Federal Contracting - FasTrack Fundamentals:
Award Management
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Office of Research Administration

Objectives

Upon completion of this training, participants will understand:
• Severable vs. non-severable contracts and what that means for award management
• Fund code structure and set-up for various types of federal contracts
• Prior approval items and how to obtain a Contracting Officer’s Authorization (COA)
Overview

Award management of federal contracts can be a complicated process. Recently, sponsors have utilized new types of contracts that have required additional accounting procedures for departments. This class will look at these changes to ensure that costs are appropriately allocated. There will also be an in-depth look at prior approval requirements for federal contracts and examples of requests to the sponsor to obtain approval.

Why do I care how the government awards contracts???

- The way they award directly impacts how you manage the funding!
- It also impacts how OSP invoices and your reporting requirements.
What is a “severable contract”?

The Bona Fide Needs Rule mandates that a fiscal year’s appropriations only be obligated to a legitimate need in the fiscal year for which the appropriation was made. The rule becomes problematic when a contract crosses fiscal years, thus requiring a determination of the severability of the contract.

- **Severable services** are services that are continuing and recurring in nature and from which the agency realizes a benefit at the time the services are provided, even if the contract has not been performed to completion. Services are considered severable if they can be separated into components that independently provide value to meet an agency’s needs.

- **Non-severable services** - services that cannot be feasibly separated into components, but must be performed as a single task to meet the need of the government.

Why did award types change?

- OIG audits of NIH found violations of the bona fide needs rule:
  - Audit A-03-10-03106 - NICHD only funded $31 million of $164.7 million in FY 2003 for a NON-severable contract to Westat, Inc. The audit recommended they deobligate $133.7 million from FY 04-07 and charge it to the current FY or report an Antideficiency Act violation. NIH agreed that bona fide needs rule had been violated and admitted violating the Antideficiency Act.
  - Violations also found in NIAID, NIDDK, & NIDA
The impact on Duke:

• If a contract is severable:
  - The base and option periods MUST be kept separate (separate fund codes, final closeout for each period, new subcontracts each period, etc.) Generally, periods cannot exceed one year. Task orders for IDIQ contracts must also be kept separate.
  - “Use it or lose it” concept - unobligated funds will disappear at the end of each period. There is no “carryover” concept. If additional funds are needed, PI must reapply for funds via JOFOC (Justification for Other Than Full and Open Competition)

• ORA is proactively requesting the contract type on each new contract or at time of modification. NIH is restructuring contracts to comply with the rule.

How can I tell if it is severable?

• ORA will let you know on each contract and we will request a new fund code if necessary.
• Duke SOM currently only has ONE NIH contract that is non-severable.

• For WAY more than you ever want to know on the HHS procurement process, here are additional resources:

  http://www.hhs.gov/asfr/ogapa/acquisition/contractfunding/faq/index.html
Fund code set-up on federal contracts:

- Fund code set-up on contracts depends on the type of contract:
  - IDIQ (indefinite delivery/indefinite quantity) contracts will have fund codes for each Task Order
  - All other types will have separate fund codes for the Base Period and each Option if they are severable contracts.
  - Non-severable contracts can keep the same fund code throughout the life of the project.
  - All subcontracts will still need separate funds codes for each TO/Option.

Fund code set-up on federal SUBcontracts:

- More than likely, you will need a new fund code for an amendment to a federal subcontract from another institution. ORA will ask the sponsor about severability when we receive the subcontract modification.
  - If you need a new fund code, ORA encourages you to submit a WBSE request. It may take considerable time to negotiate, and if you are incurring costs, they must be on the new fund code to avoid late cost transfers. You will always need a new fund code if you get a new agreement, even if the agreement is for an existing project.
- ORA is issuing new subcontract agreements each period for contracts that are severable. Outgoing subs must also have a new fund code.
We don’t have expanded authority???

- Contracts don’t have the luxury of having expanded authority like grants and cooperative agreements.
- This requires prior approval requests to the sponsor PRIOR TO ENGAGING IN THE ACTION.

How do I know what requires prior approval?

- Look in Section B: Advance Understandings in the contract for “Items Unallowable Unless Otherwise Provided”
- See handout 1 for discussion
Some items in Section B are not allowable, even with a prior approval request. Food for meals, light refreshments, beverages, and promotional items were restricted by the HHS Policy on Promoting Efficient Spending.

Prior approval for subcontracts

- FAR 52.244-2 requires prior approval for certain types of subcontracts. (Handout 2)
- Items required when applying for prior approval:
  - Description of supplies or services
  - Type of sub (cost-reimbursable, fixed-price, etc)
  - Name of subcontractor
  - Proposed price
  - Certified cost and pricing data (if required)
  - Cost Accounting Standards (if required)
  - Negotiation memo
What is the process for prior approval?

- Letter asking for prior approval (with appropriate backup) drafted by the department and sent to the Contracting Officer, with a copy to ORA.
- Contracting officer and program officer will review the request and may request additional information.
- If approved, the contracting officer will send a Contracting Officer’s Authorization (COA). If ORA is not copied on the approval, please forward a copy to your federal contract manager.
- OSP must reference the COA number on the invoice in order to be reimbursed for the expense.

What does a COA look like?
What does a COA look like?

November 11, 2011

Minhamee Paul
Sr. Federal Compliance Specialist
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Evans Street, Suite 307
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Dear Mr. Smith,

I am pleased to announce that the U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health (NIH) has awarded grant funds to the University of Pittsburgh to establish a clinical trial entitled "Randomized Controlled Trial of a Novel Therapeutic for Stroke" (Grant No. 1 U01 NS062288-01). The grant amount is approximately $2.5 million over a period of two years, from November 1, 2011, to October 31, 2013.

This grant will support the development and implementation of a novel therapeutic for stroke, which has the potential to significantly improve outcomes for patients suffering from this devastating condition. The study will involve a randomized controlled trial involving approximately 120 patients, with the primary outcome measure being functional recovery at 90 days post-stroke.

In addition to the direct funding, the grant will also provide support for the development and implementation of a comprehensive data management and monitoring system, which will be critical to ensuring the success of the study.

I look forward to working with you and the rest of the project team to ensure the successful completion of this important research effort.

Sincerely,

[Signature]

Contract Specialist
NIH/OD, Office of Management Branch

Questions???
Additional Information

- Valuable information is also available through the DHHS Acquisition Policies and Guidance web site http://www.hhs.gov/asfr/ogapa/acquisition/policies/index.html
- NIH annual salary cap can be found at http://grants.nih.gov/grants/policy/salcap_summary.htm
- Electronic Guide to NIH Acquisition: overview of the common acquisition process used throughout the NIH, and the unique variances employed by some Institutes/clinics http://acq-map.od.nih.gov/

Federal Contracting @ Duke

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