BASIC INTRODUCTORY TRAINING (COMPLIANCE)

Session 4 – Fundamentals of Assistance Subawards

Introduction

From the beginning of this training series, we've been talking about the requirement to distinguish between *acquisition* and *assistance*.

In Session 4 we'll look more closely at the requirements you must follow when making *assistance* awards (often referred to as *subawards* or *lower-tier awards*, since they are made at a tier below the prime award).

Review of spending context: Three Ways to Spend Money

We've discussed that there are basically 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.

For this session, we're going to look at the third of these three: *assistance*.

Terminology for this session

We'll use the following terms throughout the session:

- ***Uniform Guidance (UG)*** refers to 2 CFR 200 and 45 CFR 75, which are effectively identical in language and intent.
- ***Pass-through Entity (PTE)*** refers to the organization that is the recipient of the prime assistance award and is issuing a lower-tier assistance award (*subaward*) to a lower-tier recipient (*subrecipient*). We receive this term in the UG, which defines it at 2 CFR 200.74.

The Basic Regulatory Requirements for Subawards

The UG identifies the following eight issues that the PTE must address when issuing a subaward. Later in this session, we'll discuss items three through eight in greater detail.

1. Correctly determine that the action is assistance *(and not* acquisition*)*

This requirement is stated in 2 CFR 200.330. Recall from previous training sessions 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.)

On large or potentially controversial subawards, it is always best practice to obtain guidance/approval from the funder on this determination (assistance or acquisition).

2. Determine your authority to issue an assistance subaward

USG regulations require prior funder approval for the issuance of subawards under federal assistance awards. If you don't already have explicit approval in the award agreement, you must obtain written approval prior to issuing a subaward. See 2 CFR 200.308(c)(1)(vi).

Sometimes the terms of the federal award will explicitly require prior approval of the subrecipient, the amount, and the form of subaward agreement. Other times, the terms of the agreement may be quite vague. It's always a good idea to double check with the funder to be sure precisely what the prime award requires, in terms of prior approval of subawards.

As we'll see in item 5, below, the use of the Fixed Amount Award also requires specific prior approval. Ideally, you want to secure all the needed prior approvals before you solicit proposals.

3. Provide a proper Notification of Funding Opportunity (solicitation of proposals)

This requirement isn't *directly* imposed on PTEs by the UG. However, the UG does put the requirement on federal awarding agencies, and following the guidance will ensure the best possible outcome of your subawards. The extensive requirements for notifications of funding opportunity are spelled out in Appendix I of the UG (2 CFR 200 / 45 CFR 75).

4. Vet the subrecipient; evaluate risk of non-compliance; determine appropriate special provisions

2 CFR 200.331(b) presents four specific issues that the PTE must consider in evaluating the subrecipient's ability to comply with the terms of the subaward agreement. Based on this evaluation, the PTE must use appropriate monitoring methods and may impose special conditions in the agreement, if needed, in order to minimize the risk of non-compliance by the subrecipient.

This step will likely require you to collect the subrecipient's DUNS number. If they don't have one, you will probably need to help them to get it. See 2 CFR 25.

5. Choose whether to use cost reimbursement or fixed amount award

You need prior funder approval to use the fixed amount type of award. See 2 CFR 200.45, 2 CFR 200.201, and 2 CFR 200.332.

6. Determine the amount of the award, including how you will provide for indirect costs

You'll need to evaluate the subrecipient's proposed budget in light of the cost principles (Subpart E of the UG). Adjustments are often necessary.

Additionally, 2 CFR 200.331(a)(4) requires PTEs to provide for the subrecipient's recovery of indirect costs as part of the total amount of the subaward, either by recognizing the subrecipient's NICRA (if they have one) or by negotiating a rate (or fixed amount) for indirect costs with the subrecipient. If the subrecipient is unwilling or unable to negotiate a rate, they may accept a de minimis rate of 10% of Modified Total Direct Costs (MTDC).

7. Issue a compliant award agreement

2 CFR 200.331(a) lists 6 items of information that must be included in subaward agreements.

8. Comply with FFATA reporting requirements

The Federal Funding Accountability and Transparency Act (FFATA – 2 CFR 170) requires that subawards that amount to $25k or more in a year must be reported via the FFATA Subaward Reporting System (FSRS). You may also need to report executive compensation of the subrecipient.

Your subrecipient must have a DUNS number.

> ***Sidebar on DUNS numbers, SAM registration and FFATA reporting:***
> When you read 2 CFR 25, you can come away with the impression that subrecipients must be registered in SAM, but this is not the case. Only the DUNS number is required for FFATA reporting, and only at the first tier below the prime award. See OMB guidance published on 14 SEP 2010 at 77 FR 55663 et seq. and 77 FR 55671 et seq.

7. Monitor subrecipient performance

2 CFR 200.331(d), (e) and (f) spell out the requirements for the PTE's monitoring of subrecipient performance and audits of subrecipient's records of financial transactions under the award.

8. Close out the agreement upon completion

Closeout may be as simple as receiving a final performance report from the subrecipient, but it's usually a bit more complicated than that. Often you'll need a final financial report, and you may have to wait to receive an independent auditor's report as well. You may need to make a final payment to the subrecipient; the subrecipient may need to return outstanding unobligated advances. You may need to issue disposition instructions on residual equipment that was bought with subaward funds.

Usually, you try to structure the subaward so as to simplify closeout as much as possible. At the very least, you should obtain a document from the subrecipient certifying that they have completed all required work, paid all financial obligations incurred under the subaward, and received all required funds from the PTE.

Notice of Funding Opportunity

The Notice of Funding Opportunity (NoFO) is the document you use to solicit proposals. Asking for and receiving proposals is the first step in making an assistance subaward. The more you tell the applicants about what you want, the easier it will be to turn the winning proposal into a subaward agreement.

2 CFR 200's Appendix I contains the OMB's directive to federal awarding agencies governing the form and content of federal NoFOs. While the UG doesn't impose this standard on PTEs, it is comprehensive, and I would urge PTEs to adopt it as their guide.

Here's an outline of the seven-point list of requirements for a NoFA:

A. Program Description—The full program description of the funding opportunity.

B. Federal Award Information—Must contain sufficient information to help an applicant make an informed decision about whether to submit a proposal. Also must indicate the type(s) of assistance instrument (e.g., grant, cooperative agreement) and level of substantial involvement that may be awarded if applications are successful.

C. Eligibility Information—Considerations or factors that determine applicant or application eligibility. Should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will preclude the awarding agency from making an award. Key elements to be addressed are:

1. Eligible Applicants;
2. Cost Sharing or Matching;
3. Other Eligibility Criteria, if applicable.

D. Application and Submission Information

1. Address to Request Application Package;
2. Content and Form of Application Submission—What's required, limitations on page count, component pieces, other information that must be submitted;
3. Unique entity identifier and System for Award Management (SAM);
4. Submission Dates and Times, including:
    i. Any deadline in terms of a date and local time.
    ii. What the deadline means.
    iii. The effect of missing a deadline.
    iv. How the receiving office determines whether an application or pre-application has been submitted before the deadline.
5. Intergovernmental Review;
6. Funding Restrictions—Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements.
7. Other Submission Requirements—This might include the format of submission, i.e., paper or electronic, for each type of required submission.

E. Application Review Information:

1. Criteria—This section must address the criteria that the awarding agency will use to evaluate applications, including the merit and other review criteria that evaluators will use to judge applications
2. Review and Selection Process—The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications.
3. For any Federal award under a notice of funding opportunity. This is essentially recipient vetting and disclosure information.
4. Anticipated Announcement and Award Dates—Optional.

F. Federal Award Administration Information:

1. Federal Award Notices—What a successful applicant can expect to receive following selection.
2. Administrative and National Policy Requirements—Identify the usual administrative and national policy requirements the awards may include. Providing this information lets a

potential applicant identify any requirements with which it would have difficulty complying if its application is successful.

3. Reporting—Include general information about the type, frequency, and means of submission (paper or electronic) of post- award reporting requirements. Highlight any special reporting requirements.

G. Awarding Agency Contact(s)— The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open.

H. Other Information—This section may include any additional information that will assist a potential applicant.

Subrecipient Vetting, Risk Assessment and Risk Mitigation

Before you can issue an assistance award, you have to make sure that the intended subrecipient is:

- eligible to receive an award (not suspended nor debarred from receiving federal awards, not on the terrorist lists) and
- capable of performing in accordance with the terms and conditions of the agreement.

As mentioned in the overview, 2 CFR 200.331(b) states the following four specific issues to address in considering the subrecipient's capacity to perform:

- The subrecipient's prior experience with the same or similar subawards;
- The results of previous audits of similar subawards, and the extent of those audits;
- Whether the subrecipient has new personnel or new or substantially changed systems; and
- The extent and results of previous monitoring (whether by the PTE or other agencies).

Vetting will also include getting the subrecipient's DUNS number, checking existing lists, obtaining references from previous donors, verifying legal status, and reviewing internal controls (especially accounting policies).

If your examination of the recipient indicates that they're not quite ready to perform to federal standards, then you will need to consider what special conditions to impose in the award agreement in order to mitigate any deficiencies.

The goal here is to do everything that makes sense to assure that the subrecipient can perform successfully. If you need to help the subrecipient to develop its capacity, this is where you identify what you plan to do.

Cost Reimbursement vs. Fixed Amount Awards

Cost reimbursement is the norm for assistance awards. We've discussed the issues of cost reimbursement in session 1a.

However, as noted in the overview, the UG provides the option (when appropriate) of using a fixed amount award. The term is defined at 2 CFR 200.45.

2 CFR 200.201(b) provides basic instructions for using this type of award. Briefly, they are as follows:

- the scope of the funded activity must be specific (clearly definable as either a single deliverable or a series of linked milestones);

- the total estimated cost must be supported by adequate cost, historical or unit pricing data; and
- allowable costs are determined using the cost principles.

Under a fixed amount award, both parties recognize and agree that the supported activity cannot be completed without incurring the costs described in the budget. Thus, the recipient is not required to produce any financial reports. It is sufficient for the recipient to certify completion of the funded activity.

Fixed amount awards are useful when the recipient has the capacity to conduct the funded activity but may not have the capacity to account for costs to the standards required under a cost reimbursement award.

However, *because* there is no financial accounting required, it is necessary and wise to avoid certain types of cost in fixed amount awards, such as the following:

- cost share (2 CFR 200.201(b)(2) prohibits the use of fixed amount award when there is a mandatory cost share element.);
- purchase of equipment (If accounting is beyond the capability of the recipient, then so too would property management be. Delivery of durable property should be accomplished through an in-kind grant of the property.)
- construction activities (Construction activities should never be funded via a fixed amount award.)

The PTE must obtain prior funder approval to issue a fixed amount subaward. See 2 CFR 200.332. This section also implies that a fixed amount subaward may not exceed the simplified acquisition threshold in total amount.

The Subaward Budget, including Indirect Costs

Whether the subaward is for reimbursement of costs or for a fixed amount, you must negotiate the amount on the basis of a detailed budget that you evaluate for allowability/allocability in accordance with the cost principles (Subpart E of the UG).

The budget must include a provision for recovery of the subrecipient's allocable indirect costs. (see 2 CFR 200.331(a)(4).)

We discussed allowable costs and cost allocation in Session 1b. We won't review that here. But keep in mind that your subrecipient may not be familiar with the USG cost principles. You may need to do some coaching to help them to prepare a budget that conforms to the cost principles.

There are three basic ways to address ***indirect costs***. Each of them requires that the subrecipient must apply the agreed approach to all of its final cost objectives, regardless of funding source. This in itself demands a certain level of sophistication of the subrecipient, because they need to identify those costs that they treat as indirect costs, and they need to treat those costs consistently in their accounting system, regardless of source of funds. When the subrecipient is unable or unwilling to follow reasonably disciplined cost accounting practices, it may be best to use the fixed amount award, providing an arbitrary *de minimis* amount for indirect costs.

The three approaches are as follows.

Follow the subrecipient's NICRA

If your subrecipient has a NICRA with any USG agency, then you must accept and follow the terms of that agreement.

Negotiate an indirect cost rate agreement directly with the subrecipient

To do this, you would need to follow the cost principles of Subpart D plus the applicable appendix, based on the subrecipient's organization type. Using this approach can be dauntingly complex, depending on the PTE's experience and staffing.

One aspect of this approach that can be particularly troublesome is the use of provisional/final rates, which can significantly delay final closeout of an award. Fortunately, USAID has suggested an approach that simplifies the administration of indirect rates when they are negotiated by the PTE. Basically, the USAID rule provides for negotiating a *fixed amount* for indirect costs (instead of a *rate*). The effect is similar to that of a fixed amount award: once negotiated and agreed, the fixed amount for indirect costs is paid to the subrecipient without regard to the actual direct costs incurred. Care must be taken during negotiations to assure that the amount allowed for indirect costs will be reasonable and will not exceed what would likely be paid if the provisional/final method were used. This approach is discussed in greater depth in the USAID references listed at the end of this handout.

If you want to use this USAID approach under a non-USAID prime, you should check with the funder for approval before proceeding.

Provide a *de minimis* rate

The third approach is for the subrecipient to elect to use an arbitrary rate of 10% of Modified Total Direct Costs (MTDC). MTDC is defined at 2 CFR 200.68. In this approach, the base of allocation is modified in order to eliminate common distorting factors, to more equitably allocate indirect costs across all final cost objectives of the organization.

The Subaward Agreement

As noted in the overview, 2 CFR 200.331(a) lists 6 items of information that must be included in subaward agreements, as follows:

1. Clearly identify the agreement as a subaward, and clearly identify the prime federal award and a long list of details, as follows:
    a. Subrecipient name (i);
    b. Subrecipient's DUNS number (ii);
    c. Information on the prime federal award, including: Federal Award Identification Number, date of issue, name of the federal awarding agency issuing, brief project description of the prime (for FFATA compliance), CFDA number of the prime, and indirect cost rate of the prime (iii), (iv), (ix), (x), (xi) and (xiii);
    d. Subaward period of performance start and end dates (v);
    e. Federal funds obligated to the subaward by this action and the total federal obligated amount for the subaward, citing CFDA numbers and amounts if more than one prime

(vi), (vii) and (xi);

f. Total federal funds committed to the subaward (viii);

g. Name of the pass-through entity (PTE) and contact information of PTE awarding official (x); and

h. Identification of whether the subaward is R&D or not (xii);

2. All requirements of the prime that must be passed through to the subrecipient;
3. Any additional requirements imposed by the PTE in order to meet its obligations to the prime, including identifying performance and financial reports, and any special conditions imposed by the PTE due to inadequacies of the subrecipient noted during vetting (see 2 CFR 200.207);
4. Indirect cost rate of the subaward, as discussed previously;
5. A requirement that the subrecipient permit the PTE and auditors to have access to records and financial statements of the subrecipient relevant to the subaward; and
6. Appropriate terms and conditions concerning closeout of the subaward.

These are minimum requirements per the UG. It might be reasonable to expand this list using the checklist we reviewed in Session 1. It is advisable to include any clauses that may be indicated in response to local laws and practices.

Subrecipient Monitoring

As noted in the overview, 2 CFR 200.331 contains the requirements for PTEs to monitor subrecipient performance to assure compliance with the terms and conditions of the subaward agreement.

Monitoring during performance should be appropriate to the scope and amount of the award and the subrecipient's perceived ability to perform. Monitoring can range from simple desk reviews of periodic reports to periodic site visits to frequent site visits and significant technical assistance to the subrecipient.

Financial audits as monitoring tools

Financial audits are an excellent monitoring tool when used appropriately. Audits can be performed by the PTE's financial staff, or they can be contracted out for performance by a third party accounting/auditing firm. The UG imposes certain requirements and limitations on third-party audits of subrecipients.

There are two kinds of third-party audits described as allowable costs in the UG:

Subpart F audits
The reasonably proportionate share of the cost of "Subpart F" (formerly "A-133") audits <u>when required by the UG</u>, are allowable. Note that *<u>only</u>* US nonprofit entities that spend more than $750k in federal award funds in their fiscal year are required to undergo the Subpart F audit.

<u>Foreign and for-profit entities are also exempted from the requirements of Subpart F</u>. The table of applicability at 2 CFR 200.101(a) and the omission of Subpart F from the list of subparts which *may* be applied to foreign entities at 2 CFR 200.101(c) make it clear that Subpart F does not apply to <u>foreign</u> and <u>for-profit</u> entities, no matter how much federal award money they spend.

***Limited scope* or *agreed-upon-procedures* audits for monitoring purposes**

When the subrecipient is not subject to the requirements of Subpart F, 2 CFR 200.425(c) limits the allowability of audit cost to only those audits that are:

- Conducted in accordance with GAGAS attestation standards;
- Contracted and paid by the PTE; and
- Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

The UG is clear that no other audit costs are allowable.

Review

Key takeaways from this session:

- Issuing subawards begins with a correct determination that the action is *assistance*, not *acquisition*.
- A thorough and precise notice of funding opportunity is the best first step toward a successful subaward.
- Subrecipients must be vetted with care, to assure compliance with federal requirements.
- Most subawards are cost reimbursable. However, the fixed amount award is available and may be a viable alternative under certain circumstances. Use of the fixed amount award type requires prior approval of the federal funder.
- The federal cost principles must be applied when evaluating the proposal budget and determining the amount of the subaward.
- Federal rules require that budgets provide for indirect costs.
- A sound and complete award agreement is key to a successful subaward. The federal rules are extensive in listing the requirements for the contents of agreements.
- The PTE must comply with FFATA reporting requirements for all subawards under federal primes.
- Monitoring during performance and auditing during/after performance is important. The allowability of audit costs is restricted by the UG.
- Closeout should be well documented.

Resources for Further Study

In-depth exploration of acquisition vs. assistance from USAID's perspective in ADS 304. This document was completely updated on 18 APR 2016, and it contains excellent guidance on making this critical distinction.

USAID's practical approach to providing for indirect costs in awards to recipients with no NICRA is detailed in Standard Provision *RAA4. Indirect Costs – Charged as a Fixed Amount (June 2012)*—part of ADS 303mab.

USAID's practical guidance on the use of *Fixed Amount Awards* is found in ADS 303saj – *Fixed Amount Awards to Non-Governmental Organizations*.

USAID's approach to limited scope audits of non-US recipients is found in Standard Provision *M2. Accounting, Audit, and Records*—part of ADS 303mab, in ADS 591 – *Financial Audits of Contractors, Recipients and Host Government Entities*, and in ADS 591maa – *Guidelines for Financial Audits Contracted by Foreign Recipients*. (Note that while USAID's guidance applies only to USAID awards, the logic and legal precedent for this guidance should be useful in suporting any request for approval of approach you may make to a non-USAID federal agency.)

USAID offers extensive guidance to its AOs on closeout procedures, including forms and checklists to use, at ADS 302sat.

For more on FFATA and the FSRS, see https://www.fsrs.gov/.

For guidance on obtaining a DUNS number, including advice for foreign (non-US) organizations, see here.

USAID has good guidance on closeout of awards at ADS 302sat.