BASIC INTRODUCTORY TRAINING (COMPLIANCE)

Session 2 – Fundamentals of Procurement & Management of Property

Introduction

In Session 1 we learned that a set of cost principles makes up a major component of funders' rules about how to implement and administer the projects that they fund. And we explored the cost principles of the US government as a detailed example of the kinds of controls funders impose on recipient performance through the cost principles.

In Session 2, we'll briefly look at the three basic categories of recipient expenditures—with an emphasis on the requirement to distinguish between *acquisition* and *assistance*—and then we'll dive into the issues of procurement and management of property.

We'll explore how the USG regulations influence organizational policy on property—both acquisition and management—how the regulations govern how the recipient obtains, uses and disposes of property bought with federal award funds.

Three Ways to Spend Money

When you think about it, there are only three ways that an organization (or anyone, for that matter) can spend money. The organization can:

- **Compensate Staff** – Hiring and paying (through wages and benefits) the people who *are* the organization—who do the work of the organization in the name of the organization.
- **Acquire Property and Services** – Buying/leasing/renting the property that the organization needs, and obtaining professional and other services that enable the organization to do its work (but that aren't provided by organization staff).
- **Give Gifts** – Providing assistance to others through grants-in-aid (usually), though it's possible to simply give money away, if that's consistent with the organization's mission.

Recall from the first training session that we need to make a clear (and correct) distinction between *acquisition* (buying stuff) and *assistance* (giving gifts). For a refresher on this topic, go here. There's a link to a more thorough source at the end of this handout.

For this session, we're going to look at the middle of these three: *acquisition,* with a primary focus on ***acquiring and managing property***. We'll use the USG's regulations as our guide, since these are the rules that recipients of USG assistance awards must follow when spending award funds.

The procurement of *services*—especially the services of individual persons—has some particular issues of its own that distinguish it from procurement of property. This session focuses on the acquisition and management of *property*. While a lot of this basic information transfers to the procurement of services, there are differences that warrant a separate discussion in a separate session.

Rules of Buying and Owning Stuff – Instinctive

No matter what you buy, you follow certain rules in doing so. For most of us, these rules are so deeply ingrained as to seem instinctive. Here's a simplified version of the life cycle of a purchase:

- ***Identify the need and specify the purchase*** – Whether we think about it consciously or simply notice the feeling that we need something, this is the first step of any purchase action that we take. We make the statement (whether overtly or subliminally), I'm going to get *one of those*. If we think about it a bit more, we probably make a couple of further decisions at this stage. We might determine some key specifications of the item we mean to buy: brand, color, technical specifications. We will probably (at least) estimate the price we'd expect to pay for it. And, if we're in a relationship, we might consider whether or not we want to discuss the intended purchase with our significant other (budgetary considerations, etc.).
- ***Identify the source and price*** – Whether we consciously go shopping or simply respond to the impulse of the moment, we decide where to get and how much to spend for this thing that we're getting. We expand our initial statement to, I'm going to get that *here* for *this much*.
- ***Assure that we get what we intended to get*** – This is where we look at the details of our agreement with the seller and where we inspect our purchase to be sure it's as we expected it to be. Sometimes we may omit this step, but when we do, we usually regret it. So over time we've learned to require complete contractual agreements and to verify that what we get is what we thought we wanted to get. We ask, Will I get what I expect? And once we have it, we ask, Is this the real thing? Does it work? Is it as I want it to be?
- ***Pay for it*** – We give the agreed amount of money to the vendor, and we take our new possession away with us (or maybe we eat it on the spot, or go into the theater and watch the show, or whatever).
- ***We use it*** – We do whatever it was with it that we planned to do when we decided to buy it. Some of the stuff we buy gets used completely up: take for example the meal in the restaurant or the movie in the theater. But other stuff we buy doesn't get used up. Instead, it remains available for us to use and re-use. Some of that stuff we keep indefinitely. While we keep it, we keep track of it, and probably we keep it in good working order. But eventually, it loses is useful value to us, or it wears out, or it breaks, and then…
- ***We dispose of it*** –When we no longer need or want it, we get rid of it. We may pass it on to others who can use it; we may sell it; we may simply throw it away. But after we do that, we no longer have it.

As individuals, we don't bother to write down these rules. They're basically instinctive. We've learned them from childhood. We don't even think about them as rules.

But as organizations spending large amounts money that's been donated to us by funders who've told us that they care how we spend it—what we acquire with it, how we use and dispose of the property we get with it—we find that we need to write down a thorough set of these rules, so we can follow them consistently over time.

Rules of Buying and Owning Stuff – USG

When our funder is an agency of the US government, we're told specifically what our written procurement policy needs to say. The USG spends billions of dollars buying stuff, and so they have very clear ideas about how one should approach the buying of stuff. And they want their award recipients to follow those rules as well.

They're so thorough in their demands, that they divide their regulatory statements into two categories: ***Procurement*** (buying stuff) and ***Property Management*** (owning stuff).

The rules for ***procurement*** appear in the Uniform Guidance at 2 CFR 200.317 - .326, which are titled *Procurement Standards*. (HHS presents these same rules at 45 CFR 75.326 - .335.)

The rules for ***property management*** appear in the Uniform Guidance at 2 CFR 200.310 - .316, which are titled *Property Standards*. (HHS presents these same rules at 45 CFR 75.316 - .323.)

We'll look first at the procurement standards. The UG's General Procurement Standards appear (mostly) at 2 CFR 200.318 / 45 CFR 75.327. They require a recipient to maintain written procurement policy that assures effective internal controls (approvals) and covers several specific points. To put them in a somewhat more logical sequence than they appear in the regulation, I'll organize them here according to the "instinctive" rules of buying stuff that we just discussed.

Identify the Need and Specify the Purchase

The regulations impose—explicitly and implicitly—four key requirements at this stage:

Avoid acquiring unnecessary or duplicative items.

This is the basic requirement to buy only what you need. (2 CFR 200.318(d) / 45 CFR 75.327(d))

Specify the item to be purchased.

This is implicit in 2 CFR 200.319(c)(1) / 45 CFR 75.328(c)(1), which requires solicitations of bids to include "a clear and accurate description of the technical requirements for the material, product, or service to be procured." While you may not always resort to public solicitations of bids, you need to be prepared to do so. good procurement policies require this.

Estimate the expected cost of the procurement.

This is implicit in 2 CFR 200.323(a) / 45 CFR 75.332(a), which requires a cost/price analysis for every action in excess of the Simplified Acquisition Threshold. Not all of your purchases will be so large as that, but this step is also a key element in cost/price analysis of contracts where competition is inadequate, and you probably will encounter a fair share of those.

Determine and obtain all needed approvals.

This is implicit in the fact that numerous procurement actions (purchase of real property and equipment being the chief examples) require the prior approval of the federal funder in order to be allowable. Smart organizations also include internal approvals as part of an effective system of internal controls.

Provide for other special requirements.

Certain types of procurement transaction are further flagged for special handling. Most notably, they include construction (2 CFR 200.325 / 45 CFR 75.334 and USAID Standard

Provisions) and procurement of recovered materials (2 CFR 200.322).

> **NOTE on USAID Procurement Rules**
> The US Agency for International Development (USAID) has special rules regarding the source of commodities and the nationality of suppliers. These restrictions apply only to USAID funding. So it's important not to automatically apply them to non-USAID awards.

Identify the Source and Price

The regulations go into particular detail around this stage of procurement

Maintain written standards of conduct that avoid and prevent Conflict of Interest (COI).

This includes both:

- ***personal COI*** in procurement transactions (2 CFR 200.318(c)(1)), and
- ***organizational COI*** in dealing with parent or subsidiary organizations. (2 CFR 200.318(c)(2) / 45 CFR 75.327(c)(2))

Assure free and open competition.

2 CFR 200.319 (45 CFR 75.328) applies to all procurement transactions, and it includes the following:

- avoiding certain restrictive practices (§ 200.319(a)),
- establishing standards for formal solicitations of bids (§ 200.319(c)), and
- establishing standards for using prequalified lists of suppliers or products (§ 200.319(d)).

Define methods of procurement to be followed.

This means establishing a set of graduated standards, so that attention to detail in conducting and documenting the transaction increases as the total cost of the transaction increases. This acknowledges both that lower-cost/lower-risk purchases should be less complex and that higher-cost/higher-risk purchases benefit from more complex procedures that assure best value for the money.

2 CFR 200.320 (45 CFR 75.329) requires at least the following three gradations of cost/risk/complexity of approach (to help visualize these, see this procurement competition matrix):

- ***Micro-purchases*** – transactions below USD $3500 (or whatever lower threshold the recipient's policies may define). Such transactions require only minimal administrative burden, including documentation. (§ 200.320(a)) See also 48 CFR Subpart 2.1. Scroll to page 15 of the PDF.
- ***Simplified Acquisitions*** – transactions above the micro-purchase threshold but below the USG's Simplified Acquisition Threshold, which is currently USD $150,000. Such transactions require "relatively simple and informal" methods that must include requiring price quotations from "an adequate number" of qualified sources but do not require extensive or formal solicitations of bids. (§ 200.320(b)) and

- ***Large Acquisitions*** – transactions exceeding the Simplified Acquisition Threshold. Such transactions require the highest level of care and documentation, with formal advertising of solicitations for bids, preference for *sealed bids* resulting in fixed price contracts (where circumstances permit — see § 200.320(c))), and use of *competitive proposals* resulting in cost reimbursement type contracts where sealed bids are inappropriate and/or competition is inadequate(§ 200.320(d)). See item 8 below.

The recipient must also document its cost/price analysis for every transaction above the Simplified Acquisition Threshold. (2 CFR 200.323)

NOTE that the UG's procurement standards also reserve the federal awarding agency's right to review the technical specifications of significant procurement actions. See 2 CFR 200.324 / 45 CFR 75.333.

Define procedures to be used when competition is inadequate.

Situations where competition is inadequate (typically when only one bidder can be identified) require special care.

- The recipient must document the circumstances that make competition impossible.
- Proper costing of the transaction becomes a significant issue, because market competition is not working for the recipient to assure a reasonable price.
- You will need to obtain and evaluate a non-competitive proposal from the contractor.
- For most procurements of property, you'll use a firm fixed price contract (FFP), and you'll need to document why the price is reasonable. (Most non-competitive procurements involve obtaining services, which we'll discuss in the next session.)

Require affirmative steps to favor the use of certain businesses.

US law requires that purchases made with USG funds (including award funds) must use affirmative steps to assure that business goes to minority businesses and women's business concerns when possible. (2 CFR 200.321 / 45 CFR 75.330)

Award contracts only to responsible parties.

A *responsible party* is one that is:

- *capable of delivering* the required goods or services and is
- *not suspended or debarred* from participating in federal awards. (2 CFR 200.318(h))

Maintain written records of procurement transactions.

Records must detail the history of the transaction from beginning to end, including documenting the recipient's rationale for choosing the following:

- need for the purchase and approximate anticipated cost,
- method of procurement (sealed bid solicitation, competitive proposals, non-competitive proposals – see more on this in items 7 & 8, below),
- vendor,
- contract type (firm fixed price, cost plus fixed fee, time & materials), and
- the basis for the contract price. (2 CFR 200.318(i))

Assure that we get what we intended to get.

This is all about creating proper contracts and enforcing their terms. The importance of this stage increases in direct proportion to the total cost of the procurement.

Establish Standards for Procurement Contacts.

Recipient policy must require that procurement contracts include all necessary provisions to assure a legally binding agreement and to incorporate all applicable clauses found in Appendix II of the UG. See 2 CFR 200.326 / 45 CFR 75.335.

Provide for oversight of contractors.

Oversight must ensure that contractors perform in accordance with the terms and conditions of contracts executed with them. (2 CFR 200.318(b))

Property Standards in the Uniform Guidance

Once you acquire property, you need to keep track of it and maintain it, and eventually you will need to dispose of it. This leads to the topic of *property standards*.

Because they gave you the money to buy the stuff, the USG funder is also interested in how you use and dispose of it. As noted above, the regulatory language appears at 2 CFR 200.310 - __.316 / 45 CFR 75.316 - __.323

In order to make sense of a discussion of the USG property standards, we need to establish a bit of background. We need to understand issues of ownership/interest, and we need to understand classes of property.

Who owns it?

The USG regulations recognize three categories of ownership:

- ***Government-owned property*** – where title vests entirely in the USG. The USG funder may make such property available to the recipient for use, but title never vests with the recipient. The recipient has to care for this property in the same way that it cares for its own property, but it always belongs entirely to the USG. (this is somewhat rare.)
- **Recipient-owned property purchased with USG award funds** – where title vests with the recipient. This is property held in trust by the recipient as trustee for the beneficiaries of the funded program. (See 2 CFR 200.316 / 45 CFR 75.323.) The property technically belongs to the recipient; however the USG retains an interest in the property that includes the right to direct the recipient's use of the property and to recover the property (or its fair market value) from the recipient when the recipient no longer needs if for program purposes. (This is the usual and dominant form of ownership.)
- **Exempt property** – where title vests with either the recipient or a third party and, where the USG provided funds to purchase it, the USG places no claim whatsoever on it. (This is also rare.)

What kind of property is it?

Property is recognized to be either *real* or *personal*.

- ***Real property*** – is land and permanent structures erected on it.
- ***Personal property*** – is everything else, including both tangible and intangible property. For property purchased with USG funds, we also need to look at it through the USG lens and determine whether it is *equipment* or *supplies*. See the next section on this.

USG Property Management requirements (focusing on *equipment*)

2 CFR 200.313(d) / 45 CFR 75.320(d) provide that the recipient shall follow its own property management procedures and requires that those policies include certain minimum provisions regarding *equipment*. The recipient may apply these management criteria to all of its durable property, and many do.

Is it equipment or is it supplies?

As long as we're classifying things, we need to now classify the personal property that we've bought with USG award funds, because the regulations differ according to these distinctions.

The first classification has to do with durability and per-unit acquisition cost. If the property has a useful life of one year or more, the USG considers it to be *durable*, and as its value increases the USG's concern for it also increases. If it's not durable, then the USG isn't particularly interested in it, as long as it gets used up within the award period. (We'll learn more on that, when we talk about disposition at the end of the award.)

So now we're only talking about ***durable personal property***, and we further classify that according to its value. There are two possibilities:

Equipment – if a durable item's purchase cost (including delivery, in accordance with the recipient's policy) exceeds the recipient's capitalization threshold (or USD $5000, whichever is less), then it is classified as ***equipment***.

Supplies – if a durable item's purchase cost is less than the capitalization threshold (or USD $5000, as above) then it is classified as ***supplies***.

Does that mean that the USG considers a $2000 computer *supplies*? YES. But of course, the wise recipient will want to keep track of such durable supplies, regardless of the USG's stated interest in the property.

Property Records

The recipient must maintain property records that record the following:

- description of the property;
- a number that uniquely identifies the property;
- source of funding (including the FAIN - Federal Award Identification Number);
- who holds title to the property;
- acquisition date;

- acquisition cost;
- percentage of federal participation in the acquisition cost (as the percentage of federal participation in the total project costs of the project under which the property was acquired);
- location of the property;
- use of the property;
- condition of the property;
- ultimate disposition (disposal, sale, donation, etc.); and
- date of final disposition.

I recommend that such records also include the following (not required by regulation, but highly useful for knowing when to retire an item from your records and for figuring things out at award closeout).

- Useful life of the item; and
- Current fair market value (FMV), which should be updated periodically.

Physical Inventory

The recipient must conduct a physical inventory at least once each two years and must reconcile the physical inventory to the property records.

Control System

The recipient must implement a system of control that ensures adequate safeguards to prevent loss, damage or theft of the property and that requires the investigation of any such loss, damage or theft.

Maintenance Procedures

The recipient must implement maintenance procedures that assure the property is kept in good condition.

Sales Procedures

The recipient must establish proper sales procedures to ensure the highest possible return, when the recipient is authorized or required to sell the property.

Use and disposition of equipment at award closeout

2 CFR 200.313(c) / 45 CFR 75.320(c) provides instructions for the use of equipment for award purposes during and after the award period. It requires the recipient to use the equipment for award purposes, restricts the recipient from using it to provide services for a price below market price (unfairly compete with local business) without specific authorization to do so, and requires the recipient to dispose of the property when it is no longer needed for award purposes (whether or not the award that purchased the property is still active).

2 CFR 200.313(e) / 45 CFR 75.320(e) provides the instructions for disposing of property at the end of the award or when no longer needed by the recipient for award purposes. In order to comply with this section, the recipient should start with a listing of all items purchased under the award and all residual *unused* supplies.

All equipment items (items whose purchase price exceeded the recipient's capitalization threshold or USD $5000) that have a *current* fair market value (FMV) less than $5000 may be retained without obligation to the funder. The USG is no longer interested in those. That shortens the list.

For each item with a *current* FMV greater than $5000 and for *unused* supplies with an aggregate FMV greater than $5000, the recipient must seek disposition instructions from the funder.

There are two possibilities for disposition instructions, as follows:

1. Items may be retained by the recipient, given away or sold, but in each case the recipient must repay to the funder its share of the *current* FMV of the item.
2. Title to items may be transferred to the funder or to a third party. Since the property is held in trust for program beneficiaries, this often means that title can be transferred to a local entity, who will continue to use the property for program purposes. In this case, no money would be due to the funder. However, if title is transferred to a third party for other-than-program uses, then the funder's share of current FMV must be paid to the funder.

The usual practice is for the recipient to recommend to the funder the desired disposition instructions for items that require them. The funder then issues instructions.

Use and disposition of unused supplies at award closeout

2 CFR 200.314 / 45 CFR 75.321 requires the recipient to use supplies for award purposes during the award period. It is not expected that there should be a significant inventory of unused supplies at the end of the award. However, in the event that the aggregate value of unused supplies *that will not be used on other federal awards* is greater than or equal to $5000, the recipient must compensate the funder for its share of the residual supplies. Preparing for this eventuality can be complex. The basic idea is to be sure to use up all supplies purchased under the award during the award period.

Review

Key takeaways from this session:

- Procurement begins with a correct determination that it's *acquisition*, not *assistance*.
- Buy only what's necessary, only as much as you need, and only when you need it.
- Recipients must have written procurement policy that assures effective internal controls and that addresses all of the points listed at 2 CFR 200.310 - .316 / 45 CFR 75.316 - .323.
- Recipients must have written property management policy that covers all of the points listed at 2 CFR 200.313(d) / 45 CFR 75.320(d).
- Regardless of how title is held, property purchased with award funds is typically held in trust for the ultimate beneficiaries of the program, and the recipient must seek disposition instructions from the funder when the property is no longer needed.

Resources for Further Study

In-depth exploration of acquisition vs. assistance from USAID's perspective in ADS 304.

For deep study of the USG approach to cost/price analysis, find extensive information at this Contract Pricing Reference Guides website.
correct link is :
https://www.dau.mil/tools/p/cprg