

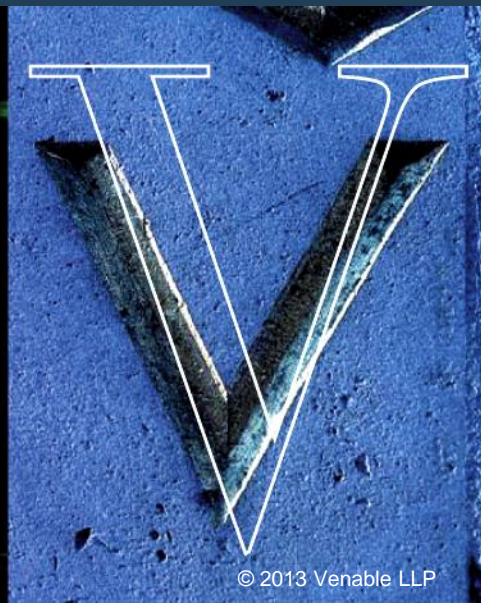
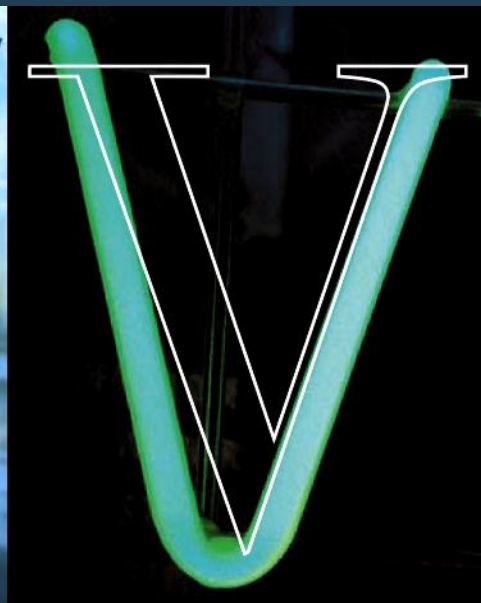
THE TOP TEN FEDERAL GRANT AND CONTRACT PITFALLS FOR NONPROFITS

Tuesday, February 12, 2013
12:30 p.m. - 2:00 p.m. EST

Venable LLP
Nonprofit Organizations Practice
Washington, DC

Moderator:
Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists:
Steven Steigleder, Institute of International Education
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Upcoming Venable Nonprofit Legal Events

March 13, 2013 - [Preparing an Online Social Media Policy: The Top Ten Legal Considerations for Your Nonprofit](#)

April 16, 2013 - Public Policy and Politics:
Compliance Tips for Your Nonprofit's Advocacy and
Electoral Efforts (Details Coming Soon)



#1 - Failure to Understand the Difference between Acquisition and Assistance

- Acquisition = Contract
 - Federal Acquisition Regulations (FAR)
- Assistance = Grant or Cooperative Agreement
 - Code of Federal Regulations (CFR)
 - E.g., Title 2 of the CFR (government-wide); Title 22 CFR 226 (agency-specific regulation, US AID)



#2 - Believing Grant Recipients Have Greater Compliance Latitude

- Contracts Misnomers
 - Greater regulation
 - More enforcement focus and resources
- Grants
 - Subject to DoJ and OIG investigations
 - Similarly subject to False Claims Act
 - NDAA FY13, Sec. 828 expands whistleblower protections to grant and contract programs alike



#3 - Funding Issues

- Analysis of impact on organizational cash flow
 - Is the award operating under a Continuing Resolution?
- Understand the grant's payment provisions and their impact on cash flow
 - Cash advances
 - Reimbursement
- Understand the difference between estimated ceiling and funds obligated



#4 - Understanding the Applicability and Scope of OMB Circular A-122 and Other OMB Circulars

- A-122 has limited applicability/scope
 - Applies to a nonprofit, cost-based arrangements at all tiers
 - Does not apply to fixed-price arrangements
 - Does not apply to profit
- A-21
 - Applies to an educational institution, cost-based arrangements at all tiers
 - Principles are a guide for fixed-price arrangements
 - Does not apply to profit
- A-110
 - Admin. requirements for grants to higher education, hospitals, and other nonprofits



#5 - Failing to Maintain Accurate Time Cards and Other Records

- The accuracy of time cards, reports, and invoicing of paramount importance
- Estimates not allowed
- Should be kept contemporaneously
- System for maintaining accuracy
- Failures can give rise to civil, criminal and/or administrative action
 - E.g., suspension/debarment



#6 - Not Taking Advantage of a Post-Award Conference

- Establish a good working relationship with Agreement Officer
- Seek Agreement Officer's interpretation of clauses you do not fully understand
- Establish expectations for the time required to obtain Agreement Officer action on selected items requiring advance approval



#7 - Failure to Read Federal Award Thoroughly

- Imperative to review and understand all documents, including those incorporated by reference
- Misunderstanding the type of grant/contract issued by the government (i.e., is the grant cost-based, fixed-price, etc.)



#8 - Misunderstanding Delegation of Authority

- Role and Responsibility of the Agreement Officer
- Role and Responsibility of the Agreement Officer's Technical Representative
- Role of other Federal officials involved in the program



#9 - Other Important Requirements

- Foreign Corrupt Practices Act
- Gifts/gratuities
- Conflicts of interest
- Maintaining auditable records
- Failure to Comply with Fly America Act Restrictions
- Subcontracting/subgrant restrictions



#10 - Misunderstanding the Case of Fraud

- Accusations of fraud need not be based on the affirmative knowledge of the defrauding individual
 - Knowledge includes actual knowledge and:
 - Deliberate ignorance of the truth or falsity of the information, or
 - Reckless disregard of the truth or falsity of the information
 - Failure to have adequate controls can be deemed reckless disregard
- Can be raised by disgruntled employees via the *qui tam* whistleblower provisions



Questions

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