Coronavirus relief fund update from Commerce and the SAO
July 27, 2020
Webinar questions

Would software that creates a web portal allowing several of the over counter functions of a public agency to be conducted online be eligible for CARES funding? The web portal would limit the publics and staff’s exposure to COVID-19 by reducing face to face interactions as well as exchanges of paperwork and payments.
If the web portal was developed in response to COVID-19, then that would be an eligible use of these funds. As with any cost decision, be sure to think through the eligible cost considerations and document those decisions.

The relationship differentiating line is fuzzy between grant-subrecipient and procurement of a service. What are some clarifying distinctions?
There are three key relationships that may exist: Contractor, sub-recipient, and beneficiary. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), 2 CFR 200, defines what a contractor and sub-recipient are.

**Contractor:** Per 2 CFR 200.23, a contractor means an entity that receives a contract as defined in section 200.22 contract, which is an instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. These agreements fall under the procurement rules. For example, purchasing PPE for staff or cleaning services for the office. Commerce sometimes refers to “Contractors” as Vendors.

**Sub-recipient:** Per 2 CFR 200.93, a sub-recipient is a non-federal entity that receives a federal award directly or indirectly to carry out a part of a federal program; but does not include an individual that is a beneficiary of such program. This is an entity that you contract with to perform part or all of the statement of work under the contract with Commerce on your behalf. For example, contracting with the local nonprofit to provide food assistance or the economic development agency to provide small business grants. Commerce usually refers to “Sub-recipients” as Sub-Contractors.

**Beneficiary:** An individual or entity that is the recipient of some form of public assistance, grant, or benefit. They aren’t providing a good or service, and they aren’t doing any work on our behalf. The small business that receives a grant or the family that receives rent assistance would be a beneficiary.

The AGA has a [Sub-recipient vs. contractor checklist](#) to aid in determining if the entity receiving federal funds has a contractor or sub-recipient relationship.

We have been told by the SAO that if a revenue loss is the eligibility criteria for a business to receive CARES funds from a city, we would have to maintain the documentation on hand, not just for it if requested. What sorts of documents or evidence should we request?
The Uniform Guidance (**2 CFR 200.303 Internal Controls**) requires non-federal entities to establish and maintain effective internal control over the federal award that provides reasonable assurance that the non-federal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the award. For example, if cash grants are to be awarded to businesses based on eligibility criteria, as opposed to reimbursement type grants, and the eligibility criteria is lost revenue due to COVID-19 (e.g. non-essential business unable to operate), there must be documentation to support how the business met the eligibility criteria. The eligibility criteria should be clearly defined up front.
How a business may prove it’s eligible will be up to the awarding agency to determine if the support is adequate or not. Examples may include Department of Revenue tax return showing a reported decline or absence of revenue. It could also be as simple as a self-certification if it’s clearly obvious that business was completely shut down because it was deemed non-essential – for example, a nail or hair salon.

**Does a city need to request estimated cost billing to receive CARES before distributing funds to a non-profit?**

A city does not need to request estimated cost billings. Funding can be provided to a non-profit in two ways.

The first, as a grant to assist them with the impacts of COVID-19, similar to the small business grants. In this scenario the non-profit would be a beneficiary not a sub-recipient. How those funds are awarded and what for, will depend on how you design that program. Whether the grants are based on eligibility or reimbursable, a cost has to be incurred by the city to receive reimbursement from Commerce.

The second, you can contract with the non-profit to perform work on behalf of the local government, such as providing rental assistance to individuals and households. You can only reimburse sub-recipients for incurred costs and can only seek reimbursement from Commerce when you’ve incurred the costs of your sub-recipients.

Does supplanting only apply to the municipalities and not to the businesses to whom we grant money?

The eligible cost considerations should be applied to the municipality making the use decisions. Grants to small business who have been impacted by COVID-19 have been determined an eligible use of the funds per Treasury guidance. Using the funds to provide these small business grants have already passed the eligible cost considerations. They do not need to be extended further to the small business/grant beneficiary.

**Do you see inventory being an allowable cost for grants given to local businesses?**

This really depends on how your small business grant program is structured and the details it entails. Generally speaking, there’s nothing that prevents inventory from being an allowable cost. This is a legitimate business expense for retail businesses. You’ll want to consider whether that makes sense for your program. For example, if the grant is to support businesses that aren’t able to operate, then it may not make sense to allow inventory costs because what inventory is needed when not open for business?

**Are unemployment charges reimbursable?** As a reimbursable employer 50% of our charges are going to be covered by the feds but can we claim the other 50% against the CARES funds? We are a city that doesn’t pay into social security so we didn’t qualify for the credit that would have offset the costs.

As long as the unemployment costs are incurred due to the COVID-19 public health emergency and they aren’t being covered by another federal source, then those costs would be eligible.

**Can we use CARES funds for utilities assistance and, if so, how do we ensure that our program is not determined to be revenue replacement?**

You may use the CRF funds to create various resources to support individuals and households that have been impacted by COVID-19. This could include shelter assistance, food assistance, utilities assistance, etc. If you create a utility assistance program to support folks impacted by COVID-19 that is not considered revenue replacement. This is assistance to an impacted individual or household so that they may continue to maintain their access to utility services.

**How are the municipalities going to be able to dispose of the laptops at the end of their useful life purchased for telework?** With other federal grants the requirements are more stringent than regular assets.

The Uniform Guidance states a computing device is a supply (not equipment) if the acquisition cost is less than the lesser of the capitalization threshold established by the non-federal entity or $5,000, regardless of its useful life (2 CFR 200.94).

Therefore, if less (generally computers are less than $5k), the federal equipment management rules, including disposition of equipment, would not apply. However, the state law and local policy would apply (i.e. controls over the disposition of small and attractive assets). Also note that for this award (CFDA #21.019), Subpart D, Post Federal Award Requirements, including equipment requirements of 2 CFR 200.313 are not applicable.
Is there a chance that Treasury would relax the restrictions on existing CARES funds such that they could be used to offset lost revenues? The Treasury does not have the authority to relax restrictions without direction from Congress. Recently the Senate has proposed a new bill that would make changes to the uses of the CRF grants. One of those changes would allow the use of 25% of the funds toward revenue shortfalls. As of 8/5/20, this proposal has not been made law.

Has the IRS issued guidance on the taxable impact of CARES Act funding payments to individuals or businesses? The IRS and the Treasury have not issued guidance on the taxable impact of these funds to individuals and small businesses. The Department of Commerce recommends that you work with a tax professional to determine the appropriate tax implications for your reporting purposes.

Would time and effort certifications be required for government employees being charged to CARES? The CRF (CFDA #21.019), specifically excludes the cost principles, where the time and effort documentation requirements are found. For other federal awards subject to Subpart D of the Uniform Guidance, 2 CFR 200.430(i) standards for documentation of personnel expenses, requires compensation charged to a federal award be based on records that accurately reflect the work performed (supported with adequate time and effort documentation). There would have to be time and effort for direct charges of compensation if cost principles applied to the particular award/program.

Has there been any additional guidance to allow CARES dollars to be the local match for the 25% of the 75%/25% FEMA program? Per Treasury FAQs: May funds be used to satisfy non-federal matching requirements under the Stafford Act? Yes, payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund’s eligibility criteria and the Stafford Act. Regardless of the use of Fund payments for such purposes, FEMA funding is still dependent on FEMA’s determination of eligibility under the Stafford Act.

Can cities give cash grants to non-profits to provide services to respond to COVID-19 similar to how the guidance allows for the distribution of cash grants to small businesses? Funding can be provided to a non-profit in two ways. One of those ways is as a grant to assist them with the impacts of COVID-19, similar to the small business grants. In this scenario the non-profit would be a beneficiary not a sub-recipient. How those funds are awarded and what for, will depend on how you design that program. If the program can be designed to provide a grant based on the non-profits eligibility, then it is possible to award a “cash grant” to the non-profit similar to how that can work for a small business or other grant beneficiary.

The other way, you can contract with the non-profit to perform work on behalf of the local government, such as providing rental assistance to individuals and households. In this scenario the non-profit would be a sub-recipient. You can only reimburse sub-recipients for incurred costs and can only seek reimbursement from Commerce when you’ve incurred the costs of your sub-recipients.

Is it possible that the state-imposed deadlines of October 31 will be extended? Question for Commerce. The Department of Commerce is currently working with OFM on the additional funding for local governments and the possibility of extending the October 31 deadline. Nothing has been determined at this time.

Recently the Senate has proposed a new bill to Congress that would make changes to the CRF grants. One of those changes would extend the deadline to 90 days past the primary recipient’s state fiscal close for 2021. If passed, this would extend the deadline to September 30, 2021 for the State, which would likely be an August 31 deadline for the contracts with the local governments.
We have been told that if a staff person is “substantially” doing COVID-related work, then all of their staff costs are eligible for reimbursement. But descriptive language says budgeted staff costs are NOT eligible for reimbursement. Could you please clarify?

The Treasury’s guidance is very clear that you may charge staff time spent on COVID-19 related work to this grant. You will need to document the time spent on COVID-19 work and charge those payroll related costs accordingly or you may determine a position is substantially dedicated to COVID-19 work and charge 100% of those payroll costs to this grants.

An eligible costs consideration is whether a cost was already budgeted in the most recent enacted budget as of March 27th. It is likely that staff that were included in the enacted budget were not intended to be responding to COVID-19 impacts. If that’s true, then those staff are likely being utilized for a substantially different purpose and would meet the eligibility consideration.

Each jurisdiction is responsible to define substantially dedicated and substantially different for their uses.

How will the definition of "Substantially Dedicated" be related to the CARES Act? Is there a definition for that?

Each local government has the authority to define what substantially dedicated means. Just be sure that the definition is reasonable and that it is consistently applied in practice.

Could you clarify “regular budgeted costs.” Available documents seem unclear as to what is budgeted or not budgeted for.

“Regular budgeted costs” are those costs that were included in a city’s most recent adopted budget as of March 27, 2020. Expenses eligible for reimbursement through the CARES Act are those that were not included in the adopted budget. These could include additional community support, grants to businesses or non-profits, or equipment to allow remote work.

The relationship of procurement (sub-contractor providing procured services or goods to a grant recipient) vs sub-recipient (sub-contractor who receives grants and uses the money to provide a good or service) is very important for us as city with an EDC sub-recipient. As a city, providing human services is becoming more and more a core function, such as prevention of homelessness and preventing food insecurities of children and families. We are entering into a contract, for example, with a Social Services agency who works with families to keep them housed. We are also working with a social services agency that provides food to families with children. All geared towards community families. We have done some of this before the outbreak and increased the help as the pandemic continued. We consider the relationship with those social agencies as a procurement-of-services relationship. Is that acceptable or will this be a point of contention for the State Auditor’s Office?

With regard to the question above, to clarify, a “Contractor” is the relationship regarding procurement. Commerce sometimes refers to Contractors as Vendors. A “Sub-recipient” is the relationship that carries out part of the federal program (see 2 CFR 200.23 and 200.93). The Commerce contract language refers to sub-recipients as sub-contractors. There are distinctively different federal compliance requirements for contracting vs sub-awarding, so it’s important to identify the relationship correctly up-front. The situations described would be sub-recipient relationships for federal 2 CFR 200 purposes.

If we become a pass-through agency of a federal grant, we have to comply with a number of rules. Is there a grant threshold where some or all of those rules are lifted?

No, there is no threshold. See 2 CFR 200.331.