ASAP WEBINAR

ON

USG RULES AND REGULATIONS: FINANCIAL MANAGEMENT AND COMPLIANCE (REPEAT)

DECEMBER 2, 2020

Questions and Answers

ACCELERATING SUPPORT TO ADVANCED LOCAL PARTNERS (ASAP)

USG Rules and Regulations: Financial Management and Compliance

The answers to these questions are provided by the managing partner of Sustainability Solutions PC, who conducted the webinar. As GAGAS or "Yellow Book" auditors, we take a conservative approach to which costs can be charged to USAID and other US Government agencies. As you will see in many of our answers below, USAID, through the standard provisions for Non-US NGOs at m1(b), allows all awardees to obtain written confirmation from their Agreement Officers ("AOs") on whether costs will be allowable or allocable, and we strongly encourage organizations to do this. This same ability to obtain certainty on costs, can be found at 2 CFR 200.407 – prior written approval, at the following link:

Https://www.ecfr.gov/cgi-bin/text-idx?sid=72694d14e5678f6611ace95765934ae0&mc=true&tpl=/ecfrbrowse/title02/2cfr200_main_02.tpl

Please note, the questions below were taken directly from the webinar event and have not necessarily been edited or amended except for obvious typos, etc. Many of the answers were provided during the presentation and given that the answers may need to be taken in context with other content, it might be helpful to review the actual webinar for which ASAP will provide the link.

1. What do you do if the budget is approved and you still face challenges with delayed release of funds from USAID?

- There is nothing you can do to force the Agreement Officer to issue an Award (in which the funding is identified) before he or she is ready. When you finally receive your signed Award, it should come with an obligated funding amount which should be enough to cover at least the first few months of program activity. If your organization is still pre-award, where USAID may indicate that your budget is "approved" but you have not received an award/funding, you will need to wait as noted above.
- You might consider asking if you can have 2 CFR 200.458 Pre-award Costs approved.

2. What is the difference between approved budget and obligated amount? This is for Prime Partners which have subawards contracts.

- The difference between an approved budget and obligated amount is as follows. The approved budget will usually be for the total award funding which is granted over a period of time (normally 5 years). Over the course of the five years, the Agreement Officer (AO) will make available to you obligated amounts to be paid over the period of the project. Please note that the US Federal Government and all agencies, such as USAID, are only funded by Congress on an annual basis. The obligated amount will never be greater than the total award budget. The Prime will receive any funds which need to be passed down to subawardee's under the Prime's obligations to the subs.

3. Are subaward budgets negotiable?

- Yes, the best time to negotiate the budgeted amount is before the proposal is submitted but the budgets can be amended during the course of the project.
- Your award is granted on the ability to deliver the requested services or activities. When your consortium is submitting the technical and financial proposals, it will be clear on what each partner is doing.

4. What's the allowed turnaround time for a budget modification to be approved?

- I am not aware of AOs having any deadlines, but if it is a "Mission Critical" item, please report it straight away to your AO and Agreement Officer's Representative "AOR".
- Please make sure to be extremely clear, in writing as per Mandatory Standard Provision (MSP) #4 – Notices - on what you are requesting and why.

5. When do we need to send the request for budget modification? Will there be a need for the request if there is a change in the personal cost/travel/other direct cost? If yes or no any reference from the regulation?

- Please review 2 CFR 200.413 (direct cost) sections (c) (d) and (e) as well as the guidance on indirect costing (NICRA application). Go to 2 CFR 200 Appendix IV.
- Please note that recipients have great flexibility (up to 10% of the total award budget) in moving funds between direct cost categories. Please see MSP M2.

6. How often is it better for the budget to be changed during the fiscal year?

- There is no reason to change a budget at any time during the fiscal year unless the organization will be changing funding by more than 10% of the total award budget. Please see MSP M2.
- Also, see 2 CFR200.308 – Revision of budget and program plans, which is the source of the USAID MSP M2.

7. Is it possible to have the obligated amount bigger than the approved budget?

- No, this is not possible. The AO can only obligate funds up to the maximum award amount.

8. Is there any reference document that talks about 10% to 15% budget allignment /movement?

- Please review the Non-US Standard Provision M3 - Amendment of Award and revision of budget (a) and (b) and especially (b)(10).
- Also, see Q&A #6 above.

9. Brifely discuss the the new provision of Performance Measurement?

- This is one of the biggest changes in the revised Uniform Guidance (UG) and it is all about measuring performance. The Federal Government, at the new UG section 2 CFR 200.202 – Program Planning and Design - every agency designing their programs should define the targets and deliverables. Therefore, when an organization prepares its technical proposal the organization should take into account the performance expectations. There are an additional 6 or 7 UG changes in performance and are not all of the changes relate to finance.

10. How do we use Supplies and Equipment according to our organization finance manual?

- If you need supplies and equipment for carrying out the project, they should be a part of your technical proposal.
- Justify the costs in your budget narrative and, if you are unsure, refer to the MSP M1 and ask for confirmation from the AO that the costs will be allowable. Also see 2 CFR 200.407 on Prior Approvals.

11. Is indirect rate/NICRA/10% de minimis auditable?

- The terms Indirect Rate and NICRA refer to the same thing and are audited on an annual basis during the GAGAS or "Yellow Book" audit. The10% de minimis is not audited.

12. What is 10 % de minimis?

- The 10% de minimis is an optional overhead benefit that the organization can elect to receive. You choose to ask for it. The rate is fixed at 10% and this is applied to a certain base called Modified Total Direct Costs or MTDC which is defined at 2 CFR 200.68. It is meant to cover costs that cannot be covered directly such as Bid and Proposal costs. See 2 CFR 200.414(f).

13. What types of activities are allowed for de minimis budgeting?

- There are no rules for what type of activities or costs are allowed for the 10% de minimis. At 2 CFR 200.414(f), as of November 12, 2020, the definition changed to say that applicants do not need to justify what they will use the 10% for.

14. Is an organization under any obligation to explain how the de minimis is spent?

- No – but the organization still needs to comply with the requirement that "costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both."
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15. If all costs are covered, why would one still request a 10% de minimis?

- Certain types of costs under the UG cost principles, such as bid and proposal costs, and certain high level administration costs cannot be directly costed.

16. What constitutes the MTDC when computing the 10% de minimis?

§200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

17. Is is possible to pay salary for staff for some portion from de minimus and the other portion to the allocated budget?

- Staff who work on projects and are able to complete timesheets which accurately reflect actual time spent are normally charged as direct costs. Please see 2 CFR 200.430(i).
- An organization could utilize its 10% for covering staff salaries but these would then normally be for staff whose time is difficult to allocate to projects or final cost objectives. This could be for staff such as HR, Finance, IT, etc., who work on many different projects.

18. Can you charge 10% MTDC if you have only one project?

- Yes, as the 10% is meant to cover some costs that cannot be recovered directly (see above on Bid and Proposal costs), however, the COFAR guidance does suggest that if an organization is able to charge ALL costs directly, then the 10% may not be appropriate. Remember that organization sustainability is one of the components of the Non-US Pre-award Survey (NUPAS). If USAID wants you to be sustainable and they are not going to allow you to recover proposal costs directly, they should consider allowing the 10%.

19. Can this 10 % de mininis apply to church organizations?

- Yes, it does, it applies to any organization which is receiving funds from the US government under a cooperative agreement which does not currently have a NICRA. Please see 2 CFR 200.414(f).

20. What happens if the organization receiving funding has an internal policy that would give indirect costs less than 10% de minimis?

- You are allowed to charge less but the prime can't force a sub to accept a rate less than 10%. Exercise caution though as you don't have to do this (accept less than 10%) and you need to ensure you cover your costs.

21. If an orgnization miss/ rejected by the AOR/ to include the 10% de minimis in its initial budget-is it possible to request for it any time through an amendment?

- Please remember that it is the Agreement Officer (AO) who is responsible for ultimately approving budgets and obligating funding. Before November 12th, 2020 there could have been discussions between organizations and their AOs or AORs about whether the organization could obtain their 10%. Post November 12th, 2020, the UG made it more clear that organizations do not need to justify what they will use the 10% for. However, organizations must still comply with the requirement to ensure that " *costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both.*" This is why I believe each organization should prepare a Cost Policy Statement which clarifies which costs they will be treating as direct and indirect.

22. When to charge or ask the 10% de minimus to USAID? After end of each FY or after the end of project or program?

- Always ask BEFORE you win the award. If you wait to apply or ask only after you win, then the AO must try to find funds somewhere and this is not always easy.
- The same answer applies to subs. As a matter of fact, the Prime should assume that the sub will eventually ask for the 10% so the Prime should consider adding it during the proposal stage.

23. How do I access the de minimis? What are the rules governing this process?

- You should reach out to your agreement officer and cite the 2 cfr 200.424(f) reference in the uniform guidance saying that you now elect to receive the 10% de minimis.

24. Does the 10% de minimis apply to all types of awards?

- It applies to all organizations who have Cooperative Agreements. It would not apply to organizations who have a Fixed Amount Award (FAA) or Fixed Amount Subaward. With a contract a fee would be included through which you would recover any indirect costs that were not budgeted for elsewhere.

25. Which one is better for the organization, 10% de minimis or NICRA?

- There is no real "better" option as this would depend on many things. One issue could be, is the organization capable of preparing the NICRA application and is the Mission Agreement Officer willing to evaluate it? Is there a competent audit firm in this country that will be able to audit the NICRA as part of the Yellow Book audit each year?, etc.
- I think starting with the 10% de minimis is a good option while learning more about indirect costing. Please closely read the USAID guidance for preparing an indirect cost rate submission as well as 2 CFR 200.413 and .414.

26. Are there conditions for approving the 10% de minimis for subawards?

- Please see Q&A numbers 21 and 22 above. Please remember that the Prime is responsible for the funds that they pass down to the sub so be aware of all of the responsibilities that a Prime has. I suggest reviewing 2 CFR 200.332.

27. I want to understand why 10% de minimis does not need to be justified?

- The Council on Financial Assistance Reform "COFAR" or OMB did not go into great detail on this but remember that 99% of Federal Funds are spent in the USA where obtaining a NICRA is always possible, so the 10% was created for those organizations which may not be able to prepare the NICRA application. In the preamble to the original Uniform Guidance published on December 26th, 2013, on page 78,600, COFAR explains that this 10% de minimis is "*automatic without analysis of actual costs*", which means not audited.

28. How do you decide which direct costs that are covered or not covered under de minimis?

- Please see Q&A numbers 11 - 14 above.

29. What is the process of having your 10% de minimis approved for the sub?

- Please see Q&A numbers 21, 22 and 26 above.

30. For use of indirect costs must we request approval from USAID or is it the organizational responsibilities?

- The Non-US organization must apply to the local Mission for their NICRA, and many Missions are not allowing them at this point in time.
  So please ask your AO if they will be willing to accept your proposal and ask before you prepare the proposal as the exercise is very challenging.

31. Please explain with an example about double charge of indirect cost.

- An example if you had two projects using space and you decided to allocate this as an indirect cost instead of determining space based on square footage/meterage. The NICRA is calculated based on the indirect cost divided by the direct cost pool. Over and above this you are charging rent to some other foundation. This would be a double charge as the rent expense is already included as part of your NICRA.

32. The exchange rate that was used during awarding of funds is not the same with the rate of disbursement. We are therefore losing because of exchange difference. How should we handle this type of situation?

- Applications are made in dollars. The Mission may advise about the exchange rate to be used when preparing the budget. Over the period of drawing down the funds the rates may change. There is a provision whereby you can approach your AO who can give you additional funding should the need arise. You can, however, only claim back what your expenditure was.
- Please also see Cost Principle 2 CFR 200.440 on Exchange Rates.

33. Does the AOR have the powers to delay funding release indefintely for no major reason?

- Please remember that the AO has the "power" over funding issues. Please obtain and study the AOR Designation Letter which comes with the Cooperative Agreement.
- Please communicate with the AOR and AO in writing and clearly explain why you need the funding to be obligated and explain how the program will be negatively affected if the funds are not released.

34. Are non U.S Organization (LIPs) entitled to pay housing allowance if it is approved on the proposal under USAID funded project?

- Possibly. If the cost is clearly included in the cost proposal and the budget justification, and, you specifically ask (as per 2 CFR 200.407) for approval, then the can be allowable.
- If you are not certain, always ask the AO.

35. Can you change a fixed award during the year before expiry of the contract to a sub recipient?

- Yes, you can but it would not be common. A Fixed Amount Award ("FAA") is not audited and the cost principles don't apply. Administration under FAAs is easier.

36. Can we blanketly use LOE as an allocation basis for shared costs?

- No. The correlation for some shared costs such as rental space, insurance, security, and travel may have little to do with LOE. Each type of shared or joint and common cost should be allocated based on a logical methodology, such as LOE, program spend, distance travelled, assets insured, etc.

37. Will USAID cover cost for softwares that may not directly be used for the benficiaries like Quickbooks?

- Yes. It is an administrative cost, which could be charged as an other direct cost if you can logically allocate the software use across all of your projects or final cost objectives.

38. How can we justify certain fines? - Some are unavoidable. For example, some countries make it so difficult to import items and find any minor thing to fine you on. Any idea on how we can go about justfiying such a cost?

- I do not believe there is any way to "justify" fines or "grease payments". I suggest speaking with the Mission or other large NGOs to see what advice they can provide about avoiding corrupt practices.

39. Are office teas an allowable cost under the USAID Grant?

- Generally, not allowable for the organization's own staff, but possibly for visitors, depending on the cultural norms of the country and/or region.
  Again, if you are not sure, ask the AO for a determination as per 2 CFR 200.407 and the Mandatory Standard Provision M1.

40. Can you procure an American product manufactured in China or Russia? E.g., a Dell computer manufactured in China.

- Please see 22 CFR 226 for Source and Nationality guidance. Also see ADS 310 and read the Non-US Mandatory Standard Provision M6.

  The rules changed from Source, Origin and Nationality to just Source and Nationality.

  Generally, if you buy a Dell computer, off the shelf from a legitimate supplier in your operating country (not China) then the SOURCE is deemed to be local and not China where the product may have been produced. Be careful now with the new rules on not buying certain Chinese equipment. See the new Cost Principle at 2 CFR 200.471 Telecommunications costs etc.
- A good thing is that at Non-US MSP M6(d) it states that you can always reach out to your AO.

41. In this last slide with the example of the Financial Report we can see that the amount advanced is less than total expenses. When that happened USAID automatically sends the difference or that will happen after approval of the report? If that happens in the end of project how should the Prime proceed to have the difference back?

- As there is a difference you will be required to submit a reimbursement report. If it's at the end of the project you will need to seek approval. This would mean you need to continuously review and check you are in balance with the funds received. If it's within the project you submit a reimbursement report.

42. When it comes to USAID procument procedures are these universal or are they defined by the award?

- Determine if you are US-based or not. Non-US based procurement falls under the MSP numbers 5 and 6 and 12 and 14. Refer to your award and look at the MSP. Go to 22CFR226 as well as 2 CFR 200.318-322 for guidance as this probably refers to US based organizations.

43. What kind of supporting document should we expect from our sub-recipent on FAA?

- As you, the Prime, will have reviewed the budget and milestones up front at the creation of the FAA, all you need to confirm over the course of the execution of the award is the delivery of the milestones.

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44. If you have an FAA award and you are accruing your gratuity in an interest bearing account,are you supposed to report the interest gained?

- A FAA has 4 documents relating to it in the ADS303. In theory you are not meant to be making a profit in a FAA. However, there is no audit but be certain to include all of the costs you're expecting to expend in the completion of the activity to protect yourself.
- Regarding interest earned, please see FAA Required As Applicable Provision ("RAAP") Number 1 which does require the keeping track of and refunding any interest earned greater than $500 per year.

45. Can you please define how the ADS, FAR, and 2CFR200 interact and/or overlap?

- The 2 CFR 200 is the Uniform Guidance overarching all federal government agencies who have to comply with this. USAID have ADS303 which is for grants and cooperative agreements. If you are US-based you comply with the entire Uniform Guidance. For Non-US-based organizations, the requirements stated in "the Schedule" or Attachment A of your award apply. FAR – Federal Acquisition Regulations applies to "For Profit" entities.

46. Please explain GAGA audits vs RCA?

- "GAGAS" stands for Generally Accepted Government Auditing Standards. A USAID "RCA" or Recipient Contracted Audit is performed under GAGAS guidelines. GAGAS is also commonly known as the "Yellow Book" and can be found on the www.gao.gov website.

47. How are audit costs administered under USAID funding mechanism?

- In MSP number 2 there is a provision for audit. You are required to have an audit in certain circumstances. If your organization expends >USD750 thousand in your fiscal year you are required to have a Yellow Book (GAGAS) audit. Under 2 CFR 200.435 it states that the US Government will reimburse the costs for the Yellow Book audit. Yellow Book audits are more expensive than your local statutory audit. You need to ensure your audit is compliance with the GAGAS standards as if it is not compliant, it will not be reimbursed.

48. On cost share if we acquire US banned products using the other donor's funds how will this affect our relationship with USAID?

- Let's clarify "banned products" versus "Restricted Commodities". Please read MSP M6. I believe you would not be able to use items listed under M6(b)(1) or (b)(2) for cost share, even if procured with other donor (Non-US) funds. However, items procured that are "Restricted Commodities" as per M6 (b)(3) would count. Please note that the new "889" items found at Cost Principle 2 CFR 200.471 will be "banned products" and not allowed for cost share.

49. What would be the consequence if a sub reciepint could not meet the cost share requirement?

- Awards identify cost share targets. Cost share targets would be split between the Prime and the sub. Cost share used to be defined as a percentage (normally 10%) or an amount but now it must be a defined amount. As soon as you realize you are not going to meet your cost hare target you need to approach your AO and request a reduction in the target explaining what changed from the expectations at the proposal stage.

50. Regarding the aspect of sustainability, what can a sub awardee do to have funds for project sustainability?

- All organizations should strive to diversify their sources of funding so as not to be reliant on one donor. All OECD states or countries are expected to devote up to 0.7% of their GDP to the developing world which means that there are Billions of US$ provided each year for projects and organizations around the world.
- Please look at the websites of organizations which provide the same types of services that your organization provides and see who funds them. Fundraising is a specialist activity and a significant amount of time must be spent on this.