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MEMORANDUM

TO: Firm Clients

FROM: Stacy Paltiyevich and Micki Morris, Rogers, Morris & Grover, LLP

DATE: November 12, 2020

RE: 2020 Revisions to 2 CFR Part 200 – Effective November 12, 2020

The purpose of this memorandum is to summarize newly released revisions to 2 CFR Part 200 that are applicable to the purchases involving federal funds. These revisions will require updates to the District's federal purchasing procedures, a familiarity with the new self-certification option for raising the Micro Purchase Threshold, and the use of updated addenda/certification forms for federally required contract provisions. Please note that as a result of the 2020 revisions, the statutory numbering in 2 CFR Part has been impacted, and Districts will need to revise numbering throughout relevant District documents related to Grants Management and Federal Purchasing Procedures.

Enclosed with this memorandum are OMB's redlined revisions to 2 CFR Part 200, a sample self-certification form for raising your District's Micro Purchase Threshold, an updated contract certification addendum to use with contracts subject to 2 CFR Part 200, and a separate contract certification addendum for use with contracts funded with FEMA Public Assistance funds.

I. Background

The Office of Management and Budget (OMB) conducts a review of the Uniform Guidance, set forth in 2 CFR Part 200, every five years. The objectives of the proposed review and resulting revisions are to reduce the burden on the recipients, provide additional guidance on implementing new statutory requirements, and improve the management, transparency and oversight of Federal financial assistance.

The effective date of the 2020 Uniform Guidance revisions is November 12, 2020 (90 days from the August 13, 2020 issuance and publication in the Federal Register), with some exceptions. Specifically, the effective date of regulations implementing the "Huawei Ban" and certain foreign telecommunications bans were effective immediately (August 13, 2020, the issuance date of the final guidance). The revisions are not applicable to awards of federal financial assistance issued prior to August 13, 2020, such as funds available from the CARES Act of 2020 or FEMA Public Assistance Grants. However, many grants originating from the U.S. Department of Education are entitlement programs, not federal financial assistance programs. Be sure to verify specific grant program type prior to determining the applicability of specific 2020 changes to a particular program or purchase.

II. Notable 2020 Revisions Impacting Purchasing Procedures

A. Ban on Foreign Telecommunications

A newly added provision, codified in 2 CFR §200.216, pertains to a ban on foreign telecommunications. Notably, Federal grant funds may not be used to purchase equipment, services or systems that use "covered telecommunications" equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. "Covered telecommunications" means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), as well as video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

These new restrictions should be added to your purchasing procedures and solicitation documents for federally funded contracts. When expending federal funds, 2 CFR Part 200 requires Districts to include a provision in their contracts regarding these bans. For your convenience, the attached contract certifications addenda include the newly required provisions.

B. Micro Purchases

The 2020 revisions to §200.320 formalize the OMB's 2018 increase of Micro Purchases from $3,500 to $10,000 (2 CFR §200.67).[1] The OMB also clarified that purchases under the Micro Purchase Threshold are "non-competitive procurement," which means that micro-purchases do not require any competitive process. Subgrantees should, but are not required to, distribute purchases less than the micro purchase threshold among qualified suppliers.

The requirements for Micro Purchases have been revised as follows:

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[1] Please note that the 2020 revisions also formalized the 2018 increase of the Simplified Acquisition Threshold from $150,000 to $250,000 (2 CFR 200.88)

§ 200.320(a)(1)(ii)

(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

There is also a new option for school districts to increase the Micro Purchase Threshold from $10,000 to up to $50,000. In particular, non-federal entities may now self-certify a threshold up to $50,000 on an annual basis, but the entity must maintain documentation to be made available to the Federal awarding agency and auditors, in accordance with §200.334. The self-certification must a clear identification of the self-certified threshold, and supporting documentation of any of the following justifications: (A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit; (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or (C) **For public institutions, a higher threshold consistent with State law**.

Enclosed with this memorandum is an example of a self-certification form that may be used by the District and executed by the District's Superintendent to increase the Micro Purchase Threshold. Please note that the self-certification may also be authorized by Board Resolution, should Board approval by required for your District. For example, if your District seeks to increase the Micro Purchase Threshold to a number beyond your Superintendent's purchasing authority as stated in your District's Board policies CH (Local) and/or CV (Local), Board approval is appropriate. Make sure to review your District's local policy to determine the required approval steps. If raised, purchasing procedures should be revised to reflect the higher threshold.

C. Domestic Preferences for Procurement

The 2020 revisions contain additional language emphasizing domestic preferences for procurement, which appears in 2 CFR §200.322. **This new section causes numbering changes on the remaining procurement provisions from §200.322 to §200.346. Please update your procedures accordingly.**

The new provision states:

§200.322

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured product).

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

The requirement of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

Please note that this is a preference factor, not a mandatory or disqualification factor. Districts are therefore advised to (1) add this new provision to federal purchasing procedures, and (2) include a statement of the preference in solicitations for federally-funded contracts. When federal funds are used, 2 CFR Part 200 also requires Districts to include a provision in their contracts regarding this preference. For your convenience, the attached contract certifications addenda include this new provision.

D. Conclusion

While this memorandum addresses specific major revisions impacting purchasing procedures, is not an exhaustive list of all of the 2020 revisions. Districts are advised to review all revisions to 2 CFR Part 200 (enclosed) and make all necessary updates to grants management and federal purchasing procedures/manuals. Should you have any questions regarding the information covered by this memorandum, the documents enclosed herein, or any other aspect of the 2020 revisions, please do not hesitate to contact us directly.