First-time Grantee Workshop

U.S. Department of Commerce

Office of Inspector General

OIG Audit History With First-time Recipients

- **NIST Advanced Technology Program**
  - Many start-up companies
  - Awards to single companies and joint ventures
  - Pre-award accounting system surveys and cost audits
- **NIST Manufacturing Extension Partnership (MEP)**
- **NTIA Public Safety Interoperable Communications (PSIC) Program**
  - State agencies without cost sharing experience
- **Agency requests for preaward audit**
  - Metropolitan Television Alliance (NTIA)
  - Mid-America Research Institute (NOAA)

A Grant Is a Cost-Reimbursement Agreement

- **An allowable cost must meet all of the following**
  - ***Allowable***
    - **Laws, cost principles, other regulations, terms and conditions of grant**
  - ***Allocable***
    - **Did it benefit the project?**
  - ***Reasonable***
    - **Would a reasonable person have spent this much?**
  - ***In conformance with generally accepted accounting principles (GAAP)***
    - **Must be a real cost reflected in the accounting records**

Sources to Determine Allowability

- **Federal cost principles**
  - Colleges and universities
    - OMB Circular A-21 (2 CFR Part 220)
  - State, local, and tribal governments
    - OMB Circular A-87 (2 CFR Part 225)
  - Nonprofit organizations
    - OMB Circular A-122 (2 CFR Part 230)
  - Commercial organizations
    - FAR cost principles (48 CFR Part 31)
- **Commerce Learning Center course on cost principles**
  - https://doc.learn.com/learncenter.asp?sessionid=3-EB587215-FEE3-4F1E-81AD-578D895C2A40&DCT=1&id=178409&page=64

Sources to Determine Allowability

- **Federal administrative requirements**
  - **State, local, and tribal governments**
    - **OMB Circular A-102 (15 CFR Part 24)**
  - **Nonprofits, colleges and universities, commercial entities (Commerce policy)**
    - **OMB Circular A-110 (15 CFR Part 14)**
- **Sources of audit findings**
  - **Minimum standards for accounting and procurement systems**
  - **Disbursement policies (advances)**
  - **Valuation of contributions**
  - **Program income**

Sources to Determine Allowability

- **Commerce Standard Terms and Conditions**
  - **10% limitation on transfers among direct cost categories**
  - **No transfers among direct and indirect cost budgets**
  - **No indirect costs unless specifically included in budget**
  - **Federal share of indirect costs limited to lesser of budget line item or "actual"**

Sources to Determine Allowability

- **General terms and conditions**
  - **Implement program rules**
  - **Limitations on noncash contributions**
  - **Limitations on categories of costs (e.g., travel, supplies, indirect)**
- **Special award conditions**
  - **Specific to this recipient**
  - **Often to correct deficiencies in recipient performance or compliance**

Nonfederal Matching Share

- **“Cost sharing or matching means that portion of project or program costs not borne by the Federal Government” (15 CFR Section 14.2(j))**
  - **Not “What can we find to claim in order to receive federal money?”**
  - **Must be real costs that meet allowability standards**
- **As applied in Commerce, there is no distinction between a “federal” and “nonfederal” cost**
  - **“If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs” (Commerce Standard Terms and Conditions, Section A.03a)**

Effect of Disallowed Costs

- **Assume a grant with total budget of $1,000,000 and an 80% federal share. Auditor finds $25,000 of questioned costs, which grants officer disallows.**

Costs claimed	$1,000,000
Costs disallowed	$25,000
Costs allowed	$975,000
Federal sharing ratio	x 80%
Federal funds earned	$780,000
Federal funds disbursed (assume 80% of $1,000,000)	$800,000
Refund due the government	$20,000

Historical Matching Share Issues

- **Transfers among “partners”**
  - **Must be allocable**
  - **Nature of relationship?**
    - **Subrecipient?**
      - **Must be at cost**
    - **“Co-recipient?”**
      - **Must be at cost**
    - **Third-party in-kind contributor?**
      - **Generally based on fair market value, except for donated services**
- **Benefit to project**

Historical Matching Share Issues

- **Cash contributions are not matching share until expended on allowable project costs**
- **In-kind contributions are received from third parties, not from the recipient**
  - **Allowable value for equipment contributed by recipient cannot exceed book value unless special arrangements made with grants officer**
  - **Intracompany transfers at cost or transfer price (48 CFR Section 31.205-26(e))**
  - **Allowable value for donated services is not fair market value**
  - **Recipient must record income for contributions received**

Indirect Costs

- **A system for allocating shared costs among "cost objectives"**
- **Rates negotiated with a cognizant federal agency on behalf of the federal government**
  - **Usually shown as a percentage**
  - **"Reasonable" differs by industry and by company**
- **Must meet allowability standards**

Historical Indirect Cost Issues

- No indirect costs in approved budget
  - Commerce Standard Terms and Conditions limit indirect costs to lesser of budget or “actual”
  - Start-up company has no indirect until it gets new business
- No approved rate
- Proposed amount not based on costs
- Indirect costs hidden in direct line items
- Transfers of budget between direct and indirect

Relationships Among "Partners"

- **3 types of relationships with recipients**
  - ***Contractor***
    - **Provides ("sells") goods or services to a recipient for use under the grant**
    - **Terms and conditions do not flow down**
    - **Not limited to cost reimbursement unless specified in contract**
    - **Examples: technical consultant, accountant, attorney**
  - ***Subrecipient***
    - **Assists the recipient in achieving objectives of statement of work**
    - **Terms and conditions flow down**
    - **Direct federal recipient delegated most oversight responsibilities**
    - **Reimbursement for allowable costs**
    - **Examples: technical or geographic allocation of work scope**

Relationships Among "Partners"

- **3 types of relationships with recipients (continued)**
  - ***Third-party in-kind contributor***
    - **Donates goods or services to a recipient for use under the grant**
      - **Imagine a contractor that does not charge the recipient**
    - **Terms and conditions do not flow down**
    - **Value of contribution based on OMB circulars**
    - **Examples: landlord donates space, large company provides staff for smaller recipient, volunteer labor**
- **Fourth relationship: *Co-recipient***
  - **Not mentioned in OMB circulars**
  - **Each party individually responsible/liable for its budget and performance**
  - **Terms and conditions automatically apply to all**
  - **Reimbursement for allowable costs**
  - **Example: NIST Advanced Technology Program (ATP) joint venture**

Historical Recipient Relationship Issues

- **Poor or nonexistent oversight of subrecipients**
- **Failure to obtain necessary approvals**
- **Improper valuation of contributions**
  - **Recipients cannot make in-kind contributions to themselves (cannot use fair market value)**
  - **Donated services limited to salary plus benefits**
  - **Discounts are not in-kind contributions**
- **The nature of the relationship determines what it is, not the words on top of the agreement**

Recipient Administrative Systems

- **OMB circulars provide minimum standards**
  - **15 CFR Part 24 for state, local, tribal governments**
  - **15 CFR Part 14 for everyone else**
- **Must provide a transaction trail to document allowability of costs**
- **Must have procurement standards**
- **Must have property standards**
- **Must have written code of conduct**
- **Must have written procedures**
  - **To distinguish between allowable and unallowable costs**
  - **To minimize time elapsing between receipt and disbursement of federal funds**

Historical Administrative Systems Issues

- **Lack of documentation**
  - **Failure to document direct labor**
  - **Missing or inadequate vendor invoices**
  - **Claims based on estimates rather than actual costs**
- **Lack of CFO or accountant with federal grant or contract experience**
- **Lack of central accounting system and supporting documentation for cost claimed**
- **Excessive or unnecessary advances**
- **Failure to establish standards and procedures**
- **Conflicts of interest and related-party transactions**

Audits

- **OMB circular A-133 establishes audit requirements for governmental units, colleges and universities, and nonprofits**
  - **Must have a comprehensive single audit for any year it expends at least \$500,000 in cumulative federal award funds**
- **Commerce Standard Terms and Conditions require periodic (at least every 2 years) audits of other recipients "when the federal share amount awarded is \$500,000 or more over the duration of the project period." (DOC Standard Terms and Conditions, Section D.01.b)**
- **Some programs establish program-specific audit guidelines**
- **Some programs require accounting system certifications**
- **Cost of audit and accounting system certification can be allowable under the grant**
  - **If so, applicants should provide for these costs in their proposed budgets**

Historical Issues With Outside Audits

- **Required audits not performed**
- **Outside auditors lack experience with Commerce programs and requirements**
- **Accounting system certifications become marketing engagements**
- **Auditors engaged by recipient do not always act in best interest of the government**
- **Commerce grants often too small to be covered by single audit**

Program Income

- "Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award" (15 CFR Section 14.2(aa))
  - Translation: If a recipient generates revenue as a result of incurring allowable costs, it is program income
  - "Gross income" means it is not offset by costs incurred to generate it
- Program income earned during the award is restricted
- Income earned after the award ends is not restricted

Program income

- Three allowable uses
    1. Added to approved funding to expand the award
    2. Fund nonfederal share of project costs
    3. Deducted from total allowable project costs before applying the federal sharing ratio
- Federal funding agency directs recipient which option to use
    - If no option specified for governmental recipients, the deductive method is the default (15 CFR Section 24.25(g))
    - If no option is specified for other types of recipients, the additive method is the default (15 CFR Section 14.24(d))
    - BTOP direction is to use additive method
- If cost share or additive method is directed and the recipient generates more program income than it can spend, the excess is treated under the deductive method (15 CFR Section 14.24(c) or 24.25(g))

Historical Issues With Program Income

- Recipients do not understand program income is gross revenue
- Recipients do not understand that program income is restricted
- Recipients do not accurately report program income
- Recipients generate program income in excess of what they can spend

Impact of excess program income: The deductive method illustrated

- **Assume a BTOP grant with total budget of $1,000,000 and an 80% federal share. Recipient generated $500,000 of program income. Total allowable project costs are $1,400,000; thus $100,000 of unspent program income.**
- **What is the impact of the $100,000 in excess program income?**

Allowable eligible* costs	$1,000,000
Excess program income	$100,000
Basis for federal share	$900,000
Federal sharing ratio	x 80%
Federal funds earned	$720,000
Federal funds disbursed	$800,000
Refund due the government	$80,000

* - BTOP rules require program income be used to fund expansion of the project beyond the approved budget. Therefore, costs eligible for federal reimbursement will be based on allowable project costs excluding any costs funded by program income.

Grants Administration

- **"Grants Officer means the [Commerce] official with the delegated authority to award, amend, administer, closeout, suspend, and/or terminate grants and cooperative agreements and make related determinations and findings" (15 CFR Section 14.2(u))**
- **"The Program Officer ... is responsible for monitoring and oversight of the work being conducted under an award, such as tracking the recipient's progress and comparing the actual accomplishments with the goals and objectives established in the award" (Commerce Grants Manual, July 28, 2008, Chapter 4, Section H)**

Historical Issues With Grants Administration

- **Recipients are often unclear as to the roles**
  - **More day-to-day contact with Program Officer than Grants Officer**
  - **"The government" is the government**
- **Program officers unclear of role and rules**
  - **Give approvals that exceed authority**
    - **Preaward costs**
    - **Changes in budget**
    - **Changes in project scope**
  - **Give incorrect advice**
- **Grants officer is the only one who can change terms and conditions of the award**

Questions?

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