How Federal Grants are Being Transformed into Federal Contracts: What Public Procurement Professionals Need to Know

Dr. Lawrence (Larry) Martin, PHD. MSW, MBA
Professor of Public Affairs
University of Central Florida

Turning Federal Grants into Contracts

Overview of Presentation

Over the last 12 plus years, the federal government has quietly laid the ground work to transform the federal grant system into a federal contracting system
Turning Federal Grants into Contracts

Presentation Overview

• Federal: Grants, Contracts & Cooperative Agreements
• Federal Grant Performance Initiatives (GAO & OMB)
• 2 Code of Federal Regulations, Part 200
• Implications for Public Procurement Professionals

Federal Grant & Cooperative Agreement Act of 1977

Assistance Versus Procurement

- Assistance
  - Grant
  - Cooperative Agreement
- Procurement
  - Contract
Federal Grants, Contracts & Cooperative Agreements

- **GRANT** – The Federal Government is a PATRON
- **CONTRACT** – The Federal Government is a PURCHASER
- **COOPERATIVE AGREEMENT** – The Federal Government is a PARTNER

Federal Grants, Contracts & Cooperative Agreements

- Contracts are governed by the *Federal Acquisition Regulation*
- Grants and Cooperative Agreements are governed by the “*Uniform Guidance*”
Federal Grants, Contracts & Cooperative Agreements

Catalogue of Federal Domestic Assistance

• Lists all federal financial assistance programs (e.g., Community Services Block Grant [CSBG])

• Identifies the type of financial arrangement: Grant or Cooperative Agreement

Federal Grant Performance Initiatives (GAO & OMB)

• Government Accountability Office (GAO) & Office of Management & Budget (OMB) have long wanted major changes to the federal grant system

• GAO (2006) pointed out: lessons learned from performance-based contracting are beginning to inform federal grant design

• OMB (2013) recommended: resources be reallocated from programs that are not effective to those that are
Uniform Guidance

December 2013, the federal OMB issued:


• During development the uniform requirements were called the:
  
  “OMB SUPERCIRCULAR”

Uniform Guidance

The “Uniform Guidance” calls for:

• Inclusion of outcome performance measures in all federal grants

• Outcome performance measures may reflect the preferences of the recipient or the federal government

• Financial data must be related to performance (?????)

• Fixed amount awards may be used (compensation is tied to performance)
Uniform Guidance

*Fixed Amount Awards*

• May tie compensation to performance

• Three methods of payment are authorized:
  1. - a series of partial payments tied to milestones agreed to in advance
  2. - prices for a predetermined unit or units
  3. - one lump sum payment upon completion of the grant or cooperative agreement

Uniform Guidance

*Fixed Amount Awards*

• Recipients and sub-recipients must certify in writing at the end of the grant/cooperative agreement that:

  > the program, project or activity was completed

  > and the level of effort agreed to was achieved

• The certification must be signed by someone with the authority to legally bind the entity

• Requirements apply to both recipients and sub-recipients
Uniform Guidance

• The *fixed amount award* provisions of the Uniform Guidance essentially transform federal grants into performance-based contracts (PBC)

• The term “contract” cannot be used because of the *Federal Grant & Cooperative Agreement Act of 1977*

Federal Experimentation with Performance-Based Grants

• Corporation for National & Community Service (CN&CS) *“Pay-for-Success” demonstration grants*

• *“Pay-for-Success” grants also called “Social Impact Bonds”*

• CN&CS created the “Social Innovation Fund”

• To Date, $1 Billion in “pay-for-success” grants have been awarded
Implications for Public Procurement Professionals

- The days of federal grants/cooperative agreements being treated as “free money with strings attached” are numbered
- The inclusion of performance and outcome measures in federal grants and cooperative agreement will become standard practice
- Payments will increasingly be tied to performance (no performance, no payments)
- Don’t assume that other governments are aware of the Uniform Guidance

To Know More


