SECTION 24:  
GRANT CONTRACTS

A grant is a class of contract which provides the transfer of cash or something of value to a recipient to support a public purpose authorized by law. Grant contracts are different from other contracts in many key ways.

Definition
Grants are financial assistance paid or services furnished by a state agency via a third party to an eligible recipient instead of acquiring by professional or technical contract, purchase, lease, or barter property or services for the direct benefit or use of the granting agency.

Grants always involve three parties: 1) the state agency with authority to make the grant, 2) the outside entity who will administer the grant or deliver the service, and 3) the final recipient of the service.

Authority to Give Grants
State agencies do not have general or automatic grant making authority. The authority for grants must be specifically stated in the statutes and is generally directly related to the appropriations that fund them. Some agencies, such as Trade and Economic Development, have long-term programs that authorize grants and loans. Most other situations are appropriation specific.

Office of Grants Management Policies
The Department of Administration’s Office of Grants Management (OGM) is charged by M.S. 16B.97 to standardize, streamline, and improve state grant-making practices per M.S. 16B.97.

One tool for accomplishing this are comprehensive grants management policies that apply to all Executive Branch agencies, boards, commissions, councils, authorities, and task forces.

To review all current OGM Policies visit: www.admin.state.mn.us/ogm_policies_and_statute.html

To learn more or contact the OGM, please visit our website at www.admin.state.mn.us/ogm

Public Notice and RFP
As a general principle, grants distributed by an agency should be done in a fair and equitable manner, which is usually done through some form of public notice. Each state agency may differ in how it notifies the public and solicits requests for proposals (RFP), but the agency should have a defined process that ensures a fair and equitable distribution. Per OGM Policy 08-03, competitive grant opportunities shall be publicized as broadly as possible and at a minimum, must be posted on the granting agency’s website.

OGM Policy 08-03: http://www.admin.state.mn.us/documents/grants_policy_08-03.pdf
Minn. Stat. § 15.994 requires state agencies with Internet sites to provide information on grants available through the agency and are encouraged to provide a link to the grant application under Minn. Stat. § 16E.20. In addition, state agencies are encouraged to develop systems for electronic grant application submission.

Examples of appropriate public notice:

- If the legislation does not specify who the grantee is, the process should be open, fair and as competitive as practical in making the awards. This would include such actions as issuing an RFP and placing a notice on the agency’s website. Agencies should also consider additional methods to reach potential applicants including, but not limited to: US mail, electronic mail, targeted newspapers and the State Register.

- If the legislation specifies specific organizations or groups, such as metropolitan counties, notification should be directly sent to all eligible organizations or groups, such as of the counties in the metro area.

The RFP should contain the following:

- State the legislative authority for the grant.
- State any specific requirements from the state legislation or federal pass-through.
- Clearly identify the objectives and work product of the grant.
- Clearly state the grant selection/evaluation criteria.
- Request a report from the grantee on other grants it has received from other state agencies. This way the evaluation panel may obtain information on the past performance of the applicant. Be prepared to verify information received from the grantees, such as verifying matching funds claimed by the grantee.
- Indicate to whom the applications should be submitted.
- State the application deadline.

If you have any question about public notice, ask your Agency Contract Coordinator, the Office of Grants Management, or Assistant Attorney General.

**Conflict of Interest**

Be aware that the statutory provisions for conflict of interest apply to everyone involved in the grant award process; including state and nonstate employees. Relevant statutes are: Minn. Stat. §§ 10A.07, 15.054, 15.43, 16C.04, 43A.38, 471.87.

OGM Policy 08-01, Conflict of Interest Policy for State Grant-Making addresses potential conflicts of interest in the grant award process. This policy also applies to organizations that are current state grantees or grant applicants. OGM Policy 08-01 includes procedures to avoid both individual and organizational conflicts of interest.

OGM Policy 08-01: [http://www.admin.state.mn.us/documents/grants_policy_08-01.pdf](http://www.admin.state.mn.us/documents/grants_policy_08-01.pdf)

The following are some definitions created by the commissioner of Administration related to conflicts of interest:
• Actual conflict of interest: An “actual conflict of interest” occurs when a decision or action would be compromised without taking appropriate action to eliminate the conflict. If an employee has an outside interest that conflicts with her/his public responsibilities to the extent that her/his public responsibilities or decisions are influenced to the detriment of the public or the benefit of the employee or her/his personal interest, that is an actual conflict of interest. Such action may include an employee receiving a direct or indirect financial benefit as a result of using the public position and/or influence; or the outside influence could be so prevalent that the public decision is influenced or dictated by an employee’s outside interest.

• Potential conflict of interest: A “potential conflict of interest” is a situation in which an employee has outside, private influence and/or interests that could influence public decisions, actions or responsibilities. This differs from an actual conflict of interest in that actions have yet to occur where the outside influence and/or interests of the employee affect or dictate public decisions, actions or responsibilities.

• Appearance of a conflict of interest: An “appearance of a conflict of interest” is any situation in which a reasonable person would conclude that an employee has an outside influence and/or interest that conflicts with his/her public duties or responsibilities.

There are a number of guidelines on the issue of conflict of interest in Minnesota statutes. Additionally, most state agencies have agency specific statutes, rules and policies. This section does not attempt to cover all of these, but focuses on the major statutory standards and on some of the obligations and responsibilities that flow from them. For questions as to whether or not something is a conflict of interest, contact your agency ethical practices officer.

The message delivered by the statutes listed above is clear and simple:

- Each state employee, as an individual, is responsible for NOT putting himself/herself and his/her state agency in a position where a conflict of interest might exist or could give the appearance of existing.
- Any activity, influence or input related to any part of the acquisition process IS covered by these standards – from getting the idea to approving the payment, and everything in between.
- When anyone in a position of responsibility in a state agency becomes aware of a potential conflict of interest, THAT PERSON MUST ACT to remove the state employee from ANY involvement with the acquisition in question.

Use of Grant Agreements OGM Policy 08-04 states that Minnesota state agencies must use a written grant agreement for all grants made by the agency. It is essential to write clear duties and expectations of the grantee into the grant contract. Careful drafting ensures that the parties to the contract have achieved an understanding and have mutually agreed on the terms of the contract, such as duties, quality of performance, time of performance, and terms of payment. Careful drafting avoids future disputes, which are costly and waste valuable resources.

An ambiguous contract may result in failure to obtain the services the agency assumed were contained in the contract. Agencies may find it difficult to require contractors to perform duties that are not clearly and specifically stated. Ambiguous contracts lead to amendments that are used to
clarify items that should have been in the original contract. The written contract is generally the only thing that counts in a dispute over whether the contractor has fulfilled his promises.

In a legal action, any ambiguity will be interpreted against the party in the more powerful position; in most cases the agency, so a provision that can be interpreted against the agency most likely will be. Don't take for granted that something you and the grantee have discussed and verbally agreed upon will happen. **If it is not written in the contract, it is not enforceable.**

**Suggestions for clear drafting**

First and foremost you must answer who, what, when, where, and how much. Answering these questions with specific detail is a great start to contract drafting. Thinking through the following list of issues will help you get the most from your contractor.

- Does the agency have statutory authority to enter into the grant?
- List precisely what you want to get from the grantee; such as, the qualifications of the person(s) performing the work; the work; the time of performance; the final product.
- Specifically identify how grant payments will be made to the grantee.
- Determine how you know when you got what you wanted; determine how you will enforce the provisions of the contract.
- Specify grantee's duties simply and in plain English.
- Don't rely on the grantee’s proposal as the list of duties. It is usually unspecific, is not drafted in legally enforceable language. It may contain language that is extraneous, conflicts with your goals, or is contrary to state law.
- Incorporate all attachments to the contract properly.
- Label attachments in the order they are mentioned in the contract; that is, the first attachment mentioned should be Attachment A, the second, Attachment B, etc.
- Attachments must actually be attached to each copy of the contract. Lengthy and cumbersome attachments may be incorporated by reference without being attached to the contract if the contract specifically identifies those items in such a manner that they can be unambiguously identified and their location specifically identified. Such as, “price schedule dated November 15, 1999, and filed with the US Department of Health and Human Services (the place where it is actually officially filed and available).” To incorporate an attachment by reference state in the contract, “see Attachment Q, which is incorporated into this contract by reference. Attachment Q may be located at ____________.” Another example is a lengthy price schedule. You can incorporate this by stating, “see the price schedule dated November 15, 1999, and filed with the US Department of Health and Human Services (the place where it is actually officially filed and available).”
- All numerical computations are accurate.
- Every blank in the contract is filled in.
- All instructions are deleted from the contract form.
- The contract is properly paginated.
- The contract is consistent with the limits and purposes of the appropriation from which payments are to be made.

A sample grant contract is available on the OGM website. Since each grant is unique, this form may have to be modified. Agencies are strongly encouraged to contact the OGM and their Assistant Attorney General to review any modifications to this form.
Sample Grant Contract
The Sample Grant Contract form is available on the OGM website at:

http://www.admin.state.mn.us/documents/grant_shell_11-08.doc

Grant Payments
OGM Policy 08-08 requires that state agencies specify the method and schedule of payments for each grant in the grant agreement. Reimbursement is the preferred method for making grant payments. Although they are not preferred, advance payments on grants may be allowed in certain situations. Advance payments on grants shall be negotiated between the state agency and grantee on a case by case basis. Please review OGM Policy 08-08 for additional information: http://www.admin.state.mn.us/documents/grants_policy_08-08.pdf

When entering the grants into the SWIFT agencies should follow the Minnesota Management and Budget’s guidance for properly coding grant payments to the correct expenditure object code and the correct accounting period.

Don’t use purchase orders for making grant payments.

Don’t forget that the prompt payment statute, Minnesota Statutes Section 16A.124, subdivision 3, applies to grants.

Amendments
Any amendments to the terms of the grant contract MUST be made according to a fully executed amendment. A memo to the grantee indicating changes is not legally binding and is not sufficient to make the changes.

It is very important that the amendment is in place before the contract expires. This will avoid any liability that may occur for not having a contract in force when the grantee is working.

Contracts may only be amended within the scope of the original grant.

An amendment must be clearly identified and written, and properly executed any time the grantee and agency agree to a change in any provision of the contract. All amendments must be clearly numbered and must be approved in the same manner as the original contract.

The contract should indicate WHY the contract was changed. You need to detail in the amendment WHY the amendment is necessary. All contract amendments should be drafted using the format of the sample amendment below. This form is available on OGM’s web page: http://www.admin.state.mn.us/ogm_forms.html

In the example below, the clause is underlined only for illustration:
AMENDMENT

Recitals

[INSTRUCTIONS: 1) FILL IN ALL BLANKS AND DELETE ALL INSTRUCTIONS. INSTRUCTIONS ARE IN BLOCK PRINT. 2) IF YOUR CONTRACT HAS EXPIRED: CONTACT YOUR AGENCY’S CONTRACT COORDINATOR IMMEDIATELY.]

Contract Start Date: ______________________ Total Contract Amount: $__________________

Original Contract Expiration Date: ___________ Original Contract: $__________________

Current Contract Expiration Date: _[IF APPLICABLE]_ Previous Amendment(s) Total: $_______

Current Amendment: $__________________

This amendment is by and between the State of Minnesota, through its Commissioner of [INSERT AGENCY NAME] (“State”) and [GRANTEE’S FULL LEGAL NAME AND ADDRESS] (“Grantee”).

Recitals

1. The State has a contract with the Grantee identified as [INSERT CONTRACT NUMBER OR OTHER IDENTIFYING INFORMATION (EXAMPLE, “DATED _______” OR ACFMS Contract Number] (“Original Contract”) to provide [GIVE A BRIEF DESCRIPTION OF SERVICES PROVIDED UNDER THE ORIGINAL CONTRACT].

2. [EXPLAIN WHY THE AGREEMENT IS BEING AMENDED].

3. The State and the Grantee are willing to amend the Original Contract as stated below.

Grant Amendment

[THE FOLLOWING IS A SAMPLE AMENDMENT. BE SURE TO CLEARLY INDICATE WHAT IS BEING ADDED/DELETED. ONE WAY TO DO THIS IS BY STRIKING OUT INFORMATION YOU WANT DELETED AND UNDERLINING THE INFORMATION YOU ADD. YOU WILL NEED TO MODIFY THIS FORM FOR YOUR NEEDS.] In this Amendment deleted contract terms will be struck out and the added contract terms will be underlined.

REVISION 1. Clause 1. “Term of Contract” is amended as follows:

1.1 Effective date: June 1, 1999, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

1.2 Expiration date: December 31, 1999 March 15, 2000, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
REVISION 2. Clause 2. “Grantee’s Duties” is amended as follows:
Grantee will prepare the Certificate of Substantial Completion and send it to the State for its signature.

REVISION 3. Clause 4.1.(C) “Total Obligation” is amended as follows:
*Total Obligation.* The total obligation of the State for all compensation and reimbursements to the Grantee under this contract will not exceed $350.00 $375.00.

Except as amended herein, the terms and conditions of the Original Contract and all previous amendments remain in full force and effect.

1. STATE ENCUMBRANCE VERIFICATION
2. GRANTEE

*Individual certifies that funds have been encumbered as required by Minn. Stat. "16A.15 and 16C.05.*

*The Grantee certifies that the appropriate person(s) have executed the contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.*
Monitoring Performance
It is the responsibility of the granting authority to monitor its grantees’ performance. OGM Policy 08-10 states that agencies must conduct at least one monitoring visit per grant period on all state grants over $50,000 and at least annual monitoring visits on grants over $250,000. In addition, agencies must conduct a financial reconciliation of grantees’ expenditures on grants over $50,000.

OGM Policy 08-10: www.admin.state.mn.us/documents/grants_policy_08-10.pdf

The following are examples of how an agency may monitor performance:

- Obtain and review third party certifications indicating that the work is satisfactorily completed (by an inspector).
- Perform site visits using a fiscal/program management checklist as a tool to ensure the grantee’s contract compliance.
- Engage an independent auditor/public accountant to perform a contract compliance audit of the grantee’s activities and subsequently review the auditor’s report.
- Obtain and thoroughly examine all payment documentation submitted for reimbursement and the documentation that evidences that the grantee obtained required match funds.
- Documentation from monitoring visits must be kept in the grant file.

Procedures Checklist
This checklist may serve as a guide as you move through the approval process.

- Identify grant-making statutory authority and determine a mechanism for ensuring that a fair and equitable means of spending the grant funds has been identified by the agency and approved by agency head.
- Follow OGM and agency grant making guidelines and identify grantees. (Public notice of the grant is strongly recommended.)
- Select grantees.
- Write a grant contract using OGM and agency guidelines and the appropriate contract form.
- Encumber money.
- Obtain grantee’s and state’s signatures.
- Notify grantee, by sending copy of contract to grantee.
- Monitor grantee’s progress and compliance with grant requirements as required by OGM and agency guidelines.