



CIRCULAR

STATE OF NEW JERSEY

DEPARTMENT OF THE TREASURY

NO.: 07-05-OMB	ORIGINATING AGENCY: OFFICE OF MANAGEMENT AND BUDGET	PAGE 1 OF 2
EFFECTIVE DATE: 09-07-06	EXPIRATION DATE: INDEFINITE	SUPERSEDES: 05-12-OMB
SUBJECT: GRANT AGREEMENTS – AGENCY CONTRACTS		
ATTENTION: DIRECTORS OF ADMINISTRATION AND CHIEF FISCAL OFFICERS		
FOR INFORMATION CONTACT: ROBERT LAZZARA		PHONE: (609) 984-1536

I. PURPOSE

The purpose of this circular letter is to establish State policy regarding grant agreements and/or agency contracts entered into by State agencies. (Note: Section VI of the Grant Agreement has been amended and is the only change to 07-05-OMB.)

II. DEFINITIONS

Grant - An award of financial assistance to an organization that provides support to accomplish a public purpose in the form of money, or property in lieu of money, by a State agency. The term includes "cost-type contracts" in which the contractor is paid on the basis of the costs it incurs, with or without a fee; and "fixed price contracts" in which a specific amount is paid per unit regardless of the actual costs incurred. The term does not include purchases made in accordance with statutes and regulations regarding procurement, and stipends, tuition aid, loans to students and other similar expenditures.

Grantee - The government or non-government entity to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

III. POLICY

The following policy is adopted with regard to grant awards made by all State agencies.

A. The Standard Grant Agreement developed by the Office of Management and Budget can be used for any grant.

1. Grant agreements developed by an agency for its exclusive use may be used; however, all sections of the Standard Grant Agreement must be included.

2. State agencies may choose not to use the entire grant agreement for grants less than \$10,000. However, Section I (Grant Agreement Data) of the Standard Grant Agreement must be included.
 - B. Departments shall adopt policies that insure that the sum of the current fiscal year's portion of the contract commitment shall not exceed the appropriation for that program. For example, agencies shall not over commit funds because the agency anticipates that contract balances from one Grantee will materialize for use to fund a contract to another Grantee.
 - C. All grants shall be signed by a Department Grant Approval Officer, who shall attest that sufficient funds have been appropriated by the State Legislature and are available for the current State fiscal year's portion of the grant award.
 - D. Accounting for grants (e.g. appropriations, encumbrances, etc.) must be in compliance with the Office of Management and Budget's grant accounting policy and procedures.
 - E. Each agency shall maintain an official central file of all grant agreements entered into and approved by the Department Grant Approval Officer.
 - F. All grant programs are to be audited for compliance with applicable State and Federal laws and regulations.

Charlene M. Holzbaur
Director

APPENDIX (Standard Grant Agreement)

STATE OF NEW JERSEY GRANT AGREEMENT BETWEEN

THE DEPARTMENT OF _____

AND _____ (GRANTEE)

GRANT NUMBER _____

GENERAL

- I. Grant Agreement Data
- II. Compliance with Existing Laws
- III. Bonding and Insurance
- IV. Indemnification
- V. Assignability
- VI. Availability of Funds

PRE-AWARD REQUIREMENTS

- VII. Special Grant Conditions for "High Risk" Grantees

POST-AWARD REQUIREMENTS

- VIII. Financial Management System
- IX. Method of Payment
- X. Allowable Costs
- XI. Period of Availability of Funds
- XII. Matching and Cost Sharing
- XIII. Program Income
- XIV. Audit Requirements
- XV. Budget Revision and Modification
- XVI. Property Management Standards
- XVII. Procurement Standards
- XVIII. Monitoring of Program Performance
- XIX. Financial and Performance Reporting
- XX. Access to Records
- XXI. Record Retention
- XXII. Enforcement
- XXIII. Termination and Suspension

AFTER-THE-GRANT REQUIREMENTS

- XXIV. Grant Closeout Procedures

ATTACHMENTS

- A. Additional Grant Provisions
- B. Approved Budget
- C. Comparison of Actual to Budget Expenditures
- D. Program Specifications

I. **Grant Agreement Data** (Click to View)

II. **Compliance with Existing Laws**

A. The Grantee, in order to permit the Department to award this grant, agrees to comply with all Federal, State and municipal laws, rules, and regulations generally applicable to the activities in which the Grantee is engaged in the performance of this grant.

B. These laws and regulations include, but are not limited to the following:

1. **Federal Office of Management and Budget (OMB)** documents:

<http://www.whitehouse.gov/omb/circulars/>

2. **New Jersey Department of the Treasury, Office of Management and Budget** documents:

a) Circular Letter 04-04-OMB, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid:

<http://www.state.nj.us/infobank/circular/cir0404b.htm>

b) State Grant Compliance Supplement:

<http://www.state.nj.us/treasury/omb/publications/grant/index.shtml>

3. **State Affirmative Action Legal Citations:**

The Grantee agrees to require its contractors to comply with the requirements of N.J.A.C. 17:27, applicable provisions of N.J.S.A 10:5, et. al., and P.L. 1975, c.127 and all implementing regulations.

Failure to comply with the laws, rules and regulations shall be grounds for termination of this grant.

III. **Bonding and Insurance**

Bonding and insurance of the type described in Attachment A, Part VII, shall be provided by the Grantee and proof of bonding and insurance must be retained on file by the Grantee.

IV. **Indemnification**

The Grantee shall be solely responsible for and shall keep, save, and hold the State of New Jersey harmless from all claims, loss, liability, expense, or damage resulting from all mental or physical injuries or disabilities, including death, to its employees or recipients of the Grantee's services or to any other persons, or from any damage to any property sustained in connection with the delivery of the Grantee's services that results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Grantee's failure to provide for the safety and protection of its employees, whether or not due to negligence, fault, or default of the Grantee. The Grantee's responsibility shall also include all legal fees and costs that may arise from these actions. The Grantee's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

V. Assignability

The Grantee shall not subcontract any of the work or services covered by this grant, nor shall any interest be assigned or transferred except as may be provided for in this grant or with the express written approval of the Department.

VI. Availability of Funds

The Recipient shall recognize and agree that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the availability to the Department of funds appropriated by the State Legislature from State and/or Federal revenue or such other funding sources as may be applicable. A failure of the Department to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach of the Agreement by the Department or an event of default under the Agreement and the Department shall not be held liable for any breach of the Agreement because of the absence of available funding appropriations. In addition, future funding shall not be anticipated from the Department beyond the duration of the award period set forth in the Grant/Loan Agreement and in no event shall the Agreement be construed as a commitment by the Department to expend funds beyond the termination date set in the Grant/Loan Agreement.

VII. Special Grant Conditions For "High Risk" Grantees

- A. A Grantee may be considered "high risk" if the Department determines that a Grantee:
1. Has a history of unsatisfactory performance.
 2. Is not financially stable.
 3. Has a financial management system which does not meet the standards set forth in Section VIII.
 4. Has not conformed to terms and conditions of previous awards.
 5. Is otherwise not responsible; and the Department determines that an award will be made; special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.
- B. Special conditions or restrictions may include:
1. Payment on a reimbursement basis.
 2. Withholding authority to proceed to the next phase until receipt or evidence of acceptable performance within a given funding period.
 3. Requiring additional, more detailed financial reports.
 4. Additional project monitoring.
 5. Requiring the Grantee to obtain technical or management assistance.
 6. Establishing additional prior approvals.

- C. If a Department decides to impose such conditions, the Department official will notify the Grantee as soon as possible, in writing, of:
1. The nature of the special conditions/restrictions.
 2. The reason(s) for imposing the special conditions.
 3. The corrective actions that must be taken before the special conditions will be removed by the Department and the time allowed for completing the corrective actions.
 4. The method of requesting reconsideration of the conditions/restrictions imposed.

VIII. Financial Management System

- A. The Grantee shall be responsible for maintaining an adequate financial management system and will immediately notify the Department when the Grantee cannot comply with the requirements established in this Section of the grant.
- B. The Grantee's financial management system shall provide for:
1. Financial Reporting:

Accurate, current, and complete disclosure of the financial results of each grant in conformity with generally accepted principles of accounting, and reporting in a format that is in accordance with the financial reporting requirements of the grant.
 2. Accounting Records:

Records that adequately identify the source and application of funds for Department supported activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures and income.
 3. Internal Control:

Effective internal and accounting controls over all funds, property and other assets. The Grantee shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.
 4. Budget Control:

Comparison of actual expenditures or outlays with budgeted amounts for each grant. Also, the relationship of the financial information with performance or productivity data, including the development of unit cost information required by the Department.
 5. Allowable Cost:

Procedures for determining reasonableness, allowability, and allocability of costs generally consistent with the provisions of Federal and State requirements.
 6. Source Documentation:

Accounting records that are supported by source documentation.
 7. Cash Management:

Procedures to minimize the time elapsing between the advance of funds from the Department and the disbursement by the Grantee, whenever funds are advanced by the Department.

- C. The Department may require the submission of a "Statement of Adequacy of the Accounting System," as provided in Attachment A, Section II of this grant agreement.
- D. A Department may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to the award. If the Department determines that the Grantee's accounting system does not meet the standards described in paragraph B above, additional information to monitor the grant may be required by the Department upon written notice to the Grantee, until such time as the system meets with Department approval.

IX. Method of Payment

A payment will be made to the Grantee in a manner determined by the Department (see Attachment A, Section V), upon receipt by the Department of a properly executed copy of this grant.

X. Allowable Costs

A. Limitation on Use of Funds

Grant funds must be used only for allowable costs.

B. Applicable Cost Principles

For each type of organization, there is a set of Federal principals for determining allowable costs. Allowable costs will be determined in accordance with applicable Federal cost principles specific to the organization incurring the costs (e.g. Federal OMB Circulars A-87, A-122, A-21, etc.) and State requirements.

XI. Period of Availability of Funds

Grantees may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

XII. Matching and Cost Sharing

The Grantee shall be required to account to the satisfaction of the Department for matching and cost sharing requirements of the grant in accordance with Federal and State requirements.

XIII. Program Income

Program income shall be defined as gross income earned by the Grantee from grant-supported activities. Such earnings include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

- A. If a Grantee receives interest earned of \$250 or more in a fiscal year on advances of grant funds, see Attachment A, Section VIII (B).
- B. Unless the grant provides otherwise, the Grantee shall have no obligation to the Department with respect to royalties received as a result of copyrights or patents produced under the grant.

- C. All other program income earned during the grant period shall be retained by the Grantee and used in accordance with Attachment A, Section IV of this grant.

XIV. Audit Requirements

This grant is covered by the audit requirements of the Department of the Treasury Circular Letter 04-04-OMB, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid.

XV. Budget Revision and Modification

- A. This Section sets forth criteria and procedures to be followed by the Grantee in reporting deviations from the approved budget and in requesting approvals for budget revisions and modification. Revisions and modifications to this grant must be requested by the Grantee and approved by the Department in writing.
- B. Grantee shall request approval in writing, from the Department Grant Approval Officer designated in Attachment A, Section III when there is reason to believe a revision or modification will be necessary for the following reasons:
1. Changes in the scope, objective, financial assistance, key personnel, timing of the project or program, or deviations from the approved budget.
 2. To provide financial assistance to a third party by sub-granting (if authorized by law) or by another means to obtain the services of a third party to perform activities which are central to the purpose of the award.
 3. The need for additional funding or to extend the period of availability of funds.
 4. Adjustments between cost categories and/or shifts of funding to direct cost categories that are not part of the approved budget.
 5. Revisions which involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

For the purpose of this grant, indirect costs are defined as those incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved.

Direct costs are defined as those which can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged.

- C. The Department may also, at its option, establish policy to restrict transfers of funds among direct cost categories and must require Grantees to comply with applicable Federal and State requirements concerning prior approval for certain budget changes.
- D. When requesting approval for budget revisions, the Grantee shall clearly show the change in cost categories and may use the budget form provided in Attachment B of this grant.
- E. The Department may request changes in the scope of services of the Grantee to be performed hereunder. Such changes, which are mutually agreed upon by and between the Department and the Grantee must be incorporated in written amendments to this grant.

- F. If the Grantee is making program expenditures or providing grant services at a rate which, in the judgment of the Department, will result in substantial failure to expend the grant amount or provide grant services, the Department may so notify the Grantee. If, after consultation, the Grantee is unable to develop to the satisfaction of the Department a plan to rectify its low level of program expenditures or grant services, the Department may upon thirty (30) days notice to the Grantee, reduce the grant amount by a sum so that the revised grant amount fairly projects program expenditures over the grant period. This reduction shall take into account the Grantee's fixed costs and shall establish the committed level of services for each program element of grant services at the reduced grant amount. If such a determination is made by the Department subsequent to the awarding of the grant and the funds have already been received by the Grantee, the reduced amount will be remitted to the Department.
- G. If the revision requested will result in a change to the Grantee's approved project which requires Federal prior approval, the Department will obtain the Federal agency's approval before approving the Grantee's request.

XVI. Property Management Standards

Property furnished by the Department or acquired in whole or in part with Federal or Department funds or whose cost was charged to a project supported by Federal or Department funds shall be utilized and disposed of in a manner generally consistent with State and Federal requirements.

XVII. Procurement Standards

Procurement of supplies, equipment, and other services with funds provided by this grant shall be accomplished in a manner generally consistent with Federal and State requirements.

Adherence to the standards contained in the applicable Federal and State laws and regulations does not relieve the Grantee of the contractual responsibilities arising under its procurements. The Grantee is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurement entered in support of a grant.

XVIII. Monitoring of Program Performance

- A. The Grantee must assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity to monitor performance under grant supported activities to assure time schedules and objectives are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved as applicable.
- B. The Grantee shall inform the Department of the following types of conditions which affect program objectives and performance as soon as they become known:
1. Problems, delays, or adverse conditions which will materially impair the ability to attain program objectives, prevent meeting time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Department assistance required to resolve the situation.
 2. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated, at a lower than anticipated cost, or produces a greater benefit than originally planned.
- C. The Department may, at its discretion, make site visits to:

1. Review program accomplishments and management control systems.
2. Provide such technical assistance as may be required.
3. Perform fiscal reviews to ensure grant funds are being properly expended in a timely manner.

XIX. Financial and Performance Reporting

- A. The grant budget as used in this Section means the approved financial plan to carry out the purpose of the grant. This plan is the financial representation of the project or program as approved during the grant application and award process. The Approved Budget is contained in Attachment B.
- B. The Grantee is required to submit a final report at the conclusion of the grant.
- C. The Grantee shall submit interim expenditure reports comparing actual expenditures with the approved budget.
- D. The Grantee shall submit interim performance reports as prescribed by the Department; however, reports shall not be required more frequently than quarterly or less frequently than annually.
- E. The Grantee shall submit annual reports.
- F. Extensions to reporting due dates may be granted upon written request to the Department.
- G. If reports are not submitted as required, the Department may, at its discretion, suspend payments on this grant. The State of New Jersey may, at its discretion, take such action to withhold payments to the Grantee on this or any grant with other State agencies until the required reports have been submitted.

XX. Access to Records

- A. The Grantee in accepting this grant agrees to make available to the Department, any Federal agency whose funds are expended in the course of this grant, or any of their duly authorized representatives, pertinent accounting records, books, documents and papers as may be necessary to monitor and audit Grantee's operations.
- B. All visitations, inspections and audits, including visits and requests for documentation in discharge of the Department's responsibilities, shall as a general rule provide for prior notice when reasonable and practical to do so. However, the Department retains the right to make unannounced visitations, inspections, and audits as deemed necessary.
- C. The Department reserves the right to have access to records of any Subgrantees and requires the Grantee to provide for Department access to such records in any grant with the Subgrantee.
- D. The Department reserves the right to have access to all work papers produced in connection with audits made by the Grantee or independent certified public accountants, registered municipal accountants or licensed public accountants hired by the Grantee to perform such audits.

XXI. Record Retention

- A. Except as otherwise provided, financial and programmatic records, supporting documents, statistical records and all other records pertinent to the grant shall be retained for a period of seven years, unless Federal or State funding Department statutes require longer periods or unless directed to extend the retention by the Department.
1. If any litigation, claim, negotiation, action or audit involving the records is started before the expiration of the seven year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular seven year period, whichever is later unless otherwise directed by the Department.
 2. Records for nonexpendable property acquired with Department funds shall be retained for seven years after its final disposition, unless otherwise provided or directed by the Department.
- B. For Federal and State purposes (unless otherwise provided):
1. General - The retention period starts from the date of submission of the final expenditure report, or for grants that are renewed annually, from the date of submission of the annual financial report.
 2. Real Property and Equipment - The retention period for real property and equipment records starts from the date of the disposition, replacement or transfer at the direction of the awarding Department.
- C. The Department may request transfer of certain records to its custody from the Grantee when it determines that the records possess long-term retention value and will make arrangements with the Grantee to retain any records that are continuously needed for joint use.

XXII. Enforcement

A. Remedies for Noncompliance

If a Grantee materially fails to comply with the term of an award, whether stated in a State or Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the Department may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the Grantee or take more severe enforcement action.
 2. Disallow all or part of the cost of the activity or action not in compliance.
 3. Wholly or partly suspend or terminate the current award for the Grantee's program.
 4. Withhold further awards for the program,
 5. Request the balance of grant funds to be returned and/or seek reimbursement for funds expended that were not in compliance with the terms and conditions of the grant agreement.
 6. Take other remedies that may be legally available.
- B. Hearings, Appeals

In taking an enforcement action, the Department may provide the Grantee an opportunity for such hearing, appeal or other administrative proceeding to which the Grantee is entitled under any statute or regulation applicable to the action involved.

C. Effects of Suspension and Termination

Costs incurred by the Grantee, resulting from obligations incurred by the Grantee during a suspension or after termination of an award, are not allowable to be applied against the grant unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the costs result from obligations which were properly incurred by the Grantee before the effective date of suspension or termination, and are noncancellable.

D. Relationship to Debarment and Suspension

The enforcement remedies identified in this Section, including suspension and termination, do not preclude the Grantee from being subject to State and Federal debarment and suspension procedures.

XXIII. Termination and Suspension

A. The following definitions shall apply for the purposes of this Section:

1. Termination

The termination of a grant means the cancellation of assistance, in whole or in part, under a grant at any time prior to the date of completion.

2. Suspension

The suspension of a grant is an action by the Department which temporarily suspends assistance under the grant pending corrective action by the Grantee or pending a decision to terminate the grant by the Department.

3. Disallowed Costs

Disallowed costs are those charges to the grant which the Department or its representatives shall determine to be beyond the scope of the purpose of the grant, excessive, or otherwise unallowable.

B. When the Grantee has failed to comply with grant award stipulations, standards, or conditions, the Department may suspend the grant and withhold further payments; prohibit the Grantee from incurring additional obligations of grant funds pending corrective action by the Grantee; or decide to terminate the grant in accordance with paragraph C below. The Department shall allow all necessary and proper costs, which the Grantee could not reasonably avoid during the period of suspension, provided they meet Federal and State requirements.

C. The Department may terminate the grant in whole or in part whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Department shall promptly notify the Grantee in writing of the determination and the reasons for the termination together with the effective date. Payments made to the Grantee or recoveries by the Department under the grant terminated for cause shall be in accord with the legal right and liability of the parties.

- D. The Department and the Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and in case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.
- E. The Grant Closeout procedures in Section XXIV of the grant shall apply in all cases of termination of the grant.

XXIV. Grant Closeout Procedures

A. The following definitions shall apply for the purpose of this Section:

1. Grant Closeout

The closeout of a grant is the process by which the Department determines that all applicable administrative actions and all required work of the grant have been completed by the Grantee.

2. Date of Completion

The date when all activities under the grant are completed or the expiration date in the award document, or any supplement or amendment thereto.

- B. The Grantee shall submit final expenditure and performance reports as prescribed by the Department and in the timeframes set forth in Attachment A, Part VI upon completion of the grant period or termination of the grant.

The Department may permit extensions when requested in writing by the Grantee.

- C. The Grantee will, together with the submission of the final report, refund to the Department any unexpended funds or unobligated (unencumbered) cash advanced, except such sums that have been otherwise authorized in writing by the Department to be retained.
- D. In the event a final audit has not been performed prior to the closeout of the grant, the Department retains the right to recover any appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

Attachments: (Click to View)

- A. Additional Grant Provisions
- B. Approved Budget
- C. Comparison of Actual to Budget Expenditures
- D. Program Specifications