

Federal and State Funding in the Wake of a Disaster – What You and Your Organization Need to Know

September 28, 2017

Presented by:

VENABLE





Your Speakers



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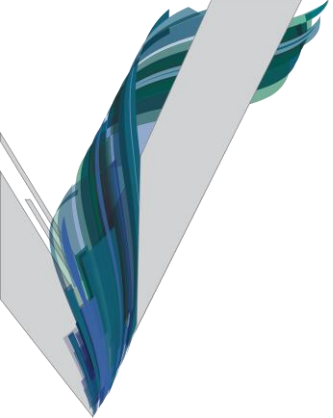
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Please refer to slide 22 for full speaker biographies and contact information.



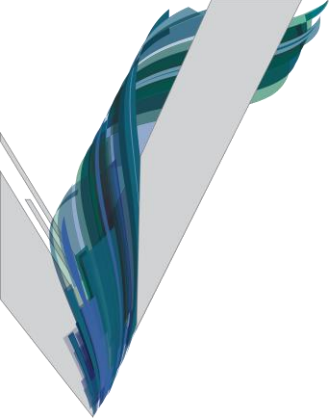
Agenda

1. The Federal Perspective
2. The State/Municipal Perspective
3. Early Legal Issues
4. Insurance Recovery
5. Questions and Answers



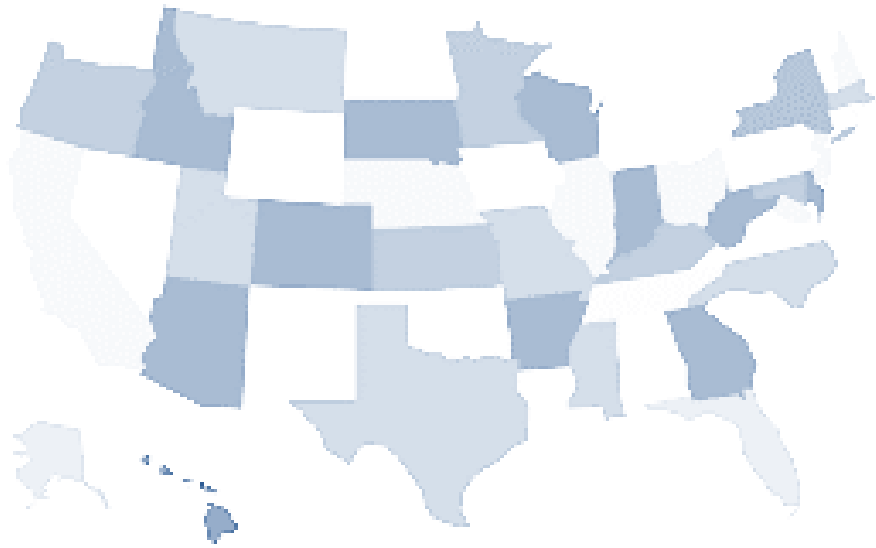
The Federal Perspective *(Discussion)*

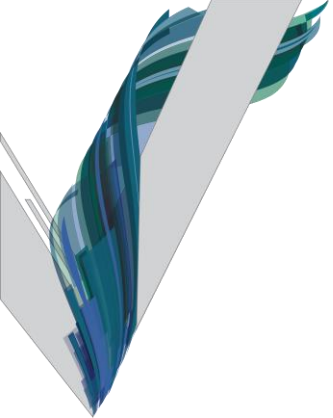




The State/Municipal Perspective

(Discussion)





Early Legal Issues





Identifying Your Legal Framework

- **Statutory Authority**
 - Understand specific appropriation law
 - Understand the legislation the grant is running through (e.g., Stafford Act (42 USC § 5121) or Housing and Community Development Act of 1974)
- **Office of Management and Budget Circulars**
 - You may be most familiar with the old OMB Circulars (e.g., A-102, A-110, etc.)
 - The Uniform Guidance is applicable to awards made as of 12/26/2014
 - Procurement provisions not applicable until December 25, 2017
- **Agency Regulations**
 - Identify individual agency regulations in the CFR (e.g., FEMA, Title 44; HUD, Title 24)
 - Read regulations in conjunction with agency-issued deviations from the standard requirements (e.g., Community Development Block Grant in Title 24, Part 570)
- **Non-conflicting State regulations may apply**
 - Example of conflicting state standards may include preferred sources, geographic preferences, etc.



Considerations for Meeting Your Legal Framework Obligations

- Augment your existing team with:
 - An individual responsible for federal regulatory compliance
 - An individual responsible for addressing and responding to federal audits
- Consider creating a basic compliance matrix
- Document rationale
- Document Agency response/opinions

Key Items for Managing Federal Funds



Subrecipient versus contractors



Procurement practices



Subrecipient monitoring




Cost principles





Subrecipients versus Contractors

- What is the difference?
 - When do you use a subrecipient?
 - When do you use a contractor?
 - What are notable pre-agreement requirements?
 - What are the notable post-agreement requirements?
 - How do subrecipients and contractors differ from beneficiaries?
- 



Subrecipient Monitoring

- “Subrecipient”: A non-Federal entity that receives a subawards from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program.
- Unless provided otherwise, terms and conditions of a federal award flow down to subrecipients.
- Grantees MUST:
 - Review financial and programmatic reports
 - Recommend corrective action for deficiencies detected through audits, on-site reviews, etc.
 - Follow up and ensure that subrecipients take timely and appropriate action on all deficiencies detected
 - Issue management decisions for audit findings
 - Verify audit compliance
 - When necessary, consider enforcement action



Subrecipient Monitoring *cont'd*

Grantees **MAY** monitor by:



Providing training
and technical
assistance



Performing on-site
reviews of program
operations



Providing agreed
upon audit
procedures/requirements



Establishing a Workable Procurement System

- Competition is generally required
 - Clearly state all requirements and do not limit competition to certain vendors
 - Best practice to post opportunities online (i.e., full and open competition)
- Contracts can be sole-sourced when:
 - Item is available from a single source
 - In a public exigency or emergency where delay is not an option
 - When the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request
 - After solicitation of a number of sources, competition is determined inadequate.
- Cost analysis is required where no price competition (profit must be separately analyzed)



Establishing a Workable Procurement System

cont'd

- All contract actions (solicitation, Q/A, evaluation, award decision, etc.) should be maintained in the contract file
 - Even documents related to unsuccessful offerors should be maintained
- Contract terms must meet certain federal requirements and have specific flow down clauses
 - Agencies' requirements and clauses are similar in many respects, but there are often differences
 - E.g., prohibition against suspended and debarred entities applies across federal agencies, whereas Davis-Bacon Act applies to HUD awards but not FEMA
 - Ensure your contract template incorporates the appropriate contract terms
- Keep all modifications within the original scope





Ensuring Costs are Allowable

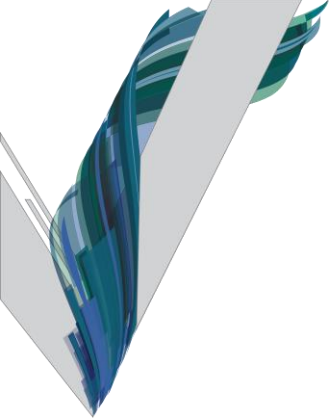
- Regulatory requirements generally require all costs (contractor and subrecipient alike) to be “reasonable,” “necessary,” “adequately documented,” and used for an “allowable” purpose
 - Stems from OMB Cost Principles (currently located at Title 2, Part 200, Subpart E)
 - Examples of allowable costs: direct programmatic expenses, training, most legal expenses, supplies and approved equipment purchases
 - Examples of unallowable costs: alcohol, interest on debt, state and local taxes (generally)



Ensuring Costs are Allowable *cont'd*

- Establishing a System to Review Costs
 - Pick a Team: who will review the costs to ensure compliance with terms of contract and reasonability?
 - Develop standard documentation requirements for all subrecipients and contractors
 - Involve procurement team
 - Create a process so invoices are timely reviewed
 - Ensure contracts have clawback provisions in the event federal auditors disagree with determination



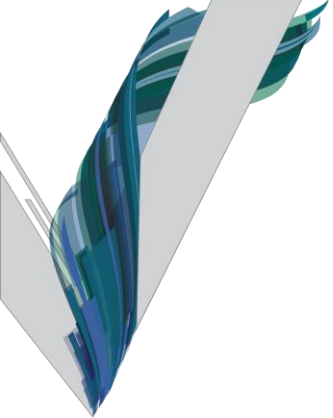


Insurance Recovery



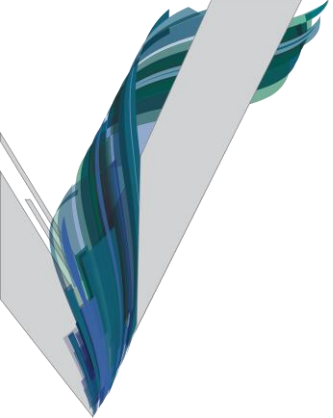
Insurance Recovery

- Duplication of Benefits Issues
- Notice to Insurers
- First Party Property Damage Claims
- Business Interruption Claims
- Third Party Claims



Questions and Answers





Thank You!

For more on federal grant requirements, *see*
<https://www.grantslibrary.com>





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Marion Mollegen McFadden serves as vice president of public policy at Enterprise. Previously, she served as deputy assistant secretary for Grant Programs at the U.S. Department of Housing and Urban Housing (HUD). At HUD, she oversaw affordable housing and community development programs, including the Community Development Block Grant Program (CDBG), the HOME

Investment Partnerships program, the Housing Trust Fund, the Neighborhood Stabilization Program (NSP) and CDBG Disaster Recovery funds, including the recent National Disaster Resilience Competition grants. In this role she formed and facilitated multiple public-private partnerships, including with the Rockefeller Foundation to support communities planning for disaster resilience, with the Silicon Valley-based company GitHub to bring tech education and resources to residents of public housing, and with the nonprofit organization KaBOOM! to create a design competition to retrofit cities and other built spaces to accommodate play for better health of residents. Marion holds a J.D., magna cum laude, from Howard University School of Law (2000) and a B.A. from Northwestern University (1994).



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Terry Brody is a Senior Managing Director at Ankura based in New York, NY and Parsippany, NJ. Terry has 15 years of experience advising clients on complex litigations, conducting regulatory investigations, and managing multibillion-dollar government budgets and programs. Drawing upon his unique leadership experiences in government and the private sector, Terry regularly conducts complex

investigations, provides compliance counseling, and delivers independent monitoring and reporting services for organizations that allegedly engaged in misconduct or that proactively seek to reduce the risk of noncompliance with applicable laws, regulations, and authorities.

During a distinguished career in public service, Terry served on the New Jersey Attorney General's executive team and also helped establish and lead a central recovery office charged with coordinating the State of New Jersey's multibillion-dollar disaster recovery effort following Hurricane Sandy. Earlier in his career, Terry worked at two large law firms representing clients in complex commercial litigations, corporate investigations, and regulatory matters, and advised executives and board members on corporate governance requirements and compliance best practices.



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Michael Davis finds ways to solve his clients' problems—either with innovative business solutions or through litigation or dispute resolution. His practice often focuses on environmental issues encountered in construction and redevelopment. He has been involved in some of the most significant redevelopment projects in the country—from the World Trade Center in Manhattan to the Poplar Point redevelopment project in the District of Columbia.

Mr. Davis is also frequently called on to help in the acquisition of high-value insurance policies and in numerous insurance coverage disputes across many industries. He has significant experience representing drug, medical device and dietary supplement manufacturers in litigation and dispute resolution.



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Dismas (Diz) Locaria is a member of the firm's Government Contracts Group. Mr. Locaria's practice focuses on assisting government contractors in all aspects of working with the Federal government. Mr. Locaria has extensive experience assisting clients with regulatory and contract/grant term counseling, compliance (including ethics and integrity compliance), responsibility matters, such as suspension, debarment and other contracting/grant exclusions, small business matters and GSA Federal Supply Schedule contracting. Mr. Locaria also represents and counsels clients with the peculiarities of the Homeland Security Act, including obtaining and maintaining SAFETY Act protections.



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Melanie Jones Totman is counsel with Venable's Government Contracts group where she provides clients with legal advice related to both federal and state procurement and grant law, including complex compliance matters under the Federal Acquisition Regulation, the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and various agency regulations.