

# ***ESSA Procurement & Fiscal Updates***



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# Agenda

- EDGAR Rules (Part 200)
  - Procurement
  - Allowability
- ESSA Requirements
  - Use of Title I Funds
  - Fiscal Rules
    - Supplanting
    - MOE





# EDGAR Rules

## 2 CFR Part 200

# Effective Dates

- **December 26, 2014** – Direct Grants from ED
- **July 1, 2015** – State Administered Programs
- **July 1, 2017** – Procurement Rules (Two Year Grace Period)
- Indirect Cost Rates When Due For Renegotiation

# The New 2 CFR Part 200

- Subpart A – Definitions
- Subpart B – General Provisions
- Subpart C – Pre Award Requirements
- Subpart D – Post Award Requirements
- Subpart E – Cost Principles
- Subpart F – Audit Requirements

# Procurement



# Contract vs. Grant 200.330 (pg 124)

- No change from the current requirement.
- Entities must clearly determine what is a subgrant and what is a contract.



# Procurement by States 200.317 (pg 118)

- Still provides flexibility for States
- All other nonfederal entities follow policies and procedures under Section 200.318-200.326.



# General Procurement Standards 200.318(a) (pg 118)

- All nonfederal entities must have documented procurement procedures which reflect applicable Federal, State, and local laws and regulations.

# Contract Administration

## 200.318(b) (pg 118)

- Nonfederal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract

# Conflict of Interest

## 200.318(c)(1) (pg 118)

- Must maintain written standard of conduct, including conflict of interest policy.
- A conflict of interest arises when any of the following has a financial or other interest in the firm selected for award:
  - Employee, officer or agent
  - Any member of that person's immediate family
  - That person's partner
  - An organization which employs, or is about to employ, any of the above or has a financial interest in the firm selected for award

# Conflict of Interest (cont.)

## 200.318(c)(1) (pg 118)

- Must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors/ subcontractors.
- However, may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- Standards of conduct must include disciplinary actions applies for violations.



# Conflict of Interest (cont.)

## 200.318(c)(2) (pg 118)

- **NEW:** If the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state or local government the entity must also maintain written standards of conduct covering organization conflicts of interest

# Conflict of Interest (cont.)

## 200.112 (pg 101)

- The Federal awarding agency must establish conflict of interest policies for Federal awards.
- **NEW:** All non federal entities must establish conflict of interest policies, and disclose in writing any potential conflict to the federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

# Mandatory Disclosures

## 200.113 (pg 102)

- **NEW:** Must disclose in writing, in a timely manner:
  - All violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.
  - Failure to make disclosures can result in remedies in 200.338 (remedies for noncompliance) including suspension and debarment.

# Vendor Selection Process 200.318(h) (pg 119)

- Must award contracts only to responsible contractors possessing the ability to perform successfully:
  - Contractor integrity
  - Compliance with public policy
  - Record of past performance
  - Financial and technical resources



# Competition

## 200.319(a) (pg 119)

- All procurement transactions must be conducted with full and open competition.
  - Must have protest procedures to handle disputes
- To eliminate unfair advantage, contractors that develop or draft specifications, requirements, statement of work, and invitations for bids or RFPs must be excluded from competing for such procurements.

# Competition (cont.)

## 200.319(a) (pg 119)

### ■ Situations that restrict competition:

1. Unreasonable requirements on firms to qualify to do business
2. Requiring unnecessary experience or excessive bonding
3. Noncompetitive pricing practices
4. Noncompetitive awards to consultants on retainer
5. Organizational conflicts of interest (see 200.318(c)(2))
6. Specifying a brand name instead of allowing “an equal”
7. Any arbitrary action in the procurement process

# Competition (cont.)

## 200.319(b) (pg 119)

- Must prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposal, except where applicable Federal statutes expressly mandate or encourage geographic preference.
- Does not preempt state licensing laws.
- Exception: architectural and engineering services (if provides appropriate number of qualified firms).

# Competition (cont.)

## 200.319(c) (pg 119-120)

- Written procedures for procurement must ensure all solicitations:
  - Incorporate a clear and accurate description of the technical requirements for materials, product or service to be procured; and
    - “Brand name or equivalent” may be used as needed, but the specific features of the named brand which must be met by the offers must be clearly states
  - Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

# Methods of Procurement 200.320 (pg 120-121)

- Method of procurement:
  - **NEW:** Micro-purchase
  - Small purchase procedures
  - Competitive sealed bids
  - Competitive proposals
  - Noncompetitive proposals

# Micro-Purchase 300.320(a) (pg 120)

- **NEW:** Acquisition of supplies and services under \$3,500 or less.
- May be awarded without soliciting competitive quotations if nonfederal entity considers the cost reasonable.
- To the extent practicable must distribute micro-purchases equitably among qualified suppliers.

# Small Purchase Procedures 300.320(b) (pg 120)

- Good or service that costs \$150,000 or less
  - (NEW: Simplified Acquisition Threshold was raised under 200.88)
  - Organization may set lower threshold
- Must obtain price or rate quotes from an adequate number of qualified sources
- “Relatively simple and informal”

# Sealed Bids

## 300.320(c) (pg 120)

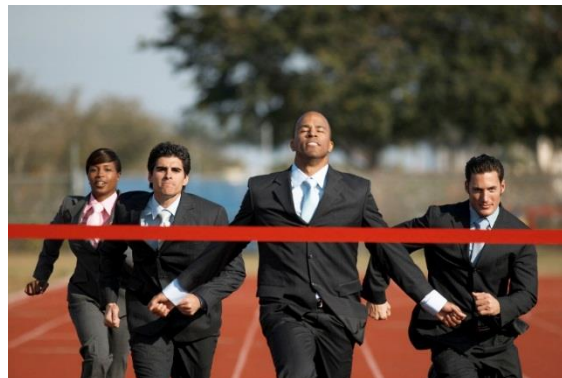


- Over \$150,000
  - Organization may set lower threshold
- Bids are publically solicited.
- Appropriate when:
  - A complete, adequate and realistic specification or description of good or service is available;
  - Two or more responsible bidders are willing and able to compete effectively for the business
  - Selection of vendor can be made principally based on price and it's a firm fixed price contract.



# Competitive Proposals 300.320(d) (pg 120-121)

- Over \$150,000
  - Organization may set lower threshold
- Award contract to responsible vendor whose proposal is most advantageous to the program, considering price and other factors.
- Generally used when sealed bid is not appropriate.



# Noncompetitive Proposals 200.320(f) (pg 121)



- Appropriate only when:
  - The item is only available from a single source;
  - There is a public emergency that will not permit delay;
  - **NEW:** The Federal awarding agency or pass-through expressly authorizes noncompetitive proposals in response to a written request from non-Federal entity; or
  - After soliciting a number of sources, competition is determined inadequate.

# Contract Cost and Price 200.323 (pg 121)

- **NEW:** Must perform a cost or price analysis in connection with every procurement action over \$150,000, including contract modifications
- Independent estimate before receiving bids or proposals.
  - Cost analysis generally means evaluating the separate cost elements that make up the total price (including profit)
  - Price analysis generally means evaluating the total price



# Suspension and Debarment Appendix II(H) (pg 183)

- Cannot contract with vendor who has been suspended or debarred
  - Excluded Parties List System in the System for Award Management (SAM)
  - 2 CFR Part 180 (OMB Debarment Suspension Rules) and 2 CFR 3485 (USDE Rules)

# Suspension and Debarment

## 2 CFR 180.300

- For contracts over \$25,000 you must verify that the person with whom you intend to do business is not excluded or disqualified.
- This MUST be done by either:
  - a. Checking SAM; or
  - b. Collecting a certification from that person; or
  - c. Adding a clause or condition to the covered transaction with that person.

# Factors Affecting Allowability of Costs

## 200.403

### All Costs Must Be:

1. Necessary, Reasonable and Allocable
2. Conform with federal law & grant terms
3. Consistent with state and local policies
4. Consistently treated
5. In accordance with GAAP
6. Not included as match
7. *Net of applicable credits (moved to 200.406)*
8. Adequately documented



# ESSA

## **Allowable Use of Funds** **Fiscal Requirements**

# Definition Changes Sec. 8101 (52)

- **(NEW)** “core academic subjects” → “well-rounded education”
  - English, reading or language arts, writing
  - **science, technology, engineering, mathematics,**
  - **computer science,**
  - foreign languages,
  - civics and government,
  - economics,
  - arts, music
  - history, geography,
  - **career and technical education,**
  - health, physical education, and
  - others as designated by State/LEA
- **(NEW)** Removed the definition of Highly Qualified Teachers (HQT)



# LEA Plans

## Sec. 1112

Describes how the LEA will:

- Monitor student's progress in meeting challenging State academic standards
  - Includes implementing a “well-rounded program of instruction”
- Address disparities in teacher distribution
- Meet its responsibilities re: comprehensive support and improvement
- Provide effective parent and family engagement
- Coordinate and integrate services with preschool programs
- **(NEW)** Coordinate academic and CTE content through instructional strategies which may include experiential learning or work-based learning opportunities, etc.
- **(NEW)** Support efforts to reduce the overuse of discipline practices that remove students from the classroom
  - May include disaggregation (this is a best practice because of increased scrutiny)

# LEA Plans (cont.)

## Sec. 1112

Describes how the LEA will:

- Facilitate transition Middle to HS and HS to postsecondary
  - Coordination with IHEs
  - Dual or concurrent enrollment
- Where LEA uses funds for preschool
  - Ensure services comply with Head Start Act
- For EL SWD how program will meet IEP
- For LEAs with Title I or III language program:
  - Information for parents on reasons for child's selection
  - Details of the program, including right to opt out
  - Effective means of communication with EL parents including regular meetings

# 1003 LEA Grant Applications

## Sec. 1003(e)

- States determines the application but must include:
  - Description of how the LEA will meet requirements under 1111(d):
    - Develop comprehensive support plans for identified schools;
    - Support schools developing/ implementing targeted improvement plans
    - Monitor identified schools;
    - Use a rigorous review process to recruit, screen, select, and evaluate any external partners with whom the LEA will partner;
    - Align other Federal, State, and local resources to carry out the activities; and
    - Modify practices and policies to provide operational flexibility that enables full and effective implementation of the plans.
  - Assurance that each school the LEA proposes to serve will receive all of the State and local funds it would have received in the absence of 1003 funds.

# LEA Use of Funds for Direct Student Services

## 1003A(c)

- 1% Outreach and communications to parents re: available services
- 2% Administration
- Remainder on allowable uses of funds
  - In paying the costs associated with the direct student services the LEA shall—
    - First, pay such costs for students who are enrolled in schools identified for comprehensive support and improvement
    - Second, pay such costs for low-achieving students who are enrolled in schools implementing targeted support and improvement plans; and
    - With any remaining funds, pay such costs for other low-achieving students served by the local educational agency.

# LEA Use of Funds for Direct Student Services (cont.)

## 1003A(c)

### (NEW) LEA Use of Funds (cont.)

- Allowable expenditures may include:
  - Academic/CTE coursework aligned to academic / industry standards
  - Credit recovery;
  - Post-secondary instruction and examination costs, including Advance Placement and International Baccalaureate test fees;
  - Transportation of LEAs implementing school choice if not reserved for comprehensive support; and
  - High Quality Academic Tutoring.

# Identification of Schools

## Sec. 111(c)(4)(D)

- Evaluation of all public schools and subgroups must occur every year
- System must identify schools for comprehensive and targeted interventions and support at least once every three years

# Targeted Support and Improvement

## Sec. 1111(d)(2)

- (NEW) Each SEA must:
  - Notify each LEA of **any school** in which any subgroup of students is consistently underperforming; and
  - Ensure the LEA provide notification to the school re: subgroup(s) identification.
  
- Applies to all public schools, not only Title I schools

# Targeted Support and Improvement Plan

## Sec. 111(d)(2)(B)

- **(NEW)** Upon notice that a school has been identified, the school must (in partnership with stakeholders) develop and implement a targeted support and improvement plan for each identified school.
- The plan must:
  - Include information on student performance against all indicators;
  - Include evidence based interventions;
  - Be approved by the LEA prior to implementation; and
  - Identify resource inequities to be addressed through implementation if a subgroup, on its own, would lead to identification.
- The LEA must monitor and implement additional action if there is unsuccessful implementation



# Comprehensive Support and Improvement

## 1111(c)(4)(D)

- (NEW) States must establish a methodology for identifying schools for comprehensive support that must include:
  1. At least the lowest performing 5% Title I schools;
  2. All public high schools in the State failing to graduate 1/3 or more of their students; and
    - At SEA discretion this may include an extended year adjusted graduation rate
      - One or more additional years after 4;
      - Summer sessions; or
      - 1% receiving alternate diplomas.
  3. Title I schools in which any subgroup, on its own, would be identified as lowest-performing 5% and has not improved (as defined by the State).



# Comprehensive Support and Improvement (cont.)

## 1111(c)(4)(D)

- State may add additional state-wide categories
- **(NEW)** Beginning 2017-2018, must identify schools for comprehensive support and improvement at least once every 3 years
  - States must use meaningful differentiation for this determination

# Comprehensive Support and Improvement Plan

## Sec. 1111(d)

- **(NEW)** Upon notice that a school has been identified, the LEA must (in partnership with stakeholders) develop and implement a comprehensive support and improvement plan for each identified school.
- The plan must:
  - Include information on student performance against all indicators;
  - Include evidence based interventions;
  - Be based on school-level needs assessment;
  - Identify resource inequities to be addressed through implementation; and
  - Be approved by the school, LEA and SEA.

# District Improvement?

## Sec. 1111(d)(3)(B)

Maybe.

- **(NEW)** The State may take action to initiate improvement in any LEA with a significant number of schools:
  - that are consistently identified for comprehensive support that do not meet the exit criteria; or
  - identified for targeted support and improvement.
- What could this include?
  - Up to the SEA!

# Public School Choice Sec. 1111(d)(1)(D)



**(NEW)** A LEA may provide all students enrolled in an identified school the option to transfer to another public school.

- Priority given to lowest-achieving children from low income families.
  - Remain in that school until he/she has completed the highest grade
- LEA must provide sufficient number of options to provide a meaningful choice for parents.

# High Quality Academic Tutoring

## Sec. 1003A(c)(3)

- LEA allowable expenditures may include high quality academic tutoring.
- The SEA must:
  - Compile and maintain and updated list of State-approved high-quality academic tutoring providers;
  - Ensure that each LEA provides an adequate number of tutoring options to provide meaningful choice to parents;
  - Develop procedures for monitoring the quality of services; and
  - Establish and implement clear removal criteria if the provider is unsuccessful.

# High Quality Academic Tutoring (cont.) Sec. 1003A(c)(3)

Other available activities include:

- Academic/CTE coursework aligned to academic / industry standards;
- Credit recovery; and
- Post-secondary instruction and examination costs, including Advance Placement and International Baccalaureate test fees

# LEA-level Set-Asides

## Sec. 1113(c)

- Necessary and Reasonable Amount (calculated before allowable expenditures and transfers)
  - Homeless Children and Youths
    - **(NEW)** Use to apply only to homeless students in non-participating Title I schools; however that language was removed.
    - Now, this set-aside may be used for all homeless students.
  - Children in local institutions for neglected children
  - Children in local institutions for delinquent children and neglected or delinquent children in community day programs, if appropriate
  - Early childhood education programs

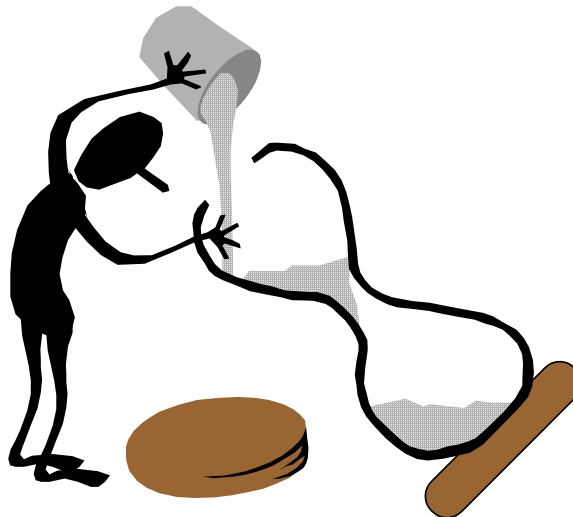


# LEA-level Set-asides (cont.)

- 1% Parent and Family Engagement Sec. 1116(a)(3)
  - **(NEW)** 90% of that amount must go to schools
    - Previously 95%
    - Exception for LEA where 1% less than \$5,000
- **(NEW)** 5% of Title I, A allocation for Public School Choice Transportation
- 5% Financial Incentives and Rewards Sec. 1113(c)(4)
  - To attract and retain qualified and effective teachers who serve in schools identified for comprehensive and targeted support and improvement

# Title I, A Supplement Not Supplant (SNS) Sec. 1118(b)(1)

Federal funds must be used to supplement  
and in no case supplant state, and local  
resources



# Prior Title I, A SNS Rule

“What would have happened in the absence of the federal funds??”

## 3 Presumptions of Supplanting

1. Required to be made available under other federal, state, or local laws
2. Provided with non-federal funds in prior year
3. Provided services to Title I students and the same services were provided to non-Title I students using non-federal funds.

# ESSA Title I, A SNS Sec. 1118(b)(2)

- **(NEW)** To demonstrate compliance, the LEA shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that the school receives all the State and local funds it would otherwise receive if it were not receiving Title I funds.
  - Similar to prior SW standard

# Title I, A SNS (cont.)

## Sec. 1118(b)(3) – (4)

- **(NEW)** No LEA shall be required to:
  - Identify individual costs or services as supplemental; or
  - Provide services through a particular instructional method or in a particular instructional setting to demonstrate compliance.
- **(NEW)** The Secretary may not prescribe the specific methodology a LEA uses to allocate State and local funds to each Title I school.

# QUESTIONS?



54

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