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MEMORANDUM

DATE: April 12, 2010
TO: TechMIS Subscribers
FROM: Charles Blaschke
SUBJ: i³ Guidance Update

Because a number of TechMIS subscribers are considering participating in i3 grant applications from LEAs or other eligible non-profits, we want to provide you with the latest information which we have gathered regarding participation of for-profit organizations in i3 grants. The guidance and interpretations are still hazy in certain areas. The bottom line is that TechMIS subscribers should work out arrangements with LEAs on contract matters early to ensure they are paid for products or services and from what funding sources, especially during “scale-up” phases.

Please call me directly if you have any questions.

**Stimulus Funding Alert:
USED Provides Updated Guidance on the Investing in Innovation
Fund (i³) Which Attempts to Clarify Whether i³ Grantees Can Use
Grant Dollars to Purchase Products or Services from For-Profit
Entities and Use For-Profit Firm Research in Order to Meet “Evidence
Criteria” for Selection**

A Technology Monitoring and Information Service (TechMIS)
SPECIAL STIMULUS FUNDING ALERT

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In our last TechMIS report, we raised the question as to whether i³ grant funds could be used to purchase products which are the focus of i³ grants, particularly during scale-up phases. The March 30th i³ guidance addresses the question as to whether grantees can purchase products and services from for-profit entities but does not address the question directly as to whether i³ funds can be so used. In section N-2, the Frequently Asked Question (FAQ) guidance states, “i³ grantees obtaining goods and services that are necessary to carry out their projects must follow the applicable rules in the Education Department General Administrative Regulations (EDGAR)”; it also states that grantees’ procurements “must comply with applicable state laws.” The guidance also clarifies that the only “partners” who can receive i³ subgrant funds are “official partners,” which cannot be for-profit organizations. Hence, the question still exists as to whether funds to purchase products following current EDGAR regulations and state procurement laws can come from i³ grants or whether they have to be bought with other sources of funding. It is logical to assume that i³ grants can be used to purchase products from for-profit organizations. However, firms that are serving as “other partners,” or are otherwise part of an i³ grant application, should get clarification from the potential grantee as to whether or not, if the grantee awarded an i³ grant, a portion of these funds or some other funding sources (e.g., part of the 20% cash matching contribution) could be used to purchase the product beyond any portion which would be provided as part of the 20 percent matching requirement.

In his Straight Up blog for [Education Week](#), Rick Hess who works with the non-profit American Enterprise Institute, also questions the rationale behind the most recent FAQ by noting, “This means that for-profit providers cannot receive a subgrant, but can only participate via a procurement.” However, because a for-profit firm cannot be an “official partner” with an LEA applicant which wants to work with a for-profit firm whose products and/or strategies are to be validated and replicated, the district may have to go through a formal competitive RFP process in which another firm may be selected. Hess concludes, “This would seemingly violate the i³

requirements that scaled projects be the same as the original. Hmm, that one feels positively Kafkaesque. If we are really going to ‘invest in innovation,’ doesn’t it make sense to open the process to commercial ventures – which, for my money, have the sector’s best track record of taking new solutions to scale?”

A second question raised by several TechMIS subscribers relates to whether the evidence submitted by the grantee could be information provided by the firm whose product had been the focus of prior, rigorous evaluation and research studies. The FAQ as stated was, “May an eligible applicant use prior research conducted by a for-profit research company to satisfy the standards of evidence for its proposed project?” The answer given was, “Under this program, there are no restrictions regarding the source of prior research studies providing evidence for the proposed practice, strategy, or program.” The guidance does not state that an LEA applicant must have a record of demonstrated effectiveness in using a specific program, practice, or strategy that is being proposed based on evidence provided by research conducted outside the district. It does, however, state that, to be eligible, a non-profit organization that is part of the partnership must have “a record of significantly improving student achievement, attainment, or retention through its work with an LEA or schools.” Hence, while research evidence on a program, strategy, or approach that has been proposed, for example for a validation grant, can be provided by a private research firm, it is not clear whether the peer reviewers would consider that evidence related to a record of performance by either the LEA or the non-profit applicant.

In response to our email to the i³ office on March 19, their March 27 response was, “Please understand that i³ is a competitive grant, and for that reason the Department cannot provide guidance or feedback on specific plans or proposals. In addition, the Department cannot predetermine eligibility for a proposed applicant or partner or speculate on how the peer reviewers will score specific projects.”

In a surprising break from tradition on policy interpretations by USED, the FAQ states that a grantee “may treat costs associated with preparing its grant application, including the costs of a grant writer, as indirect costs.” However, unless USED approves, the cost for preparing a grant application cannot be paid for out of the direct costs charged to the i³ program. For more than three decades, OMB Circular A-87 has discouraged such reimbursement as being part of the indirect cost. In fact, proposals written by third parties whose payment would be contingent upon grant awards have been considered illegal. The Administration has proposed to increase new K-12 education funding for competitive grants from about 16 percent to about 28 percent of USED’s total K-12 budget. This has yielded criticisms by many rural districts that they do not have a capacity to compete with, for example, urban districts which have specific staff responsible for grant applications. This may, however, be an indication of a changed policy on the part of USED. It should be noted that Secretary Duncan recently indicated that 30 percent of the nation’s “dropout factories” are in rural districts which is much more than his previous statement of 20 percent. This suggests that USED could be defining more broadly eligible rural districts because i³ grants provide a two-point competitive advantage for LEAs that qualify as rural districts.

In another clarification, the FAQ states that a private school can be an eligible applicant for i³

funding only if it is a “non-profit” and serves as an “official partner” or “applicant” for a consortium of rural LEAs. Education service agencies and SEAs which are also an “LEA” in the state (i.e., D.C. and Hawaii) may also be eligible applicants. While there are limits on the amount of i³ grant funding and the number of grant awards to grantees, there is no limit on the number of projects in which an “official” or “other partner” may participate; this once again tilts the playing field toward non-profit entities and “official partners.” Unlike many other competitive grants which require matching funds, the grantee (e.g., an LEA) may contribute in-kind or cash financial resources to the i³ project, but such funds cannot be counted as part of the 20 percent matching fee which must come from the “private sector” or other non-LEA sources.

The initial i³ and RTTT guidance stated that any products developed under these competitive grants would be made available “freely” and “posted on the Internet,” which created a concern among interested for-profit firms. The FAQ does clarify that grantees of development grants do not have to share information and evaluative data collected during the project with Communities of Practice or with USED contractors conducting evaluations or other services. During the recent SIIA Forum, i³ Director James Sheldon was not at liberty to talk much about the final i³ rules as they had not yet been published, but he did emphasize that the quality of the i³ program will largely be a function of the quality of the peer review panels. Any points needing clarification on some of the above issues should be made known to applicants prior to the May 11th application due date, and certainly be agreed upon and communicated to the peer review panel.

The i³ guidance is available at: <http://www2.ed.gov/programs/innovation/faqs.pdf>