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## Topic: Contracts for personnel services that offer to provide States matching funds – Wildlife Restoration

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WSFR HQ: Branches of Policy, Information Management, and Audit

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**Background:** The Wildlife and Sport Fish Restoration Program (WSFR) Headquarters office was approached by a Regional Office asking for an opinion on the allowability/advisability of States entering into contracts for personnel services provided by a non-profit organization. Other Regions indicated that several States currently have, or are considering, such agreements. Entering into an agreement for a third-party to provide staffing services may be very beneficial to States to support critical staffing needs when States are not able, for many possible reasons, to staff through normal hiring. These contracts may take many forms, one being where the non-profit organization discounts its administrative fee on the contract, allowing the State to use the unrecovered fee as non-Federal match to the Federal funding.

### **Authorities:**

Authorities and guidance consulted are:

2 CFR 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final rule (78 FR 78590, Dec. 26, 2013 and amendments/additions)

50 CFR 80 - Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety; Final rule (76 FR 46150, August 1, 2011)

Audit Guide for Sport Fish and Wildlife Restoration Programs (January 31, 2003) (NOTE: References in this handbook do not correlate to the newly published 2 CFR 200.)

### **Opinion/Guidance:**

We researched and considered the overall concept of States contracting for additional staff and using unrecovered fees toward the non-Federal match. **We find that when done appropriately, it is possible to use this approach as a way for States to obtain qualified personnel to accomplish mission critical objectives while receiving in-kind non-Federal match to support WSFR programs.** However, before entering into contracts, there are many nuances that States must carefully review and consider. States must use the appropriate assessment and processes to ensure that costs are reasonable, **that State procurement procedures are appropriately applied including requirements for competition**, that match meets all applicable criteria in both 2 CFR 200 and 50 CFR 80, and that acceptable business practices are implemented.

**It is important that State agencies are diligent in understanding the nature of costs in the contract, including the makeup of the fee reduction that is being proposed as match. States must ensure that match meets the same requirements as the Federal program and that the match is properly assessed and documented.**

State fish & wildlife agencies should consider the following:

1. Is the agency following the State guidelines as they apply to contracting, including exceptions/justifications for single-source awards (if applicable)? **(NOTE: To reduce risk, strictly follow State guidelines, adhere to internal controls, and document actions and decisions. See Audit Guide)**
2. If a State chooses to award the contract as a sole source: 1) Is there sufficient justification for not competitively bidding the staffing services? and 2) Does sole sourcing the agreement comply with applicable State procurement rules? **(NOTE: When a contract is bid and awarded competitively, the process adds support to the award. If sole sourcing, States must take care to adequately support the decision and strictly follow State guidelines. Fully supporting/documenting the choice of the award recipient reduces the risk of potential audit findings. The Service recommends competitive bidding as the best option to reduce potential audit risk.)**
3. **What functions/services is the for-profit or non-profit organization performing for the total administrative fees they are asking for (prior to discount)? Is the administrative fee negotiated according to State guidelines and a fee that the market will support? Can the contractor document the fee as being related to actual costs?** **(NOTE: Typically, administrative fees on contracts can be “what the market will support.” When the contract is bid competitively, there is more support for the fee being market-based. If the contract is awarded as a sole source, States must consider how they will document supporting the fees as market-based. Please consider that what the market will support in one State may not be the same as what the market will support in another State.)**
4. Are these functions/services considered eligible costs (see 50 CFR 80 for eligible costs in Wildlife Restoration and Sport Fish Restoration programs) under WSFR? **(NOTE: Match must meet the same eligibility standards as the Federal funds. See 2 CFR 200.306, 200.403, and 200.405; 50 CFR 80.85, and Audit Guide, In-Kind Contributions.)**
5. Are the costs reasonable, i.e. are they comparable to personnel services and fees that another for-profit or non-profit organization providing similar services would charge and do they provide an adequate benefit for the costs? (See 2 CFR 200.403 and Audit Guide, Questioned Costs. **NOTE: This is easier to document and support when the contract is awarded through a competitive process.)**
6. Does the agreement allow for contributions/donations from the third party? If so, the contribution/donation is not allowable as direct or indirect costs and can only be used to satisfy match. (See the guidance at 2 CFR 200.434)
7. Does the scope of the contract adequately detail what the staff provided will accomplish, the qualifications of the staff, what the contractor will provide, what the agency is expected to

provide, and details of all associated costs. Does the contract address the responsibilities of the contractor and specifics of reporting and cost documentation? Does the contract address the contractor's responsibility should there be an audit finding?

8. Does this arrangement produce a cost that is both necessary and reasonable for the accomplishment of the program objectives in comparison to other alternatives? Would a prudent person enter into a similar arrangement? (See 2 CFR 200.404 and Audit Guide, Questioned Costs.)

WSFR Regional Offices should:

1. Distribute this guidance to affected Regional and State staff.
2. Emphasize with States the benefits of following these recommendations to ensure compliance with the regulations and to reduce audit risk.
3. Review contract information with States, upon request.

Please contact WSFR HQ if you have other recommendations to add.

## REFERENCES:

### ***2 CFR 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final rule***

#### **§ 200.38 Federal award.**

Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

- (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or
- (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability.

#### **§ 200.101 Applicability.**

(a) General applicability to Federal agencies. The requirements established in this Part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

#### **§ 200.306 Cost sharing or matching.**

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

- (1) Are verifiable from the non-Federal entity's records;
- (2) Are not included as contributions for any other Federal award;
- (3) Are necessary and reasonable for accomplishment of project or program objectives;
- (4) Are allowable under Subpart E—Cost Principles of this Part;
- (5) Are not paid by the Federal government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
- (6) Are provided for in the approved budget when required by the Federal awarding agency; and
- (7) Conform to other provisions of this Part, as applicable.

\* (c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with § 200.434

Contributions and donations.

**(\*NOTE: The citation at § 200.306(c) does not directly address credits or unrecovered administrative fees, but does support the concept of allowing unrecovered non-Federal costs as match.)**

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits. **(NOTE: The unrecovered administrative fees could be considered a credit.)**

#### **§ 200.403 Factors affecting allowability of costs.**

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this Part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period. See also § 200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of this Part.

#### **§ 200.404 Reasonable costs.**

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services for the geographic area.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

#### **§ 200.405 Allocable costs.**

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

- (1) Is incurred specifically for the Federal award;
- (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
- (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

#### **§ 200.406 Applicable credits.**

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

#### **§ 200.434 Contributions and donations.**

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 200.306 Cost sharing or matching). Depreciation on donated assets is permitted in accordance with § 200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements.

**(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not allowable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306 Cost sharing or matching.**

**(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.**

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

**(f) Fair market value of donated services must be computed as described in § 200.306 Cost sharing or matching.**

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of Subpart D of this Part. The value of the donations must be determined in accordance with §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

### ***50 CFR 80 - Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety; Final rule***

#### **§ 80.2 What terms do I need to know?**

*Match* means the value of any non-Federal in-kind contributions and the portion of the costs of a grant-funded project or projects not borne by the Federal Government.

#### **§ 80.85 What requirements apply to match?**

The requirements that apply to match include:

(a) Match may be in the form of cash or in-kind contributions.

(b) Unless authorized by Federal law, the State fish and wildlife agency or any other entity must not:

(1) Use as match Federal funds or the value of an in-kind contribution acquired with Federal funds; or

(2) Use the cost or value of an in-kind contribution to satisfy a match requirement if the cost or value has been or will be used to satisfy a match requirement of another Federal grant, cooperative agreement, or contract.

(c) The agency must fulfill match requirements at the:

(1) Grant level if the grant has funds from a single subaccount; or

(2) Subaccount level if the grant has funds from more than one subaccount.

## ***Audit Guide for Sport Fish and Wildlife Restoration Programs (January 31, 2003)***

### **IN-KIND CONTRIBUTIONS**

In-kind contributions are non-cash contributions made by parties other than the States. In-kind contributions may be included as part of the State's matching share of total costs, but they should not be included as any part of the Federal share of the total costs (522 FW 1.13). Guidance in valuing volunteer labor, donated goods, land, and other services, as well as in-kind record keeping requirements can be found in 43 CFR Part 12.64.

Auditors should review the in-kind contributions and supporting documentation to learn how they are claimed and valued. The auditors will need to determine the types of in-kind contributions used by the State, the program areas and specific grant agreements where they are used, the State's procedures for proper and consistent treatment of in-kind contributions, and the parties responsible for accounting and reporting in-kind contributions. The procedures should address documentation, valuation, availability, validity, and assurance that each in-kind contribution is used only once as match for a Federal grant.

When in-kind contributions exceed the amount required for the State's matching costs of the grant, the audit review may be limited to an amount identified by the State that is necessary to satisfy the State matching requirement. However, auditors should be aware that excess in-kind contributions might be claimed later. If so, the excess in-kind contributions may be used to the extent necessary within the same SFY.

In-kind contributions should be shown separately on the Financial Status Reports (SF-269s). Anticipated in-kind contributions should be identified in the grant proposal and grant agreement.

### **APPENDIX I, GLOSSARY**

In-Kind                    A non-cash contribution made by parties other than the State which is used as the state match, reducing or eliminating the State's cash outlay.

Questioned Cost        A cost that is questioned by the auditor because of an audit finding:

- Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;
- Where the costs, at the time of the audit, are not supported by adequate documentation; or
- Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

### **APPENDIX 4, ANNOUNCEMENT LETTER**

In order to expedite our review and facilitate future discussions, we request the following information be made available to our auditors as soon as possible and at least 45 days prior to the entrance conference:

14. Information regarding what source/supporting documents are maintained in the accounting system for grant expenditures, including Matching and In-Kind contributions.