



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

**U.S. FISH AND WILDLIFE SERVICE WILDLIFE AND SPORT FISH
RESTORATION PROGRAM**

Issues Identified with State Practices in Subaward Administration for Wildlife
and Sport Fish Restoration Program Grants



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Memorandum

To: Margaret Everson
Principal Deputy Director, Exercising the Authority of the Director
U.S. Fish and Wildlife Service

From: Melanie L. Sorenson *Melanie L. Sorenson*
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Office of Audits, Inspections, and Evaluations

Subject: Management Advisory – Issues Identified with State Practices in Subaward Administration for Wildlife and Sport Fish Restoration Program Grants
Report No. 2018-CR-064

The U.S. Fish and Wildlife Service (FWS) annually awards approximately \$1 billion in grants to State¹ fish and wildlife agencies through its Wildlife and Sport Fish Restoration Program, under the provisions of the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. We completed several audits of grants awarded under the Program since the U.S. Office of Management and Budget (OMB) announced new Federal Uniform Grant Guidance (2 C.F.R. part 200) that took effect in December 2014. During these audits, we identified differences in State practices when providing Federal funds to non-Federal entities for work related to Program grant objectives. This advisory report summarizes many of these findings across the Program to help the FWS improve grant recipients' conformance to Federal regulations.

States Are Inconsistently Managing Federal Financial Assistance Funds for Non-Federal Entities

States may provide Program funds to other non-Federal entities either as a subaward of financial assistance to a subrecipient who will accomplish grant objectives, or as a procurement contract to a contractor who will support the State's grant-related activities. State officials must use judgment in determining which avenue best aligns with regulatory guidelines. This subrecipient/contractor determination has accountability and potential monetary impacts with respect to profit taking, asset management, revenue management, and the treatment of indirect costs. For example, a State or subrecipient purchasing equipment would be subject to the provisions of Federal grant regulations, which require prior approval from the FWS for the types of equipment purchased, and allow the FWS to impose specific instructions for equipment disposal at the end of the project (e.g., returning title or value to the Program). The same return is

¹ In this report, we use the term "State" to refer generally to any of the primary funding recipients, to include States, Territories, or the District of Columbia.

not required of a contractor, and the FWS or the State may not even be aware of such purchases because contractors are not typically required to seek approval for the equipment they use. Attachment 1 provides additional implications of the States’ determinations.

Guidance on Whether a Non-Federal Entity is a Subrecipient or Contractor is Unclear

When a third party is directly fulfilling Program purposes and grant objectives rather than supporting the State, we classify the arrangement as financial assistance, and the third party is considered a subrecipient rather than contractor. Although the document used in financial assistance is often also referred to as a “contract,” the arrangement differs from the buyer/seller relationship established by a procurement contract. Figure 1 provides a breakdown of the differences between subrecipients and contractors, expanding from language at 2 C.F.R. § 200.330 to emphasize those areas where our conclusions have differed from State determinations.²

Assistance	Procurement
The subrecipient —	The contractor —
Uses Federal funds to carry out a program for a public purpose specified in authorizing statute	Provides goods and services that are ancillary to the operation of the Federal program, for use by the State agency
May be a governmental entity, quasi-governmental authority, nonprofit organization, or for-profit entity with goals and operations that align with the mission of the State agency and objectives of the grant	May be a governmental or quasi-governmental authority, nonprofit organization, for-profit entity, or individual that typically operates in a competitive environment, providing similar goods and services to many different purchasers within normal business operations
Has responsibility for programmatic decision making, with performance measured in relation to whether the objectives of a Federal program were met	May make decisions regarding staffing, technical approach, and suppliers, but typically works within requirements and specifications defined by the contracting entity
Is directly responsible for adhering to applicable Federal program requirements	Is not directly subject to compliance requirements of the Federal program as a result of the contract, though similar requirements may apply for other reasons

Figure 1. Characteristics of assistance and procurement relationships.

Some State procurement policies do not provide clear guidance for defining a transaction as either procurement or financial assistance. Moreover, some State officials told us that they

² Although the definition at 2 C.F.R. § 200.69 does not include for-profit entities, the Department of the Interior recently published rules—including language to be codified as 2 C.F.R. § 1402(a) effective October 29, 2019—that would allow the FWS to prescribe certain administrative requirements and cost principles for for-profit entities receiving Federal grants or subawards thereof. In this report, therefore, we include for-profit entities among the types of third-party entities that may be classified as subrecipients of financial assistance.

have difficulty understanding and relating the uniform regulatory language to their fish and game programs. The distinctions between a subrecipient and contractor are not always clear, and the regulation itself, at 2 C.F.R. § 200.330(c), recognizes that not all the characteristics will be applicable to a given situation. Publicly available checklists based on uniform regulation can be helpful to guide officials through each of the required considerations. We found, however, that conversations using Program-specific examples have, in some instances, helped stakeholders understand our interpretation of the regulatory language. Examples provided in Attachment 2 illustrate how our interpretations differed from those of State officials.

Under the provisions of 2 C.F.R. § 200.331, when extending a grant subaward, the primary recipient of Federal financial assistance must:

- Inform the subrecipient of the Federal assistance relationship
- Honor the subrecipient’s federally negotiated indirect cost rate
- Evaluate risk
- Monitor subrecipient performance, including the review of financial and performance reports and the correction of audit findings and other deficiencies
- Publicly disclose the relationship, under the terms of the Federal Funding Accountability and Transparency Act and 2 C.F.R. part 170

In contrast, when a State provides funds to a contractor, the State should follow its own procurement policies in the same manner as when it is not using Federal funds (2 C.F.R. § 200.317). Even when a State makes an agreement that would be considered a “contract” under the State’s policies, we may still classify and audit the Federal funds as a subaward because 2 C.F.R. § 200.330(c) provides that, “the substance of the relationship is more important than the form of the agreement.”

The States’ treatment of cooperative agreements is another factor contributing to differing interpretations. We found that some States classified agreements that would fall under the Federal definition³ of cooperative agreements as procurement rather than financial assistance. They did so based on State interpretation that cooperative work be governed by a “contract” as defined in State procurement policy. Given that Federal funds are being used for these subawards, the States should adhere to the definitions of financial assistance found under Federal law and Uniform Grant Guidance.

³ The Federal Grant and Cooperative Agreement Act of 1977 and 2 C.F.R. part 200 define cooperative agreements as a form of financial assistance in which, “substantial involvement [of the funding agency] is anticipated. . .during performance of the contemplated activity.”

Some States Are Not Conducting Risk Assessments Nor Adequately Monitoring Subrecipients

We found that a number of States had not conducted or documented risk assessments for subrecipients, nor publicly reported all major subawards. State practices in subaward administration vary, but all fall under the basic requirements of 2 C.F.R. § 200.331, which provides guidance on risk assessment and monitoring of subrecipients. In contrast, procurement actions do not have this common basis, leaving a broad range of potential risk assessment and monitoring practices affecting the use of Program funds. Competent monitoring can help ensure project success and accurate reporting by detecting and correcting deficiencies. Risk assessments help States prioritize monitoring activities on areas with the highest risk.

Emerging Risk: Implementation of Procurement Standards Under Program Subawards

Federal regulations (2 C.F.R. § 200.318 *et seq.*) established procurement standards for non-Federal entities (other than States) that expend Federal funds. These standards took effect, for most States' subawards, on July 1, 2018. In general, micro-purchase programs may be used for procurements up to \$10,000, and simplified acquisition procedures may apply up to \$250,000.⁴ Many States provide subaward Program funds to third parties that, we believe, may not be prepared to demonstrate conformance to federally imposed procurement standards. These may be county and municipal governments, private companies, or nonprofit organizations with varying degrees of maturity in terms of their procurement systems and related controls. Further, we are concerned that States may not be prepared to provide the technical assistance or oversight needed to manage the risks of non-compliance in this area.

Peer Practices for States to Consider

We identified examples of progress in Federal grant management and subaward administration that State agencies can adapt and implement to improve management practices:

- Ohio proactively implemented a basic risk assessment across hundreds of subrecipients, with indications of how elevated risk ratings could affect monitoring protocols.
- The Illinois State legislature enacted its Grant Accountability and Transparency Act to provide for grants oversight without undue redundancy or conflict with Federal requirements.⁵
- South Dakota's State Board of Internal Control convened a Federal Grant Compliance Workgroup to assist State agencies in implementing Federal Uniform Grant Guidance and addressing related audit findings.⁶

⁴ OMB Memorandum M-18-18: "Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance" June 20, 2018.

⁵ See <https://grants.illinois.gov> for the Illinois legislation, policies, training materials, and job aids (forms and checklists).

⁶ See <https://bfm.sd.gov/sbic> for the State of South Dakota's internal control framework and related job aids.

- The Arizona Office of Grants and Federal Resources published policies, guidelines, and instructions for performing specific activities associated with all stages of grant administration and management.⁷

Developing and implementing similar practices should help States better administer Federal funds and grant activities, and lead to improved Program audit results in the future.

Conclusion and Recommendations

The partnership among the FWS and its State counterparts is extended to many other partners through grant subawards and procurement contracts. During our Program audits, we found instances in which the States did not consistently apply Federal Uniform Grant Guidance correctly. Further, we will soon begin using new procurement standards for subrecipients in our Program audit scope. A common understanding of requirements, in terms directly applicable in the fish and game setting, can help Program recipients successfully implement Program requirements and take corrective action where warranted.

Our experience auditing the State Program grants leads us to view subaward administration as a continuing area of concern, and the implementation of procurement standards at the subrecipient level as an elevated risk for the Program (along with other grants administered by the FWS beyond the scope of this report).

We recommend the FWS:

1. Provide guidance to the States, clarifying the application of Federal regulations for administering Program funds when State recipients pass funds to other non-Federal entities
2. Provide continued training and outreach to Program recipients on the proper administration of subawards and contracts
3. Strengthen monitoring for States that provide Program funds to other non-Federal entities

Response to Report

Please provide us with your written response by October 30, 2019. The response should provide information on the actions you have taken or planned to address the recommendations, as well as target dates and titles of the officials responsible for implementing these actions. Please send your response to aie_reports@doioig.gov.

⁷ See <https://grants.az.gov/grant-manual> for the State of Arizona's grants management manual.

The information in this management advisory will be included in our semiannual report to Congress and posted on our website no later than 3 days from the date we issue it to you. Please contact me at 202-208-5745, if you have any questions.

Attachments (2)

Implications of Subrecipient/Contractor Determination

	Subrecipients	Contractors
Terms and Conditions	U.S. Fish and Wildlife Service (FWS) grant requirements also apply to other conservation partners when the State provides funds through a subaward. ⁸	FWS requirements would not apply when the State awards a procurement contract.
Public Disclosure	Transparency regarding the use of Federal funds is required under the Federal Funding Accountability and Transparency Act and 2 C.F.R. part 170.	The same transparency is not yet required of procurement contracts awarded by grant recipients under current U.S. Office of Management and Budget guidance.
Accountability for Performance	Work often involves broad goals and may be fully funded even when performance targets are not fully attained.	Contractors are typically bound to specific deliverables.
Applicability of Single Audit Act	A non-Federal entity that receives \$750,000 or more in Federal funding must adhere to the requirements of the Single Audit Act and 2 C.F.R. part 200, Subpart F.	Since procurement contracts do not count toward this threshold, mischaracterization could lead an entity to miss an audit that should be required.
Access to Records for Monitoring and Audit	2 C.F.R. § 200.331(a)(5) requires that subawards include a stipulation for access to subrecipients' records for auditing and compliance monitoring.	Designation as procurement terminates the funds' identity as Federal, curtailing the ability to assess the third party's spending controls.
Disposition of Equipment	Federal regulations ⁹ apply to equipment purchased by the State and its subrecipients.	Contractors typically hold full title to equipment they purchase for a project unless the contract states otherwise.

⁸ As stipulated at 2 C.F.R. § 200.101, "the terms and conditions of Federal awards...flow down to subawards to subrecipients."

⁹ 2 C.F.R. §§ 200.313 and 200.439 stipulate that equipment purchased with grant funds must generally continue to benefit grant-related activities unless the Federal funding agency is compensated for a proportional share of the equipment's residual value when the equipment is disposed (or when the grant ends).

	Subrecipients	Contractors
Profit	Federal regulation at 2 C.F.R. § 200.400(g) prohibits profit taking on grant awards or subawards, without prior written approval from the Federal awarding agency.	Contractors generally include profit when pricing their services. Depending on State procurement policies, the rate or amount of profit might not be disclosed.
Treatment of Program Income	Federal regulation provides for three ¹⁰ general methods to govern revenues generated by grant-supported activities.	The same guidance does not apply to a State's contractors. Funds might not be reportable to the FWS or be leveraged to benefit Program objectives.
Indirect Costs	2 C.F.R. § 200.331(a)(4) requires the State to honor subrecipients' Federal negotiated indirect cost rate agreement ¹¹ where one exists.	The practice of citing "waived indirect" (that is, eligible indirect costs that are not collected) as match might not be supportable.

¹⁰ 2 C.F.R. § 200.307 enables the State to either: (1) reduce the cost of the Federal award, (2) expand grant-related activities, or (3) offset the cost of the State's required matching contributions.

¹¹ Federal regulations at 2 C.F.R. §§ 200.414 to 417, and Appendix VII govern the identification of indirect costs that may be payable under Federal grants. The State will enter into a negotiated indirect cost rate agreement with its cognizant Federal agency as defined at 2 C.F.R. § 200.19 and Appendix V. The State's cost proposal can be structured in such manner that treatment of both the State's and the third party's indirect costs varies depending upon whether the action is deemed to be a subaward or a procurement contract.

Differing OIG and State Subaward Determinations

Public Purpose in Statute	Grant Objective	Purpose or Objectives of the Third Party Agreement	OIG Conclusion	State Determination
16 U.S.C. 777a, Para (1)(C) — ...adoption of plans of restocking waters with food and game fishes	Maintain fish production levels by providing high-quality conditions for all phases of hatchery production and holding fish at modest densities	Develop and implement hatchery operations and growout methods that provide a supply of healthy and vigorous fish. Raise, tag, and release juvenile white seabass spawned by resident hatchery broodstock. Maintain and assess a broodstock management plan.	SUBRECIPIENT: The third-party entity* is directly fulfilling a public purpose established in Federal statute by carrying out a portion of the Federal grant.	CONTRACTOR: The State is procuring the use of a specialized facility.
16 U.S.C. 777g, Para (b)(1) — ...acquisition, development, renovation or improvement of facilities . . . that create, or add to, public access to the waters of the United States	Provide convenient access to [the lake] during times of low water level within the lake by constructing improvements	The State entered into an agreement for the “planning, construction, and/or renovation” of facilities on waters controlled by a local Government with a stipulation that the property would be open to the public . The local Government then contracted the boat launch improvements to a company licensed in heavy construction.	SUBRECIPIENT: The local Government is directly fulfilling a public purpose established in Federal statute, and essentially carrying out the entire Federal grant. The local Government then competitively let a procurement contract.	CONTRACTOR: The State made no proactive determination and administers all pass-through agreements as contracts.
16 U.S.C. 669a(9) — ...research into problems of wildlife management . . . affecting wildlife resources	Provide landowners with a better understanding of how soils management activities impact upland bird habitat	Establish a set of measurable ecological attributes . . . of upland bird habitat, and how they are differentially impacted Provide applicable, relevant information for private landowners and land management personnel to promote smarter, adaptive management decisions	SUBRECIPIENT: The parties are fulfilling a public purpose in Federal statute and carrying out the grant. In addition, the Federal Grant and Cooperative Agreement Act defines cooperative agreements as assistance.†	CONTRACTOR: The University’s work benefits the State agency.

* The third party is a nonprofit entity established to offset the environmental impact of electrical power generation facilities. In completing the activities described, it is fulfilling its own mission.

† The State made Program funds available under a cooperative agreement that established a cooperative research unit involving the U.S. Fish and Wildlife Service, the U.S. Geological Survey, the State, the State University, and a nonprofit organization.

