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View From Wiley Rein: Best Practices for Finding and Obtaining Federal Grants



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As many in the federal contracting and grants community are aware, regulations governing the solicitation, award, and management of federal grants and subgrants have undergone significant changes in the past couple of years. Indeed, following the Office of Management and Budget's ("OMB") issuance of the Uniform Guidance on Grants—also known as the "Super Circular"—in December 2013, and particularly after the rules became effective in December 2014, a lot of analysis has been done of the new rules' effect, including their effects on grantees and their intersection with government contract regulations.

It should come as no surprise, then, that the contracting community has taken notice of both the changing regulatory landscape and the sheer number of dollars awarded each year in the form of grants, and has begun asking how traditional government contractors can find and obtain such grants. To that end, this article provides an overview of federal grants, followed by practical tips for finding, applying for, and ultimately obtaining grants.

Grants vs. Contracts. As an initial matter, it is important to understand the distinction between federal grants and federal contracts, both because some types of work are more likely to be solicited using one vehicle or the other, and because the rules and regulations governing grants and government contracts differ. The Federal Grant and Cooperative Agreement Act ("FGCAA") sets forth the type of legal instrument an executive agency must use when seeking to acquire a

particular good or service. According to the FGCAA, agencies are required to award a federal grant when the goal is to carry out a "public purpose" and not much involvement by the state or local government is anticipated; cooperative agreements are similarly aimed at providing a public purpose but involve more participation by the state or local government. By contrast, agencies are required to use a contract when the item or service sought is for the "direct benefit or use" of the Government. Whereas federal grants are governed by the "Super Circular," codified under 2 CFR § 200, federal government contracts are subject to the regulations set forth in the Federal Acquisition Regulation ("FAR") and agency-specific supplements thereto.

The Court of Appeals for the Federal Circuit recently reinforced the importance of the FGCAA "public purpose" test for determining whether an agency has chosen the appropriate instrument to award federal funding in *CMS v. Massachusetts Housing Finance Agency*. In that case, a company called Contract Management Services ("CMS") challenged the Department of Housing and Urban Development's ("HUD") characterization of agreements for the administration of public housing projects as cooperative agreements, arguing that the contracts were procurements and should be subject to federal procurement laws and regulations. The Federal Circuit looked to the FGCAA in determining that that the funding's principal purpose was to acquire property or services "for the direct benefit or use of the United States government," and that HUD therefore should have used a procurement contract.

Types of Grants. In seeking out grant opportunities, it is also important to understand which of the federal agencies award grants and what kinds of grants are available, especially to for-profit entities. According to Grants.gov, 26 federal agencies, including the Department of Defense and numerous civilian agencies, use

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grants to obtain a wide variety of services and products in support of their respective missions. Not surprisingly, the types of grants issued differ according to the particular agency's needs, goals, and funding.

Broadly speaking, grants may be issued as categorical grants, which are used only for narrowly defined purposes, or as block grants, which allow recipients to fund a broad range of activities within more general policy areas, such as community development or law enforcement. Block grants are typically awarded to states and are therefore not the best target for private entities seeking grants. Similarly, formula grants—a type of categorical grant—are typically awarded to states and are thus not the best target for prospective grantees.

Instead, categorical grants known as “project grants” provide the most promising opportunities to obtain federal funding. Project grants are generally awarded on a competitive basis and provide funding for fixed or known periods for specific projects or the delivery of specific services or products. These may include fellowships, scholarships, research grants, experimental and demonstration grants, evaluation grants, planning grants, technical assistance grants, and construction grants.

Grant Application and Award Process. To begin the process of applying for a grant, potential grantees need to identify agency-prepared Funding Opportunity Announcements (“FOA”). An agency may announce a grant opportunity in a variety of ways: a program announcement, a request for applications, a notice of funding availability (“NOFA”), or a more traditional solicitation. Just as not all FOAs look the same, neither are agencies required to publicize grant FOAs in one, uniform manner. Thus, although Grants.gov is the primary clearinghouse for funding opportunities, individual agencies may have more current or complete lists of grant opportunities.

Once submitted to the agency, a grant application is subjected to several layers of review. First, the agency conducts an initial screening to determine whether the application meets all requirements and is eligible for award. Next, the agency considers the quality of the application and the applicant's ability to perform the grant requirements. This phase involves a more exacting review than merely determining whether the applicant “checked the box.” In performing this review, agencies often engage an independent expert or peer review panel to assess applications on a uniform rating scale established by the granting agency. Finally, the granting agency conducts a financial review of the applicant's budget to confirm that it addresses all budgetary requirements of the grant program and complies with all statutory and financial regulations.

Once the agency's reviewers recommend award to a particular applicant, the granting agency will send the awardee a Notice of Award (“NOA”). The grantee can accept the NOA in one of two ways: signing the grant agreement or drawing down funds. By taking one of these two actions, the grantee becomes legally obligated to carry out the terms and conditions of the grant.

Best Practices for Crafting the Most Competitive Grant Application. Best practices for applying for and obtaining grants start well before an entity actually submits an application. In that regard, there are three best practices companies should keep in mind when seeking and applying for grants.

First, it is important for an entity seeking grant opportunities to narrow its focus, *i.e.*, to analyze possible opportunities and identify a limited set of targets so as to ensure efficient use of time, money, and resources. As a practical matter, it is helpful to determine whether to outsource initial research tasks to a consultant or other expert who may use specialized tools to identify target opportunities and agencies. Of course, a company may prefer to keep grant research and strategy in-house. In such cases, it is important to develop a formal process for identifying and analyzing opportunities—*e.g.*, by creating a centralized grants office or by instituting a formal process by which individual program managers or business units report on possible opportunities.

Second, it behooves a prospective grant applicant to be familiar with how different agencies have awarded grants in the past to better understand where its capabilities align with various agencies' priorities and funding opportunities. Indeed, past trends in a particular agency's grant programs and awards provide useful information regarding that agency's grant practice and priorities. Similarly, small businesses should determine whether an agency has a specific grant program for small businesses—*e.g.*, a Small Business Innovation Research (“SBIR”) or Small Business Technology Transfer (“STTR”) Program. For example, the National Institutes of Health (“NIH”) and Department of Energy (“DoE”) have robust SBIR and STTR programs.

Finally, an applicant can improve the quality of its application simply by understanding the overarching need the granting agency is trying to address. Unlike in the procurement context, in which solicitation and specification documents advise offerors of the specific requirements that the contracting agency demands and that offerors need to meet, grant notices of opportunity tend to be more skeletal and open-ended. Thus, rather than simply rehash the requirements described in the FOA, an applicant should speak to the agency's actual need or goal in its application, *e.g.*, by clearly articulating the benefit its application provides to the agency and to the taxpayer.

Conclusion. As federal grant regulations continue to evolve, and as the market for federal grants tightens with increased interest by the government contracting community, it will become more important for entities seeking grants to implement a comprehensive approach to identifying and applying for federal grants. Understanding the difference between contracts and grants, what types of grants to target, and how the application process works, is only the first step; capitalizing on that knowledge both by targeting agencies whose priorities are aligned with the applicant's and by crafting an application that speaks to the agency's overall needs, is critical to not just finding, but actually obtaining, federal grants.