

Appendix A

OMB Uniform Guidance

Changes Likely to Impact School Districts (Text in **boldface** indicates new language)

Prepared for Education TURNKEY by Dr. Cheryl Sattler

Section	Change	Practical Impact on School Districts
200.20 Computing Devices NEW	<i>Computing devices</i> means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. See also §§ 200.94 Supplies and 200.58 Information technology systems.	<p>Previously there was no separate definition for computers/technology, meaning that if they were expensive (generally over \$500) and used for more than 1 year, they were “equipment,” and if they were less than \$500, they were considered “supplies.” These two categories have very different recordkeeping requirements. This new definition clarifies this situation and exempts most technology (up to a \$5,000 ceiling) from the requirements of equipment – tagging, inventorying, and reconciling every other year.</p> <p>This should reduce burden to school districts as they acquire new technology devices.</p>
200.33 Equipment origin: A-102	<i>Equipment</i> means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.	<p>Explicitly aligns definition of equipment with a state/school district’s own definition, allowing a single system of recordkeeping (except if the state/district’s definition is greater than \$5,000.00). Should reduce the burden on districts.</p>

<p>200.45 Fixed amount awards</p> <p>NEW</p>	<p><i>New. Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results.</i></p>	<p>This would be a type of grant that would minimize cost accounting. It's not clear how or if this type of award is to be used in education.</p>
<p>200.58 Information Technology Systems</p> <p>NEW</p>	<p><i>Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also §§ 200.20 Computing devices and 200.33 Equipment.</i></p>	<p>This is a new definition. Some school districts believe that, as their technology needs are more complex (servers, etc.) this gives them permission to spend federal funds on such technology infrastructure. Since the definition is not used within the UGG, it's not clear what the implications are.</p>
<p>200.76 Performance goal</p> <p>NEW</p>	<p><i>Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).</i></p>	<p>This is a new definition and it is not clear how it will apply to federal grants used by school districts. It is not clear whether this is limited to the Government Results and Performance Act (GPRA) which provides Federal program-level reports on performance (aggregated from school districts on up) or whether a new form of reporting and analysis is anticipated.</p> <p>We are likely to see what this means when the US Department of Education issues its next round of awards, in July 2015, as the Department is responsible for providing recipients with “clear performance goals, indicators, and milestones”. See also 200.210.</p>

<p>200.79 Personally identifiable information (PII)</p> <p>NEW</p>	<p>PII means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public Web sites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.</p>	<p>The concept of data privacy has become a concern across the country. As districts establish contracts with third-party providers for products that capture student data, these contracts should address personally identifiable information. Districts have some knowledge of “directory” information but these definitions vary, and in many cases are out of date.</p>
--	---	---

<p>200.82 Protected Personally identifiable information (Protected PII)</p> <p>NEW</p>	<p><i>Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed.</i></p>	<p>Taken together with the definition of personally identifiable information (above), this is a newly created definition intended to require districts to ensure the privacy of data that can be readily linked to students.</p> <p>As districts establish contracts with third-party providers for products that capture student data, these contracts should address protected personally identifiable information.</p>
<p>200.88 Simplified Acquisition Threshold</p> <p>NEW</p>	<p><i>Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this Part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.</i></p>	<p>The simplified acquisition threshold (SAT) is the boundary at which, if a procurement exceeds this amount, stricter rules apply. The SAT is currently \$100,000, and this new regulation raises it to \$150,000.00.</p>

200.112 Conflict of Interest	The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.	<p>School districts vary on whether or not they have written conflict of interest policies, and those policies also vary on who is covered and the requirements. Now, all districts must create compliant conflict of interest policies, modeled after a policy created by the US Department of Education (such a policy has not been made public at this time)</p> <p>The requirement for disclosure is new. In general, most districts will have to disclose to the state education agency, which may use the information in auditing the school district.</p> <p>Having to disclose conflicts may make districts less likely to enter into contracts that make such conflicts an issue.</p>
200.113 Mandatory Disclosures	The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR Part 180 and 31 U.S.C. 3321).	<p>This policy relates to serious, criminal violations – fraud, bribery, etc. Presumably this requirement is to enable the US Department of Education and its Inspector General to more closely and thoroughly track these violations, which previously could be identified and addressed locally without being brought to the attention of the Federal government.</p>
200.301 Performance Measurement	The Federal awarding agency must require the recipient to use OMB-approved government-wide standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data to performance accomplishments of the	<p>This requirement states that the US Department of Education cannot request data in addition to what is already requested through a number of data collections (all of which must be vetted by the Office of Management and Budget). While this may relieve some school district burden (in terms of additional data to collect) it also may increase the burden on districts to ensure that their data are accurate.</p> <p>Districts do not currently relate financial data to performance accomplishments, and the form of such reporting is not at all clear. This change is consistent with a government-wide focus on maximizing the impact of a Federal award.</p> <p>It is also unclear what is meant by providing cost information to demonstrate cost-effective practices. It is not clear whether this is limited to the Government Results and Performance Act (GPRA) which provides Federal program-level reports on performance (aggregated from school districts on up) or whether a new form of reporting and analysis is anticipated.</p> <p>We are likely to see what this means when the US Department of Education issues its next round of awards,</p>

	<p>Federal award. Also, in accordance with above mentioned government-wide standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The Federal awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in § 200.210 Information contained in a Federal award. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made.</p>	<p>in July 2015, as the Department is responsible for providing recipients with “clear performance goals, indicators, and milestones.” See also 200.210.</p>
<p>200.313 Equipment (c)(1) NEW</p>	<p>Equipment purchased with federal funds can be used by the school district as long as needed, whether or not the program continues to be federally supported.</p>	<p>This is likely to impact short-term grants rather than categorical funds, which tend to be renewed. It will also impact schools that are at the low end of eligibility for categorical funds. Districts can buy equipment with the federal funds and then continue to use it without worrying if the grant is renewed. For example, computers purchased with a School Improvement Grant could remain in a school after the end of the funding period.</p>

	<p>Priority order of use:</p> <ol style="list-style-type: none"> 1. activities under a federal award from the same source (other ED funds); 2. activities under other federal awards. 	
<p>200.313 Equipment (c)(2) NEW</p>	<p>Equipment purchased with federal funds MUST be made available for other projects currently or previously supported by the federal government provided that such use will not interfere with the work on the projects or program for which it was originally acquired.</p>	<p>This will impact any funding program that is directed to a specific population, like IDEA or Title III. It means that if for example a computer or whiteboard is purchased with IDEA funds, when it isn't being used by IDEA it has to be available for other federal programs.</p> <p>Note: This is almost a complete reversal of current policy.</p>
<p>200.313 Equipment (c)(2) and (3) NEW</p>	<p>Equipment may also be used for non-federally funded programs or projects. User fees should be considered if appropriate.</p> <p>Note: almost a complete reversal of current policy</p> <p>Notwithstanding...the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal government retains an interest in the equipment."</p>	<p>Federally funded purchases may be used wherever needed as long as the original project participants retain the use they need. For example, computers purchased for Title I students can be used at night for adult education. This flexibility is likely to be welcomed by some districts and avoided by others, who will fear that federal funds will be tapped to purchase equipment for general district or school use.</p> <p>The ban on using federally funded equipment to provide services "for a fee that is less than private companies charge..." is to prevent districts from engaging in anti-competitive activities that would disadvantage local businesses.</p> <p>The user fees is likely to come into play where there is an afterschool program run by a third party such as a Boys and Girls Club (perhaps 21st Century) who could be asked to pay a per-student fee to defray the cost of maintenance, or perhaps an education service provider that wishes to use a school's computer lab. This flexibility is likely to be limited by existing district and school policies about the use of school/district property by third parties, and logistical challenges.</p> <p>Some school districts value the ability to generate program income, while others do not.</p>
<p>200.318 General Procurement Standards (a)</p>	<p>LEAs must have documented procurement procedures that reflect applicable state, local, Federal law (including the</p>	<p>School districts without documented procurement procedures will have to create them; districts with documented procedures will have to revise them to comply. All documents created by a school district would be considered public information, and must be supplied on request (a fee may apply). The availability of such information may assist in understanding the often-complex district procurement process.</p>

	OMB guidance)	See also the requirements listed in 200.319 (c)
200.318 General Procurement Standards (b)	LEAs must maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders. Shift is from a “system” to “oversight”	Formerly, school districts were required to have a “management system” to track contractors. In practice, this often meant that contractors’ payments were available in the district’s computerized accounting system. This new requirement is stronger. Districts now must “maintain oversight” over contractors’ performance, with the implication that such performance will be more closely monitored for compliance. This will require recordkeeping and potentially the determination of appropriate deliverables.
200.318 General procurement standards (c)(1)	Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. -No employee/ officer/ agent may participate in selection/ award/ administration of a contract supported by a Federal award if has a real or apparent conflict of interest. Conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.	School districts are already required to have standards of conduct covering conflicts of interest. However, these requirements are higher than those previously required. New is the requirement that personnel cannot participate in awards (see language at left) in the case of an “apparent” conflict of interest. Also new: the inclusion of “a tangible personal benefit from” a firm. Districts will have to define this term, but generally it will be defined as above a nominal amount (\$25-50). Another addition is that the conflict of interest applies to a firm “considered for” a contract. Previously, conflicts of interest applied to firms “selected for award.” Also see 200.112 - District must disclose all conflicts of interest
200.318 General procurement standards (c)(1)	The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set	School districts are already required to have standards of conduct covering conflicts of interest. However, these requirements are higher than those previously required. New: the requirement for disciplinary actions, which cannot be limited by state or local law. Districts will have to define what is meant by “not substantial” or “nominal value.” This is likely to impact dinners at conferences, vendor-sponsored trips, etc.

	<p>standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.</p> <p>*No longer included: “To the extent permitted by State or local law or regulations”</p>	
<p>200.318 General procurement standards</p> <p>(2)</p> <p>NEW</p>	<p>If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.</p>	<p>This is a new extension of conflict of interest, and covers organizations that are related to a school district but are separate. One example would be school district foundations. As this is new, districts are likely to look to the Federal government for an interpretation.</p>
<p>200.318 General procurement standards</p> <p>(2)(i)</p>	<p>The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the</p>	<p>Previously, districts had to keep a “paper trail” of records for “significant” procurements. Now, districts must keep records for all procurements.</p> <p>The requirements are quite extensive, and may require potential vendors to provide additional information to school districts. Auditors will be checking to see that the rationale for the method of procurement (bid, RFP, sole source) meets the standards established in the UGG. Auditors also will be looking at the basis for the contract price (potentially including factors used in negotiating profit).</p>

	basis for the contract price. Change: for ALL procurements	
200.318 General procurement standards (j)(1)	<p>The non-Federal entity may use time and material type contracts 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 material type contract means a contract whose cost to a non-Federal entity 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.</p> <p>(2) 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 in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.</p>	Districts may make few changes in this area. Time and materials contracts are often used with consultants such as those who provide professional development. However, most time and materials contracts already contain a ceiling price (“not to exceed”) but this explicit requirement may cause some districts to reconsider the use of such contracts.
200.319 Competition (a) NEW	In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements,	Districts frequently ask for a potential contractor to develop a scope of work or other documents to inform a procurement. If this happens, districts will now be required to exclude the drafter from any competition for that work. It appears that, because the language states “from competing,” that this may only apply for work valued at more than \$150,000.00.

	statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.	
200.319 Competition (a)(6)	Newly strengthened: Cannot specify only a “brand name” product instead of allowing “an equivalent” product to be offered and describing the performance or other relevant requirements of the procurement	It is common district practice to use a “sole source” contract because only a single organization can supply a specific product (for example, only Renaissance Learning supplies Accelerated Reader). Former language stated that districts needed to specify that “an equal” product could be purchased – a requirement that was largely ignored because it seemed to require simply that the same product could be purchased from more than one supplier. Now, districts are prohibited from using a brand name as a rationale for sole source. Instead, they must include language allowing “an equivalent” product to be procured. An equivalent product would have to meet the specifications of the procurement. In the case of the Accelerated Reader example, an equivalent might be another computer-based reading program that tracks student performance.
200.319 Competition (7)(b)	Newly prohibited: use of statutorily or administratively imposed state or local 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. Procurements 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.	Previously, state and local mandates for geographical preference had to be followed, even when using federal funds. Districts will have to examine local and state mandates for geographical preference and will have to make sure federal funds don’t have this restriction. This is likely to be a headache as some funds (state/local) will be subject to these restrictions while Federal will not.
200.320 Methods of Procurement to be followed	New: Micro-purchases for acquisition of supplies or services. Current ceiling is \$3,000. To the extent practicable, the non-Federal entity must	This is a new category of purchasing, and it essentially removes the requirements from small purchases (under \$3,000.00). As the language (at left) indicates, the district must “to the extent practicable” distribute such purchases equitably. Districts aren’t likely to do so in most cases as they have established relationships and accounts with suppliers and often receive a discount from those suppliers. As stated in the official FAQ: The non-Federal entity must, to the extent practicable, distribute these

	<p>distribute micro-purchases equitably among qualified suppliers.</p> <p>Reference 200.67 for definition: Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.</p>	<p>purchases equitable among qualified suppliers. For example, a purchase of computer paper in the amount of \$2,000 can be treated as “a micro-purchase.” No rate competitive quotations are necessary for the purchase. A cost or price analysis is not required. However, in accordance with the non-Federal entity’s written policies, which may include strategic sourcing or bulk purchase arrangements ...the non-Federal entity must consider whether to make the purchase from any one of a number of office supply stores. Such policies may dictate the purchase of computer paper to rotate among qualified suppliers if they offer the same rates.</p> <p>The overarching goal appears to be cost savings.</p>
<p>200.320 Methods of procurement to be followed</p> <p>(b)</p>	<p>Small purchase (\$3,001-\$149,999)</p> <p>New: required documentation per 200.318</p> <p>New: LEAs limited to the 5 procurement methods</p> <p>Old language: “methods of</p>	<p>This is the category of spending for items between \$3,001 and \$149,999, called “small purchases. Previously, districts had to keep a “paper trail” of records for “significant” procurements. Now, districts must keep records for all procurements.</p> <p>The requirements are quite extensive, and may require potential vendors to provide additional information to school districts. Auditors will be checking to see that the rationale for the method of procurement (bid, RFP, sole source) meets the standards established in the UGG.</p>

	procurement to be followed” New language: The non-Federal entity MUST use one of the following methods of procurement.”	
200.320 Methods of procurement to be followed (c)	Over the Simplified Acquisition Threshold (\$150,000) Sealed Bid New: required documentation per 200.318	All purchases over \$150,000 must be conducted using one of three methods. Sealed bids is the first of these methods. Sealed bids are typically used for commodities and construction. In any case, sealed bid policies and procedures are probably already in place in most LEAs. LEAs will need to review but few changes are likely. However, districts must keep records for all procurements. The requirements are quite extensive, and may require potential vendors to provide additional information to school districts. Auditors will be checking to see that the rationale for the method of procurement (bid, RFP, sole source) meets the standards established in the UGG. Auditors also will be looking at the basis for the contract price (potentially including factors used in negotiating profit).
200.320 Methods of procurement to be followed (d)	Over the Simplified Acquisition Threshold (\$150,000) Competitive proposals New: Any response to publicized requests for proposals must be considered to the maximum extent practical (former: shall be honored) New: The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;	All purchases over \$150,000 must be conducted using one of three methods. Competitive proposals is the second of these methods. Districts will have to consider whether and how to publicize RFPs. New language concerning responses must be considered, which appears weaker than the prior “shall be honored”; however it is not clear what this entails. Districts may have a slower buying process due to the need to create written procedures, which are then subject to open government requirements and must be supplied to requesters (there may be a fee). Previously, districts had to keep a “paper trail” of records for “significant” procurements. Now, districts must keep records for all procurements. The requirements are quite extensive, and may require potential vendors to provide additional information to school districts. Auditors will be checking to see that the rationale for the method of procurement (bid, RFP, sole source) meets the standards established in the UGG. Auditors also will be looking at the basis for the contract price (potentially including factors used in negotiating profit).
200.320 Methods of procurement to be followed (f)	Over the Simplified Acquisition Threshold (\$150,000) Sole Source (noncompetitive proposals) “Procurement by noncompetitive proposals is procurement through	All purchases over \$150,000 must be conducted using one of three methods. Competitive proposals is the third of these methods. These requirements are stricter than previously (see language at left). The potential impact on sole source really is derived from the brand-name limitation of procurement in general, as many districts used the brand name to justify sole-source procurements. The new language does permit a district to request permission to sole source from the state educational

	<p>solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:</p> <p>(1) The item is available only from a single source;</p> <p>(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;</p> <p>(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or</p> <p>(4) After solicitation of a number of sources, competition is determined inadequate.</p> <p>No longer in effect: “(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.</p> <p>(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.”</p>	<p>agency, but this is a burdensome process that few districts are likely to utilize.</p> <p>One area of relief in the new requirements is that “Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits,” is no longer required.</p> <p>Previously, districts had to keep a “paper trail” of records for “significant” procurements. Now, districts must keep records for all procurements.</p> <p>The requirements are quite extensive, and may require potential vendors to provide additional information to school districts. Auditors will be checking to see that the rationale for the method of procurement (bid, RFP, sole source) meets the standards established in the UGG. Auditors also will be looking at the basis for the contract price (potentially including factors used in negotiating profit).</p>
<p>200.323 Contract Cost and Price (a)</p>	<p>Old: A cost analysis must be performed when the offeror is required to submit the elements</p>	<p>This requirement – for cost analysis – has now been extended from a relatively small group of procurements (see language, at left) to all procurements above \$150,000.</p>

	<p>of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.</p> <p>New: The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.</p>	<p>Both the old and new language have been provided for comparison.</p> <p>Note that the prior language that cost analysis is not required if price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities...” is no longer allowed.</p> <p>Districts will need significant assistance in interpreting this requirement.</p>
<p>200.323 Contract Cost and Price (b)</p>	<p>The non-Federal entity 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</p>	<p>Although there are no changes here, the requirement for <i>written</i> procedures for procurement (and the fact that, as an internal control, they will be examined) should prompt districts to create procedures that adhere to these requirements. Districts vary on their current levels of adherence.</p>

	<p>performed. To establish 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.</p>	
<p>200.324 Federal awarding agency or pass-through entity review</p>	<p>Throughout this section, authority formerly reserved for the Federal agency is now shared with the pass-through agency (State education agency).</p> <p>States may now review documents on request. In order to be exempt from procurement reviews, the non-Federal entity may request that the state education agency test the procurement systems of the non-federal entity (appears reserved for “continuous high-dollar funding and third-party contracts are awarded on a regular basis”)</p>	<p>Procurement reviews was previously reserved for the federal awarding agency (the US Department of Education). Therefore, few occurred unless a district was audited by the Inspector General. Now, the authority is extended to the State Education Agency.</p> <p>States will vary in their implementation of this option to review procurement documents.</p> <p>Larger districts will be able to request waivers of this requirement by asking the state to examine their procurement systems.</p>
<p>200.325 Bonding requirements</p>	<p>Throughout this section, authority formerly reserved for the Federal agency is now shared with the pass-through agency (State education agency).</p>	<p>If the state education agency has reviewed a district and concluded that the district meets standards, no further bonding requirements are in effect.</p> <p>If not, all bonding requirements are in effect in the same manner as in prior guidance except that the requirements “MUST” be met. This is most likely to impact construction contracts.</p>
<p>200.415 Certifications</p>	<p>To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the</p>	<p>Although prior versions required certification, the language was limited to the accuracy of indirect cost proposals. Language concerning fraud, etc. is new.</p> <p>This is meant to raise awareness of the consequences of fraud.</p>

	<p>agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”</p>	
--	---	--