Grants Management: Pre-Award Issues 2

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Mary Graydon Center 4&5, 9:30 – 11:30

Presenters:

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What Will Be Covered Today

I. Award Numbering System

II. Sponsor Relationship
   A. Sponsor Personnel and Roles
   B. Prior Approval
   C. Changes to Scope of Work
   D. Re-Budgeting
   E. No-Cost Extensions

II. Contractual Issues under Awards
   A. Definitions
   B. Processes
   C. Agreement Terms
   D. Subrecipient Monitoring
   E. Employee vs. Consultant

III. A Look Ahead: RAC in the Spring
Award Numbering System

- Award numbers, especially federal, often include important information about the project, such as sub-agency, year, type of application, etc.
- Federal agencies are often made up of separate grant-making divisions, institutes, centers, directorates, etc.
- Sample numbers for U.S. Department of Justice:
  o 2009-IJ-CX-4110 [IJ=National Institute of Justice];
  o 2012-DC-BX-K005 [DC=Drug Court programs];
- Sample numbers for U.S. Department of State:
  o S-LMAQM-12-GR-1009 [LMAQM=Logistics Management/Office of Acquisitions Management];
  o S-ECAAS-10-GR-165(DT) [ECA=Bureau of Educational and Cultural Affairs; DT=grants officer’s initials].
Award Numbering System: NIH

Application Activity Code (R01) Institute Code (HD)
Type (7)

→ 7 R01 HD028792-18 ← Grant Year (18)

Application types:
1. New
2. Renewal
3. Revision (supplement)
4. Extension
5. Noncompeting Continuation
6. Change of Organization Status
7. Change of Grantee Institution
8. Change of Institute or Division (noncompeting)
9. Change of Institute or Division (competing)
Award Numbering System: NIH (cont.)

Activity codes:
R series: Research Grants (e.g. R01, R03, R15, R21); R01 is the most common;
K series: Career Development Awards (e.g. K01, K12);
T & F series: Research Training and Fellowship;
P series: Program Project/Center Grants (e.g. P01 and P20).

Institute Codes: a two-letter code to identify which institute within NIH is funding a particular project (e.g. HD = National Institute for Child Health and Human Development).

Serial Number: a unique 6-digit number assigned by the institute for each grant.
Award Numbering System: NIH (cont.)

Suffixes:
Grant year, starting with 01

Additional suffixes can follow using a letter and a number. The letter codes are:

S: supplement
A: amendment
X: allowance

The number identifies which the sequence, so that 04S2 would identify the second supplement in year 4.
Sponsor Relationship:
Sponsor Personnel and Roles

Program Officer:

- Title may vary ("Project Officer," "Contract Officer’s Technical Representative," "Program Official," etc.);
- Primary point of contact for PI and on any programmatic questions;
- Receives and reviews technical reports;
- Reviews requests for changes to statement of work, key personnel, etc.;
- Generally not allowed to agree unilaterally to any modifications to the award, especially with federal awards; smaller private foundations may be different.
Sponsor Relationship: 
Sponsor Personnel and Roles (cont.)

Grants officer:

- Title may vary (“Contract Officer,” “Grant Specialist,” “Grants Management Specialist,” etc.);
- Primary point of contact for OSP;
- Serves as the sponsor’s contractual negotiator;
- Often receives and reviews technical and financial reports;
- Reviews requests for prior approval;
- Initiates modifications to agreement;
- Can say “no” to program officer.
Sponsor Relationship: Prior Approval

Some actions/changes/expenses require prior approval. The following is not an exhaustive list, but typically, prior approval is required for [from OMB circular A-110]:

• “Change in the scope or the objectives of the project … (even if there is no associated budget revision…)”

• “Change in a key person specified in the application or award document.”

• “The absence for more than three months, or a 25 percent reduction in time [effort] … by the principal investigator.”

• “The need for additional Federal funding.”
Sponsor Relationship: Prior Approval (cont.)

- “The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.”
- “Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.”
- The purchase of equipment if not specifically included in the approved budget.
Sponsor Relationship: Prior Approval (cont.)

All requests for prior approval should come from OSP.

Sponsors sometimes do approve requests after the fact, but they can and do turn down such requests.
Sponsor Relationship: Changes to Scope of Work

• Can be difficult to determine if a change is substantial enough to require sponsor approval.
• If in doubt, it is better to talk to OSP and ask the sponsor: would such a change require prior approval?
• Examples of changes that may signify a change of scope, even though they are allowed from a budget standpoint:
  o Change in PI effort even if under the 25% threshold;
  o Changes in planned equipment purchases;
  o Changes in number of human or animal subjects;
  o Major changes in staffing, travel plans, etc.
Sponsor Relationship:
Re-Budgeting

- Review project brief and award for rules regarding re-budgeting;
- Note that most requirements look at the cumulative transfers, not the individual transfers;
- Contact OSP with any questions if it is not clear whether a particular re-budgeting plan requires prior approval;
- If the award uses vague words such as “substantial” or major,” OSP can follow up with sponsor to determine if approval is required;
- If approval is required, OSP coordinates the request.
Sponsor Relationship: Re-Budgeting (cont.)

- Read guidelines carefully:
  - Is the threshold based on a dollar value or percentage?
  - Do those thresholds apply to each line-item? Or category?

- Three sample scenarios:
  - Approval needed if any line-item is modified by more than 20%.
  - Approval needed if the cumulative amount of transfers among direct cost categories exceeds 10% of the total approved budget.
  - Any “substantial” deviations from project budget require sponsor prior approval.
## Sponsor Relationship: Re-Budgeting: Sample

<table>
<thead>
<tr>
<th>Categories</th>
<th>Current Budget</th>
<th>Proposed Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel - PI</td>
<td>$30,000</td>
<td>-$2,000</td>
</tr>
<tr>
<td>Fringe</td>
<td>$7,590</td>
<td>-$506</td>
</tr>
<tr>
<td>Travel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic travel</td>
<td>$5,000</td>
<td>$3,006</td>
</tr>
<tr>
<td>International travel</td>
<td>$10,000</td>
<td>-$500</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postage</td>
<td>$4,000</td>
<td>-$500</td>
</tr>
<tr>
<td>Telecom</td>
<td>$5,000</td>
<td>$500</td>
</tr>
<tr>
<td>Indirect @39%</td>
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<td></td>
</tr>
<tr>
<td>Total</td>
<td>$85,630</td>
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</tr>
</tbody>
</table>
Sponsor Relationship: No-Cost Extensions

- Definition: an extension to a sponsored project’s time period without any addition of funds.
- Sponsors can and do say “no” – especially if the project has already been extended.
- Generally, recipient must make request at least 30 days before current end date (sometimes more).
Sponsor Relationship:
No-Cost Extensions (cont.)

• 3 minimum conditions to request a no-cost extension:
  o The project is not finished;
  o There are legitimate reasons for the delays and a reasonable plan for finishing;
  o There are unspent funds remaining;

• Leftover funds by themselves are not a sufficient justification, if the project goals have been accomplished.

• In addition to finishing the project as planned, a no-cost extension request might also identify additional opportunities to expand the project.

• Contact the OSP post-award team contact to prepare no-cost extension requests.
Contractual Issues under Awards: Definitions

Two main categories of agreements under awards: subawards and vendor agreements.

• **Subawards** are agreements with other organizations to receive Federal pass-through funding. Subawardees (subrecipients) are typically identified in the proposal and involved in the project from the start. Also called subcontracts or subrecipient agreements.

• **Vendor agreements** are agreements with third parties to provide goods or services that AU needs in order to carry out a project. Vendors can be organizations or individuals. Also called consulting agreements.
Contractual Issues under Awards: Definitions (cont.)

From OMB Circular A-133, section 210:

Subrecipient:

1) Determines who is eligible to receive what Federal financial assistance;

2) Has its performance measured against whether the objectives of the Federal program are met;

3) Has responsibility for programmatic decision making;

4) Has responsibility for adherence to applicable Federal program compliance requirements; and

5) Uses the Federal funds to carry out a program of the organizations as compared to providing goods or services for a program of the pass-through entity.
Contractual Issues under Awards: Definitions (cont.)

From OMB Circular A-133, section 210:

Vendor:

1) Provides the goods and services within normal business operations;

2) Provides similar goods or services to many different purchasers;

3) Operates in a competitive environment;

4) Provides goods or services that are ancillary to the operation of the Federal program; and

5) Is not subject to compliance requirements of the Federal program.
Contractual Issues under Awards: Processes

• Why prepare agreements?
  o To achieve clarity on project roles and expectations;
  o To establish rights (e.g. intellectual property) and limit liability;
  o To flow down the terms and conditions of the prime award, in the case of a subrecipient.

• Process: OSP drafts agreements for signature by Director of Procurement and Contracts (or others depending on dollar value).

• Vendor agreements are subject to AU and sponsor procurement policies, but not the prime award terms and conditions.
Contractual Issues under Awards: Agreement Terms

Statement of Work:
• For subrecipients, use the original proposal if possible;
• Provide as much detail as possible;
• Larger projects should be broken down into components, with specific deliverables identified;
• If time is of the essence, deadlines should be established.
Contractual Issues under Awards: Agreement Terms (cont.)

Payment Terms:

• Subawards are generally cost-reimbursable;
• In rare cases advances to subawardees can be arranged;
• Vendor agreements can have various payment terms:
  o Daily or hourly rate: generally used for individual consultants; a cap on the total days/hours is typically included. Some sponsors limit the daily rate.
  o Fixed price: generally used when a discrete deliverable is required (e.g. research paper, website, translation).
  o Cost-reimbursable agreement: rare with vendor agreements; used when work is harder to quantify or estimate costs.
• Generally final payments should be withheld until satisfactory completion of work.
Contractual Issues under Awards: Agreement Terms (cont.)

Intellectual Property:
Two primary options:
• “Work made for hire:” AU owns all rights to intellectual property produced under an agreement;
• Or each party owns the property that it creates during the project; generally in this case AU will secure a license to use the property.

• Either way, AU usually must secure for the sponsor a license to use any intellectual property developed.
Contractual Issues under Awards: Agreement Terms (cont.)

Other:

- **Termination** clause so that AU can end an agreement that is not working out;
- **Reporting** terms ensure that AU receives sufficient information on progress;
- **Indemnification** clause to avoid unnecessary liability for AU;
- **Confidentiality** clause to prevent misuse of AU information;
- **Certifications**, if required by the terms of the prime award.
Contractual Issues under Awards: Subrecipient Monitoring

• When prime recipient “passes through” federal funds to a subrecipient, it assumes responsibility for ensuring the subrecipient’s compliance with all applicable award terms.

• Subrecipient monitoring includes:
  o Evaluating subrecipient’s compliance with financial and other requirements, often based on a review of the subrecipient’s A-133 audit;
  o Evaluating subrecipient’s performance.

• Subrecipient monitoring is an increasingly important focus of the A-133 audit.
Contractual Issues under Awards: Employee vs. Consultant

- Current AU employees (including adjunct faculty) and students cannot be paid as consultants.
- Important to distinguish between independent contractor and employee; the following slide contains guidance from the IRS on factors to be considered in making this distinction – generally focused on control over the work process.
- Questions about which designation to choose can be referred to Human Resources.
Contractual Issues under Awards: Employee vs. Consultant (cont.)

- **Behavioral**: Does the company control or have the right to control what the worker does and how the worker does his or her job?

- **Financial**: Are the business aspects of the worker’s job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)

- **Type of Relationship**: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?
A Look Ahead: RAC in the Spring

Save the dates: February 14, March 14, April 11, May 9
(subject to change)

9:30 – 11:30, locations TBD

Topics to be covered:
• Post-award financial management
• Expense processing
• Audits
• Compliance
Quiz