12th Annual Federal Grants Management Update
Webcast questions and answers

Resources:

Uniform Guidance (2 CFR 200)

2017 OMB Compliance Supplement (and access to OMB Circulars)

CFOC July 2017 FAQ document

Q&A from webcast:

1. I didn't see any content in the slides relating to NIST 800-171 and protecting Controlled Unclassified Information (CUI). Would you please comment on the compliance challenges of 800-171 and risk of not being eligible for federal grants requiring the use and protection of CUI?
   This content is outside of the scope of the presentation and not an area I have direct knowledge of. We would be happy to discuss offline.

2. When you discover an item of procurement noncompliance, such as a contract that was approved by the board but no comparative bids were obtained (dollar amount of $50K), what can you do? (How can you minimize the fallout?)
   Assuming the $50,000 purchase (directly charged to a federal award) was made after the effective date or implementation date for your organization, you may have issues. You would have been out of compliance with that purchase and an auditor would likely need to report this noncompliance and the related questioned cost. If you discover it before the auditor, you may be able to reach out to your cognizant/oversight agency to seek guidance and hopefully that will lay out a plan that is acceptable to them in order to avoid a questioned cost. This is all pure speculation on my part and it will be interesting to see how it all shakes out in the early years of post-implementation.

3. Please remind us what CFR stands for.
   Code of Federal Regulations

4. How would we know if a fixed price or cost reimbursement contract falls under the FAR?
   It would typically reference “Federal Acquisition Regulations” or Title 48 of the CFR. If you are not sure, contact your contracting officer.
5. How do we know whether an award we get from the state or county is in reality a "pass-through" award?
   The pass-through entity (state or county) is required to inform you that it is a federally-sourced award along with the CFDA number. Information concerning a federal source is also often found within the grant award or agreement. If you suspect it is federally-sourced, you should ask the question back to the pass-through entity and document the results of this inquiry to mitigate the risk of noncompliance.

6. Regarding pass-through awards: What if the award starts with the USDA then goes to the state then to another nonprofit then to us? Do we report that as a pass-through award on the SEFA?
   Yes (it does not matter how many pass-through entities stand between your organization and the federal agency).

7. Is the sub-recipient monitoring applicable only for new contracts or for existing contracts as well?
   Sub-recipient monitoring is not a new requirement. It only got “enhanced” with Uniform Guidance (UG). If the sub-award was made with a pre-UG prime award (typically awards issued before Dec. 26, 2014), the old OMB Circulars (e.g., A-110, A-122, A-133, etc.) would have applied and those circulars did require adequate sub-recipient monitoring and certain mandatory content in the sub-recipient agreement. With the UG, the new requirements of risk assessments and tying these assessments to the monitoring plan are the most dramatic changes.

8. We do business with a number of vendors (in the ordinary accounting use of the term vendor). How can I determine which ones we need "contracts" for in terms of 2CFR 200? Examples: utilities, motor vehicle repairs and maintenance, lawn maintenance, etc. (assuming it’s not a micro-purchase)? Are you seeing clients opt for multiyear contracts so that they don’t have to get competitive bids every single year for every single contract?
   Keep in mind the new procurement rules apply to “direct” purchases charged to federal awards. 2 CFR 200 does not require formal contracts for all procurements. The procurement rules mainly discuss the types of procurement actions that are required depending on the dollar size of the procurement action.

9. Does the monitoring have to occur during the effective contract year or can the monitoring be subsequent to contract year-end?
   With respect to sub-recipient monitoring, “monitoring” theoretically is a continuous process from the beginning of the award until after the award is concluded. However, the procurement plan will likely call for different types of monitoring at different times. For example, a low-risk sub-recipient may have more monitoring on the back-end vs. the front-end.
10. Another example question: You get a temporary worker from (say) Robert Half. At what point is a "contract" (in the uniform guidance sense of the word) required? How do you get competitive rates after you are into the work a week?

I am going to avoid the “contract” question (see previous response on similar question) but I would think any temp placement is likely going to exceed the micro-purchase level ($3,500) and thus you would have to do some sort of price analysis (unless you can justify a sole-source arrangement, which is now extremely difficult). If after a period of time it appears the amounts to be paid will exceed the next procurement level (e.g., $150,000), then you may need to contemplate a competitive bidding situation from various temp placement firms. Discuss with your cognizant agency as appropriate.

11. Can we apply for an indirect rate if we do not have a direct contract with the federal government? We are a sub-contractor through local governments and have not found a mechanism to apply for a federal indirect rate. Thank you.

You should discuss this with the agency that is the source of most of your federal funding. UG gives you that right even as a pass-through entity. If you never had a rate before, you could also consider the new 10 percent option.

12. Are you required to reapply annually for a de minimis rate?

No. If you never had a formal federal indirect rate before, you should automatically qualify and you should discuss the use of the de minimis rate with the awarding agency. There is no process for applying for it or re-affirming its use. If you undergo a UG audit, there should be a note to your SEFA that says you use the de minimis rate option.

13. We received a sub-award and do not have an approved indirect rate. The prime is subjecting us to a de minimus 10 percent (our indirect is much higher than that). My understanding was that the indirect rate for an organization that does not have an approved rate is to be negotiated between the prime and sub. Is that correct?

The prime and sub can certainly mutually agree on an overhead rate that works for both sides. However, if the sub has a federally negotiated rate, the prime must honor it. If there is no rate in place, at a minimum, the sub would be entitled to the 10 percent rate. See response to question #11 regarding apply for a rate.

14. Would it be possible to elect to charge a de minimis rate of 10 percent of MTDC?

Only if the organization NEVER had a negotiated rate with the federal government
15. For an organization is mostly (say, 98 percent or so) funded by government grants, what
is left to obtain by using an indirect rate? Is depreciation allowable in indirect rates?
First, congratulations if 98 percent of your expenses can be direct charged to a federal
award. Or are you saying that federal awards comprise 98 percent of your funding? I
don't know your specific funding arrangement but most organizations have a hefty
amount of facilities and administrative costs that can only be recovered through an
indirect agreement. If your indirect rate would be less than 10 percent, consider the 10
percent rate option if you never had a negotiated federal indirect rate before.

16. Are pass-through entities required to negotiate indirect rates with sub-recipients, or allow
the de minimus 10 percent, if the sub-recipient doesn't have a NICRA? Some agencies
are claiming they don't have to.
The prime and sub can certainly mutually agree on an overhead rate that works for both
sides. However, if the sub has a federally negotiated rate, the prime must honor it. If
there is no rate in place, at a minimum, the sub would be entitled to the 10 percent rate.
See response to question #11 regarding apply for a rate.

17. What is the other identification number (column 5) of the SEFA? We only list the CFDA
number and the pass-through entity ID number. Is that sufficient? Also our SEFA is two
pages, one page includes direct funded grants and the next page is pass-through grants.
Do we need to change the format of our SEFA? We haven't found any templates out
there yet. We believe we have all the data required to be included on the SEFA but it
may not be in the proper format. Any suggestions would be appreciated.
You may have the minimum requirements covered (see UG section §200.510 for the
required elements. Also see the new FAQ document for best practices). The “Other
Identification Number” field is typically the grant number assigned by the funder (helps
distinguish other grants under the same award, as applicable).

18. I thought I saw on the screen that depreciation was unallowed, but thought I heard the
speaker say that depreciation was allowed. Can you clarify?
Depreciation is typically allowable as an indirect cost. Sorry for the confusion. I was
establishing definitions of direct and indirect in my section that deals with unallowable
costs but was not listing those items out as unallowable.

19. Can admin and facility cost be considered direct cost if they are objectively measured?
Then applying a percentage of admin and facility that didn't get measured by cost rate?
Or do you need to back out the direct cost from admin you already allocated before you
apply your indirect cost rate amount?
There are concepts of taking indirect costs and treating them as direct costs using an
appropriate allocation methodology. This would be part of the rate negotiation process
with the federal agency.
20. Frequency in checking SAM checks? Annually/bi-annually?
   At least in the procurement process (or when entering into an agreement with a sub-recipient). I am not aware of ongoing checks but it could be viewed as a good practice for multiyear arrangements (i.e., at least annually).

21. Are there financial systems that you recommending?
   Not necessarily for purposes of this presentation. Keeping it broad. Please email or call me if you would like to discuss your particular situation.

22. Regarding timesheets: For foreign countries that are required by law to only work 40 hours, but they work more, are timesheets reflecting percentages rather than hours worked permitted?
   I would defer to your legal counsel.

23. In the total time concept, our timekeeping system allocates time based on the rate per hour the person is paid. If the person is exempt, the total pay is the same regardless of whether they are working 80 hours or 100 hours in the two-week pay period. Are we required to reduce the rate of pay for the individual by dividing the total pay by the 100 hours works, which results in a lower per hour cost than the actual per hour rate of pay?
   It is not about the total pay. It is about fair allocation of payroll cost when an individual works on multiple cost centers. Ideally, your time system could handle the total time concept so the weighted average of the pay is allocated based on time work. If your system is limited as described, you may need to prorate the 100 hours down to 80 in the EXACT same proportion so the allocation is still based on the total time concept.

24. Can we pay an organization that itself is not debarred/suspended/etc., but they are an independent franchise of a company that is debarred/suspended/etc.?
   I would defer to your legal counsel.

25. As an exempt employee working on regular duties and intermittently spending direct hours on federal awards, how would an allocation look for four hours on federal awards, and 45 on regular duties? A pass-through entity indicated the full four hours would be eligible under the grant. Typically, this would result in an allocation of 8.1633 percent (4/49) of your salary for the time period being charged to the federal award.

26. If you are a sub-recipient from a research institute for college/universities, which procurement rule would apply?
   If you are not one of these types of entities, your micro-purchase level would be $3,500, not $10,000.
27. What are organizations required to do about the audit? This will be a small purchase but this is not an item easily priced over the phone and does not need a formal bid. Typically audit costs are not direct charged to the federal award. However, the UG specifically states that “in procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in § 200.317 Procurement by states through 20.326 Contract provisions of Subpart D- Post Federal Award Requirements of this part or the FAR (48 CFR part 42), as applicable.”

28. Has the $10,000 for research institutes been finalized and approved or are they still debating? Adopted as a matter of law in December 2016. UG not yet updated for this change.

29. Why does the reg. say $3,000 and the reference to FAR's $3,500 provision?
Keep reading. It says the rate will be adjusted for inflation from time to time and you should look to Title 48 (FAR) for the current level.

When you go to 48 CFR 2.1, it says:
Micro-purchase means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.

Micro-purchase threshold means $3,500.

30. I'm dealing with a federal agency that has not uploaded their grants to USA.gov due to IT issues. I am unable to report sub-awards from this grant to FSRS. How do I document this for audit purposes?
A memo and/or emails from the agency may suffice.

31. Where can I find the OMB circular?
See list of resources at the top of this Q&A document.

32. If a sub-awardee has not registered in SAM.gov, will they still show up as debarred when I search? Is a screenshot showing they were not found, sufficient back-up, or are they required to register?
No. If an entity is suspended or debarred, the federal government adds them to the list. The sub-awardee takes no action with SAM.gov.

33. Do you have any good resources for sub-recipient risk assessment and monitoring?
Not really. I think we all are trying to comply as best as we can. How one organization may structure a risk assessment may be very different from how another organization would. As time passes, I expect the learning curve to be less severe and information about best practices will emerge.