

Virtual Presentation



Procurement Standards in the Uniform Guidance

*By Karen Norris, Principal
Kanoco Consulting*

*Prepared for
Governor's Office of Planning and Research
State of California*



OPR Federal Assistance



The screenshot shows the homepage of the Governor's Office of Planning and Research (opr.ca.gov). The navigation menu includes 'CEQA & State Clearinghouse', 'Planning & Land Use', 'Climate & Resilience', 'Economic Development', and 'Long-Range Research'. The main content area features several informational cards: 'State Clearinghouse', 'Document Submission', 'California Environmental Quality Act (CEQA)', 'Technical Advisories', 'Federal Assistance' (highlighted with a red border), 'CEQA Updates', 'California Jobs (AB 900)', and 'CEQA & Climate Change'. Below the cards, there is a section titled 'ON THIS PAGE:' with buttons for 'What We Do', 'Announcements', 'Tools and Resources', and 'Initiatives'. The URL at the bottom of the browser window is 'https://opr.ca.gov/clearinghouse/ceqa/federal-grants/'.

with a focus on land use and community development, climate risk and resilience, and high road economic development.

Applying for Federal Grants



A screenshot of a web browser displaying the website for the Governor's Office of Planning and Research (OPR). The browser's address bar shows the URL: https://opr.ca.gov/clearinghouse/ceqa/federal-grants/. The website has a dark red header with navigation links: "About OPR", "Meetings", "Publications", "Partners", "E-Lists", and "Settings". Below the header is a search bar with the text "Search this website". A secondary navigation bar contains links for "CEQA & State Clearinghouse", "Planning & Land Use", "Climate & Resilience", "Economic Development", and "Long-Range Research". The main content area features a large heading "Review of Federal Programs". Below this heading is a paragraph of text explaining the State Clearinghouse's role. A second paragraph states that the SCH does not administer grant programs. At the bottom of the main content area, there are three icons with text: a red-bordered box around a purple building icon labeled "Applying for Federal Grants", a purple document icon labeled "Federal Grant Resources", and a purple envelope icon labeled "Federal Grants E-List". The footer of the website includes links for "Back to Top", "Conditions of Use", "Privacy Policy", "Accessibility", and "Contact Us", along with social media icons for Twitter, YouTube, and Email. The copyright notice at the bottom reads "Copyright © 2021 State of California".

Applying for Federal Grants



← → ↻ https://cfda.opr.ca.gov/#/

CA.gov Contact Us Settings

Intergovernmental Review of Federal Programs

OPR Home Submissions Registration Login

Home

The State Clearinghouse (SCH) serves as the state's Single Point of Contact for the submission of Federal assistance applications pursuant to [Presidential Executive Order No. 12372](#) and [SAM Section 0912](#). With the signing of [Assembly Bill 1348](#) the State Clearinghouse is responsible for reporting on all federal grants applied for and received in California regardless if they fall under Executive Order 12372. We have developed the new on-line database to assist with that reporting.

These applications must be provided to the SCH, which in turn publishes this information for review by State and local elected officials. The SCH does not administer grant programs or offer any grant funding. Please visit [Grants.gov](#) for funding opportunities.

Federal Assistance Application

To apply for a federal assistance program, please upload a copy of your application cover form (Standard Form 424) to the SCH. DO NOT send your full application package or any other supplemental information.

In the appropriate box on Form 424, mark that the federal assistance application was made available for state review under the Executive Order 12372 process before submitting your federal assistance application to the federal funding agency.

*** Organization Name**

*** Email Address**

*** Catalogue of Federal Domestic Assistance (CFDA)**

Federal Grant Resources



← → ↻ 🔒 https://opr.ca.gov/clearinghouse/ceqa/federal-grants/

CA.GOV     About OPR Meetings Publications Partners E-Lists Settings

 Governor's Office of Planning and Research

CEQA & State Clearinghouse ▾ Planning & Land Use ▾ Climate & Resilience ▾ Economic Development ▾ Long-Range Research ▾

Review of Federal Programs

The State Clearinghouse (SCH) serves as the state's Single Point of Contact for the review of federal assistance applications pursuant to [Presidential Executive Order No. 12372](#). Notification of all federal assistance applications must be provided to the SCH pursuant to [Assembly Bill No. 1348](#) , which in turn publishes this information for review and comment by State and local elected officials. [SAM Section 0912](#) requires that departments submit new federal funds through the SCH and then through Finance through a DF-24 notification prior to applying for funds.

The SCH does not administer grant programs or offer any grant funding. Please visit [grants.gov](#) for funding opportunities and [beta.sam.gov](#) for the online Catalog of Federal Domestic Assistance (CFDA).



[Applying for Federal Grants](#)



[Federal Grant Resources](#)



[Federal Grants E-List](#)

Back to Top Conditions of Use Privacy Policy Accessibility Contact Us   

Copyright © 2021 State of California

Federal Grants E-List



A screenshot of the website https://opr.ca.gov/clearinghouse/ceqa/federal-grants/. The page has a dark red header with the OPR logo and navigation links: "About OPR", "Meetings", "Publications", "Partners", "E-Lists", and "Settings". Below the header is a search bar and a navigation menu with categories: "CEQA & State Clearinghouse", "Planning & Land Use", "Climate & Resilience", "Economic Development", and "Long-Range Research". The main content area is titled "Review of Federal Programs" and contains two paragraphs of text. The first paragraph discusses the State Clearinghouse (SCH) as the state's Single Point of Contact for federal assistance applications, citing Presidential Executive Order No. 12372, Assembly Bill No. 1348, and SAM Section 0912. The second paragraph states that the SCH does not administer grant programs and directs users to grants.gov and beta.sam.gov. Below the text are three icons: a classical building for "Applying for Federal Grants", a document for "Federal Grant Resources", and an envelope for "Federal Grants E-List". The "Federal Grants E-List" icon and its text are enclosed in a red rectangular box. At the bottom of the page is a footer with links: "Back to Top", "Conditions of Use", "Privacy Policy", "Accessibility", and "Contact Us", along with social media icons for Twitter, YouTube, and Email. The copyright notice "Copyright © 2021 State of California" is also present.

Procurement Standards

Learning Objectives

Procurement Standards

Learning Objectives

- Raise awareness of the difference between contracts and financial assistance.
- Develop a greater understanding of the procurement standards.
- Identify common challenges with procurement.

Procurement Standards

A Few Words

Procurement Standards

A Few Words

Procurement under the uniform guidance more closely follows language from prior OMB Circular A-102 (states) rather than A-110 (hospitals, nonprofits, universities).

A-102 was more restrictive than A-110.

Procurement Standards

A Few Words

Nonfederal entities had to adjust to the new standards.

Local policies and procedures must align with the new standards, and may require updates.

Challenges with procurement are among the top audit findings.

Learning Objective #1

Raise Awareness of the Difference Between Contracts and Financial Assistance

LO1: Contracts and Grants

Definitions in the Uniform Guidance

- Contract.
- Cooperative Agreement.
- Grant Agreement.
- Subaward.



LO1: Contracts and Grants

Contract (200.1)

- Within the context of financial assistance, a legal instrument by which a recipient or subrecipient nonfederal entity purchases property or services needed to carry out the program under the federal award.
- Contractor is an entity that receives a contract.

LO1: Contracts and Grants

Cooperative Agreement (200.1)

- A legal instrument of financial assistance from a federal awarding agency (31 USC 6302-6305).
- Used to enter into a relationship to carry out a public purpose authorized by law (31 USC 6101(3)) and not to acquire property or services for the entity's direct benefit or use.
- Requires substantial involvement between the awarding agency and recipient.

LO1: Contracts and Grants

Grant Agreement (200.1)

- A legal instrument of financial assistance from a federal awarding agency (31 USC 6302, 6304).
- Used to enter into a relationship to carry out a public purpose authorized by law (31 USC 6101(3)) and not to acquire property or services for the entity's direct benefit or use.

LO1: Contracts and Grants

Subaward Agreement (200.1)

- A legal instrument of financial assistance provided by a pass-through entity to a subrecipient to carry our part of a federal award received by the pass-through entity.

LO1: Contracts and Grants

Contracts and Financial Assistance Awards

- Share attributes, similarities.
- Sometimes difficult to distinguish between them:
 - Terms and conditions.
 - Subject to federal requirements.
 - Competitively awarded (although some grants and some contracts are noncompetitive).
 - Based on a solicitation and a review of selection criteria.
 - Offered to eligible applicants.
 - Awarded to responsible parties.

LO1: Contracts and Grants

Contracts and Financial Assistance Awards

- Have differences that distinguish the instruments:
 - Contracts generally follow the FAR.
 - Financial assistance follows the uniform guidance.
 - Contracts deliver goods or services.
 - Financial assistance delivers mission, public good.
 - Contracts are not associated with a program statute.
 - Financial assistance originates from a program statute.

LO1: Contracts and Grants

Key Attributes of Contracts

- No program statute.
- Buyer/seller relationship.
- Terms and deliverables.
- Consideration (\$).
- Signatures/acceptance.
- Contracts serve as procurement agreements for purchases of goods and services within grants.



LO1: Contracts and Grants

Applicability (200.101)

- Contracts awarded by federal agencies follow the Federal Acquisition Regulation (FAR).
- Financial assistance awarded by federal agencies follow the uniform guidance.

Contracts awarded within grants, however, could follow the FAR or the uniform guidance.

LO1: Contracts and Grants

Applicability (200.101)

- The uniform guidance may apply to for-profits.
- For-profits usually receive contracts.
- For-profits are usually more familiar with the FAR.

Award terms and conditions should reflect the applicable regulations.

LO1: Contracts and Grants

Applicability of Cost Principles

- Uniform guidance cost principles, Subpart E, 2 CFR 200.400s.
- FAR cost principles, could apply, 48 CFR 31.2.
- Hospital cost principals, 45 CFR 75

Award agreement should indicate which cost principles apply.

Learning Objective #2

Develop a greater understanding of the procurement standards.

LO2: Procurement Provisions

Procurement in the Uniform Guidance



The procurement provisions are located in the post-award section of the uniform guidance, Subpart D, at 200.317-200.327.

LO2: Procurement Provisions

Procurement by States (200.317)

- When procuring property or services with federal funds, states follow the same policies and procedures it uses with non-federal funds.
- States also follow 200.321, 200.322, 200.323, 200.327.
- All other non-federal entities follow 200.318-200.327.

Procurement is heavily governed by state regulation.

LO2: Procurement Provisions

General Procurement Standards (200.318)

- Non-federal entity must have written procurement procedures consistent with state, local, tribal law, and the uniform guidance.
- Non-federal entity must maintain oversight.
- Non-federal entity must have written standards of conduct covering conflicts of interest with related parties, financial conflicts such as gratuities or favors, or organizational conflicts (affiliates).

LO2: Procurement Provisions

General Procurement Standards (200.318)

- Non-federal entity must avoid unnecessary or duplicative items, and may consider economical options such as lease rather than purchase.
- Non-federal entity is encouraged to enter into state and local intergovernmental agreements for shared services for greater economy and efficiency.
- Non-federal entity is encouraged to use federal excess and surplus property when feasible.

LO2: Procurement Provisions

General Procurement Standards (200.318)

- Non-federal entity is encouraged to use value engineering clauses for construction projects.
- Non-federal entity must award contracts only to responsible and qualified parties, with consideration to risk, integrity, compliance, past performance, resources and capacity, and suspension and debarment.

LO2: Procurement Provisions

General Procurement Standards (200.318)

- Non-federal entity must maintain records to detail the history of procurement.
- Non-federal entity may use a time & materials contract only after determination that no other contract type is suitable, and the contract includes a ceiling price that the contractor would exceed at its own risk, to reduce open-ended contracts.
- Non-federal entity must be responsible to settle all claims and disputes that may arise.

LO2: Procurement Provisions

Competition (200.319)

- All procurement transactions under a federal award must provide free and open competition.
- To eliminate unfair competitive advantage, contractors that develop specifications must be excluded from competing for the procurement.



LO2: Procurement Provisions

Competition (200.319)

- Requirements that are considered unfair include:
 - Unreasonable requirements.
 - Requiring unnecessary experience.
 - Noncompetitive pricing practices between affiliated companies.
 - Noncompetitive contracts to consultants on retainers.
 - Organizational conflicts of interest.
 - Specifying brand name only.
 - Any arbitrary action.

LO2: Procurement Provisions

Competition (200.319)



- Non-federal entity must not impose local geographic preferences, except where federal statutes apply, or in architectural and engineering contracts as long as there is an adequate number of qualified firms.

LO2: Procurement Provisions

Competition (200.319)

- Written procedures for procurements must:
 - Ensure clear and accurate description of the requirements.
 - Identify all requirements.
- All pre-qualified lists of contractors must be current and include enough qualified sources to ensure free and open competition.

LO2: Procurement Provisions

Methods of Procurement (200.320)

- Non-federal entity must have and use documented procurement procedures consistent with the uniform guidance, and following the identified methods of procurement.
- There are informal and formal methods.

LO2: Procurement Provisions

Informal Methods (200.320(a))

- Informal methods of procurement include micro-purchase and small purchase, and are simpler procurement methods than formal procurements.

LO2: Procurement Provisions

Informal Methods (200.320(a))



LO2: Procurement Provisions

Micro-purchase (200.320 (a)(1))

- Micro-purchase threshold has increased from \$3,500 to \$10,000, consistent with the FAR.
- No required bid process or price quotes.
- Non-federal entity should distribute micro-purchases equitably among qualified suppliers.
- Purchase cards may be used if procedures are documented.

LO2: Procurement Provisions

Micro-purchase (200.320 (a)(1))

- Non-federal entity is responsible to determine and document an appropriate micro-purchase threshold.
- Non-federal entity may establish a threshold higher than the federal threshold defined by the FAR (\$10,000).

LO2: Procurement Provisions

Micro-purchase (200.320 (a)(1))

- Non-federal entity may increase the micro-purchase threshold from \$10,000 up to \$50,000.
- Non-federal entity may self-certify on an annual basis and maintain documentation.
- Self-certification must contain a justification and documentation:
 - Low-risk auditee.
 - Annual internal institutional risk assessment.
 - For public institutions, must be consistent with state law.

LO2: Procurement Provisions

Micro-purchase (200.320 (a)(1))

- Non-federal entity may increase the micro-purchase threshold over \$50,000.
 - Must be approved by cognizant agency for indirect costs.
 - Increased threshold remains valid until there is a change in status affecting the approval.



LO2: Procurement Provisions

Small Purchase (200.320 (a)(2))

- For procurements higher than micro-purchase threshold up to \$250,000, currently the simplified acquisition threshold.
- No bid process.
- Adequate number of price quotes.
- A lower threshold may be used, when authorized and not prohibited by state, local, tribal laws.

LO2: Procurement Provisions

Formal Methods (200.320 (b))

- Formal procurement methods include sealed bids and competitive bids.
- For procurements that exceed the simplified acquisition threshold, currently at \$250,000.

LO2: Procurement Provisions

Sealed Bids (200.320 (b)(1))

- Public solicitation for a firm, fixed-price contract.
- Lowest price.
- Preferred method for construction contracts.
- Specifications defined.
- Two or more bidders (adequate number).
- Selection based on price.

LO2: Procurement Provisions

Competitive Bids (200.320 (b)(2))

- Public solicitation for a firm, fixed-price or a cost-reimbursement contract.
- Must be a written method for review and selection.
- Two or more bidders (adequate number).
- Selection based on most advantageous offer, with price and other factors (best value) considered.
- May be used with architectural and engineering contracts.

LO2: Procurement Provisions

Non-Competitive Procurements (200.320 (c))

- May be used in specific circumstances.
- Non-competitive procurements may only be awarded when one of more of the following applies:
 - Does not exceed the micro-purchase threshold.
 - Item available only from a single source.
 - Public emergency will not permit a delay resulting from a bid process.
 - Federal agency or pass-through entity approves it.
 - A solicitation results in an inadequate number of bidders.

LO2: Procurement Provisions

Small, MBE/WBE, Labor Surplus (200.321)

- Must use when possible.
- Steps to take include:
 - Placing these types of firms on solicitation lists.
 - Assuring these types of firms are solicited, when possible.
 - Dividing larger requirements into smaller tasks to permit these types of firms to participate.
 - Establishing feasible delivery schedules.
 - Using services and assistance of SBA and MBDA.
 - Requiring prime contractors to consider these firms for subcontracts.

LO2: Procurement Provisions

Domestic Preference (200.322)

- Must provide a preference for the purchase of goods or services produced in the United States.
- Produced in the United States means for iron and steel products, that all manufacturing processes occurred in the US.
- Manufactured products means items composed in whole or in part in certain defined materials.

LO2: Procurement Provisions

Recovered Materials (200.323)

- State agencies or political subdivisions of states must comply with:
 - Section 6002 of the Solid Waste Disposal Act.
 - EPA guidelines at 40 CFR 247.
 - Items should contain recovered materials.
 - As much as practicable.
 - Satisfactory performance.
 - For items over \$10,000.



LO2: Procurement Provisions

Contract Cost and Price (200.324)

- For procurements over the simplified acquisition threshold (\$250,000), must perform a cost and price analysis.
- Must negotiate price as a separate element.
- Cost estimates are allowable only to the extent that costs or estimates included in negotiated prices would be allowable under Subpart E.
- Cost-plus-percentage-of-cost and percentage-of-construction-costs methods must not be used.

LO2: Procurement Provisions

Federal or Pass-Through Review (200.325)

- Review would determine if procurement system complies with standards.
- Review occurs under certain circumstances, including:
 - Federal or pass-through agencies requests the review.
 - Non-federal entities may request a review to confirm its procurement system meets standards.
 - Non-federal entity may self-certify.

LO2: Procurement Provisions

Bonding Requirements (200.326)

- Construction contracts over \$250,000.
- Federal or pass-through agencies may accept bonding policies of a non-federal entity, if federal interest is adequately protected.
- Different requirements:
 - Bid guarantee.
 - Performance bond.
 - Payment bond.



LO2: Procurement Provisions

Contract Provisions (200.327)

- Incorporate national policy requirements into contract agreement.
- Refer to Appendix II of the uniform guidance:
 - Drug-Free Workplace Act.
 - Equal Employment Opportunity Act.
 - Buy American Act.
 - Debarment and suspension.
 - Others.

Learning Objective #3

Identify common challenges with procurement.

LO3: Common Challenges

What Are Some of the Challenges?

- Updating procurement policy and procedures.
- Hiring staff named in proposals.
- Sole source/noncompetitive procurements.
- Pre-award risk assessments.
- Cost principles.
- Contract types.

LO3: Common Challenges

Written Procurement Policy and Procedures

- Nonfederal entities may need to update written procurement policy and procedures to align with the revised uniform guidance.
 - Incorporate new information.
 - Revise existing information, as needed.
 - Remove outdated information.

LO3: Common Challenges

Individuals or Firms Named in Proposals

- Must be mindful of free and open competition when selecting contractual staff.
- Must be mindful of HR procedures when hiring for positions.
- Must be mindful of noncompetitive procurements without awarding agency approval.
- Must be mindful of consultants and firms on retainer.

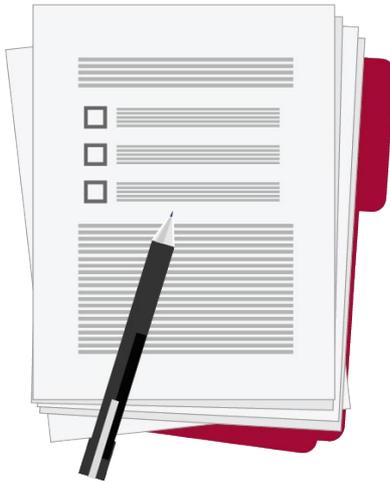
LO3: Common Challenges

Sole Source/Noncompetitive Procurements

- Recognize the allowable circumstances:
 - Micro-purchase threshold.
 - Public emergency.
 - Item available only from a single source.
 - Awarding agency approval.
 - Inadequate response to a bid.

LO3: Common Challenges

Selecting Appropriate Contract Type



- Fixed-price.
- Cost reimbursement.
- Time & materials permissible, with identified ceiling to avoid open ended contracts.
- Cost plus fee when profit is treated separately.
- Cost-plus-percentage and percentage-of-construction-costs are prohibited.

Procurement Standards

Other Challenges

- Conflicts of interest.
- Suspension & debarment.
- Risk assessments.
- Responsible parties.
- Past performance.
- Stated deliverables.



LO3: Common Challenges

Selecting Applicable Guidance

- Uniform guidance.
- FAR.
- Cost principles.



Procurement Standards

In Summary

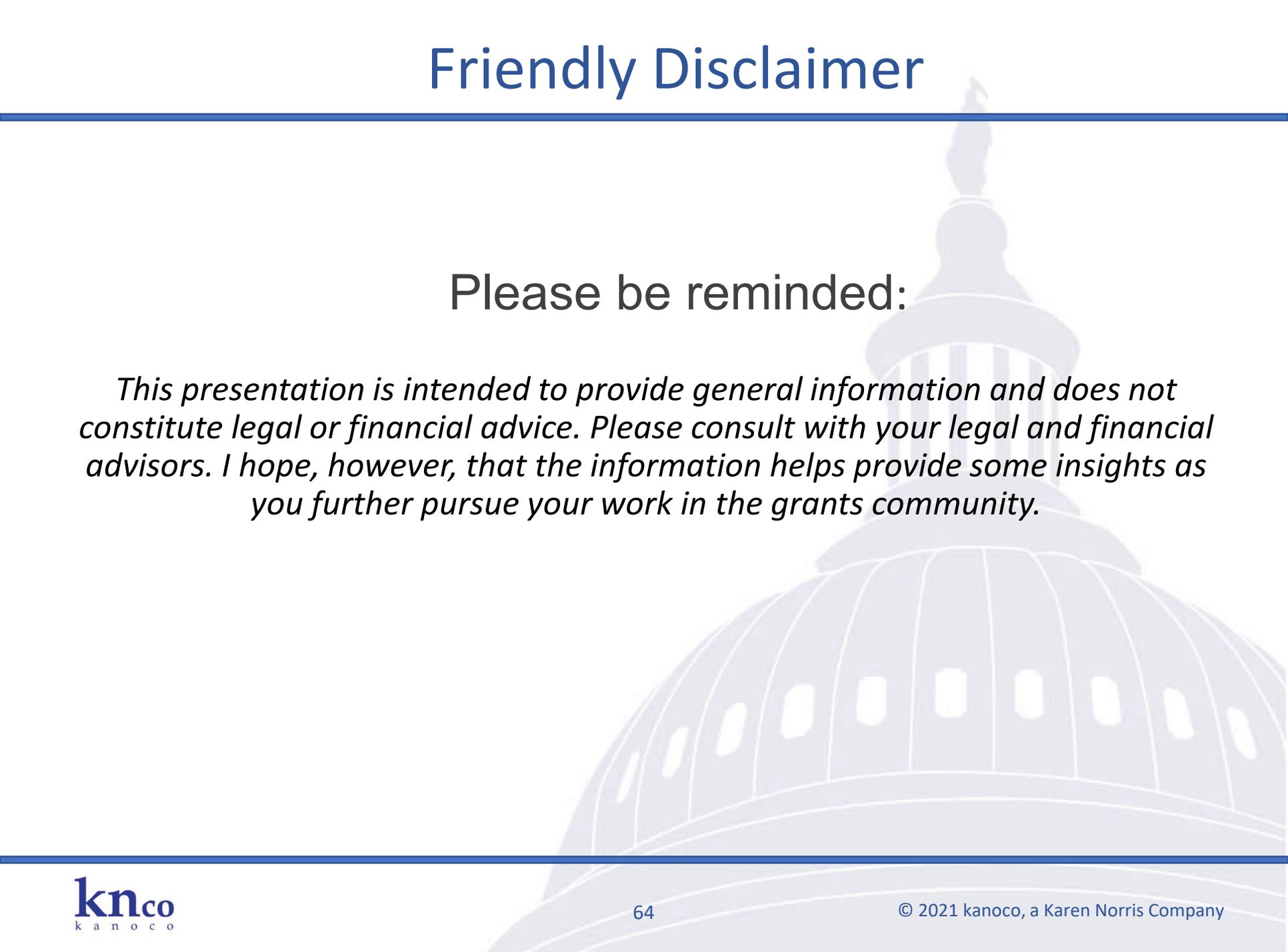
- Contracts within grants are generally for procurement.
- Procurement standards are revised.
- Written procedures should be revised.
- Contract agreements should identify:
 - Contract type.
 - Applicability of FAR or uniform guidance.
 - Applicability of cost principles.
 - Method of procurement.
 - Deliverables.



Procurement Standards

Q & A

Friendly Disclaimer



Please be reminded:

This presentation is intended to provide general information and does not constitute legal or financial advice. Please consult with your legal and financial advisors. I hope, however, that the information helps provide some insights as you further pursue your work in the grants community.

Contact Information

Prepared For



- Governor's Office of Planning and Research.
- State of California.
- <https://opr.ca.gov>
- Amy Miller, Federal Grant Administrator
- amy.miller@opr.ca.gov

Contact Information



Karen Norris, Principal



kanoco

A Karen Norris Company
Guidance you trust.

knorris@kanoco.com

<https://kanoco.com>

301-613-1277

Subject matter expert

Federal grants compliance, consulting, writing, editing