Contract Management Department

Construction Grants Essentials

Common Compliance Pitfalls and Strategies for Success

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Grant Requirements

OOH My head hurts!!

CMD's Construction Grants Program

Improve grants management and oversight to help ensure that resources are used effectively and continue to be available.

Program Work Plan

Background, Purpose & Objectives

Construction Grants Essentials - Training Sessions

1) Your COA CIP is Going to be Funded with a Grant… Now What?

2) Common Compliance Pitfalls and Strategies for Success

3) Key Area Highlights

Construction Grants Essentials - Construction Contract Guide

Checklists, requirements, and reference materials for the following four contract stages:

- *Bid Document Preparation*
- *Letting and Award*
- *Contract Execution, and*
- *Contract Administration & Management*

Process Enhancements

CMD's Discipline Experts and Grants Liaison (GL)

Solutions Providers

Other Resources - as needed *(Customized AFA Reviews, Website Resources, Professional Services Guides, Procedures, etc.)*

When	What
Before initiating the procurement process	Identify if grant funding is part of the project.
Bid Document Preparation	Ensure grant requirements are clearly spelled out in the solicitation documents and that bidders are educated on the impacts to their price.
Letting and Award	Determine Responsive / Non-responsiveness requirements for grant funded projects.
Contract Execution	Ensure contractor's grant requirements are clearly spelled out in contract, including timelines and specific deliverables.
Contract Management and Administration	Ensure compliance with grant requirements.

Common Compliance Pitfalls and Strategies for Success

Objectives:

- ✓ Recognize what is a grant.
- ✓ Understand COA responsibilities as a grantee.
- ✓ Explore ways to enhance and improve current practices.
- ❑ **Explore Common Compliance Pitfalls and Strategies for Success**

Basic Facts Common to All Grants

1. The **grantee** bears the full responsibility for the proper use of grant funds and effective functioning of the constructed system or facility.
2. Grant funding is limited. If changes in the project are to be grant-eligible, the grantor must approve them as the project progresses.
3. Even relatively small projects involve complex financial and contractual arrangements between contractors, consultants, funding sources, and the grantee.
4. Someone is responsible for administering the project, complying with regulations, reporting to the funding agency, etc. **That someone may be you…**

COA Responsibilities

This is OUR project!

Granting Agency staff is available to give advice and guidance, but ultimately **COA staff** is in control and responsible of COA projects' success.

Responsible Charge** means:

- Aware of the day-to-day operations on the project;
- Aware of and involved in decisions about changed conditions which require change orders or supplemental amendments;
- Aware of the qualifications, assignments, on-the job performance, etc. of the consultant staff at all stages of the project; and
- Visiting the project on a frequency that is commensurate with the magnitude and complexity of the project.

***Reference: 23 CFR 635.105 & 23 CFR 1.1*

Measures of a Grantee Success

On a successful project…

- The design work was completed less than 30 days late;
- The construction phase was completed within the original schedule;
- The actual cost of construction was less than 5% higher than the contractor's bid amount; and
- There were no construction contractor claims or when the claims were resolved the grantee received the bulk of the award.

Source: Management of EPA Project by a Local Grantee report , July 1982, Prepared by: Dept. of Civil Engineering University of California, Berkeley, CA

What is "Noncompliance"?

A grantee is considered to be in noncompliant status when one or more of the following apply:

- Provisions of a grant agreement are not met.
- Reporting requirements are not met.
- Grant-required tasks/activities are not conducted according to the established requirements.
- Audit requirements are not met.
- Other identified delinquencies exist.

An example of noncompliance is using the funds awarded for purposes other than those outlined in the grantee agreement.

Common Compliance Pitfalls

Local Governments use ***OMB Circulars****:*

- ***A-87 Cost Principles***
- ***A-102 Administrative Requirements***
- ***A-133 Audit Requirements***

1. Unallowable costs
2. Misallocation of costs
3. Excessive cost transfers
4. Inaccurate effort reporting
5. Inadequate sub-recipient monitoring
6. Administrative & Clerical Costs
7. Noncompliance with Assurances and special terms and conditions of award
8. Delinquent closeout reporting

Case Studies

Four COA teams, each receives a **$2M Grant** with an 80/20% cost share breakdown. COA partners with Travis County to equally contribute to the 20% share.

$2,000,000 x 20% = $400,000

$400,000 / 2 = $200,000

Thus for each grant, **COA's initial participation / cost is expected to be <u>$200K</u>.**

Then…

Case Study 1

Case Study 1

A COA employee transfers $100K in expenses from one account to another and annotates the cost transfer "to correct an accounting error"

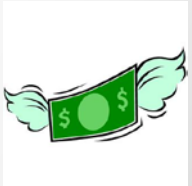
Auditors take exception. Why?

Case Study 1

Issue 1: Cost Transfers *(Cost Transfers, Overruns, and Accelerated and Delayed Expenditures)*

Issue 2: Cost Principles

- If it was an accounting error, the transfer must be supported by:
  - Documentation that fully explains how the error occurred, and
  - Certification of the correctness of the new charge (by a responsible organization official)
- Transfers of costs from one project to another or from one phase to the next solely to cover cost overruns are not allowable.
- All charges to grants must be reasonable, allowable, allocable, and consistently applied.



Expenses disallowed…COA pays $100K more…

Case Study 2

Case Study 2

You are asked by a Project Manager (PM) to stop at an office supply store on your way to work and pick up a few items (pens, envelopes and paperclips). The PM also asked you to get some donuts for a staff meeting that morning. When you arrive at work, the PM tells you that all of the items should be charged to the grant.

Your Departmental Administrator tells you that these purchases must come from Departmental funds. Why?

Case Study 2

Issue 1: Cost Principles

- If the office supplies are not **specifically allocable** to the grant, they are considered general office supplies and should not be charged as a direct cost to the grant account.
- Entertainment costs, such as food, are unallowable.

Food costs may or may not be allowable, depending on several factors: how the cost relates to the project's goals and objectives; whether the expense is reasonable; who is receiving the benefit, etc. It is not a straightforward yes or no issue. ***Recurring business meetings, such as staff meetings, are generally unallowable.***

- **Expenses disallowed…COA pays $50K more…**

Food Costs

*To be directly charged to a federal grant, the food cost must be **allowable**, **reasonable**, and **allocable**.*

Allowable

The cost is allowable if –

- *it is part of a per diem or subsistence allowance provided in conjunction with allowable travel;*

-OR-

Allowable Food Costs (cont.)

- *It is a **necessary and integral** part of a conference, meeting, or training supported by the grant (provided that such charges are not duplicated in a participant's per diem or subsistence allowance described above)*
  - *the food must be incidental to the meeting, not just desirable*
  - *attendance of the participant at the meal is necessary for his or her full participation in the conference or meeting, or to fully benefit from the training*
  - *the participant is not free to take the meal elsewhere without being absent from essential discussion, lectures, or speeches concerning the purpose of the conference, meeting, or training;*

-OR-

Allowable Food Costs (cont.)

- *it is clearly related to the goals and objectives of the grant, for example:*

  An educational grant may include:

  - *Pizza for students during lunchtime as an incentive to come to a voluntary tutoring session; or*
  - *Donuts for dads as an incentive to increase parental involvement at the school.*

Allowable Food Costs (cont.)

Reasonable – *The cost of the food must be reasonable. It is not reasonable to spend $750 on pizza for 10 students who participate in the voluntary lunch time tutoring session.*

Allocable – *The cost must be related to an activity that is specifically and clearly identified in the budget, and related to the goals and objectives of the grant.*

End to End Process for Grant Oversight – Red Flag Areas

PRE-AWARD RISKS

- Funding Over Time
- Conflict of Interest
- False Statements
- False Certifications
- Duplicate Funding
- Inflated Budgets
- Candidate Suspended / Debarred
- New Awardee

ACTIVE AWARD RISKS

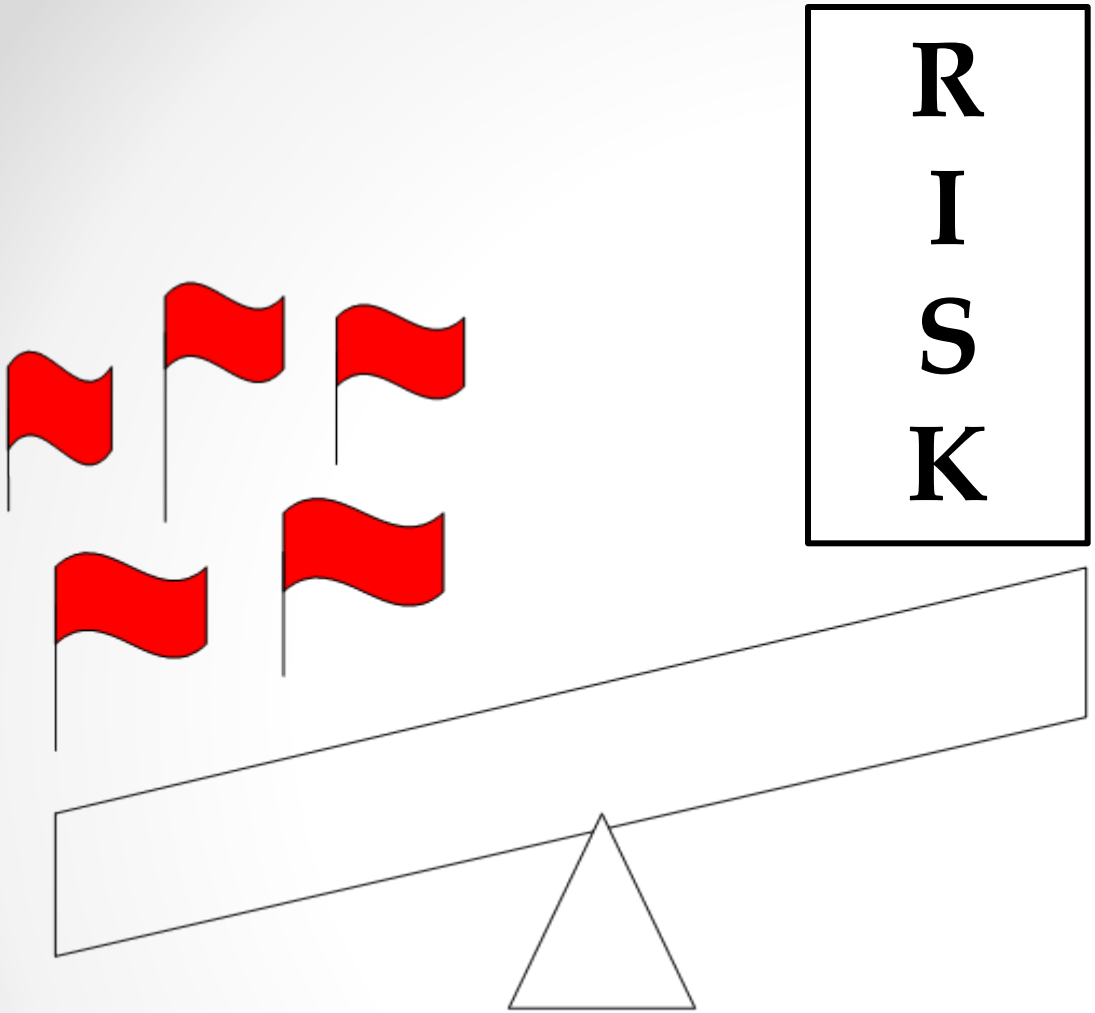
- Unallowable, Unallocable, Unreasonable Costs
- Inadequate Documentation
- General Ledger Differs from Draw Amount
- Burn Rate
- No / Late / Inadequate Reports
- Sub-Awards, Contracts, Consultants
- Duplicate Payments
- Excess Cash on Hand / Cost Transfers
- Unreported Program Income

AWARD END RISKS

- No / Late Reports
- Cost Transfers
- Spend-Out
- Financial Adjustments
- Unmet Cost Share

Anomalies:

- Cost Transfers to Other Projects or Contracts
- Multiple Payments of Same Invoice
- Excessive Costs / Large Budget Reallocations
- Multiple Adjusting Entries
- Unallowable Charges for Interest, Travel, Excess Salary
- Break in Drawdown Trend: 25% increase in drawdowns over the past 6 months
- History of Incomplete, Inadequate and Untimely project reports



Look at Red Flags Areas

The more red flags, the higher the risk

Common Grant Audit Issues

1. Labor costs based on grant budget or pre-determined allocations rather than actual time records.
   a. Support for salaries and wages must reflect an after-the-fact distribution of the actual activity of each employee. Budget estimates or other distribution percentages determined before the services are performed are prohibited. *Cash advances requests exceed actual and pending disbursements.*
2. *Cash advances are:*
   a. *Limited to the minimum amounts needed and are to be timed in accordance with the actual, immediate cash requirements, and*
   b. *Are to be as close as administratively feasible to the actual disbursements by the recipient.*

Recipients must maintain procedures to minimize the time elapsing between the transfer of funds form the US Treasury and their disbursement by the recipient or sub-recipient.

Common Grant Audit Issues

3. Expenditures benefitting more than one grant are charged directly to a single grant or are allocated without supportable basis.
   a. Expenditures which benefit multiple grants must be allocated to those grants on a basis that reasonably matches the benefit received to the cost charged.
4. *Excessive charges.*
   a. *Decisions must be made on what is most advantageous to the government. I.e. Lease versus Buy*
5. *Inadequate support for costs claimed (allowable, allocable and reasonable)*
   a. *Generally, accounting records and supporting documents must be retained for 3 years <u>after submission of the final financial status report</u>.*
6. *Expenditures incurred outside the approved budget period or outside the approved project scope.*

Common Grant Audit Issues

7. Untimely financial reporting and grant closeout.
   a. Recipients generally must submit:
      a. *Financial Status Reports (FSRs) within **30 days** after reporting periods, and*
      b. *All financial, performance, and other required reports including the final FSR, within **90 days** after the expiration or termination of the grant.*
8. *Failure to follow procurement regulations.*
   a. *A grantee must follow regulations for procurement of property and services under a grant. Grantees must perform a cost or price analysis in connection with every procurement action. (40 CFR 31.36)*
9. *Inadequate Financial Management System*
   a. *Financial systems must track costs by grant budget line item (i.e. personnel, fringes, supplies, contractual, etc.)*
10. *Absence of indirect cost rate proposal.*
    a. *Governmental units desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs.*

Case Study 3

Case Study 3

A COA employee charges to the grant a secretary, cameras, laptops, and iPads for "General Office Use".

Are these types of costs appropriate for a grant?

Case Study 3

Issue 1: Allowability of charging administrative staff salaries, general supplies and equipment costs to grants.

Administrative or Clerical Staff Salaries

- Normally treated as Facilities and Administrative (F&A) *(formerly known as indirect costs and overhead)*
- Costs may be appropriate where a major project or activity
  - Explicitly budgets for administrative or clerical services and
  - Individuals involved can be specifically identified with the project or activity

Materials and Supplies

- "General Office Use" is not sufficient justification.
  - Grantors consider the justification of 'general use' business items to determine if they are needed for a special project purpose.
- General Office Purpose is allowable as an F&A cost.
- Only materials and supplies actually used for the performance of a sponsored agreement may be charged as direct costs.

Expenses disallowed…COA pays $200K more…

Case Study 3

General Purpose Equipment

- Unallowable as a direct cost except where approved in advanced by awarding agency.
- *Use is NOT limited to research, scientific, or other technical activities.*
  - *Examples include office equipment and furnishings, information technology and equipment systems, reproduction and printing equipment.*

Special Purpose Equipment

- Allowable as a direct cost.
- *Used only for research, medical, scientific, or other technical activities.*
  - *Examples: microscopes, x-ray machines, surgical instruments, and spectrometers in a medical research grant.*

Case Study 4

Case Study 4

A COA project leader on the grant-funded project (Project A) was included in the application for a grant for another project (Project B). The application for the second project is selected for funding. Because the individual plans to spend 12 person months (100% effort) on the second project, the individual withdraws from the currently funded project.

1. Does the grantee need to obtain grantor approval for a change in status of a project leader on Project A?
2. What if the project leader wants to withdraw from the project? Is grantor approval required?

Case Study 4

Issue 1: Change in Senior/Key Personnel Named in the Notice of Award (NoA)

- Grantees are often required to notify the grantor in writing if Senior/Key personnel specifically named in the NoA will either:
  - Withdraw from the project entirely,
  - Be absent from the project during any continuous period of 3 months or more,
  - Or reduce time devoted to the project by 25% or more from the level that was approved at the time of grant award.
- Grantors must approve any alternate arrangement proposed by the grantee, including any replacement of Senior/Key personnel named in the NoA.
- The requirements to obtain grantor prior approval for a change in status pertains only to those Senior/Key personnel named in the NoA, regardless of whether the grantee designates others as key personnel for its own purposes.

Expenses disallowed…COA pays $300K more…

Better Ways to Identify Problem Grantees…

Grantee Data

Transaction Level Fraud Indicators

- Cost Transfers to other projects or contracts
- Multiple payments of same invoice
- Excessive costs / large budget reallocations
- Multiple adjusting entries, spendout at end of grant
- Unallowable charges, Charges after expiration

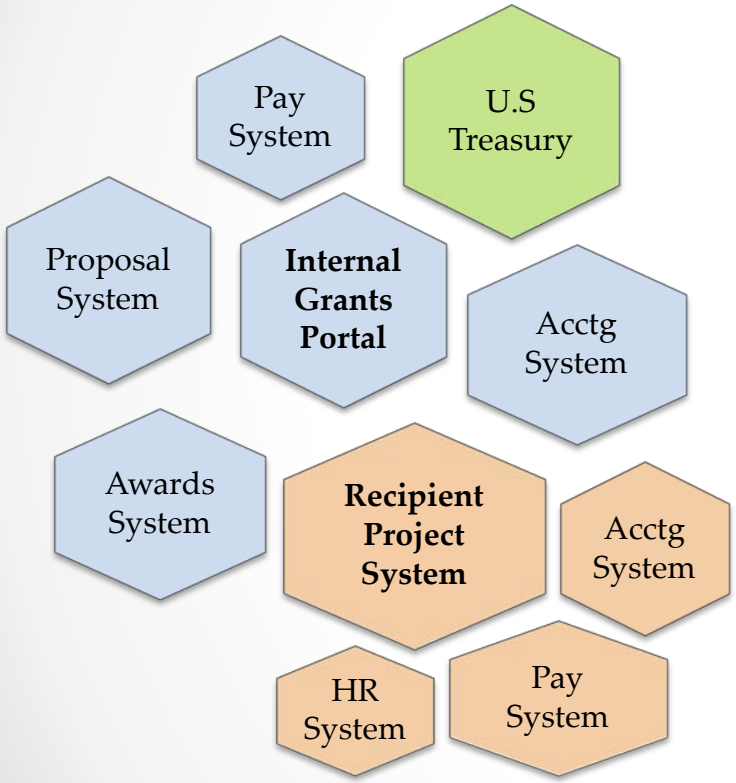
Anomalies in Payroll Transactions

- Payments after grant expiration
- Multiple labor categories for same employee
- Timesheets with signature differences
- Employee background, experience, or education does not meet requirements
- Fictitious employees, such as contractor's relatives

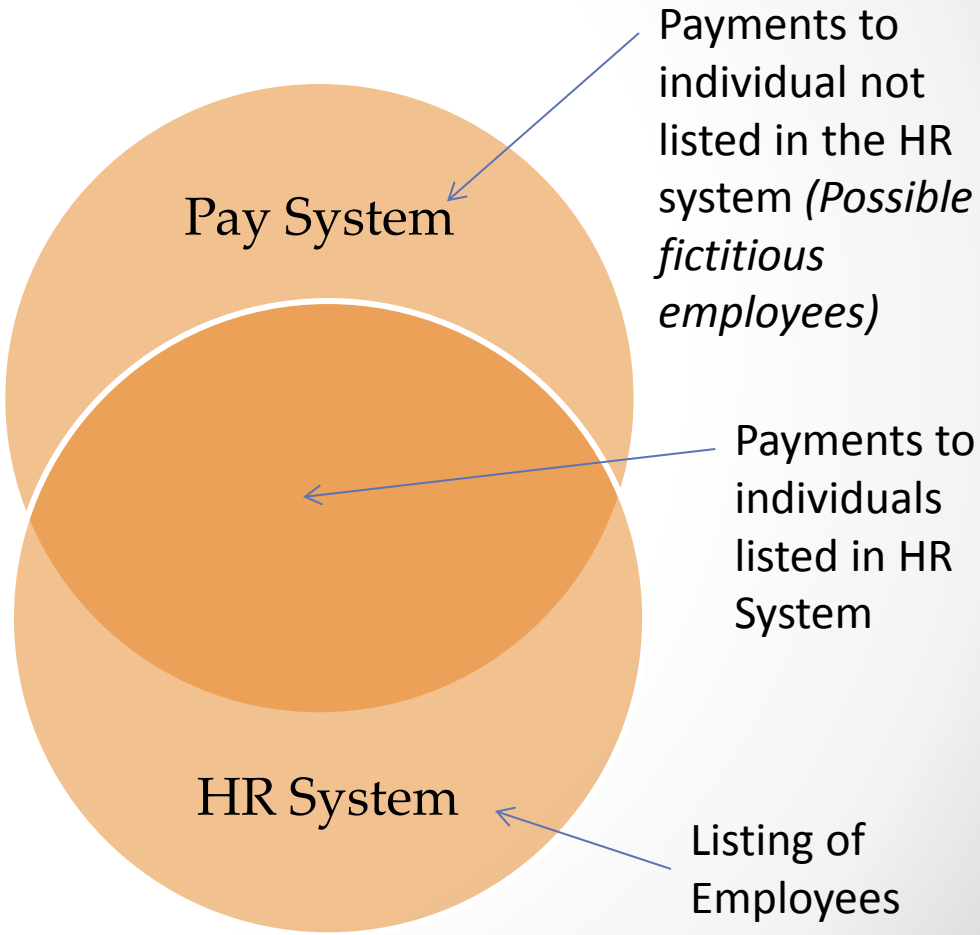
Source: Framework for Audit Oversight - National Science Foundation (NSF)

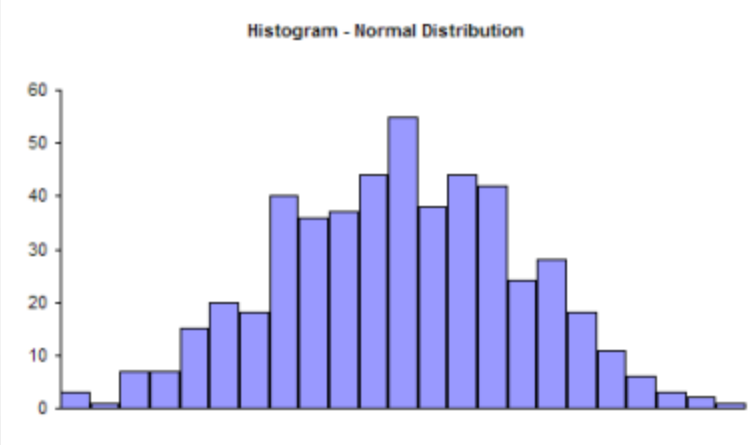
Anomalies in Payroll Transactions

Compare data from multiple systems



Compare records in recipient's systems




Histogram - Normal Distribution
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50
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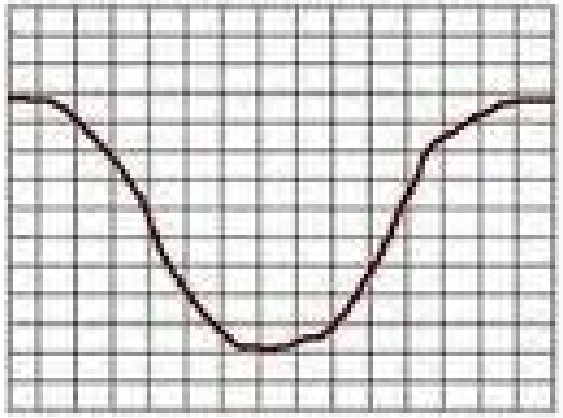

Example…Break in Drawdown Trend

- Grantee Draws $2.1 Million in 3 Months
- ☐
- Usual drawdown pattern: $250,000 quarterly
- ☐
- Grantor asks, <u>Grantee cannot provide documentation</u>

Case Study 5

Case Study 5

COA staff purchases a much needed piece of specialized equipment for the grant-funded project (Project A). When preparing the purchase request, staff realize that the only account with enough money is the grant for another project (Project B). Because both grants are funded by the same grantor, staff charges the equipment to the Project B grant.

Is this appropriate?

Case Study 5

Issue 1: Carryover authority

Issue 2: Cost Principles – 4 Tests

Review the grant award for specified carryover authority.

- Carryover of unobligated balances are routinely excluded
- If allowed, normally requires prior approval by grantor

Expenses disallowed…COA pays $100K more…

Case Study 5

The cost principles address four tests to determine allowability of costs:

1. **Allocability** – A cost is allocable to a specific grant if it is incurred solely to advance work under the grant and is deemed assignable, at least in part, to the grant.
2. **Reasonableness** – A cost may be considered reasonable if the nature of goods or services acquired reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made.

Case 5 Study

3. **Consistency** – Grantees must be consistent in assigning costs. Although costs may be charged as either direct costs or F&A costs, depending on their identifiable benefit to a particular project or program, they must be treated consistently for all work of the organization under similar circumstances regardless of the source of funding.
4. **Conformance** – Conformance with limitation and exclusions as contained in the terms and conditions of award – varies by type of activity, type of recipient, and other variables of individual awards.

Case Study 6

Case Study 6

You recently learned that a COA employee working on the grant-funded project had not disclosed that he was debarred for defaulting on his college loan. Unfortunately, you determined that this situation has gone unreported for a period of three years and during that time his salary has been paid by grant funds.

Now what?

Case Study 6

Issue 1: Using Federal grant Funds to Pay a Debarred Individual

- Immediately report the situation to the appropriate parties.
- Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.
- Individuals debarred from eligibility cannot be paid from grant funds and such charges are unallowable.

Refs. Executive Order 12549. Title 49: Transportation
PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS
FOR GRANTS AND COOPERATIVE AGREEMENTS
TO STATE AND LOCAL GOVERN*MENTS*
49.18.35

- **Expenses disallowed…COA pays $300K more…**

Case Study 6

- Prior to drawdown of funds for each grant award, grantees must report to their grantors if the grantee or any of its principals:
  - Are presently excluded or disqualified
  - Have been convicted within the preceding thee years of any of the offense listed in 2 CFR 180.800(a) or had a civil judgment for one of those offenses within that tm period;
  - Are presently indicted for or otherwise criminally or civilly charged by a government agency (Federal, State or local) with commission of any of the offenses listed; or
  - Have had one or more public transactions (Federal, State, or local) terminated within the preceding thee years for cause or default.

What are the causes for debarment?

A Federal agency may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

Case Study 6

- "Lower tier" transactions providing goods or services that will equal or exceed $25K are also subject to the regulations.
- For lower tier transactions, grantees, must:
  - Verify that the person is not excluded or disqualified prior to entering into a lower tier covered transaction.
  - Require participants to:
    - Comply with the Debarment and Suspension regulations as a condition of participation in the transactions, <u>and</u>
    - Pass the requirements to comply with regulations to each person involved in the covered transaction at the next lower tier.
- Lower tier participants and contractors under grants (where the contract requires the provision of goods and services that equal or exceed $25K) must report to the grantee if it or any participants are presently excluded or disqualified.

Strategies for Success - Best Practices for Grants Management and Reporting

- **Understand COA responsibilities.**
  - Fully understand the requirements **prior to** accepting a grant. Make sure you know what is required of you from the beginning.
  - It will benefit all grantees to understand the content of their grant agreement, including the specific monitoring and reporting requirements and Scope of Work.
  - Ensure key staff understand roles, responsibility, each other's priorities, and work together.
- **Read and refer often to your project proposal and budget.** This helps you keep focused on the goals.

Strategies for Success

- **Timely and effective communications.** Grantees will find it easier to avoid the noncompliance status when they maintain ongoing communications with their assigned grant manager.

  Grantees should continually reach out to grantor staff about any issues or concerns that may arise in meeting the requirements of the grant.

  If problems arise, it is best to let the grantor know as soon as possible. That way they can help you identify possible solutions and move forward.

Strategies for Success

- **Appropriate documentation.** Grantees are required to retain all documentation to support how grantor's funds are spent. Reporting requirements may vary, but all grantees will be required to support that funds were spent properly and in accordance with the grant agreement.
- **Conduct grant-required tasks / activities according to the established requirements.**
- **Respond to requests for information promptly.**

Strategies for Success

- **Be prepared to undergo scrutiny.** All notes, grant information, proposal information, and documents related to the grant or proposal are public record and therefore open to review by the public if requested. For limited exceptions to public records, please contact COA's Law Dept.
- **Honor ongoing relationships.** Grantors consider you a collaborator, and strive to maintain positive relationships with grantees.

Case Study 7

Case Study 7

You heard that a COA employee was charged with theft by submitting false vouchers. This concerns you because this person is the administrator for a contract that supports the grant-funded project that your are managing.

What should you do?

Case Study 7

Immediately report the situation to the appropriate parties.

As a grantee, COA is legally responsible and accountable to the grantor for the appropriate use of funds provided and for the performance of the grant-supported project or activity.

Case Study 8

Case Study 8

On a site observation for wage compliance, workers are observed working on the project who are not accounted for on certified payroll reports.

There were15 employees working on the project; while the reports only show 10 employees.

Now what?

Case Study 8

Issue 1: Wage Compliance - Ghost workers

Corrected certified payroll shall be requested/submitted immediately.

If the contractor does not comply, suspend that employer's work on the project and refer the matter to the Wage and Hour Division of the Department of Labor for investigation.

Falsification of certified payroll report(s) is the same as perjury. It's a form of fraud.

A Successful Grantee…

1. Carefully considers the qualifications and background of prospective designers
   a. In addition to evaluating a prospective designer's technical ability and experience with a particular type of project; consider each candidate's previous record - errors and omissions insurance limits, record of delays and cost overruns on previous similar projects, and any pending litigation, current claims or disputes with clients or others.
2. Closely monitors the schedule and project costs of the work during design and construction
   a. Respond immediately to any problems which are revealed during the interim design reviews;
   b. Possess a detailed schedule for all planning and design activities;
   c. Review the schedule for the project design monthly or more frequently;
   d. Require progress reports on the projects' design monthly or more frequently, AND reports on the estimated cost of the project on a regular basis;

A Successful Grantee…

e. Enforce the design schedule by notice to the designer, or actually withholding payment if the work does fall behind schedule;
f. Possess a detailed schedule for all construction activities (e.g. bar chart, CPM, etc.);
g. Conduct a review of the construction schedule monthly or more frequently;
h. Verify the progress of the work with respect to the schedule monthly or more frequently;
i. Update the construction schedule with each review; and
j. Enforce the construction schedule by notice to the contractor, or actually withholding payment if the work does fall behind schedule;

3. Resolve any difficulties which may arise during design and construction as soon as possible
   a. During construction, immediately resolve all change orders and disputes with the contractor.

Wrap-Up

Objectives

- ✓ Recognize what is a grant
- ✓ Understand COA responsibilities as a grantee
- ✓ Explore ways to enhance and improve current practices
- ✓ **Explore Common Compliance Pitfalls and Strategies for Success**

Strategies For Success…

- Understand COA Responsibilities… Make sure you know what is required of you from the beginning
- Conduct grant–related ta ording to the established requirements

Final Thoughts

Since the capital improvement project process is on-going, as are our city needs; it is most likely that COA will continue to seek grant funding for other projects in the future.

With the growth of grant funding over the past few decades, the increasing role of grants in achieving the City's objectives, and constrained resources available to meet diverse needs; **attention to improving grants management and oversight can help ensure that resources are used effectively and continue to be available**.