Nuts and Bolts of Subgrant Agreements

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Agenda

• Subrecipient vs. contractor determination
• Managing subawards
  – Obligations of the pass-through entity
  – Applicable rules governing subaward agreements
• Sample Subaward Agreement
  – Elements of a subaward agreement
Recipient vs. Subrecipient vs. Contractor

- A non-federal entity (e.g., CAA) may receive federal awards as a recipient, subrecipient or contractor (2 C.F.R. § 200.330)
- *Recipient* means a non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program (2 C.F.R. § 200.86)
  - Does not include “subrecipients”

Subrecipient vs. Contractor

- *Subrecipient* means a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal award received by the pass-through entity (2 C.F.R. § 200.92)
Subrecipient vs. Contractor

- **Contract** means a legal instrument by which a non-Federal entity purchases property or services needed to carry out a project or program under a Federal award (2 C.F.R. § 200.22)
- **Contractor** means an entity that receives a contract as defined in § 200.22 - Contract (2 C.F.R. § 200.23)
  - Note: The Uniform Guidance replaced “vendor” with “contractor”

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### Subrecipient vs. Contractor

<table>
<thead>
<tr>
<th><strong>Subrecipient (Subaward)</strong></th>
<th><strong>Contractor (Procurement contract)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose is to carry out a portion of the Federal award</td>
<td>Purpose is to obtain goods and services for the non-Federal entity's own use</td>
</tr>
<tr>
<td>Determines eligibility for assistance</td>
<td>Provides goods and services within normal business operations</td>
</tr>
<tr>
<td>Performance measured according to Federal program objectives</td>
<td>Provides similar goods and services to many different purchasers</td>
</tr>
<tr>
<td>Responsible for program decision-making</td>
<td>Normally operates in a competitive environment</td>
</tr>
<tr>
<td>Must comply with Federal program requirements</td>
<td>Is not subject to compliance requirements of the Federal program as a result of the agreement</td>
</tr>
<tr>
<td>Funds used to carry out the Federal program, rather than providing goods or services</td>
<td>Provides goods or services that are ancillary to the operation of the Federal program</td>
</tr>
</tbody>
</table>

2 C.F.R. § 200.330
Subrecipient vs. Contractor

- Substance of the relationship is more important than the form of the agreement.
  - Not all characteristics will be present in every relationship
- Pass-through entity should use judgment in classifying each agreement as a subaward or a procurement contract

2 C.F.R. § 200.330

Early Head Start-Child Care Partnerships

Subrecipient or Contractor Determination: An Analysis Tool

<table>
<thead>
<tr>
<th>Grafter</th>
<th>Partner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

For each of the following, check yes or no to indicate if this information describes you (Grafter) or your partner:

- Did the partner provide child-care services to other customers or partners prior to becoming a partner?
- Does the partner provide child-care services to other customers or partners?
- Does the partner compete with other child-care providers in the local community?
- Services provided by the partner cover only aspects of comprehensive services to low-income children and their families.
- Programmatic compliance and oversight of partnership fund and property is the responsibility of the grafter.

Add up the number of checks in each column. If most checks are in the Yes column, the partner is likely to be a subrecipient. If most checks are in the No column, the partner is likely to be a contractor.

Subrecipient or Contractor Determination: An Analysis Tool

- Provided by the Office of Head Start in EHS-CC Partnership orientations to help grantees determine whether partner is a subrecipient or a contractor
- Overlays the requirements of 45 CFR Part 75 with requirements of the EHS-CC Partnership awards

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Managing Subawards

- Identify and select partners
- Understand the rules applicable to subawards
- Evaluate costs and review budget
  - Discuss cost allocation and indirect cost treatment
- Draft subaward agreement
- Administer and manage award
  - Provide appropriate financial and technical assistance
  - Pre-award risk assessment
  - Manage payments
- Meet reporting requirements
- Plan for closeout of subaward

Obligations of Pass-Through Entity

- Determine contractor vs. subrecipient relationship
- Include certain specified information (including applicable indirect cost rate) in the subaward
- Conduct pre-award risk assessment to determine the appropriate monitoring level
- Consider imposing specific subaward conditions
- Monitor subrecipients’ activities to ensure:
  - Subaward is used for authorized purposes
  - Subaward performance goals are achieved
- Verify subrecipient is audited according to Single Audit
- Consider taking enforcement actions against noncompliant subrecipients

2 C.F.R. § 200.331
Rules Applicable to Subawards

- Federal award agreement
- Authorizing statute and regulations of Federal award
- Federal appropriations act
- Uniform Guidance
  - Codification by Federal awarding agency (e.g., HHS’s codification is 45 C.F.R. Part 75)
- Any other statutes, rules, regulations, or other laws incorporated by reference in the above
  - E.g., regs for faith-based orgs, Davis-Bacon Act, restrictions on lobbying, etc.

Elements of a Subaward Agreement

Recitals
a. General statement of purpose of the subaward
b. Identify the federal awarding agency, prime award, award authorizing statute and implementing regulations
c. Identify the award as a subaward
d. Consider referencing the award identification data required by the Uniform Guidance (2 C.F.R. § 200.331)
Elements of a Subaward Agreement

Required award identification information from 2 C.F.R. § 200.331

a. Subrecipient name
b. Subrecipient Unique Entity Identifier (DUNS #)
c. Federal Award Identification Number (FAIN)
d. Federal award date
e. Subaward period of performance start and end dates
f. Amount of federal funds obligated by this action by the pass-through entity to the subrecipient
g. Total amount of federal funds obligated to the subrecipient by the pass-through entity including the current obligation
h. Total amount of the federal award committed to the subrecipient by the pass-through entity
i. Federal award project description
j. Name of federal awarding agency, pass-through entity and contact information for awarding official
k. CFDA number and name
l. Whether the award is R&D
m. Indirect cost rate for federal award (including if using de minimis rate)

Indirect Costs

• Indirect costs
  – Pass-through must (2 C.F.R. § 200.331; COFAR FAQ .331-6):
    • Honor subrecipient’s federally negotiated indirect cost rate; or
    • Use a 10% MTDC de minimis rate; or
    • Negotiate a rate with the subrecipient (can’t force a subrecipient to accept less than the 10% de minimis rate)
  – Statutory caps on administrative costs
  – Non-federal entities are not required to establish indirect cost rates (2 C.F.R. § 200.331)
    • May continue to use cost allocation plan
Elements of a Subaward Agreement

1. Term
2. Scope of Services; Budget
3. Compensation; Payment Methods
4. Financial Accountability and Grant Administration
   • Financial management system/records
   • Indirect cost rate
   • Financial and other reports
   • Audits
   • Closeout

5. Monitoring and Evaluation
6. Record Retention and Access
7. Independent Contractor Relationship
8. Compliance with Grant Agreement and Applicable Laws
   • Prime award and subaward
   • Approved scope of services and budget
   • Laws applicable to subaward agreement
Elements of a Subaward Agreement

9. Employment Laws and Policies
10. Confidentiality; Protection of Personally Identifiable Information
11. Publicity; Public Announcements
12. IP Rights
13. Indemnification
14. Insurance
15. Termination
   • For cause and for convenience

Elements of a Subaward Agreement

   • Governing Law
   • No Assignment
   • Notices
   • Amendments

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Elements of a Subaward Agreement

• List of Exhibits
  – Exhibit A: Notice of Prime Award
  – Exhibit B: Subaward Data
  – Exhibit C: Approved Services
  – Exhibit D: Approved Budget
  – Exhibit F: Certification Regarding Lobbying

Questions
The information provided in this presentation should not be construed as legal advice or legal opinion regarding any specific facts or circumstances, but is intended for general informational purposes only.