



# RDO's in the Middle

Presented by Bob Lloyd

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# Bob Lloyd

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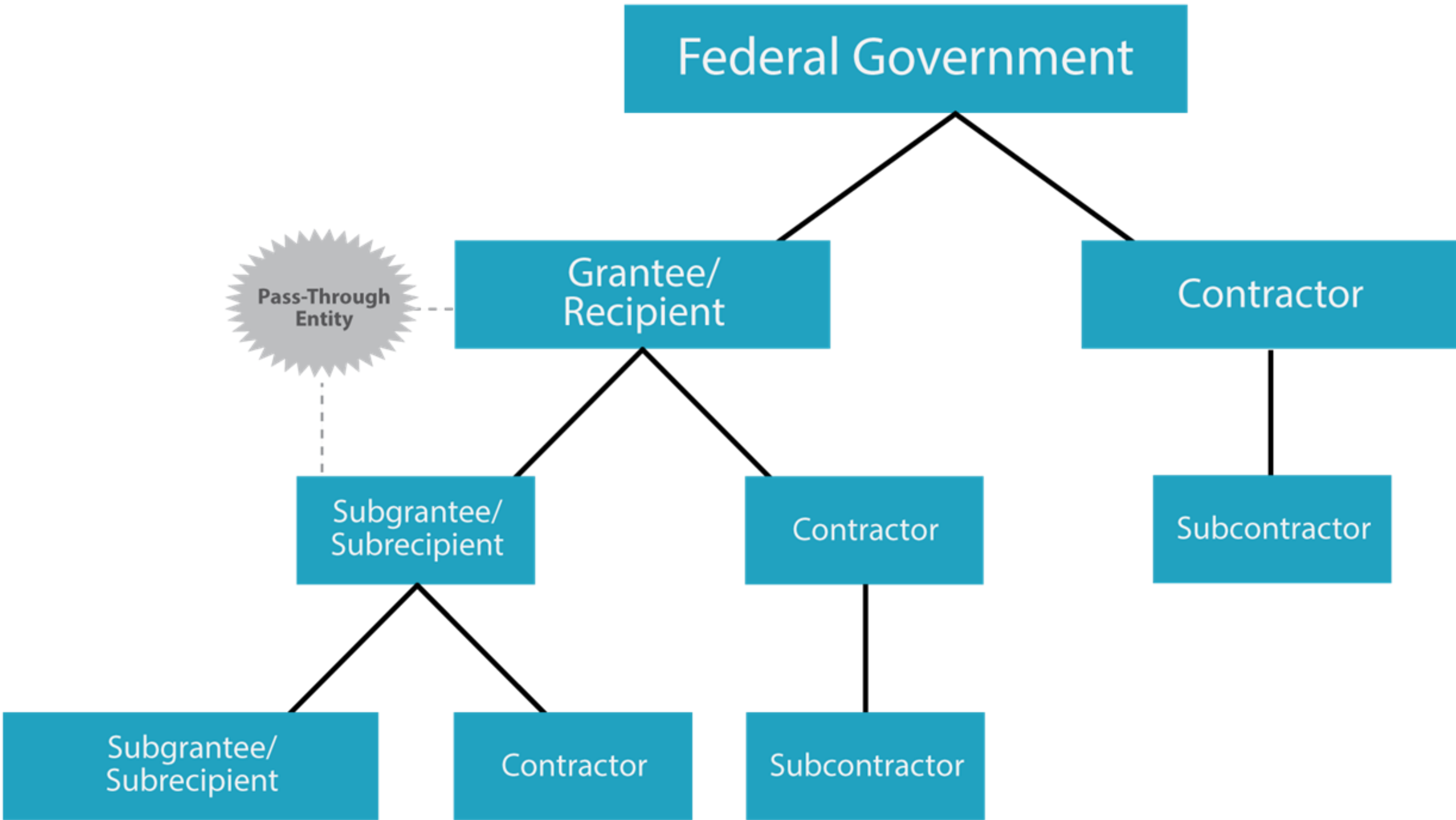
**Bob Lloyd is a respected authority on policies and practices affecting the award, administration and oversight of federal grants, contracts and subawards. He has nearly 40 years of experience in federal award implementation. Prior to starting his management consulting practice, he served as the executive director of the Grants Management Advisory Service and held staff positions in two large federally funded organizations. He has been a consultant, trainer or advisor to award and audit units in sixteen federal award-making departments and agencies, and to recipient and subrecipient organizations and their professional advisors. He is the principal author of *A Guide to OMB Grant Reform* and several other reference works on federal grants management and audits.**



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# Sorting Out Federal Award Relationships



# RDO as Direct Recipient

- **Basis for Selection**
- **Federal Agency Risk Assessment**
- **Contents of the Federal Award (2 CFR 200.211)**
- **Post-Award Administration**
  - **Incurrence of Cost (Subpart E, 2 CFR 200)**
  - **Documentation (2 CFR 200.430)**
  - **Payment (2 CFR 200.305(b))**
  - **Reporting (2 CFR 200.328)**
- **Close-out (2 CFR 200.344; 2 CFR 200.403(h))**
  - **Continuing Accountability**

# RDO as Subrecipient

- **Pass-through entity case-by-case determination of the relationship (2 CFR 200.331)**
- **Conduct of risk assessment by pass-through entity (2 CFR 200.332(b))**
- **Formulation of the subaward agreement by the pass-through entity (2 CFR 200.332(a))**
  - **Policy intent: Uniformity**
- **Post-award administration (2 CFR 200.302; 2 CFR 200.305; 2 CFR 200.328; 2 CFR 200.415)**
  - **Payment**
  - **Documentation**
  - **Reporting**
- **Close-out (2 CFR 200.344; 2 CFR 200.403(h))**

# RDO as Contractor

- **2 CFR 200.317-327, 2 CFR 200, Appendix II**
- **Competition**
- **Solicitation**
  - **Specifications/Statement of Work**
    - **No Involvement in Solicitation by RDO or Other Potential Contractors**
  - **Proposal Instructions**
  - **Evaluation Criteria**
- **Source Evaluation and Selection**
- **Contract Placement**
  - **Terms and Conditions**
  - **Contractor Records**
- **Contract Administration**



# RDO Use of the “Lower Tier” Relationships

- **Subaward vs. Contract**
- **Subrecipient vs. Contractor**
- **What Difference Does It Make?**
  - **When Do the Federal Funds Lose Their Identity?**
  - **Nature of Pre-award Due Diligence**
  - **Agreement Terms and Conditions**
  - **Administration and Oversight**
    - **FFATA Reporting**
    - **Nature of Monitoring**
    - **Single Audit Applicability**



# Key Product of OMB Grant Reform

- OMB Revised “Uniform Guidance” (2 CFR 200)
- 2 CFR 200.331—Subrecipient and Contractor Determinations
  - Derived from Section \_\_\_\_ .210 of OMB Circular A-133
  - Eliminated the Word “Vendor”
- Pass-through Entity “Must make case-by-case determinations whether each agreement it makes for the disbursement of Federal funds casts the party receiving the funds in the role of a subrecipient or a contractor.”

# Important Factors

- **Organizations can concurrently be recipients, subrecipients, and contractors under differing awards**
- **Federal agencies may issue additional guidance but it must be consistent with OMB policy in 2 CFR 200.331.**
- **Federal agency approval to subaward, contract out, or otherwise transfer substantive activity (2 CFR 200.308)**
- **OMB instruction to use "judgement" in making the determination—the "substance " of the relationship is more important than the "form of the agreement."**
- **Creation of a "federal assistance relationship" or a "procurement" relationship**



# Subrecipient Relationships: Characteristics “Supporting” Classification as Subrecipient

- **2 CFR 200.331(a)**
  - **Creates a federal assistance relationship**
  - **Determines beneficiary eligibility**
  - **Performance measured against objectives of the federal program**
  - **Responsible for programmatic decisionmaking**
  - **Responsible for compliance with applicable program requirements**
  - **Uses federal funds to carry out a public program purpose**

# Contractor Relationships: “Indicative” Characteristics

- **2 CFR 200.331(b)**
- **Provides goods and services within normal business operations**
- **Provides similar goods and services to many different purchasers**
- **Operates in a competitive environment**
- **Provides goods and services ancillary to operation of the federal program**
- **Not subject to compliance requirements of the federal program although similar requirements may apply for other reasons.**



# What Factors Are Not Mentioned?

- **Type of pass-through entity**
- **Type of lower tier organization**
- **"Costing" of the agreement**
  
- **New Language:**
  - **No single factor or any special combination of factors is necessarily determinative**
  - **Federal agency is not a party to either type of lower tier agreement**

# What Should Drive the Decision?

- **The lower tier relationship itself**
  - **What is intended?**
  - **How was it entered into?**
  - **What should the terms and conditions say?**
  - **What do the terms and conditions actually say?**
  
- **Use a "scales of justice" model**

***NOTE: OMB uses clear distinctions by use of terminology and organization of the Uniform Guidance***

# What Has Been the Problem?

- **Misuse of Terminology**
- **Lack of Clarity in Prior Applicable Rules**
- **Abundance of Caution by Pass-through Entities**
- **Years of Misapplication of Policies**
- **Federal (Auditors) Worries about Accountability**

# Nuts and Bolts: RDO as Pass-through Entity

## ➤ The "Musts"

- **Make case-by-case determination about the nature of the relationship (2 CFR 200.331)**
- **Conduct a risk assessment of the subrecipient organization (2 CFR 200.332(b))**
- **Formulate the subaward agreement (2 CFR 200.332(a))**
- **If applicable, submit FFATA subaward reports (2 CFR 170)**
- **Conduct oversight and monitoring activities (2 CFR 200.332(d-f))**

## ➤ The "Shoulds"

- **Build confident knowledge of the Uniform Guidance**
- **Practice the real "Golden Rule"**
- **Use "Differential Accountability" when warranted.**



# Nuts and Bolts: RDO as Purchaser of Goods and/or Services

- **2 CFR 200.317-327**
- **Sources of Authority**
- **Importance of Terminology**
- **Key Concepts**
- **Code of Conduct**
- **Acquisition Planning**
- **Methods of Procurement**
- **Solicitation of the Marketplace**
- **Competition**
- **Source Evaluation and Selection**
- **Contract Award**
- **Contract Administration**
- **Procurement Records**

# Help...and More Help

## Access NADO's Federal Grants Management Webinar Series

- **Four Sessions: September 9-October 16**
  
- **ATC Session: "Unpacking OMB's Revised Uniform Guidance"**
  
- **Questions**
  - **Now**
  - **ATC: "Office Hours"**
  - **Later: Bob Lloyd**  
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