

# Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2 C.F.R. Part 200  
“Super Circular”

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# What is the purpose of this Presentation?

- Brief update on the Assistance to Firefighters Grant Programs
- The Presentation will provide a brief introduction to 2 C.F.R. Part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, informally referred to as the **Super Circular**, focusing on its Procurement Standards.
- This presentation does not discuss most requirements in 2 C.F.R. Part 200 and non-Federal entities MUST review the regulation in full.
- This presentation is meant to be interactive. Please ask questions.
- For specific questions about 2 C.F.R. Part 200, please contact the AFG Program Office.



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## 2 C.F.R. Part 200 Resources

- FEMA Grants Information: <http://www.fema.gov/grants>
- DHS Adopted Interim Final Rule:  
[http://www.regulations.gov/#!documentDetail;D=HHS\\_FRDOC\\_0001-0564](http://www.regulations.gov/#!documentDetail;D=HHS_FRDOC_0001-0564)
- Full Text of 2 C.F.R. Part 200: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- Crosswalk of Changes: [http://www.whitehouse.gov/omb/grants\\_docs](http://www.whitehouse.gov/omb/grants_docs)
- Council on Financial Assistance Reform Frequently Asked Questions:  
<https://cfo.gov/cofar/>



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# What is 2 C.F.R. Part 200?

- An OMB reform of regulations that apply to **Federal financial assistance** that streamlines the language from **eight existing OMB circulars into one consolidated set of guidance** in the Code of Federal Regulations– informally referred to as the “Super Circular.”
- OMB intends for implementation of 2 C.F.R. Part 200 to **reduce administrative burden** and the risk of **waste, fraud and abuse** for the approximately \$600 billion per year awarded in Federal financial assistance. The intended result is that more Federal dollars will be reprogramed to support the mission, **new entities will be able to compete and win awards**, and a stronger framework will be put in place to provide key services to American citizens.
- Intended to make **compliance less burdensome** for non-Federal entities of Federal financial assistance and reduce the number of audit findings that result more from unclear guidance than actual non-compliance.
- Aimed at eliminating duplicative or almost duplicative language in order to clarify where policy is substantively different across types of entities, and where it is not.



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# What is 2 C.F.R. Part 200?

2 C.F.R. Part 200 **provides the foundational requirements for the *administration* of FEMA grants and financial assistance** (e.g., how financial assistance is awarded, managed, audited, and closed-out). 2 C.F.R. Part 200 does NOT change the *programmatic substance* of FEMA's grant programs.

- For example, 2 C.F.R. Part 200 does not change:
  - Eligibility criteria for AFG, SAFER, or FP&S
  - The statutory purposes and objectives of the AFG program
  - The statutorily allowable costs and activities under the AFG program

Except for limited circumstances, 2 C.F.R. Part 200 provides requirements that FEMA and its recipients and subrecipients must comply with. When FEMA awards financial assistance, it only has a legal relationship with the recipient. FEMA does not have a legal relationship with a non-Federal entity's contractors.



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# What Awards will 2 C.F.R. Part 200 apply to?

- 2 C.F.R. Part 200 will apply to all new **non-disaster grant** awards FEMA makes on or after **December 26, 2014**.
  - This includes FY 2014 AFG, SAFER, and FP&S awards.
- 2 C.F.R. Part 200 will apply to all disaster grant awards FEMA makes for emergency or major disaster **declarations issued** on or after **December 26, 2014**.
  - Fire Management Assistance Grant Program (FMAG)
- 2 C.F.R. Part 200 **will not apply retroactively to existing awards**, with two exceptions.
  - The Audit Requirements in Subpart F will apply to all Single Audit Act audits performed for any recipient or subrecipient fiscal year that begins on or after December 26, 2014. This includes audits performed under existing awards.
  - OMB has stated that recipients and subrecipients who wish to implement entity-wide system changes to comply with the new regulations after the effective date will not be penalized for doing so.



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# What Kind of Recipients Must Follow 2 C.F.R. Part 200?

- 2 C.F.R. Part 200 applies to awards of Federal financial assistance to all “non-Federal entities”
  - “Non-Federal entities” are states, local governments, Indian tribes, institutions of higher education, or nonprofit organizations that carry out Federal awards. The definition does not include individuals. “Non-Federal entity” does not include contractors.
- Additionally, FEMA may apply Subparts A through E of 2 C.F.R. Part 200 to for-profit entities
- This is different from the old system, which had specific circulars for different kinds of entities



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# Suspension and Debarment

## §200.212 Suspension and debarment.

Non-Federal entities and **contractors** are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. Part 180. 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



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# Property Standards

## §200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds **as provided to property owned by the non-Federal entity**. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

FEMA/AFG does require some forms of “bonds” and performance clauses for vehicle procurements.

- Performance Bond (recommended)
- Pre-payment bond (required if Federal funds are used for pre-payment)
- Penalty Clause (required if Federal funds are used for pre-payment)

\* Bonds are allowable costs



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# Rules Governing Procurement

The contracting requirements remain similar to those in 44 C.F.R. Part 13, but with some changes. States will continue to follow the same policies and procedures they use for non-Federal procurements. States must also now include the required clauses in §200.326 and follow requirements on recovered materials.

**Local governments and Indian tribes will follow procurement methods under the new regulation that are similar to the old regulations at 44 C.F.R. § 13.36(b) – (i).**

The new requirements will require non-profits, universities, and hospitals to change their past practices, and they may need technical assistance.



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# Substantive Change from 44 C.F.R. Part 13

## §200.110 Effective/applicability date.

For the procurement standards in §§200.317-200.326, non-Federal entities may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in §200.104) **for one additional fiscal year after this part goes into effect.** If a non-Federal entity chooses to use the previous procurement standards for an additional fiscal year before adopting the procurement standards in this part, **the non-Federal entity must document this decision in their internal procurement policies.**



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# Procurement

## §200.318 General Procurement Standards

The non-Federal entity **must use its own documented procurement procedures** which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in 2 C.F.R. Part 200.

The non-Federal entity **must maintain 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, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest.

For purposes of the AFG program, contracted grant-writers are considered “employees” for the purpose of the applying this conflict of interest standard.



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# Procurement

## §200.318 General Procurement Standards

The **non-Federal entity alone must be responsible**, in accordance with good administrative practice and sound business judgment, **for the settlement of all contractual and administrative issues arising out of procurements**. These issues include, but are not limited to, source evaluation, **protests**, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. **Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.**



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# Substantive Change from 44 C.F.R. Part 13

## §200.319 Competition

All procurement transactions **must be conducted in a manner providing full and open competition consistent with the standards of 2 C.F.R. Part 200.**

There is a new clarification: In order to ensure objective contractor performance and eliminate unfair competitive advantage, **contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.**



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# More on Competition

## §200.319 Competition

Some of the situations considered to be restrictive of competition include but are not limited to:

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



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# More on Competition

## §200.319 Competition

The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

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

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a **“brand name or equivalent” description may be used** as a means to define the performance or other salient requirements of procurement. **The specific features of the named brand which must be met by offers must be clearly stated.**



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# Substantive Changes from 44 C.F.R. Part 13

## §200.320 Methods of Procurement to be Followed

- **Micro-purchase** (new) – procurements in aggregate of \$3,000 or less
- **Small purchase procedures** – for goods or services that do not cost more than the Simplified Acquisition Threshold (new threshold: \$150,000). Price or rate quotations must be obtained “from an adequate number of qualified sources.”
- **Procurement by sealed bids** (formal advertising) – Bids are “publicly solicited” and a firm fixed price contract is awarded to the lowest responsive and responsible bidder. Fixed Price.
- **Competitive proposals** – Generally used when conditions are not appropriate for the use of sealed bids. Fixed price or cost-reimbursement. RFPs must be publicized, identify all factors, and their relative importance.
- **Procurement by noncompetitive proposal** - (i.e., Sole Source)



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# More on Procurement Methods

## §200.320 Methods of Procurement to be Followed

In order for **sealed bidding** to be feasible, following conditions should be present:

A complete, adequate, and realistic **specification** is available; **two or more responsible bidders** are willing and able to compete; and successful bidder can be selected **principally on the basis of price**.

If sealed bids are used, the following requirements apply:

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; Local and tribal governments must publicly advertise the invitation for bids

Invitation must define the items or services in order for the bidder to properly respond;

All bids will be opened at the time and place prescribed in the invitation for bids,

Any or all bids may be rejected **if there is a sound documented reason**.



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# More on Procurement Methods

## §200.320 Methods of Procurement to be Followed

The following requirements apply for **competitive proposals**:

Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals **must be considered** to the maximum extent practical;

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

Non-Federal entity must have a **written method for conducting technical evaluations** of the proposals received and for selecting contractors;

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



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# More on Procurement Methods

## Use of Prequalified Lists (e.g., Schedules, Existing Contracts)

Generally, a non-Federal entity may seek to procure goods or services from prequalified lists of persons, firms, or products which are used in acquiring goods and services, (e.g., Government Services Administration (GSA) schedule, a State schedule, or co-operative or group purchasing) in compliance with AFG Program requirements for competition, which include the procurement standards at 2 C.F.R. 200.317 – 200.326. In order for such procurements by entities other than State governments to be permissible, the following must be true:



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# More on Procurement Methods

## Use of Prequalified Lists (e.g., Schedules, Existing Contracts)

- The **procurement of the original contract** or purchasing schedule and its use by the non-Federal entity **complies with state and local law, regulations, and written procurement procedures.**
- The **state or other entity that originally procured the original contract** or purchasing schedule did so **with the express purpose of making it available to the non-Federal entity** and other similar types of entities, **the contract or purchasing schedule specifically allows for such use**, and the work to be performed for the local government **falls within the scope of work under the contract** as to type, amount, and geography.



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# More on Procurement Methods

## Use of Prequalified Lists (e.g., Schedules, Existing Contracts)

- The procurement of the **original contract complied with** all of the procurement standards applicable to the non-Federal entity at **2 C.F.R. §§ 200.318 to 200.326**.
- With respect to the use of a **purchasing schedule**, the non-Federal entity must follow ordering procedures that adhere to state and local laws and regulations and the **minimum requirements of full and open competition under 2 C.F.R. Part 200**.
- If a non-Federal entity other than a State government seeks to use such a prequalified list, purchasing schedule, or other similar type of arrangement, it must first contact the AFG Program Office.



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# Hypothetical

The Big Bend Volunteer Fire Department also allows for micropurchases under its written procurement policies, but its micropurchase threshold is \$10,000. The Big Bend Volunteer Fire Department receives a FY 2014 AFG award to purchase P25 compliant radios, which will have a total cost of \$9,500. The fire department uses its own micropurchase procedures to complete the radio procurement.

Question: Has the Big Bend Volunteer Fire Department violated the 2 C.F.R. Part 200 procurement standards?



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# Hypothetical

Question: Has the Big Bend Volunteer Fire Department violated the procurement standards at 2 C.F.R. Part 200 ?

Answer: YES. Because 2 C.F.R. 200.320 only allows micropurchases below the \$3,000 threshold, the Big Bend Volunteer Fire Department cannot use a micropurchase procedures to make purchases above that threshold. Making a \$9,500 micropurchase violates the regulation, even though it is compliant with Big Bend's own written procurement policies and standards.



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# Hypothetical

The Canyonlands Volunteer Fire Department receives an FY 2014 AFG award to purchase personal protective equipment (PPE). Canyonlands VFD has not purchased PPE in several years and is not familiar with the current NFPA standards for PPE. For this reason, Canyonlands VFD is not certain what technical requirements it should put in its request for proposal to make sure it gets what it needs. As a result, Canyonlands VFD requests assistance drafting a request for proposal from “PPE-r-US”, a local equipment retailer. Canyonlands VFD then uses this request for proposal to complete the procurement of the equipment using the competitive proposals method. Canyonlands VFD allows “PPE-r-US” to participate in the procurement process and, ultimately, is awarded the contract to provide the equipment.

Question: Has Canyonlands VFD violated the procurement standards in 2 C.F.R. Part 200?



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# Hypothetical

Question: Has Canyonlands VFD violated the procurement standards in 2 C.F.R. Part 200?

Answer: Yes. 2 C.F.R. 200.319(a) requires that contractors who help to develop or draft specifications, requirements, etc. for a procurement be excluded from competing for that procurement. Here, because PPE r US assisted Canoylands VFD with drafting the RFP for the procurement, PPE r US should have been excluded from the competition for the procurement.



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# Hypothetical

The Labrador Fire Department is looking to purchase a new fire engine. Their neighboring department recently received a new fire engine which largely meets their needs. The Labrador Fire Department requests and receives a copy of the final build specification from the manufacturer. The Labrador Fire Department makes some minor edits to the specifications, such as paint color and compartment configurations, but leaves the build specs mostly unchanged and publishes the specifications as part of their bid solicitation.

Question: Is the manufacturer who supplied the specifications for the neighboring department's vehicle eligible to participate in the solicitation?



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# Hypothetical

Question: Is the manufacturer who supplied the specifications for the neighboring department's vehicle eligible to participate in the solicitation?

Answer: No. 2 C.F.R. 200.319(a) requires that contractors who help to develop or draft specifications, requirements, etc. for a procurement be excluded from competing for that procurement. Here, the non-Federal entity made some minor edits, but effectively used the specifications drafted by the manufacturer in its RFP. The non-Federal entity is required to exclude the manufacturer from bidding on the contract.



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# Hypothetical

Are following acceptable practices, or actions, by a manufacturer or a representative of their dealer network:

Q: Providing a product demonstration or a product for evaluation in advance of a bid solicitation. **Generally acceptable**

Q: Providing manufacturer's preprinted literature (e.g.: cut sheets & brochures). **Use of publicly available literature is generally acceptable**

Q: Providing informal, verbal or written pricing estimates to a department during a demonstration or evaluation period. **Generally acceptable**

Q: Providing a department detailed specifications of a product. **If the department subsequently uses those specifications in whole, or part, of their bid solicitation, the recipient must exclude the vendor from bidding.**



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# Questions?



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