

Grants Policy Issues and Environmental Workforce Job Development Training Grants

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TOPICS COVERED:

- UNIQUE EWDJT REQUIREMENTS
- EPA'S SUBAWARD POLICY
- UGG COMPETITIVE PROCUREMENT REQUIREMENTS
- AVOIDING ADVERSE AUDIT FINDINGS
- QUESTIONS VIA CHAT

Caveats

- This training is designed to provide recipients of EPA funds with information on EPA's policies and practices for encouraging recipients to comply with the Uniform Grant Guidance (UGG).
- The regulations take precedence in the event of a conflict with any of the materials contained on these training slides.
- The training facilitator, James Drummond, is a member of the Office of Grants and Debarment's (OGD) Senior Environmental Employment enrollee team.
 - James provides technical assistance to OGD and EPA Program Offices.
 - In that capacity he does not speak for the Agency officially on legal or policy matters.



Proper Management of EPA Brownfield Grants

Unique Brownfields Requirements

Administrative Costs—Pre-Fiscal Year 2018 Recipients.

- Prohibited by statute until 2018—CERCLA 104(k)(4)(B)(i)(III).
- Prohibits recipients from charging Brownfield cooperative agreements for indirect costs and direct grant administration costs.
- Does not prohibit charging the CA for programmatic reporting.
- Other allowable programmatic costs include negotiating and administering procurement contracts and subawards. Indirect costs charged by cost-reimbursement contractors are programmatic rather than administrative.
- Refer to T&C for details.

Unique Brownfields Requirements

Administrative Costs—Fiscal Year 2018 and afterwards.

- Brownfields Utilization, Investment, and Local Development Act (BUILD Act) signed into law on March 23, 2018 provides that recipients may use **up to 5%** of the amounts of Federal funds made available under a Brownfields grant for administrative costs.
- The 5% limit is a bottom line amount—it applies to the total amount of indirect costs and direct grant administration costs for recipients.
- Subrecipients may also use up to 5% of the amount of a subaward for administrative costs without impacting the pass-through entities 5% limit.



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Example

Eligible administrative costs include indirect costs and direct cost of grants administration as described in FY18 and FY19 terms and conditions.

The maximum amount of administrative costs for the recipient of the cooperative agreement specified in a T&C. **REVIEW THE T&C CAREFULLY!!!**

Recipients and subrecipients may apply their full indirect cost rate to their approved base but may not exceed the total amount of administrative costs specified in the T&C for their grant or subaward.

Example: Recipient A has a \$100,000 EWJDT Grant so the administrative cost limit is \$5,000. The recipient does not intend to recover any direct costs of grants administration. If a recipient's approved IDC rate is 21% and its base is *Modified Total Direct Costs* (as defined at [2 CFR 200.1](#)) then the recipient may apply the full rate to MTDC until the amount of IDCs equals \$5,000.



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Examples of Direct Costs for Grant Administration

Recipients may also use Brownfields Grant funds to pay for certain direct costs of grant administration subject to the 5% limit.

Eligible cooperative agreement and subaward administrative costs subject to the 5% limitation include direct costs for:

- Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
- Maintaining and operating financial management systems required under 2 CFR § 200.302;
- Preparing payment requests and handling payments under 2 CFR § 200.305;
- Financial reporting under 2 CFR § 200.327.
- Non-federal audits required under 2 CFR Part 200, Subpart F; and
- Closeout under 2 CFR § 200.343 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.

Unique EWDJT Requirements

- **Limit on Trainee Stipends**
 - Only stipends for transportation are allowable
 - Stipends are “participant support costs” for the purposes of distributing indirect costs to Modified Total Direct Costs.
 - FY 18 and FY 19 Recipients may not apply 5% indirect cost rate to stipend payments.
- **Management Fees**
 - Under [2 CFR 200.400\(g\)](#) EPA prohibits recipients and subrecipients from “profiting” from financial assistance agreements by receiving funds in excess of actual costs.
 - This prohibition includes using EPA funds to finance “reserves” or similar arrangements for general organizational support.
 - Refer to the Management Fees T&C.

Unique EWDJT Requirements

- **Trainee Eligibility**
 - EWDJT grants re subject to EPA's Training Grant regulations at [40 CFR Part 45.](#)
 - Costs for training individuals who are not citizens of the United States, the territories, U.S. possessions or lawfully admitted to the U.S. for permanent residency are unallowable for projects funded under RCRA 8001 or Clean Water Act 104 per [40 CFR 45.135\(a\).](#)

Regulatory Requirements

- **EPA Subaward Policy**
 - Implements new Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (**Uniform Grant Guidance or UGG**) regulatory requirements:
 - The UGG codifies standards for distinguishing between subawards and contracts at 2 CFR 200.331.
 - Under **2 CFR 200.332**, pass-through entities must include a number of provisions in subawards and monitor subrecipient performance.

What Are Subawards?

- For the purpose of the EPA Subaward policy and training, ***“subaward”*** refers to:
 - A financial assistance transaction (i.e. profit is unallowable) between an EPA assistance agreement recipient and an eligible subrecipient (or by a subrecipient to a lower subrecipient);
 - For the purpose of accomplishing a public purpose authorized by a Federal program statute.
 - Does not include payments to a procurement contractor or payments to an individual that is a beneficiary or participant in a Federal program.

Substance of a Subaward

- A subaward may be provided **by any form of legal agreement, even if the recipient considers it a contract**; the substance of the agreement is more important than the form.
 - See the definition of *Subaward* at [2 CFR 200.1](#) and EPA's [Subaward Policy](#) for more information.
- For example, if **EPA receives an assistance agreement application and the applicant has identified funding for a “contract”**, EPA will work with the applicant to determine whether the relationship was **appropriately categorized as a procurement contract or subaward**.

Identifying Procurement Contracts

- In contrast to subawards, as provided in 2 CFR Part 200.331(b), procurement contractors (including individual consultants) typically:
 - Provide goods and services on commercial terms;
 - Provide similar goods and services to many different purchasers;
 - Operate in a competitive environment; and
 - A reasonable profit is allowable.
 - **Transactions with for profit companies and individual consultants are with very, very few exceptions procurement contracts.**

Partnership Agreements

- Does EPA consider all “partnership agreements” that establish funding relationships to be subawards that are not subject to competition?
 - **No!!!!** Transactions are either subawards, procurement contracts, intergovernmental/inter-entity agreements for common procurement, interagency service agreements or services, or participant support costs.
 - Characterizing the transactions consistently with the terms used in the UGG is important for determining what rules govern the agreement
 - Some recipients refer to their contractors (particularly consultants) as “partners” so the label recipient places on the transaction is not determinative.

Specific EPA Determinations

- **The following transactions are generally subawards rather than procurement contracts:**
 - Between units of government and nonprofit or public institutions of higher education (IHEs) to support training. Community colleges are IHEs.
 - Between IHEs or between IHEs and units of government or nonprofit organizations, particularly when the transactions relate to training (including technical assistance and public education) or demonstration projects.
 - Between nonprofit organizations for collaborative projects that further the missions of both organization provided the transaction is not for commercially available ancillary services such as accounting.
- **Most often the case unless there are unique circumstances.**

What is NOT Considered a Subaward?

- **In addition to procurement contracts, subawards do not include:**
 - Funding transfers between departments of the same unit of government are generally not subawards;
 - Participant support costs, such as:
 - Stipends for trainees including EWDJT transportation stipends.
 - Program participant interns are not employees of the recipient.
 - EPA provides [Guidance on Participant Support Costs](#).

Note: Based on a change to 2 CFR Part 200 effective November 12, 2020 transactions between recipients and Federal agencies are now considered to be subawards.

Additional information

- **EPA practice provides that EPA staff work with pass-through entities to:**
 - Include the aggregate amount for subawards in a line item in the narrative for the “Other” budget category of the Standard Form (SF) 424A, “Budget Information for Non-Construction Programs” or equivalent forms for construction agreements
 - Ensure that every subaward includes the required information in [2 CFR 200.331\(a\)](#). (An optional template is provided in [Appendix D of the EPA Subaward Policy](#)).

National Term and Condition

- EPA has established a National Term and Condition for Subawards that is applicable to all assistance agreements, regardless of whether they contain subawards.
- **The National Term and Condition for Subawards:**
 - Will be included in the EPA General Terms and Conditions (T&Cs), that are applicable to every grant.
 - Can be found in [Appendix B of the EPA Subaward Policy](#).
- The next several slides will take us through components of the National Term and Condition for Subawards that are relevant to EWDJT grants.

EPA Involvement in Selecting Subrecipients

- **Pass-through entities are responsible for selecting their subrecipients.**
- **EPA personnel may not:**
 - Direct pass-through entities to make subawards to particular organizations;
 - Interfere with the recipient's subaward selection decisions unless necessary to enforce an authorized eligibility restriction; or
 - Suggest the use of specific subrecipients—**don't ask your PO!!!**
- **EPA personnel may participate in competitive selection panels as technical advisors or panelists at the request of the pass-through entity as provided in section 10.0(b) of the Subaward Policy**

System for Documenting Subawards

As a pass-through entity, the recipient agrees to:

2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a).
 - EPA has developed a template that pass-through agencies may use to document the “subaward content” requirements in 2 CFR 200.332(a).
 - This template is available in [Appendix D of the EPA Subaward Policy](#)

Prior Approval

As a pass-through entity, the recipient agrees to:

9. Obtain written approval from EPA's Award Official for any types of subawards that are not described in the approved work plan in accordance with [2 CFR Part 200.308](#).
- EPA does not require that applicants for funding name specific subrecipients in competitive proposals or scopes of work but applicants may choose to do so.

Subaward Reporting Requirement

- When EPA determines that a recipient is a pass-through entity for subawards, EPA will include:
 - the Model Programmatic Subaward Reporting Requirement; or
 - [Appendix C of the EPA Subaward Policy](#)
 - a program specific requirement in the performance reporting terms and conditions of the award.
 - EPA's Terms and Conditions reference the requirement in [2 CFR 170, Appendix A](#) which requires pass-through entities to report subawards of \$30,000 or more to *<http://www.fsrs.gov>*.

Subaward Competitions

- **Federal regulations do not generally require pass-through entities to select subrecipients competitively**, though EPA may require competition in some cases.
- Program Offices may require or encourage pass-through entities to conduct competitions for subawards, unless otherwise prohibited.
- **Pass-through entities may choose to select subrecipients competitively when consistent with applicable:**
 - Statutes;
 - Regulations; and
 - The terms of their EPA financial assistance agreement.

Policy Attachments

The **EPA Subaward Policy** has several appendices, including:

- Appendix A: Distinctions Between Subrecipients and Contractors
- Appendix B: National Term and Condition for Subawards
- Appendix C: Model Programmatic Subaward Reporting Requirement
- Appendix D: Subaward Agreement Template
- EPA Subaward Policy Frequently Asked Questions

Procurement under the UGG

- With the exception of states, all recipients must comply with the procurement requirements in [2 CFR Part 200](#).
- * States follow the same procurement procedures as they do for non-Federal funds as provided in [2 CFR 200.317](#) with the exception of requirements in 200.321 (small and disadvantaged businesses), 200.322 (recycled materials), and 200.323 (domestic preferences) and 200.327 (contract clauses). EPA's [40 CFR Part 33 Disadvantaged Business Participation](#) rule applies to states.
- EPA has posted [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) as guidance for other recipients and subrecipients of states.

Competition

- Per [2 CFR 200.319](#), competition is the norm when procuring goods and services.
- EPA will not approve sole source contracts for goods and services that are readily available in the commercial market place including consulting or instruction services provided by individuals
- Naming a contractor in a proposal as a “partner” does not change the rules for competition.

Three Thresholds for Competition for Procurements

1. Purchases up to the micro purchase level (**recently increased to \$10,000 for most recipients**) may be made without competition provided the recipient distributes purchases equitably among qualified suppliers to the extent “practicable” and the prices are reasonable. 2 CFR 200.320(a)(1).
 - Generally ,for purchases of supplies (including computing devices) but recipients may obtain consulting or instructional services PROVIDED the equitable distribution requirement is met.
 - A series of micro purchases with the same instructor (e.g. speaker fees) or consultant without using other sources as well will raise compliance issues.
 - Some universities or nonprofit research institutions may have higher micro-purchase threshold if approved by cognizant Federal agency for indirect costs.

Three Thresholds for Competition for Procurements

2. Recipients may use small purchase procedures for contracts up to the simplified acquisition threshold (**increased to \$250,000**) by obtaining price or rate quotations from an adequate number of qualified sources. 2 CFR 200.320(a)(2).
- EPA expects recipients to obtain prices/quotes from **at least 3 sources**.
 - For professional services, recipients may use email solicitations to document their files.
 - For equipment, internet searches of price catalogues documented by “screen shots” are acceptable.
 - Recipients must justify selection of contractors quoting higher prices/rates based on qualifications or technical factors.
 - Good faith efforts must be made to solicit disadvantaged businesses per 40 CFR Part 33.

Three Thresholds for Competition for Procurements

3. For procurements in excess of \$250,000 recipients must either advertise for sealed bids or publicly solicit competitive proposals. 2 CFR 200.320(b).
- Sealed bidding is appropriate when detailed specifications are available and selection is based principally on price (e.g. construction).
 - Competitive proposals are typically used for professional services.
 - **COMPETE SMART**
 - Consider the use of multi year contracts with broad scopes and options when investing in a competitive proposal process.

Sole Source??

- As provided at [2 CFR 200.320\(c\)](#), Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - The item is available only from a single source;
 - Public exigency or emergency;
 - The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
 - After solicitation of a number of sources, competition is determined inadequate.
- EPA's position is that "sole source" procurements are justified by copyrights, patents, equipment maintenance agreements with manufacturers or similar arrangements.
 - XYZ contractor is familiar with our program and we have "partnered" with the firm or individual for years does not pass muster.

Another opportunity presented by the UGG

- The UGG at [2 CFR 200.318\(e\)](#) allows intergovernmental or inter-entity agreements for procurement of common goods and services.
 - Recipients can cooperate to conduct joint competitions for IT services, curriculum development, instructional services, accounting and award a single contract that serves multiple recipients.
 - Again, **compete smart**. Multi-year contracts with broad scopes and option clauses are efficient and provide flexibility.

Avoiding Adverse Audit Findings

- EPA's OIG has found deficiencies in the following areas of recipient financial management of EPA assistance agreements:
 - Allocation of personnel and fringe benefit costs.
 - UGG (2 CFR 200.430(i)(1)) no longer requires that recipients use signed Personnel Activity Reports but the systems recipients use must produce reliable data on personnel compensation allocable to specific assistance agreements.
 - Budget estimates alone may not be used to allocate personnel compensation costs.
 - Untimely disbursement of EPA funds aka "banking" drawn down funds is another common audit finding.



Proper Management of EPA Brownfield Grants

Financial Management Common Sense Tips:

- Be sure your records tell a complete story – tracing costs from planning through drawdown and payment, clearly showing the need, approvals, proper accounting, and receipt of goods and services.
- You can only have one set of books. Your financial management system must be used for all accounts.
- **Payroll records, including timesheets, must account for 100% of the time of every employee.** This includes non-working hours (leave etc.) and all activities charged by each employee.
- Employees charged to more than one cost center must charge actual hours spent on each; they cannot be paid based on a pre-determined allocation. Non-working hours must be properly prorated among all cost centers, or charged to the general ledger.
- Charges have to make sense. For example, you can't charge an employee's travel to a different account than his/her payroll for the same day. The appropriate account should be charged for both.

Avoiding Adverse Audit Findings

- EPA's OIG has found deficiencies in the following areas of recipient financial management of EPA assistance agreements:
 - Expenditures that are not supported by source documentation such as invoices, contracts, and receipts for stipend payments.
 - Failure to exclude participant support costs (i.e. transportation stipends) from MTDC when distributing indirect costs. 2 CFR 200.68 and Appendix IV. **Again, indirect costs are only allowable up to 5% of the amount of the award for EWDJT grants awarded in FY 18 and FY 19.**
 - Inadequate oversight of subrecipients.
 - Noncompliance with the Brownfields statutory administrative cost prohibition for grants awarded prior to FY 18.



Proper Management of EPA Brownfield Grants

Timekeeping and Financial Management Requirements

EPA has on-line applicant/recipient grant training

<https://www.epa.gov/grants/epa-grants-management-training-applicants-and-recipients>



Timely Disbursement of EPA Funds

- Recipients, other than states, must minimize time elapsing between draw down and disbursement as required by 2 CFR 200.305(b). State draw downs are covered by agreements with U.S. Treasury.
- Drawdowns should be based on actual costs incurred (e.g. payroll, payment of contractor invoices) rather than estimates or “even” amounts each month or week based on anticipated cash flow.
- ASAP system allows almost instantaneous payment. No need to wait for check in mail.

Timely Disbursement cont.

- EPA policy as reflected in General T&Cs requires recipients to enroll in ASAP.
- EPA will measure compliance with 2 CFR 200.305(b) based on disbursement of at least 95% of drawn down funds within 5 Business days. Clear audit standard.
- 5 Business day disbursement standard does not apply to states.



Proper Management of EPA Brownfield Grants

Questions from Y'all?

EPA has posted answers to questions regarding Subawards and UGG Procurement requirements at <https://www.epa.gov/grants/epa-subaward-frequent-questions> and EPA Grant Policies are available at <https://www.epa.gov/grants/epa-grants-policy-resources>.

Note: Brownfields specific FQs covering a wide range of grants subjects are available at <https://www.epa.gov/brownfields/frequently-asked-questions-about-multipurpose-assessment-rlf-and-cleanup-grants>. Some FQs such as those relating to administrative costs or hiring consultants are relevant to EWJDT.