University of Colorado **Boulder**

PROCEDURAL STATEMENT

Procedural Statement Title: Indirect Cost Rates for Outgoing Subagreements

Functional Area: Research Administration

Related Policy:	U. S. Office of Management and Budget's Uniform Guidance, 2 CFR 200 and Federal Acquisition Regulations (FAR)
Effective Date:	June 25, 2024
Approved by:	Massimo Ruzzene, Vice Chancellor for Research & Innovation and Dean of the Institutes
Responsible Offices:	Office of Contracts and Grants
Procedural Statement Contact:	Alexa Van Dalsem, Director, Office of Contracts & Grants
Last Reviewed/Updated:	November 6, 2024

I. PROCEDURAL STATEMENT

This document is intended to provide guidance and processes the University of Colorado Boulder (CU Boulder) uses for the acceptance and application of Subreceipient's indirect cost (facilities and administrative, F&A) rates.

II. DEFINITIONS

Contractor: Contractor means any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract.

Indirect Costs (IDC): Indirect costs also known as facilities and administrative costs (F&A) are defined in 2 CFR 200.1 as:

> *those costs incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. It may be necessary to establish multiple pools of indirect costs to facilitate equitable distribution of indirect expenses to the cost objectives served. Indirect cost pools must be distributed to benefitted cost objectives on basis that will produce an equitable result in consideration of relative benefits derived. For Institutions of Higher Education (IHE), the term facilities and administrative (F&A) cost is often used to refer to indirect costs.*

Negotiated Indirect Cost Rate Agreement (NICRA): A negotiated agreement between an entity and its Federal cognizant auditor, documenting the Federal government's acceptance of the entity's estimated indirect cost rates for five fiscal years. A NICRA establishes the indirect cost rates an entity may use on Federally funded proposals. Once established with one agency (the Federal cognizant auditor), the NICRA is accepted across all other agencies within the Federal Government.

Sub: Shortened form of the words "Subrecipient" or "Subcontractor"

Subagreement: A generic term used for a Subaward or Subcontract.

Subaward: As defined in the 2 CFR 200.1:

> *An award provided by a pass-through entity to a subrecipient for the subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by a pass-through entity. It does not include payments to a contractor, beneficiary, or participant. A subaward may be provided through any form of legal agreement consistent with criteria in 200.331, including an agreement that the pass-through entity considers a contract.*

Subcontract: An award provided by the prime sponsor to a subcontractor for the subcontractor to carry out part of the work on an award received by the prime sponsor, for which the principle purpose of the award is to acquire property or services for direct benefit or use of the sponsor.

Pass-through Entity (PTE): Typically, on a project funded via a grant or cooperative agreement. As defined in 2 CFR 200.1: *Means a recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity under this part flows through the subaward agreement between the pass-through entity and subrecipient.*

III. PROCEDURES

A. Pass-through Entity/Contractor Responsibility

When CU Boulder acts in a PTE or Contractor capacity, providing a subagreement to another entity, CU Boulder in effect becomes the Sub's "sponsor." CU Boulder is responsible for oversight of the Sub entity from proposal to closeout and for monitoring the Sub's compliance with applicable regulations and award terms and conditions (2 CFR 200 § 200.331-333).

B. Subaward's IDC Rate

1. Determining Appropriate IDC Rate for Subaward

   As part of CU Boulder's PTE or Contractor responsibilities, CU Boulder must determine an appropriate IDC rate with a Sub. Per 2 CFR 200, § 200.332(a)(4) allowable subrecipient IDC rates include:

   a) An approved federally recognized IDC rate negotiated between the subrecipient and the Federal Government (Negotiated Indirect Cost Rate Agreement, NICRA); or
   b) In the absence of a Federal Government NICRA, a negotiated IDC rate between the PTE and the subrecipient, which can be based on a prior negotiated rate between a different PTE and the same subrecipient; or
   c) The de minimis indirect cost rate (as set forth in 2 CFR §200.414(f)) of modified total direct costs (MTDC).

   While 2 CFR 200 allows for these three options, **CU Boulder will only accept option (a) or (c) described above with the following notation:**

   - Option (a): Approved and current final, predetermined, or provisional and not expired Federal Government NICRA are acceptable. Rates negotiated with the Federal government for a separate, specific project are not acceptable as a NICRA.
   - Option (a): If a Federal sponsor has a public, documented statement that they will directly negotiate IDC rates for Subrecipients, CU Boulder will accept a rate approved by the Federal Sponsor for the current project.

   CU Boulder is unable to and does not negotiate IDC rates with Subs; option (b) above is not allowed.

2. Applicability

   CU Boulder works with a variety of sponsors. In determining applicability, the top tier sponsor is considered the "sponsor" (e.g., if CU Boulder is a subawardee on a project with an industry sponsor flowing federal funding to CU Boulder, the top tier sponsor is the federal agency).

   a) As required by Federal Acquisition Regulations Parts 42.705-1, 42.705-3, 47.705-4 and 47.705-5 and 2 CFR 200 Cost Principles, § 200.403 Factors affecting allowability of cost, CU Boulder applies these regulations and the above CU Boulder procedural statements (Section III.B.1) to all Federally funded Subs.
   b) For non-Federal sponsors, CU Boulder applies the Sponsor's policy regarding IDC.
   c) For non-Federal sponsors that do not have an IDC policy, CU Boulder's Principal Investigator (PI) will be responsible for determining that the costs on a Subs budget, including the IDC rate, are reasonable.

C. Office of Contracts and Grants (OCG) Processes

1. Proposal Stage

   At the Proposal Stage:

- OCG Proposal Analysts will work with Subs to apply the above guidance, using the IDC rate applicable at time of proposal.
- OCG will allow Subs to budget only for the above accepted IDC rates and will not engage in rate agreement negotiations with a Sub.

2. Award Stage

   At the Award Stage:
   - OCG's Subcontract Officers will allow the Sub's IDC rate as determined at the Proposal Stage so long as it is in accordance with this procedural statement guidance.
   - OCG will not engage in rate negotiations with a Sub.
   - Should a Sub have completed a NICRA with the Federal government, which was not in effect at the time of the proposal, the new rate may be budgeted if the CU Boulder PI approves and budget allows for any increased cost.

IV. FREQUENTLY ASKED QUESTIONS

Question: Why does CU Boulder not negotiate IDC rates directly with Subs?

Answer: The process to negotiate IDC rates requires highly specialized expertise that CU Boulder employees do not possess. If CU Boulder were to negotiate IDC rates without this expertise, CU Boulder would be out of compliance with Federal regulations for monitoring Subs, with 2 CFR 200 regulations on cost principles and components of a negotiated rate agreement, and at risk of audit findings.

The complexity of negotiating rate agreements can be seen in:

- 2 CFR 200, which provides the requirements for institutions of higher education, non-profit organizations, state/local government, and Indian Tribes to negotiate indirect cost rate agreements with the Federal government (see Appendices III, IV, and VII)
- Federal Acquisition Regulation, which provides the requirements for indirect cost rates for commercial entities (see FAR Part 15.216.7 and 42.705-1).
- The National Institutes of Health Indirect Cost Negotiations and Division of Financial Advisory Services (DFAS) webpages.

Question: Will CU Boulder accept an IDC rate that has been accepted by a federal agency on a different project or that has been reviewed by a third-party auditor?

Answer: Per section III.B.2 above, if the sponsor is non-Federal and does not have an IDC policy, CU Boulder may accept an IDC rate accepted by a federal agency on a different project or that has been reviewed by a third-party auditor. If the sponsor is Federal, CU Boulder employees do not have the expertise required to determine if a rate is reasonable or applicable to a project even if it has been accepted by a Federal agency on another project or has been reviewed by a third-party auditor. Negotiating rate agreements requires highly specialized expertise and provides certification that a rate is reasonable and that all costs used to determine the rate are allowable. Rates that are project-specific may or may not be reasonable for a different project, a determination which CU Boulder does not have the expertise to determine.

CU Boulder employees are also unable to determine if a third-party auditor 1) has the required expertise to determine an indirect cost rate, 2) has reviewed all of the required elements in determining an indirect cost rate, and 3) determined the period of time for which a rate is applicable to align with a project's period of performance.

V. RELATED DOCUMENTS AND RESOURCES

U. S. Office of Management and Budget's Uniform Guidance, 2 CFR 200

Federal Acquisition Regulation

VI. HISTORY

Changes	Date	Approved By
Adopted	06/25/2024	Massimo Ruzzene

Revised with changes to Uniform Guidance, no major process changes	11/06/2024	Alexa Van Dalsem