costs are higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold, currently \$250,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of at least three qualified sources.

[The organization can define the adequate number of qualified sources as long as that number is more than one.] – The number is one source as established by our adherence to LVVCLD policy [here](#) on page 4.

▪ **SEALED BID**

The sealed bid method is for bids that are publicly solicited. A firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction if the conditions below apply.

(1) For sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business
- (iii) The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. 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; and

(v) Any or all bids may be rejected if there is a sound documented reason.

▪ **COMPETITIVE PROCUREMENT**

The competitive proposal method is a formal method in which either a fixed price or cost-reimbursement type contract is awarded. This method is generally used when conditions are not appropriate for the use of sealed bids. 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 practicable;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) LVCCCLDF must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) LVCCCLDF may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used in the procurement of A/E professional services. It cannot be used to purchase other types of services even when A/E firms are a potential source to perform the proposed effort.

▪ **SOLE SOURCE**

Sole Source LVCCCLDF recognizes sole source procurements are a form of noncompetitive procurement, and as such additional steps are required to ensure that the procurement will be allowable to charge the federal award. Sole source procurements require a justification process that meets a narrow set of guidelines and authorization from the federal agency.

See Appendix C for an example of a sole source justification form.

Noncompetitive procurement can only be used if one or more of the following circumstances apply:

- (1) The total dollar amount for the acquisition of property or services does not exceed the micro-purchase threshold;
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate

F. PURCHASING DOCUMENTS

▪ CONTRACTOR VS. SUBRECIPIENT

The determination of whether the scope of work should be classified as a contract or a subaward is critically important because subawards must have the prior approval from the federal agency where procurement contracts generally do not need the prior approval unless they are a non-competitive (sole source) procurement. Additionally, all subawards must be checked for suspension and debarment exclusion regardless of the amount.

Therefore, LVCCCLDF must ensure the proper classification of contractors versus subrecipients. Many factors can go into this determination, but here are some general guidelines from §200.331 Subrecipient and contractor determinations.

The non- federal entity may concurrently receive federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of federal program funds places the party receiving the funds in the role of a subrecipient or a contractor. The federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) Subrecipients. A subaward's purpose is to carry out a portion of a federal award and creates a federal assistance relationship with the subrecipient. See the definition under §200.1 for Subaward. Characteristics that support the classification of the non-federal entity as a subrecipient include when the non-federal entity:

- (1) Determines who is eligible to receive what federal assistance;

(2) Has its performance measured in relation to whether 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) 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.

(b) Contractors. A contract is to obtain goods and services for the non-federal entity's own use and creates a procurement relationship with the contractor. See the definition under §200.1 for Contract. Characteristics indicative of a procurement relationship between the non-federal entity and a contractor are 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 operation of the federal program; and

(5) Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) Use of judgment in making a determination. In determining whether an agreement between a pass-through entity and another non-federal entity places the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

▪ **FEDERALLY-MANDATED PROCUREMENT CONTRACT PROVISIONS**

All contracts awarded by LVCCLDF to subcontractors and involving a grant-funded purchase of goods or services, including small purchases, must include certain federally-mandated procurement contract provisions, described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts including:

Provision	Citation
Termination for Cause or Convenience	41 U.S.C. 1908
Equal Employment Opportunity	41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
Clean Air Act	42 U.S.C. 7401-7671q
Federal Water Pollution Control Act	33 USC 1251-1387
Copeland "Anti-Kickback" Act	40 U.S.C. 3145 and 29 CFR Part 3
Byrd Anti-Lobbying Amendment	31 U.S.C. 1352
Debarment and Suspension	Executive Orders 12549 and 12689
Procurement of Recovered Materials	§ 200.323, Section 6002 of the Solid Waste Disposal Act, 40 CFR part 247
Davis-Bacon Act	40 U.S.C. 3141-3148
Contract Work Hours and Safety Standards Act	29 CFR Part 5, 40 U.S.C. 3701-3708, 40 U.S.C. 3702 and 3704
Rights to Inventions Made Under a Contract or Agreement	37 CFR part 401
Remedies for Breach	41 USC 1908
Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	§ 200.216, Public Law 115-232, section 889
Domestic Preferences for Procurements	V-33-34

In addition to the contract provision listed in 2 CFR Part 200 Appendix II, contracts may also need to address additional contract clauses such as:

- Statutory and national policy requirements
- Federal agency-specific requirements for contractors
- § 200.322§ 200.215 Never contract with the enemy, as applicable
- Provisions for bid guarantees, performance bonds, and payment bonds

- Provisions allowing access to contractor records federal awarding agency, Comptroller General of the United States, and any other duly authorized representative

G. CONTRACT TYPES

Contracts for procurement of goods and services for federal awards are broken into two main types:

- Firm Fixed Price Contract
- Time and Materials Contract

The most appropriate type of contract depends on the circumstances of the procurement, but in general, the Firm Fixed Price Contract is the preferred type of contract.

▪ FIRM FIXED PRICE CONTRACT

The firm-fixed-price contract is used when the total effort or cost can be estimated with sufficient certainty. As the name implies, the price is fixed in the contract, and the risk of cost overruns are borne by the contractor and not Las Vegas Clark County Library District Foundation. This procurement type also creates a built-in incentive for the contractor to be efficient in the use of labor and materials. It is appropriate to use a firm-fixed-price contract when you can determine a fair and reasonable cost for the work before the work begins.

▪ TIME AND MATERIALS CONTRACT

LVCCCLDF may use a time and materials type contract only after a determination that no other contract is suitable and 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 LVCCCLDF is the sum of:

- (i) The actual cost of materials; and
- (ii) 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 non-federal entity awarding such a contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

▪ PROHIBITED CONTRACT TYPES

Cost-plus a percentage of cost and percentage of construction cost methods of contracting are explicitly prohibited for procurements supporting federal awards.

▪ USE OF CONSULTANTS

The use of consultants is covered in 2 CFR Part 200 Subsection §200.459 Professional service costs. Contracting for professional services has additional requirements to ensure the costs charged to the federal award are reasonable.

(a) Costs of professional and consultant services provided by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-federal entity, are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the federal government. In addition, legal and related services are limited under § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringements.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service provided in relation to the service required.

(2) The necessity of contracting for the service, considering the non-federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years before federal awards.

(4) The impact of federal awards on the non-federal entity's business (i.e., what new problems have arisen.)

(5) Whether the proportion of federal work to the non-federal entity's total business is such as to influence the non-federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, an estimate of the time required, the rate of compensation, and termination provisions.)

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

H. CONTRACT ADMINISTRATION

▪ CONTRACT COST AND PRICE ANALYSIS

LVCCLDF must perform a cost or price analysis in connection with every procurement action more than the Simplified Acquisition Threshold (currently \$250,000), including contract modifications. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation, but as a starting point, LVCCLDF must make independent estimates before receiving bids or proposals.

LVCCLDF must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. When establishing a fair and reasonable profit, consideration must be 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.

Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-federal entity under 2 CFR Part 200 Subpart E—Cost Principles.

▪ PROTESTS, DISPUTES, AND CLAIMS

LVCCLDF alone must be responsible, in accordance with the 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 non-federal entity of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of LVCCLDF unless the matter is primarily a federal concern. LVCCLDF alone must be responsible, in accordance with the 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 non-federal entity of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of LVCCLDF unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

▪ REVIEW BY FEDERAL AGENCY OR PASS-THROUGH ENTITY

LVCCLDF must make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-federal entity desires to have the review accomplished after a solicitation has been developed, the federal

awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

LVCCCLDF must make available upon request, for the federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) LVCCCLDF procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

LVCCCLDF is exempt from the pre-procurement review of this section if the federal awarding agency or pass-through entity determines that its procurement systems comply with the procurement standards in 2 CFR Part 200.

LVCCCLDF may request that its procurement system is reviewed by the federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

LVCCCLDF may self-certify its procurement system. Such self-certification must not limit the federal awarding agency's right to survey the system. Under a self-certification procedure, the federal awarding agency may rely on written assurances from the non-federal entity that it is complying with these standards. The non-federal entity must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

I. COMPETITION

2 CFR Part Subsection §200.319 Competition covers many of the requirements for full and open competition. This section covers some of the requirements to maximize the opportunities for full and open competition as required.

▪ **AFFIRMATIVE STEPS**

Affirmative steps to include small and minority-owned businesses, women's business enterprises, and labor surplus area firms in procurement with federal awards are covered in 2 CFR Part 200 Subsection §200.321. LVCCLDF must take all 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:

- (1) Placing qualified small and minority businesses 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 requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses 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; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

▪ **DOMESTIC PREFERENCES**

(a) As appropriate and to the extent consistent with law, LVCCLDF, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

▪ **GEOGRAPHIC PREFERENCES**

LVCCCLDF 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. Nothing in this section preempts state licensing laws. 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.

▪ **RESTRICTING COMPETITION**

LVCCCLDF must avoid situations considered to be restrictive of competition which include but are not limited to:

- (1) Placing unreasonable requirements on firms 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; and
- (7) Any arbitrary action in the procurement process.

Furthermore, LVCCCLDF 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, potential bidders must not be precluded from qualifying during the solicitation period.

▪ **SOLICITATION REQUIREMENTS**

LVCCCLDF must ensure that all solicitations:

- (1) 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 that 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 the procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

▪ **UNFAIR COMPETITIVE ADVANTAGE**

To ensure objective contractor performance and eliminate an 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.

J. CLOSEOUT PROCUREMENT

▪ **RECORD RETENTION**

It is critical that adequate documentation is maintained to support the procurement lifecycle as required by the Uniform Guidance. Therefore, records must be retained consistent with our record retention policy.

Record retention requirements for federal award recipients appear in the Record Retention and Access section of 2 CFR Part 200 Sections 200.334 thru 200.338. The general rule for record retention is that the records must be retained for three years from the date of submission of the final expenditure report.

Exceptions:

- For records related to litigation, claims or audits started before the three-year period expires, the federal award recipient must retain records until all actions have been resolved and final action related to the litigation, claims, or audits has been taken.
- For real property and equipment, records must be retained for three years from the date of the final disposition of the property.
- When the federal awarding agency maintains the records, the three-year retention requirement does not apply to the federal award recipient.
- Records for program income transactions after the period of performance: In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-federal entity's fiscal year in which the program income is earned

VI. APPENDICES

▪ APPENDIX A: SAMPLE PURCHASE REQUISITION FORM

COMPLETED IN MICROSOFT DYNAMICS NAV (SERENIC) WEB CLIENT PURCHASING SOFTWARE.

Purchase Requisition Form

Purchase Requisition Form	Las Vegas Clark County Library District Foundation
Requested by:	
Date:	
Description	
\$\$ Amount	
Reason for Purchase:	
Award #	
Account #	
Budget Review by:	
Date:	
In Budget? (Y/N)	
Purchase Authorized (Y/N)	
Authorizing Official Name	
Authorizing Official Title	
Date Authorized:	

▪ **APPENDIX B: SAMPLE SIGNATORY AUTHORIZATION MATRIX**

Signatory Authorization Matrix

Name	Title	Phone	Email	Signatory Authority	Accounts
Briana Martinez	Legal Counsel	702.792.7000 Fax: 702.796.7181	bmartinez@kcnvlaw.com	Reviews but does not sign.	None
Tamar Hoapili	Foundation Chair	702.210.1340	Tamar.Hoapili@cox.com	Primary Signatory	ALL
Fred James	Foundation Treasurer	702.249.2272	Fj8014@aol.com	Secondary Signatory	ALL

▪ **APPENDIX C: SAMPLE SOLE SOURCE JUSTIFICATION FORM**

Sole source is authorized through NRS 332.115 (<https://www.leg.state.nv.us/nrs/nrs-332.html>)- Contracts not adapted to award by competitive solicitation; purchase of certain equipment by local law enforcement agency, response agency or other local governmental agency;

Sole Source Justification Form

Sole Source Justification Form	Las Vegas Clark County Library District Foundation
Requested by:	
Date:	
Description	
\$\$ Amount	
Reason for Sole Source (Check all that apply)	<input type="checkbox"/> The total dollar amount for the acquisition of property or services does not exceed the micro-purchase threshold <input checked="" type="checkbox"/> The item is available only from a single source <input type="checkbox"/> The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation <input type="checkbox"/> The federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-federal entity <input type="checkbox"/> After solicitation of a number of sources, competition is determined inadequate
Award #	
Purchase Authorized (Y/N)	
Authorized by: (Official Name)	
Authorizing Official Title	
Date Authorized:	
Funding Agency by: (Official Name)	
Agency Official Title	
Date Authorized:	

▪ **APPENDIX D: SAMPLE PURCHASE ORDER FORM**

Done via MICROSOFT DYNAMICS NAV (Serenic) WEB CLIENT PURCHASING SOFTWARE.

Purchase Order Form

Purchase Order Form	Las Vegas Clark County Library District Foundation
Purchase Order #	
Date:	
Award/Project #	
Contractor	
Ship to Address	
Catalog #	
Quantity	
Description	
Unit Price	
Compared and verified with the packing list and actual shipment received	
Receiver's Name	
Date	

▪ **APPENDIX E: SAMPLE BID SOLICITATION FORM**

If the LVCCLDF continues to follow procedures as adhered to by the LVCCLD, then Bid Solicitation will be performed via <https://www.ngemnv.com/>.

▪ **APPENDIX F: SAMPLE SOLICITATION EVALUATION FORM**

The solicitation form is located at <https://www.ngemnv.com/>

Solicitation Evaluation Form

Solicitation Evaluation	Bidder #1	Bidder #2	Bidder #3	Bidder #4
Las Vegas Clark County Library District Foundation	[Contractor Name]	[Contractor Name]	[Contractor Name]	[Contractor Name]
Bid Requirement 1.1 [Enter Description]	[Enter Bidder's Response to Requirement]	[Enter Bidder's Response to Requirement]	[Enter Bidder's Response to Requirement]	[Enter Bidder's Response to Requirement]
Total Points	Points Awarded:	Points Awarded:	Points Awarded:	Points Awarded:
[Enter Total Points for Requirement]	[Enter Points for Bidder]	[Enter Points for Bidder]	[Enter Points for Bidder]	[Enter Points for Bidder]

Solicitation Evaluation	Bidder #1	Bidder #2	Bidder #3	Bidder #4
Las Vegas Clark County Library District Foundation	[Contractor Name]	[Contractor Name]	[Contractor Name]	[Contractor Name]
Bid Requirement 2.1 [Enter Description]	[Enter Bidder's Response to Requirement]	[Enter Bidder's Response to Requirement]	[Enter Bidder's Response to Requirement]	[Enter Bidder's Response to Requirement]
Total Points	Points Awarded:	Points Awarded:	Points Awarded:	Points Awarded:

[Enter Total Points for Requirement]	[Enter Points for Bidder]	[Enter Points for Bidder]	[Enter Points for Bidder]	[Enter Points for Bidder]
--------------------------------------	---------------------------	---------------------------	---------------------------	---------------------------

Total Bidder Score				
Solicitation Evaluation Las Vegas Clark County Library District Foundation	Bidder #1 [Contractor Name]	Bidder #2 [Contractor Name]	Bidder #3 [Contractor Name]	Bidder #4 [Contractor Name]
Total Possible Points:	Total Points Awarded:	Total Points Awarded:	Total Points Awarded:	Total Points Awarded:
[Enter Total Possible Points for All Requirement]	[Enter Points for Bidder]	[Enter Points for Bidder]	[Enter Points for Bidder]	[Enter Points for Bidder]

▪ **APPENDIX G: SAMPLE RECEIVING DOCUMENT FORM**

[Replace with an example of your organization's form or process.] – Not Applicable

Receiving Document

Receiving Form Las Vegas Clark County Library District Foundation	Purchase Order # [PO Number]	Contractor [Contractor Name]	Received by: [Receiver Name]	Date Received: [Date]	Freight Charges: [Attach Freight bill]
Item #	Description	Quantity Ordered	Unit Price	Extended	Quantity Received
[Enter Item Number]	[Enter Description]	[Enter Quantity Ordered]	[Enter Unit Price]	[Enter Expended Price]	[Enter Actual Qty. Received]
[Enter Item Number]	[Enter Description]	[Enter Quantity Ordered]	[Enter Unit Price]	[Enter Expended Price]	[Enter Actual Qty. Received]

▪ **APPENDIX H: SAMPLE PROCUREMENT RECORDS CHECKLIST**

[Replace with an example of your organization's form or process.] – Not applicable.

Procurement Records Checklist

Items to include in the Procurement Records:

- ☐ **Description of Goods and Services**
 - ☐ **Clear, accurate description that includes technical requirements**
 - ☐ **Don't unduly restrict competition**
- ☐ **Requirements**
 - ☐ **Technical requirements regarding the functions to be performed**
 - ☐ **What requirements is the bidder expected to fulfill?**
 - ☐ **What factors will be used to evaluate the bids?**
- ☐ **Selection basis for contractor**
- ☐ **Cost or Price basis for goods and services**
- ☐ **Cost or price analysis**
- ☐ **Excluded Parties review**

If applicable, include:

- ☐ **Lease vs. buy decision**
 - ☐ **Which option is the most economical and practical?**
- ☐ **Written justification for lack of competition, such as sole source**
- ☐ **Contract provisions**
- ☐ **Other Compliance Documentation**
- ☐ **Other** _____
- ☐ **Other** _____

▪ **APPENDIX I: SAMPLE CONTRACTOR VS. SUBRECIPIENT GUIDE**

[Replace with an example of your organization's form or process.] – NOT APPLICABLE.

Contractor Vs. Subrecipient Guide

Determination:

--

▪ **APPENDIX J: SAMPLE CONTRACTOR AGREEMENT FOR SERVICES**

[Replace with an example of your organization's contract for services agreement.]

<COMPANY NAME>

CONTRACT FOR SERVICES AGREEMENT

This Contract for Services Agreement ("Agreement"), made effective as of the date shown on the signature page ("Effective Date"), is entered into by and between **<Company Name>** ("Company"), having its principal place of business at [Address] and the other party signing the signature page for **<Contractor>** ("Contractor"), having its principal place of business as shown on the signature page (each a "Party"; together the "Parties").

WHEREAS Company is a recipient of a federal award **<Award Number>** from **<Funding Source>**.

Company desires to retain Contractor as an independent contractor to perform services for Company and Company is willing to perform such services, on the basis set forth more fully below.

In consideration of the mutual promises contained herein, Company and Contractor agree as follows:

1. **SERVICES.** As and when Company wishes Contractor to provide services, the Parties will execute a project assignment in the form attached as EXHIBIT A ("Project Assignment"). The Contractor will perform the services described in each Project Assignment ("Services") in a professional and skilled manner according to the schedule of work set forth therein. The Contractor may perform services for any other person or entity so long as Contractor does not perform similar services for a direct competitor of Company's and so long as Contractor's performance of such services does not interfere with the performance of Contractor's obligations under this Agreement. Any material change to the scope of work requires the Company's written prior approval. The Contractor is being retained under the terms and conditions of this Contract for Services Agreement. The Scope of Services of the Contractor shall include but is not limited to, the duties outlined in EXHIBIT A, incorporated in this document and made a part of the agreement. The Company represents that they are knowledgeable and experienced in providing these services.

2. **PERIOD OF PERFORMANCE.** The period of performance for the federal award begins **<Beginning Date>** and terminates on **<Ending Date>** unless amended in writing by the parties. The Company is under no obligation to pay the Contractor for services or expenses provided, and the Contractor is under no obligation to perform services before the beginning date or after the ending date of the period of performance.

3. **PAYMENT FOR SERVICES.** The Company will pay the Contractor the fees and expenses outlined in the Project Assignment for the performance of the Services described therein. The Contractor acknowledges that its sole compensation for the Services will be these fees and

expenses and that the Company will have no liability of any kind to the Contractor, in contract or otherwise, beyond such fees and expenses.

The Contractor will email the invoice to:

Company Name	
Company Point of Contact	
Company Email	
Company Phone	
Company Address	

4. RELATIONSHIP OF PARTIES. The Contractor will perform the Services under the general direction of Company, but Contractor will determine, in Contractor's sole discretion, the manner and means by which the Services are accomplished, subject to the express condition that Contractor will at all times comply with applicable law. The Contractor is an independent contractor, and Contractor is not an agent or employee of the Company and has no authority whatsoever to bind Company by contract or otherwise.

5. FACILITIES, EXPENSES, INSURANCE, RECORDS, AND LICENSES. The Contractor will provide its own facilities and place of business to perform the Services, and the Contractor will bear the entire cost of its facilities without reimbursement by Company. The Company will have no obligation to reimburse the Contractor for any costs or expenses incurred by Contractor in the performance of the Services except as otherwise provided in the Project Assignment. The Contractor will be responsible for providing, for itself and its employees, at its expense and in its own name, disability, liability, workers' compensation, and other business insurance as is necessary, appropriate, and required by law. In connection with its performance of the Services, Contractor agrees that it will be solely responsible for, and will maintain, any records required by law. The Contractor agrees that it will obtain all required licenses (if any) relating to its performance of the Services.

6. TAXES AND BENEFITS. No part of Contractor's compensation under this Agreement will be subject to withholding for any federal, state, social security, workers' compensation, or other required taxes or payments. The Company will report all fees paid to Contractor to the Internal Revenue Service (and other taxing agencies) on Form 1099 or other appropriate forms as required. The Contractor acknowledges and agrees that it will be the obligation of Contractor to report as income and pay all taxes upon all compensation received by Contractor pursuant to this Agreement. Contractor agrees to indemnify Company and hold it harmless to the extent of any obligation imposed on Company to pay any taxes or insurance, including without limitations, withholding taxes, social security, unemployment, or disability insurance, including the interest and penalties thereon, in connection with any payments made to Contractor by Company pursuant to this Agreement. Contractor agrees to pay, indemnify and hold Company

harmless from any Tax imposed by any governmental authority concerning either or both of any payment to be made by Company under this Agreement or any item to be delivered by Contractor to Company under this Agreement. For purposes of this Agreement, "Tax" will mean any tax, fee, or cost not based on Contractor's net income, including, but not limited to, sales, use, excise, value-added, withholding, or similar tax or any fees and penalties or interest associated with any of the foregoing.

7. INTELLECTUAL PROPERTY.

7.1 DEVELOPED IP. Materials developed by Contractor specifically for Company will be considered the property of Company, with full use rights granted when the payment is received in full. The Contractor solely reserves the rights to all other [specify] materials developed by the Contractor, in written, digital, and other forms if in agreement by both parties prior to project start.

7.2 OWNERSHIP AND PUBLICATION OF MATERIALS: All material and other information generated under this contract shall be the shared property of Company and Contractor.

7.3 WARRANTY. The Contractor warrants that, in rendering Services hereunder, it will not knowingly infringe or have reason to know of any infringement of any patent, copyright, trademark, mask work or other intellectual property, right of any third party or otherwise misappropriate, use, or disclose any trade secret of any third party. The contractor will use its best efforts to avoid any such infringement. Contractor hereby agrees to indemnify and defend Company, and otherwise hold Company harmless, against any claim for such patent, copyright, trademark, trade secret, mask work or other intellectual property infringement or misappropriation and any other loss, damage, award, or expense (including reasonable attorney's fees) resulting from such a claim.

8. **CONFIDENTIALITY.** Contractor agrees to hold Company's Confidential Information in strict confidence and not to disclose such Confidential Information to any third parties. [Contractor] further agrees to deliver all Confidential Information promptly in Contractor's possession to Company at any time upon Company's request. For purposes hereof, "Confidential Information" will include all confidential and proprietary information disclosed by Company including but not limited to technical and business information relating to Company's costs, profit or margin information, finances, customers, suppliers, marketing, and production, personnel, and future business plans. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to Company or [Consultant] in the course of Company's business. The above obligations will not apply to Confidential Information which (a) is already known to the Contractor at the time it is disclosed; (b) has become publicly known through no wrongful act of Contractor; (c) has been rightfully received from a third party without restriction on disclosure and without breach of this Agreement or other Agreements entered into by Company; (d) has been independently developed by the Contractor; (e) has been approved for release by written authorization of Company; or (f) has been disclosed pursuant to a requirement of a governmental agency or of law.

9. TERMINATION. This Agreement will commence on Effective Date and will continue until terminated as follows:

(a) Either Party may terminate the Agreement upon notice to the other Party in the event of a breach by the other Party of any of its obligations hereunder if such breach continues uncured for a period of 14 days after notice of such breach to the other Party;

(b) Either Party may terminate this Agreement upon notice to the other Party if the other Party is adjudicated bankrupt, files a voluntary petition of bankruptcy, makes a general assignment for the benefit of creditors, is unable to meet its obligations in the normal course of business as they fall due or if a receiver is appointed on account of insolvency;

(c) Either Party may terminate this Agreement for its convenience upon thirty (30) days' notice to the other if there is no outstanding Project Assignment. The Company may terminate this Agreement for its convenience if the Contractor has not commenced work under an outstanding Project Assignment. In addition, if the Contractor has commenced work under a Project Assignment, the Company may terminate an outstanding Project Assignment by paying Contractor a termination fee of as specified in written and/or verbal agreement between parties for said services prior to start of work of the unpaid fee for Services which have been performed under such Project Assignment.

(d) If funds are not appropriated from which the Company can fulfill these obligations, this Agreement for services will automatically terminate. In the event of such termination, reimbursement will be for work completed and approved by Company before the effective date of such termination. Neither the Company nor the Contractor shall make any commitment for services beyond the period of which funds have been appropriated.

(e) Upon the termination of this Agreement for any reason, each Party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination, except that any termination will not relieve Contractor or Company of their obligations under Paragraph 6 ("Taxes and Benefits"), Paragraph 7 ("Intellectual Property"), Paragraph 8 ("Confidentiality") Paragraph 10 ("General") and Paragraph 11 ("Federally Mandated Contract Provisions"), nor will any such termination relieve Contractor or Company from any liability arising from any breach of this Agreement. Upon the termination of this Agreement for any reason, Contractor will immediately return to Company any Company property or information (including Confidential Information) that is in Contractor's possession or control.

10. GENERAL.

10.1 PRE-EXISTING OBLIGATIONS. Contractor represents and warrants that Contractor is not under any preexisting obligation or obligations inconsistent with the provisions of this Agreement.

10.2 ASSIGNMENT. The rights and liabilities of the Parties will bind and inure to the benefit of their respective successors, executors, and administrators, as the case may be, provided that, Contractor may only assign this Agreement either in whole or in part with the prior written consent of Company.

10.3 EQUITABLE RELIEF. Because Contractor will have access to and become acquainted with the Confidential Information of Company, Contractor agrees that Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance, or any other equitable relief without prejudice to any other rights and remedies that Company may have for the breach of this Agreement.

10.4 GOVERNING LAW; SEVERABILITY. This Agreement will be governed by and construed in accordance with the laws of the State of Nevada. If any provision of this Agreement is for any reason found by a court of competent jurisdiction to be unenforceable, the remainder of Agreement will continue in full force and effect.

10.5 COMPLETE UNDERSTANDING; MODIFICATION. This Agreement constitutes the full and complete understanding and agreement between the Parties and supersedes all prior understandings and agreements. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing signed by the Parties.

10.6 NOTICES. Any notices required or permitted hereunder will be given in writing to the appropriate Party at the address specified at the beginning of this Agreement for Company, the signature page for Contractor, or at such other address as the Party will specify in writing and will be by personal delivery, facsimile transmission or certified or registered mail. Such notice will be deemed given upon personal delivery to the appropriate address or upon receipt of electronic transmission or, if sent by certified or registered mail, three days after the date of the mailing.

10.7 CONFLICT OF INTEREST. During the term of this Contract for Services Agreement and at any time thereafter, the Contractor shall not act as an agent, or in a liaison capacity as an officer, employee, agent, or representative of any Company supplier or prospective supplier, nor serve in any of the foregoing capacities for any of Company's clients or prospective clients, without the prior written approval of the Company. Contractor hereby warrants that there is no conflict of interest in Contractor's other agreements or other employment, if any, with the activities to be performed hereunder and shall advise the Company if a conflict of interest arises in the future. Contractor shall avoid all circumstances and actions, which reasonably would place the Contractor in a position of divided loyalty with respect to its obligations under this Contract for Services Agreement.

10.8 ACCESS TO RECORDS. Contractor agrees to maintain books and records pertaining to all costs incurred in such detail as will properly document all expenses for which reimbursement is claimed. The books of account and other records, which are applicable to this Agreement, shall always be available for inspection and review by the Company, Federal awarding agency, Comptroller General of the United States, and any other duly authorized representative

10.9 ANTI-DISCRIMINATION/EEOC. **All contracts in excess of \$10,000** shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all

individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. FEDERALLY MANDATED CONTRACT PROVISIONS-UNIFORM GUIDANCE.

11.1 COMPLIANCE WITH CONTRACT PROVISIONS. In accordance with 2 CFR Part 200 Appendix II to Part 200—Contract Provisions for non-federal Entity, the contractor agrees to comply with all applicable contract provisions contained therein. 2 CFR Part 200 Appendix II to Part 200—Contract Provisions for non-federal Entity can be viewed at <https://ecfr.federalregister.gov/current/title-2/subtitle-A/chapter-II/part-200#Appendix-II-to-Part-200>

11.3 DEBARMENT AND SUSPENSION. Furthermore, the Contractor certifies that to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

11.4 BID GUARANTEES AND BONDS. In accordance with § 200.326 for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-federal entity provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(A) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(B) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(C) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

11.5 CONTRACTING WITH SMALL AND MINORITY-OWNED BUSINESSES. In accordance with § 200.321 “Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms,” if subcontracts are to be let, the prime contractor agrees to take the affirmative steps such as those listed in paragraphs (1) through (5) of this section.

(1) Placing qualified small and minority businesses 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 requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses 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

11.6 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. In accordance with § 200.216 "Prohibition on certain telecommunications and video surveillance services or equipment," the contractor represents that they are not expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- IN WITNESS WHEREOF, the Parties have signed this Agreement as of the Effective Date.

Effective Date: <Effective Date of Agreement>

Company:

<Company>

For the Company:

Name:

Title:

Principal place of business:

Contractor:

<Contractor>

For the Contractor:

Name:

Title:

Principal place of business:

EXHIBIT A

PROJECT ASSIGNMENT

PROJECT:

<Name of Project>

SCOPE OF WORK: [choose one]

Option #1: [List of Services]

Option #2: Contractor will perform the services listed in the attached project proposal dated <date of proposal>. [Attach accepted project proposal]

SCHEDULE OF WORK:

Effective Date: <Effective date of work>

Time Period/Schedule: For the period beginning <beginning date> and ending <ending date>, the Contractor hours will work <work schedule or "as needed">. It is expected that this project will be no more than <limit on hours-if applicable> in total.

FEES AND PAYMENT:

Fees: During <time period>, contracting work performed that is consistent with the scope of work will be billed at the rate of <hourly rate or firm fixed price contract> and invoiced <frequency of invoices>. One the invoice, the contractor shall describe the services performed, date(s) of service, and the percentage of completion of services represented by the invoice in accordance with the scope of work in <Exhibit A>

Terms: Invoices approved by <Title of invoice approver> of the Company shall be paid <terms of payment> days after approval. Payment should be made to <Contractor Principal Place of Business or Payment Address if different>.

Executed as of <Effective Date>

<Company>

<Contractor>

For the Company:

For the Contractor:

Name:

Name:

Title:

Title:

▪ **APPENDIX K: SAMPLE SUBRECIPIENT AGREEMENT LINKS**

[Replace with an example of your organization's subaward agreement.]

Subrecipient Agreements are considered non-procurement transactions, but for your information, several examples of Subrecipient Agreements may be viewed at:

https://www.caplaw.org/resources/modelpoliciesDocuments/CAPLAW_SampleSubawardAgreement_Sept2015.doc

https://www.epa.gov/sites/production/files/2016-12/documents/gmc_subaward_policy_appendix_d_subaward_agreement_template_revised_on_12_16_16.pdf

https://www.nist.gov/system/files/documents/tip/fdp_subawardagreement.pdf

https://www.epa.gov/sites/production/files/2016-02/documents/gmc_subaward_policy_appendix_d_subaward_agreement_template.pdf

▪ **APPENDIX L: SAMPLE CONTRACTOR EVALUATION CHECKLIST**

[Replace with an example of your organization's form or process.] – NOT APPLICABLE

Contractor Evaluation Checklist

LVCCLDF is required to award 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, a record of past performance, and financial and technical resources.

☐ **Contractor Integrity**

☐ **Do they have a Standards of Conduct and Conflict of Interest Policy?**

☐ **What is their Better Business Bureau (BBB) Rating?**

☐ **Do they have a Board of Directors providing oversight?**

☐ **Do they have an annual audit? If so, have there been findings?**

☐ **Compliance with Public Policy**

☐ **Do they have a history of complaints about discrimination or other public policy violations?**

☐ **How do they stay up to date on public policy requirements?**

☐ **Record of Past Performance**

☐ **What is their past performance with our organization?**

☐ **Who are some of their previous and current clients that you can check with about their experience?**

☐ **Do they have a reputation for completing their work on schedule?**

☐ **Financial Resources**

☐ **How long have they been in business?**

☐ **Who owns the company?**

☐ **How strong is their Balance Sheet?**

☐ **What is the D & B Rating or another credit rating?**

☐ **Technical Resources**

- ☐ Who will be providing technical expertise?
- ☐ If required, is their license current and in good standing?
- ☐ Suspension and Debarment
 - ☐ Is the company suspended or debarred?
 - ☐ Is the principal suspended or debarred?
- ☐ Other _____
- ☐ Other _____

▪ **APPENDIX: SELECTED ITEMS OF COST**

2 CFR Part 200 Sections 200.420 thru 200.476 titled General Provisions for Selected Items of Cost provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination of allowability in each case should be based on the treatment standards provided for similar or related items of cost.

General Provisions for Selected Items of Cost

200.420 Considerations for selected items of cost.	200.449 Interest.
200.421 Advertising and public relations.	200.450 Lobbying.
200.422 Advisory Councils.	200.451 Losses on other awards or contracts.
200.423 Alcoholic beverages.	200.452 Maintenance and repair costs.
200.424 Alumni/ae activities.	200.453 Materials and supplies costs, including costs of computing devices.
200.425 Audit services.	200.454 Memberships, subscriptions, and professional activity costs.
200.426 Bad debts.	200.455 Organization costs.
200.427 Bonding costs.	200.456 Participant support costs.
200.428 Collections of improper payments.	200.457 Plant and security costs.
200.429 Commencement and convocation costs.	200.458 Pre-award costs.
200.430 Compensation—personal services.	200.459 Professional service costs.
200.431 Compensation—fringe benefits.	200.460 Proposal costs.
200.432 Conferences.	200.461 Publication and printing costs.
200.433 Contingency provisions.	200.462 Rearrangement and reconversion costs.
200.434 Contributions and donations.	200.463 Recruiting costs.
200.435 Defense and prosecution of criminal and civil proceedings and claims, appeals and patent infringements.	200.464 Relocation costs of employees.
200.436 Depreciation.	200.465 Rental costs of real property and equipment.
200.437 Employee health and welfare costs.	200.466 Scholarships and student aid costs.
200.438 Entertainment costs.	200.467 Selling and marketing costs.
200.439 Equipment and other capital expenditures.	200.468 Specialized service facilities.
200.440 Exchange rates.	200.469 Student activity costs.
200.441 Fines, penalties, damages, and other settlements.	200.470 Taxes (including Value Added Tax).
200.442 Fundraising and investment management costs.	200.470 Taxes (including Value Added Tax).
200.443 Gains and losses on disposition of depreciable assets.	200.471 Telecommunication costs and video surveillance costs.
200.444 General costs of government.	200.472 Termination costs.
200.445 Goods or services for personal use.	200.473 Training and education costs.
200.446 Idle facilities and idle capacity.	200.474 Transportation costs.
200.447 Insurance and indemnification.	200.475 Travel costs.
200.448 Intellectual property.	200.476 Trustees.

§ 200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific federal award and the provisions below, the federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability. See also § 200.102.

[85 FR 49564, Aug. 13, 2020]

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-federal entity for the performance of a federal award (See also § 200.463);

(2) The procurement of goods and services for the performance of a federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a federal award except when non-federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the federal award.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the non-federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from the performance of the federal award (these costs are considered necessary as part of the outreach effort for the federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-federal entity.

[78 FR 76808, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the federal awarding agency, or as an indirect cost where allocable to federal awards. See § 200.444, applicable to States, local governments, and Indian tribes.

[85 FR 49564, Aug. 13, 2020]

§ 200.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 200.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and subpart F of this part have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under federal awards are less than \$750,000 during the non-federal entity's fiscal year.

(b) The costs of a financial statement audit of a non-federal entity that does not currently have a federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with subpart D, §§ 200.331-333) who are exempted from the requirements of the Single Audit Act and subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

(1) Conducted in accordance with GAGAS attestation standards;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 200.428.

[85 FR 49565, Aug. 13, 2020]

§ 200.427 Bonding costs.

(a) Bonding costs arise when the federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-federal entity. They also arise in instances where the non-federal entity requires similar assurance, including bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the federal award are allowable.

(c) Costs of bonding required by the non-federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a non-federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-federal entity in accordance with cash management standards set forth in § 200.305.

[85 FR 49565, Aug. 13, 2020]

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in (B)(9) Student Administration and Services, in appendix III to this part, as activity costs.

[85 FR 49565, Aug. 13, 2020]

§ 200.430 Compensation - personal services.

(a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-federal entity consistently applied to both federal and non-federal activities;

(2) Follows an appointment made in accordance with a non-federal entity's laws and/or rules or written policies and meets the requirements of federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, when applicable.

(b) Reasonableness. Compensation for employees engaged in work on federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-federal entity. In cases where the kinds of employees required for federal awards are not found in the other activities of the non-federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-federal entity competes for the kind of employees involved.

(c) Professional activities outside the non-federal entity. Unless an arrangement is specifically authorized by a federal awarding agency, a non-federal entity must follow its written non-federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-federal entity for non-organizational compensation. Where such non-federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on federal awards be allocated between:

(1) Non-federal entity activities, and

(2) Non-organizational professional activities. If the federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) Unallowable costs.

(1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of federal awards, other statutory ceilings may apply.

(e) Special considerations. Special considerations in determining allowability of compensation will be given to any change in a non-federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in federal policy.

(f) Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) Nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include directors and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) Institutions of Higher Education (IHEs).

(1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special

lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities; such activities must either be specifically provided for in the federal award budget or receive prior written approval by the federal awarding agency.

(2) Salary basis. Charges for work performed on federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the federal awarding agency, charges of a faculty member's salary to a federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) Intra-Institution of Higher Education (IHE) consulting. Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the federal award or approved in writing by the federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on federal awards.

(ii) The non-federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-federal entity.

(v) The total salaries charged to federal awards, including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) Periods outside the academic year.

(i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) Part-time faculty. Charges for work performed on federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) Sabbatical leave costs. Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) Salary rates for non-faculty members. Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) Standards for Documentation of Personnel Expenses

(1) Charges to federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass federally-assisted and all other activities compensated by the non-federal entity on an integrated basis but may include the use of subsidiary records as defined in the non-federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one federal award; a federal award and non-federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a federal award based on budget estimates. All necessary adjustments must be made such that the final amount charged to the federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records that meet the standards required in paragraph (i)(1) of this section, the non-federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from federal awards.

(5) For states, local governments, and Indian tribes, substitute processes or systems for allocating salaries and wages to federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems that use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical, and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to federal awards will be minimal, or if it concludes that the system proposed by the non-federal entity will result in lower costs to federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For federal awards of similar purpose activity or instances of approved blended funding, a non-federal entity may submit performance plans that incorporate funds from multiple federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved federal awarding agencies. In these instances, the non-federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to

the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49565, Aug. 13, 2020]

§ 200.431 Compensation - fringe benefits.

(a) General. Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick, or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-federal entity-employee agreement, or an established policy of the non-federal entity.

(b) Leave. The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-federal entity or specified grouping of employees.

(i) When a non-federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) Fringe benefits. The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such federal awards and

other activities, and charged as direct or indirect costs in accordance with the non-federal entity's accounting practices.

(d) Cost objectives. Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) Insurance. See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-federal entity follows a consistent costing policy.

(f) Automobiles. That portion of automobile costs furnished by the non-federal entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) Pension plan costs. Pension plan costs which are incurred in accordance with the established policies of the non-federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) Except for State and Local Governments, the cost assigned to each fiscal year should be determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs

caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-federal entity may elect to follow the “Cost Accounting Standard for Composition and Measurement of Pension Costs” (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related federal reimbursement and the non-federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-federal entity's contribution in future periods.

(iv) When a non-federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-federal entity in the form of a refund, withdrawal, or other credit.

(h) Post-retirement health. Post-retirement health plans (PRHP) refer to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The federal cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related federal reimbursements and the non-federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-federal entity contribution in a future period.

(4) When a non-federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-federal entity in the form of a refund, withdrawal, or other credit.

(i) Severance pay.

(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the non-federal entity's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-federal entity in the United States, are unallowable, unless they are necessary for the performance of federal programs and approved by the federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-federal entity in that country, are unallowable, unless they are necessary for the performance of federal programs and approved by the federal awarding agency.

(j) For IHEs only.

(1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-federal entity policies, and are distributed to all non-federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466, for treatment of tuition remission provided to students.

(k) Fringe benefit programs and other benefit costs. For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other

benefits costs specifically incurred on behalf of, and in direct benefit to, the non-federal entity, are allowable costs of such non-federal entities whether or not these costs are recorded in the accounting records of the non-federal entities, subject to the following:

- (1) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;
- (2) The costs are properly supported by approved cost allocation plans in accordance with applicable federal cost accounting principles; and
- (3) The costs are not otherwise borne directly or indirectly by the Federal Government.

[85 FR 49565, Aug. 13, 2020]

§ 200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-federal entity and is necessary and reasonable for successful performance under the federal award. Allowable conference costs paid by the non-federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the federal award. The federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

[85 FR 49567, Aug. 13, 2020]

§ 200.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the federal award, and accepted by the federal awarding agency. As such, contingency amounts are to be included in the federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§ 200.300 and 200.403 of this

part); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-federal entity's records.

(c) Payments made by the federal awarding agency to the non-federal entity's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-federal entity may not be charged to the federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 200.306). Depreciation on donated assets is permitted in accordance with § 200.436, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-federal entity may be furnished to a non-federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306.

(d) To the extent feasible, services donated to the non-federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the

project. Such indirect costs may be reimbursed under the federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in § 200.306.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-federal entity. The value of the personal property and space may not be charged to the federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in § 200.300 of this part. The value of the donations must be determined in accordance with § 200.300. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) Definitions for the purposes of this section.

(1) Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) Costs include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) Fraud means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

(b) Costs.

(1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-federal entity, (or commenced by third parties or a current or former employee of the non-federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a federal, state, local or foreign statute, regulation or the terms and conditions of the federal award, by the non-federal entity (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the federal awarding agency head or delegate to the non-federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate federal official to debar or suspend the non-federal entity, to rescind or void a federal award, or to terminate a federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the federal award, or

(2) Specific written direction of an authorized official of the federal awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to the administration of the federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final federal agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-federal entity's activities, and properly allocated to federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the computation of depreciation, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-federal entity that are already claimed as matching or where law or agreement prohibits recovery;

(4) Any asset acquired solely for the performance of a non-federal award; and

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a

cognizant agency may authorize a non-federal entity to use more than these three groupings. When a non-federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation must be maintained.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the

approved budget for the federal award or with prior written approval of the federal awarding agency.

§ 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of capital expenditures, equipment, special purpose equipment, general purpose equipment, acquisition cost, and capital assets.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the federal awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5,000 or more have the prior written approval of the federal awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the federal awarding agency, or pass-through entity. See § 200.436, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the federal awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-federal entity is instructed by the federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The federal awarding agency must

however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the federal award. Subsequent adjustments for currency increases may be allowable only when the non-federal entity provides the federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient federal funds are available.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-federal entity violations of, alleged violations of, or failure to comply with, federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the federal award, or with prior written approval of the federal awarding agency. See also § 200.435.

[85 FR 49568, Aug. 13, 2020]

§ 200.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the federal program objectives are allowable with prior written approval from the federal awarding agency. Proposal costs are covered in § 200.460.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund-raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413.

[85 FR 49568, Aug. 13, 2020]

§ 200.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 200.447.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing federal award costs.

(d) When assets acquired with federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316 of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.475). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see definition for Local government in § 200.1 of this part), up to 50% of salaries and expenses directly attributable to managing and operating federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a federal awarding agency.

§ 200.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-federal entity.

(2) Idle facilities mean completely unused facilities that are excess to the non-federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information

technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the federal award or was originally reasonable and is not subject to reduction or elimination by use on other federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the federal awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431). The cost of such insurance when the non-federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of federal research programs only to the extent that the federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)

(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-federal entity. If individual departments or agencies of the non-federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-federal entity only to the extent expressly provided for in the federal award, except as provided in paragraph (c) of this section.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49568, Aug. 13, 2020]

§ 200.448 Intellectual property.

(a) Patent costs.

(1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) Royalties and other costs for use of patents and copyrights.

(1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a federal award would be made.

(iii) Royalties paid under an agreement entered into after a federal award is made to a non-federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-federal entity retained title thereto.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

§ 200.449 Interest.

(a) General. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b) Capital assets.

(1) Capital assets is defined as noted in § 200.1 of this part. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) Conditions for all non-federal entities.

(1) The non-federal entity uses the capital assets in support of federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-federal entity from an unrelated (arm's length) third party.

(3) The non-federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-federal entity limits claims for federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-federal entity for the acquisition of facilities prior to occupancy.

(i) The non-federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for federal awards.

(ii) The non-federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions,

debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to “full coverage” under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-federal entity's federal awards are instead subject to CAS 414 (48 CFR 9904.414), “Cost of Money as an Element of the Cost of Facilities Capital”, and CAS 417 (48 CFR 9904.417), “Cost of Money as an Element of the Cost of Capital Assets Under Construction”.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54409, Sept. 10, 2015; 85 FR 49569, Aug. 13, 2020]

§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, or cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including

among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying” published on February 26, 1990, including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a federal employee or officer to give consideration or to act regarding a federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of federal or state legislation;

(B) The enactment or modification of any pending federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§ 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a non-federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413.

(vi) The non-federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 200.415.)

(vii)

(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 200.302 with respect to lobbying costs during any particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the non-federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-federal entity from contesting the lawfulness of such a determination.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

[85 FR 49569, Aug. 13, 2020]

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a federal award.

(d) Where federally-donated or furnished materials are used in performing the federal award, such materials will be used without charge.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the federal awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 200.450.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the federal awarding agency.

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.1 are allowable with the prior approval of the federal awarding agency.

[85 FR 49569, Aug. 13, 2020]

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

[85 FR 49569, Aug. 13, 2020]

§ 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the federal award or subaward directly pursuant to the negotiation and in anticipation of the federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the federal award and only with the written approval of the federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the federal awarding agency or pass-through entity.

[85 FR 49569, Aug. 13, 2020]

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-federal entity, are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

- (1) The nature and scope of the service rendered in relation to the service required.
- (2) The necessity of contracting for the service, considering the non-federal entity's capability in the particular area.
- (3) The past pattern of such costs, particularly in the years prior to federal awards.

(4) The impact of federal awards on the non-federal entity's business (i.e., what new problems have arisen).

(5) Whether the proportion of federal work to the non-federal entity's total business is such as to influence the non-federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential federal and non-federal awards or projects, including the development of data necessary to support the non-federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a federal award.

(3) The non-federal entity may charge the federal award during closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of

performance of the federal award. If charged to the award, these costs must be charged to the final budget period of the award, unless otherwise specified by the federal awarding agency.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a federal award are allowable as a direct cost with the prior approval of the federal awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-federal entity's facilities to approximately the same condition existing immediately prior to commencement of federal awards, less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-federal entity's standard recruitment program. Where the non-federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-federal entity will be required to refund or credit the federal share of such relocation costs to the Federal Government. See also § 200.464.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a federal award. For these costs to be directly charged to a federal award, they must:

- (1) Be critical and necessary for the conduct of the project;
- (2) Be allowable under the applicable cost principles;

(3) Be consistent with the non-federal entity's cost accounting practices and non-federal entity policy; and

(4) Meet the definition of “direct cost” as described in the applicable cost principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a federal award and the employee resigns for reasons within

the employee's control within 12 months after hire, the non-federal entity must refund or credit the Federal Government for its share of the cost. If dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs, and not this relocations costs of employees (See also § 200.464).

(d) The following costs related to relocation are unallowable:

- (1) Fees and other costs associated with acquiring a new home.
- (2) A loss on the sale of a former home.
- (3) Continuing mortgage principal and interest payments on a home being sold.
- (4) Income taxes paid by an employee related to reimbursed relocation costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49570, Aug. 13, 2020]

§ 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

- (1) Divisions of the non-federal entity;
- (2) The non-federal entity under common control through common officers, directors, or members; and
- (3) The non-federal entity and a director, trustee, officer, or key employee of the non-federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-federal entity.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-federal entity purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable to the extent they meet the criteria in § 200.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-federal entity purchased the property.

(e) Rental or lease payments are allowable under lease contracts where the non-federal entity is required to recognize an intangible right-to-use lease asset (per GASB) or right of use operating lease asset (per FASB) for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the non-federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the federal award is to provide training to selected participants and the charge is approved by the federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

- (1) The individual is conducting activities necessary to the federal award;
- (2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under federal awards as well as other activities; and
- (3) During the academic period, the student is enrolled in an advanced degree program at a non-federal entity or affiliated institution and the activities of the student in relation to the federal award are related to the degree program;
- (4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and
- (5) It is the IHE's practice to similarly compensate students under federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 200.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 200.431.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-federal entity (unless allowed under § 200.421) are unallowable, except as direct costs, with prior approval by the federal awarding agency when necessary for the performance of the federal award.

[85 FR 49570, Aug. 13, 2020]

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section, and, in addition, take into account any items of income or federal financing that qualify as applicable credits under § 200.406.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under federal awards and other activities of the non-federal entity, including usage by the non-federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under-applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-federal entity to establish alternative costing arrangements, such arrangements may be worked out with the federal cognizant agency for indirect costs.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect federal programs or changes in tax policies that disproportionately affect federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the federal awarding agency to identify taxes where federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the non-federal entity directly or which are available to the non-federal entity based on an exemption afforded the Federal Government and, in the latter case, when the federal awarding agency makes available the necessary exemption certificates,

(ii) Special assessments on land which represent capital improvements, and

(iii) federal income taxes.

(2) Any refund of taxes, and any payment to the non-federal entity of interest thereon, which were allowed as federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-federal entity is legally required to pay in country is an allowable expense under federal awards. Foreign tax refunds or applicable credits under federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-federal entity relate to allowable cost, these costs must be credited to the federal awarding agency either as costs or cash refunds. If the costs are credited back to the federal award, the non-federal entity may reduce the federal share of costs by the amount of the foreign tax reimbursement, or where federal award has not expired, use the foreign government tax refund for approved activities under the federal award with prior approval of the federal awarding agency.

§ 200.471 Telecommunication costs and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

[85 FR 49570, Aug. 13, 2020]

§ 200.472 Termination costs.

Termination of a federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-federal entity's other work must not be allowable unless the non-federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-federal entity, the federal awarding agency should consider the non-federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-federal entity must be regarded as evidence that such items are reasonably usable on the non-federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-federal entity,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the federal awarding agency (see also § 200.313 (d)), and

(3) The loss of useful value for any one terminated federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the federal award bears to the entire terminated federal award and other federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the federal award and such further period as may be reasonable, and

(2) The non-federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the federal award, unless the termination is for cause (see subpart D, including §§ 200.339-200.343); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the federal award and to other work of the non-federal entity, are generally allowable. An appropriate share of the non-federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

[78 FR 78608, Dec. 26, 2013. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

§ 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

§ 200.474 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the federal award, should be treated as a direct cost.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

§ 200.475 Travel costs.

(a) General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied

to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-federal entity's non-federally-funded activities and in accordance with non-federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the federal awarding agency or pass-through entity when they are specifically related to the federal award.

(b) Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-federal entity in its regular operations as the result of the non-federal entity's written travel policy. In addition, if these costs are charged directly to the federal award documentation must justify that:

(1) Participation of the individual is necessary to the federal award; and

(2) The costs are reasonable and consistent with non-federal entity's established travel policy.

(c)

(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the federal award;

(ii) The costs are consistent with the non-federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the federal awarding agency. See also § 200.432.

(d) In the absence of an acceptable, written non-federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under federal awards (48 CFR 31.205-46(a)).

(e) Commercial air travel.

(1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-federal entity can demonstrate that such airfare was not available in the specific case.

(f) Air travel by other than commercial carrier. Costs of travel by non-federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.475.

[85 FR 49571, Aug. 13, 2020]

View the electronic version of the Selected Principles of Cost online at

<https://ecfr.federalregister.gov/current/title-2/subtitle-A/chapter-II/part-200#subject-group-ECFRed1f39f9b3d4e72>

▪ **APPENDIX N: PRIOR WRITTEN APPROVAL**

2 CFR Part 200 Section § 200.407 titled *Prior written approval (prior approval)* provide additional guidance on items of cost that may require the prior approval of the federal agency to be allowable costs.

Under any given federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or non-allocability, the non-federal entity may seek the prior written approval of the cognizant agency for indirect costs or the federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability.

These sections listed below under certain circumstances may require the prior written approval of the federal agency:

(a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);

(b) § 200.306 Cost sharing or matching;

(c) § 200.307 Program income;

(d) § 200.308 Revision of budget and program plans;

(e) § 200.311 Real property;

(f) § 200.313 Equipment;

(g) § 200.333 Fixed amount subawards;

(h) § 200.413 Direct costs, paragraph (c);

(i) § 200.430 Compensation - personal services, paragraph (h);

(j) § 200.431 Compensation - fringe benefits;

(k) § 200.438 Entertainment costs;

(l) § 200.439 Equipment and other capital expenditures;

(m) § 200.440 Exchange rates;

(n) § 200.441 Fines, penalties, damages and other settlements;

(o) § 200.442 Fund raising and investment management costs;

- (p) § 200.445 Goods or services for personal use;
- (q) § 200.447 Insurance and indemnification;
- (r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) § 200.455 Organization costs;
- (t) § 200.456 Participant support costs;
- (u) § 200.458 Pre-award costs;
- (v) § 200.462 Rearrangement and reconversion costs;
- (w) § 200.467 Selling and marketing costs;
- (x) § 200.470 Taxes (including Value Added Tax); and
- (y) § 200.475 Travel costs.

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