What is a Grant?

From Beth Bowsky, National Association of Nonprofits, our contact for COFAR

In laymen's terms, the federal government generally uses "contracts" to purchase services for its own direct use. "Grants" are assistance provided to non-federal entities to provide community services. States and local governments do not typically use these terms in the same way. States often use contracts to purchase community services from nonprofits.

The highlighted phrase in the definition of *contract* was OMB's first attempt to recognize and take into account the different definition of contacts used by others, after we brought this issue to their attention. Further adding to the confusion is the section of the Uniform Guidance for *subrecipient/contractor* determination. (Prior to the Guidance this was *subrecipient/vendor* determination. Using this language, subrecipients could receive contracts, but the change in that one word precludes this.) While nothing in this changed other than changing the word vendor to contractor, the guidelines for making the determination are sufficiently vague to pretty much allow everything to be considered a contract.

In doing so, this would have provided the loophole for non-federal entities to avoid paying indirect costs by calling everything a contract. After months of unsuccessfully trying to come up with definitions that met everyone's needs, was clear, and close the loophole, we decided to take a different approach to ensuring nonprofits get their indirect costs paid. We suggested to OMB that instead they should address this problem through the Applicability section (200.101) of the Guidance by requiring the indirect cost reimbursement provision to include contracts and subcontracts.

In the version of the Guidance released on December 19, 2014 they did this. In approaching this in this manner, contracts and subcontracts are not held to all of the same requirements as grants. <u>Only the cost principles, monitoring & management, and auditing requirements apply.</u> (We have subsequently gone back and requested that the merit review process also apply.)

Essentially, what this all means is that now it really doesn't matter what the state calls an agreement with a nonprofit. What needs to be considered instead is simply whether the funding is coming from the federal government. What Illinois calls it, including fee-for-service agreements doesn't matter from the perspective of whether or not the Uniform Guidance applies. Using the Guidance, fee-for-service, which is a common term and structure for state agreements with nonprofits would be considered a fixed-price subcontract when federal funds are used from the nonprofit/state perspective. (The unit rate or fee per unit is fixed.) From the federal/state perspective, if federal *grant*

funds are used by the state to enter into these subcontracts, the state's reporting requirements would still be for a federal grant, but the nonprofit's requirements are reduced (not eliminated).

It sounds a bit confusing, but from an operational standpoint greatly simplifies things and ensures that nonprofits receive reimbursement for their indirect costs regardless of what the agreement is called. One of the arguments we used with OMB to support making this change is that because of the way that most states structure agreements with human service providers, without this change, they would likely have to shift all of their current contracts with nonprofits into grants which would create a great deal more work for states.

§200.22 Contract. ("State" was added to clarify Illinois' GATA purposes)

Contract means a legal instrument by which a non-Federal/State entity purchases property or services needed to carry out the project or program under a Federal/State award. The term as used in this part does not include a legal instrument, even if the non-Federal/State entity considers it a contract, when the substance of the transaction meets the definition of a Federal/State award or subaward (see §200.92 Subaward).

§200.51 Grant agreement.

Grant agreement means a legal instrument of financial assistance between a Federal/State awarding agency or pass-through entity and a non-Federal/State entity that, consistent with 31 U.S.C. 6302, 6304:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal/State awarding agency or pass-through entity to the non-Federal/State entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal/State awarding agency or pass-through entity's direct benefit or use;

(b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal/State awarding agency or pass-through entity and the non-Federal/State entity in carrying out the activity contemplated by the Federal/State award.

(c) Does not include an agreement that provides only:

(1) Direct United States Government cash assistance to an individual;

(2) A subsidy;

(3) A loan;

(4) A loan guarantee; or

(5) Insurance.

§200.38 Federal award.

Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

(a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability; or

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability.

(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of §200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

§200.92 Subaward.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.