

# PRE-AWARD COST

(Retroactive Funding)

## Definitions in OMB Guidance

- ▣ 2 CFR 225 (OMB Circular A-87), Appendix B, Item 31, provides this definition:

Pre-award costs are those incurred **prior to the effective date of the award** directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and **only with the written approval of the awarding agency.**

- ▣ 2 CFR 220 (OMB Circular A-21), Appendix A, Section J.36, provides this definition:

Costs incurred **prior to the effective date of the sponsored agreement**, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

- ▣ 2 CFR 230 (OMB Circular A-122), Appendix B, Section 36, provides this definition:

Pre-award costs are those incurred **prior to the effective date of the award** directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and **only with the written approval of the awarding agency.**

## Definitions in GAO Principles of Appropriation Law, Chapter 10, Section G.2

- ▣ **Retroactive funding**-the funding of costs incurred by a grantee before the grant was awarded (can be before the application is submitted).

Three situations occur with respect to retroactive funding...

### Situation 1:

Costs incurred after both the program legislation and the implementing appropriation are enacted. Generally, allowable where:

- There is no contrary indication in the language or legislative history of the program statute or appropriation.
- Allowance is not prohibited by the grantor agency's regulations.
- The agency determines that allowance would be in the best interest of carrying out the statutory purpose.

## Situation 2:

- ▣ **Costs incurred after program legislation is enacted, but before an appropriation becomes available.**
  - Previously, a general rule was, absent express intent otherwise, grantee obligations arising before an appropriation were not payable.
  - However, there is no legal requirement for a general rule, rather
- ▣ **Comptroller General made the decision that:**
  - We would prefer to base each decision from now on, on the statutory language, legislative history, and particular factors operative in the particular case in question, rather than on a general rule.

However, if an agency wishes to limit situations for retroactive funding, it could make it clear that no obligations can arise prior to the availability of an appropriation, thus avoiding potential Anti-deficiency Act problems.

## Situation 3:

- ▣ **Costs incurred before the appropriation became available and before program authority was enacted.**
  - Generally cannot be funded retroactively.
  - CG recognizes that there could possibly be exceptions, but none to date.

**\*Note\*** There are documented cases where payments were not made for pre-award costs because a grant was never made.

## Current APHIS Policy

APHIS Agreements Management Manual,  
Chapter 4, page 4-23

- Pre-award costs (sometimes referred to as pre-agreement costs) are those costs incurred before finalization of all award documents for financial assistance. Approval for costs prior to the award may be included (after the project has begun) in the Notice of Award by covering the dates of the pre-award costs within the effective dates of the award. Verbal approval to enter into an agreement or incur costs is not valid.
- Pre-award costs always are incurred at the applicant's risk. A request for coverage of pre-award costs, usually in the form of a pre-award letter, is contingent on a signed Notice of Award. Any costs incurred before approval of the Notice of Award will be subject to restrictions incurred by the applicable cost principles.