

Indirect Cost Rate – Requirements of OMB’s Supercircular

(2 C.F.R. Part 200)

Underlying Principle:

The Federal cost principles, including the policies on reimbursement of indirect costs, are designed to provide that Federal awards pay their fair share of the costs recognized under these principles.

General Rule:

- If a recipient (e.g., a State) has a federally negotiated indirect cost rate, the Federal awarding agency (e.g., NHTSA) must use that rate and may not force or entice the recipient to accept a lower rate. [2 C.F.R. §200.414\(c\)](#).
- Similarly, if a subrecipient (e.g., a local subdivision of a State) has a federally negotiated indirect cost rate, the pass-through entity (e.g., a State) must use that rate and may not force or entice the subrecipient to accept a lower rate. [2 C.F.R. § 200.331\(a\)\(4\)](#).
- If a subrecipient does not have a federally negotiated indirect cost rate, the pass-through entity may either negotiate a rate with that subrecipient or apply the de minimis indirect cost rate of 10% of modified total direct costs. [2 C.F.R. §200.331\(a\)\(4\)](#). The pass-through entity may not force or entice the subrecipient without a federally negotiated indirect cost rate to accept a rate lower than the de minimis rate of 10%.

Other considerations:

- **Subawards v. contracts:** The requirement that a State pass-through entity must use a federally negotiated indirect cost rate applies to subawards; it does not apply to contracts awarded by a State. Instead, the Supercircular provides that States must use state policies and procedures when procuring property and services via contract. [2 C.F.R. §200.317](#).
 - The Supercircular provides that “a subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient.” [2 C.F.R. § 200.330\(a\)](#).
 - A subaward may be proper when the subrecipient: determines who is eligible to receive what Federal assistance; has its performance measured in relation to whether objectives of a Federal program were met; has responsibility for programmatic decision making; is responsible for adherence to applicable Federal program requirements specified in the Federal award; and uses the Federal funds to carry out a program for a public purpose specified in in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

- The Supercircular provides that “a contract is for the purpose of obtaining goods and services for the non-Federal entity’s own use and creates a procurement relationship with the contractor.” [2 C.F.R. §200.330\(b\)](#).
 - A contract may be the proper instrument when the contractor: provides the goods and services within normal business operations; provides similar goods or services to many different purchasers; normally operates in a competitive environment; provides goods or services that are ancillary to the operation of the Federal program; and is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
- Types of indirect cost rates: Most universities have multiple indirect cost rates depending on the location and type of work performed. Off-campus research tends to have a lower indirect cost rate than on-campus research or training.

Questions & Answers:

Charging Indirect Costs

Q-1: If an agency submits an application with no indirect cost rate even though it has a federally negotiated indirect cost rate, does the pass-through entity still have to use the federally negotiated indirect cost rate? What if a subrecipient requests less than its federally negotiated indirect cost rate?

A-1: A subrecipient (or recipient) may voluntarily opt to request a lower or no indirect cost rate, even if it has a federally negotiated indirect cost rate. However, this choice must be completely voluntary and may not be the result of communication with the State pass-through entity.

Q-2: Is it acceptable for a pass-through entity to require a subrecipient to accept a rate lower than the federally negotiated indirect cost rate?

A-2: If the subrecipient already has a negotiated indirect cost rate with the federal government, the negotiated rate must be used. The pass-through entity may not request or require the subrecipient to offer a lower or zero indirect cost rate when there is a federally negotiated rate. Unallowable coercion includes a scenario where a subrecipient submits a proposal/application including its federally negotiated indirect cost rate and later lowers the rate after discussions with the pass-through entity.

Use of Contract v. Subaward

Q-3: How do I determine whether to use a contract or a subaward?

A-3: See [2 C.F.R. §200.330](#) for factors to consider when determining whether to use a contract or a subaward. In general, the Supercircular defines a contract as a relationship that is for the benefit of the State (not the contractor), whereas a subaward is for the benefit of the subrecipient. States should also look to State law to determine whether an award should be made as a subaward or a contract.

Q-4: Does the choice of instrument (subaward or contract) have an impact on the 40% share to local requirement in [23 U.S.C. 402\(b\)\(1\)\(C\)](#)?

A-4: Yes. A contract (assuming it is entered into by the State) does not count toward the 40% share to local requirement, because it is for the benefit of the State. A subaward does count toward the 40% share to local requirement because the highway safety grant funds are expended by a local jurisdiction of the State to carry out local highway safety programs.

Q-5: If an entity has a federally agreed upon indirect cost rate but submits an application with no included indirect cost rate because the applicant is providing a specific service such as training and charges per course, do we have to pay the federal rate anyway?

A-5: A specific service such as training is likely eligible to be carried out as a contract, rather than as a subaward. Contracts are not subject to the Supercircular's requirements regarding indirect cost rates. States should also look to State law to determine whether an award should be made as a subaward or a contract.

Use to Satisfy Matching Requirements

Q-6: Can the indirect cost rate be paid using State matching funds to satisfy the 80% federal share requirement?

A-6: Yes. A State may use state funds to pay the indirect cost rate. Those State funds will count towards the 20% State share.

Q-7: Can a subrecipient use its indirect costs as match? For example, can a university applying for a grant through the highway safety office apply its indirect costs as match?

A-7: This is a question of State law. If a State requires cost sharing for a subaward, any allowable cost, including indirect costs, may be used as match.