

Federal awards come with strings attached

Just like there's no such thing as a free lunch, there's no such thing as free money, yet utilities sometimes make the mistake of thinking that's what a federal award offers.

Whether used to repair a utility's infrastructure or improve it, federal awards can be an appealing source of funding. Utilities investing in clean energy initiatives often have the option of funding new installations through an award from the Department of Energy or the U.S. Department of Agriculture. And in a given five-year period, almost every utility uses federal money — typically from the Federal Emergency Management Agency (FEMA) — at least once to make repairs following a natural disaster, whether it's a wildfire, earthquake, flood, or wind or ice storm. Given the availability of these awards, why wouldn't a utility take advantage of them? The answer is a matter of costs and benefits.

Guidance issued by the Office of Management and Budget in December 2014 ushered in a new era in oversight concerning expenditures of federal funds. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (generally referred to as the Uniform Guidance) makes it more important than ever that utilities using federal money fully understand the rules surrounding eligible expenditures, document their costs appropriately, and implement processes and controls that prevent inappropriate spending.

When accepting money from a federal source, both compliance and noncompliance come with costs — so weigh the cost-benefit ratio of accepting those funds accordingly.

Costs of noncompliance

While the responsibilities that come with a federal award may seem preferable to depleting your organization's cash reserves or assuming debt by issuing bonds, the penalties for noncompliance with a federal award's terms and conditions can be far more significant.

Utilities that accept awards should be prepared for an audit by the awarding agency of how those funds are spent — either during the course of a financed project or upon its completion. In many cases, if instances of noncompliance are identified during the audit, or if there isn't enough documentation to support that the funds were used appropriately, utilities are required to reimburse the federal agency for questioned costs; could be assessed fees and penalties; and could be prohibited from receiving future awards from that granting agency.

Costs of compliance

Avoiding being caught in a noncompliance situation comes with internal and external costs of its own. Though not all utilities require a full-time award adminis-

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trator, it's important that somebody at the organization has the skills, knowledge, and experience to:

- Read and understand the terms of any given award agreement
- Educate and advise staff on ineligible and eligible expenditures
- Track expenses made using federal money
- Report on project progress as required by the awarding agency

Additional layers of internal control (such as personnel, system, and other requirements) may be needed to ensure award spending is well documented, monitored, and reported on according to federal requirements. As the costs associated with administering a utility's awards increases, they may include additional personnel, such as a contract attorney who can review award and contract documents; project managers; and accounting professionals to track expenses and generate monthly or quarterly reports. Typically, a utility's project management and tracking systems capture costs, but existing systems may need to be modified or reconfigured to track award-eligible expenses or produce reports on the project itself. Upgrading software systems would be another expense to consider before you accept an award.

Generally, when annual federal expenditures exceed \$750,000, the uniform guidance requires that a single audit be performed by an independent auditor; the scope of these audits range widely depending on the relevant compliance requirements and complexity of the award. To a smaller utility, such costs can also be prohibitive, because they may not be reimbursable under the award.

Common pitfalls for grant awardees

A lack of familiarity with relevant regulatory guidance is the first pitfall. It's not only what utilities spend federal money on that matters, but also whom they spend it with.

For example, the uniform guidance sets out specific processes award recipients must follow (and document) for five separate types of procurement, from micropurchases (under \$3,500) through large-scale projects that require bids from multiple sources.

Further, utilities that use federal award money to pay a subrecipient are considered pass-through entities, which makes them responsible for monitoring their subrecipients' use of those funds. It's also the utility's responsibility to make sure the subrecipient isn't debarred from performing federal work in the first place. Before granting any work involving federal funds to a subrecipient, search for the prospective subrecipient by name or taxpayer identification number on the System for Award Management, or SAM.

One particularly common pitfall, especially surrounding FEMA awards, lies in the distinction between repairing existing infrastructure and enhancing it. Say, for example, that a utility's poles and lines are destroyed by a wildfire. FEMA awards the entity a grant to repair the lines damaged by the wildfire, but because the lines are older and in need of an upgrade anyway, the utility opts to replace them not with the existing-quality lines but with newer, larger-capacity lines. The FEMA grant likely covers the cost only to repair the existing lines, not upgrade them. These costs can be difficult to separate and track, and the utility could be required to pay back the ineligible portion of the expense upon audit.

Know your responsibilities before you accept

Award preparedness and disaster preparedness are similar in that waiting until an emergency occurs is too late to acquaint yourself with the required procedures.

As a utility, you're well aware of the pressure you face when you're unable to deliver services to your customers. Spending time now to understand the responsibilities that come with accepting a federal award can mean you're informed and ready to accept funds when you need them — and when your customers are anxiously waiting for service.

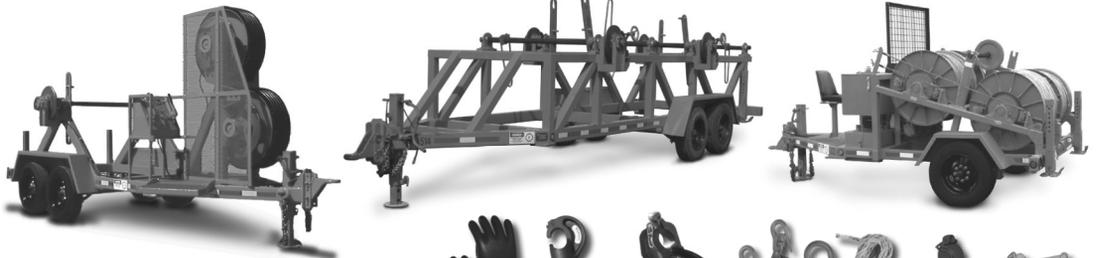
To learn more about the uniform guidance, including your responsibilities as a recipient of federal funds or as a pass-through entity for federal funds, visit www.mossadams.com/uniformguidance. **NWPPA**

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