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State Grants, Federal Sub-Grants, and Subsidies Policy

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Executive Summary

Unless otherwise provided by law, this policy applies to all Commonwealth departments that administer subsidies, state grants or federal sub-grants. A "grant" is defined under 815 CMR 2.00 as discretionary and non-discretionary (designated or earmarked) funds of State or Federal Grant Awards which are considered financial assistance provided under contractual terms between a grantor department and a grantee to assist the grantee in the achievement or continuation of a specified public purpose to benefit the general public or a segment of the general public consistent with the grantor department's legislative authorization and the terms of the grant funding. When the original grantee (recipient) passes a portion of the federal grant funds to a subrecipient, it is known as a "sub-grant".

Considerations

A department must determine the appropriate grant disbursement process in accordance with 815 CMR 2.00, the department's legislative authorization, the type of grant funding, the type of intended grant recipient, and the purpose of the grant funding. In addition, a department must comply with state finance law when making payments.

Departments are also responsible for compliance with the CTR/OSD Amendments, Suspensions, or Terminations Policy, the CTR Interdepartmental Service Agreements Policy, the CTR Vendor / Customer File and Form W-9 Policy, the CTR Accounts Payable Payroll Policy, and any other related policies issued by the Office of the Comptroller that are applicable to the disbursement of state and federal funds, personnel and payroll, fringe and indirect charges, internal controls, reporting and recordkeeping.

Departments applying for federal grant funds and disbursing them as "sub-grants" must comply with the terms of each federal grant award, the Uniform Guidance rules covering subrecipients, the CTR Federal Grant Accounting and Reporting Policy, and any other policies that outline the requirements for applying for federal grants, receiving and setting up federal grant awards, accounting requirements for managing federal funds, and federal funds reporting requirements.

Policy

The Office of the Comptroller (CTR) has broad authority to prescribe accounting rules and instructions for all state departments and for the appropriate use of the state accounting system. Pursuant to M.G.L. c. 7A §§ 7, 8, 9A, and M.G.L. c. 29 § 31, CTR is required to implement a state accounting system, a centralized payroll system, and issue instructions for the accounting practices to be used by all departments for supplies, materials, assets, liabilities, equity, debt, encumbrances, expenditures, revenues, expenses and obligations of all Commonwealth funds and accounts, including payroll, unless specifically exempted by general or special law.

What is a Grant

A "grant" is defined under 815 CMR 2.00 to include both discretionary and non-discretionary (designated or earmarked) funds which are considered financial assistance, from any source, provided under contractual terms between a grantor department and a grantee to assist the grantee in the achievement or continuation of a specified public purpose to benefit the general public or a segment of the general public consistent with the grantor department's legislative authorization.

A "grant," then, is "financial assistance" under contractual terms for a public purpose to benefit the general public or a segment of the general public. "Financial assistance" is intended to enable a grant recipient to establish, continue or increase a recipient's ability to fulfill a public purpose. Grantees are normally public, quasi-public or private non-profit entities established for a public purpose. Financial assistance is also appropriate when a grantee is in the business of providing public purpose activities and partners with the Commonwealth to fulfill, continue, or expand these public purpose activities.

Departments are responsible for disbursing grants using best value, fiscal responsibility, and other common sense business practices, similar to any other contract or department expenditure. In certain instances, a department is required to fulfill a public purpose mandate and is unable to perform the work internally. Grants are available to enable departments to utilize and combine available public and quasi-public resources and expertise to achieve similar or related legislative mandates efficiently and effectively, without the added costs and profit margins sometimes associated with use of private contractors. Grants enable partnerships and joint ventures with the commonwealth, to fulfill the public purpose legislative mandates of the grantees and the department. Grants may or may not include a requirement for matching funds or a commitment of resources. In some cases, the type of grantee most qualified to fulfill the legislative mandate is a public or quasi-public entity established specifically to fulfill the type of public purpose the department seeks, or they are the only sources of certain goods or services, have specific skills or resources, or can provide the most cost-effective performance. In these circumstances, 815 CMR 2.00 encourages departments to take advantage of partnerships and joint ventures with public and quasi-public entities legislatively established to fulfill a public purpose. However, grants may not be used to circumvent competitive procurements, or as an expeditious method of obtaining services without using a private contractor or complying with other contracting requirements.

Grants can be disbursed to another state department through an Interdepartmental Service Agreement (ISA) under 815 CMR 6.00 if the purpose of the funding is to provide financial assistance to enable another state department to fulfill or continue a specified public purpose to benefit the general public or a segment of the general public consistent with the grantor department's legislative authorization, and consistent with the restrictions for using ISAs specified in 815 CMR 6.00. Please see the CTR Interdepartmental Service Agreements Policy for more information.

Unless otherwise specified, CTR presumes that the Legislature intended for departments to use available public and quasi-public resources to achieve the goals of the grant, rather than automatically requiring a department to seek outside private contractors. 815 CMR 2.00 enables a department to provide grants of financial assistance to public or quasi-public entities, even if the grant performance includes contract-like services (program management, consultant services, etc.) provided the primary goal of the funding is to achieve a public purpose rather than fulfilling an administrative or operational need. There is a greater justification for the use of a grant (rather than a contract) when a grantee

commits to providing matching funds, in-kind services, or other resources as part of grant performance. In these circumstances the department will have to justify why a grant of financial assistance is more appropriate than a contract, the unique resources that are available under the grant (which would not be available under a contract), and the funding or other benefits that support best value under the grant.

Absent certain circumstances, such as allowable administrative expenses to support a federal award of funds to a department, a department may not use a grant to procure or expend funds solely for department operational, administrative, or programmatic needs, including consultant services, leases, equipment purchases, construction services, human or social services or other performance-based contracts for or on behalf of the department. These types of contracts are not normally considered financial assistance for a public purpose.

The only exception to this general rule involves joint ventures with other public or "quasi –public" entities, which include entities that are established to support or fulfill a primarily public purpose or specifically to provide services to other public entities (such as state authorities established by M.G.L. c. 29 § 1). These entities may provide services traditionally considered operational, or provide professional services, such as consultant, program management, grant administration, or construction management services. However, these entities exist primarily to partner with other public entities to fulfill public mandates, rather than functioning in the normal service provider environment.

Often, such entities provide matching funds or joint resources to a project that would not be available under a normal contract for goods and services. Grantor departments still have the responsibility to ensure that a grant relationship provides best value, when compared to a service contract, but are encouraged to foster joint ventures with other public and quasi-public entities when fulfilling department mandates.

What is the difference between a subsidy and a grant?

A "subsidy" includes funds designated by the Legislature to be disbursed either as a direct payment or a transfer of a specified amount to a designated recipient entity, or are designated as direct payments through "subsidies" or a "subsidy program." Legislative or funding authority that specifies a "grant," or that funding is "for a program," but does not identify a recipient does not qualify as a subsidy, because it does not name the recipient. Questions regarding whether or not funding authority supports a subsidy should be directed to CTR's General Counsel.

Who can receive a grant?

Presumption that Grantees are Public Entities

Grants to public entities may be made from all sources of funds. If the legislative authorization for a grant or financial assistance is silent as to the type of eligible recipients, the presumption will be that the intended recipients are public entities. A "public entity" is defined by 815 CMR 2.02 as a unit of state or local government including a county, municipality, local public authority, school district, special district, district commission, regional government, any agency or instrumentality of government, and state authorities as defined in M.G.L. c. 29 § 1. Where the provision of grants to non-public entities is

restricted, a department must determine the organizational structure of intended recipients prior to disbursing grants.

Grants to non-public entities may be made from trust and federal funds without specific legislative authorization. Non-public entities include individuals, partnerships, and corporations (private, non-profit, quasi-public, corporate body politic). Non-public entities also include quasi-public entities and some private, non-profit corporations, even if these entities have been established to fulfill a primary public purpose. Although these types of entities will still be considered "non-public entities" for the purpose of 815 CMR 2.00, the fact that these entities fulfill a public purpose will be an important factor when justifying the disbursement of a grant to these types of entities without specific legislative authorization awarding grants to these types of entities. If a department is unsure of the public or non-public status of a potential grant recipient, the department should consult with their legal staff and, if necessary, CTR's General Counsel.

Constitutional Restrictions on the Grant of Public Money to a Non-Public Entity

The Anti-Aid Amendment of the Massachusetts Constitution (Article XLVI § 2, as amended by Art. CIII of the Amendments to the Massachusetts Constitution) prohibits "public money or property" from aiding non-public institutions. The Anti-Aid Amendment provides in part that:

> "*No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining, or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both....*"

Article XLVI was drafted primarily to prohibit the use of public funds for private and parochial schools, and other types of non-public institutions that did not provide a benefit to the general public. "Public money" includes appropriated funds (state tax revenue), which can be either operating or capital appropriations. Although the language of Article XLVI specifies only "institutions", the courts have found the prohibition in the article to include individuals, partnerships and corporations. Also, Article XLVI has been interpreted by the courts to allow the expenditure of public funds to non-public recipients solely for the provision of a "public purposes" and not for the direct benefit or maintenance of the non-public entity.

Therefore, 815 CMR 2.00 provides that state appropriated funds may not be granted to a non-public entity , absent specific legislative authorization, unless:

1. the grant funds are used by the non-public entity solely to cover the actual costs of fulfilling a public purpose to benefit the general public or a segment of the general public, and may not provide a direct benefit or be used for maintenance of the non-public entity not associated with the fulfillment of the grant, and
2. absent specific legislative authorization awarding grant funds to a named non-public entity, or identifiable class of non-public entities, the non-public grantee has been selected through an

open public award process as determined appropriate by the granting department in accordance with an authorized exception and the department's grant funding authority; and

3. the department has included a statement as part of the contract justifying the reasons why the award to the non-public entity supports the efficient, effective and appropriate use of state appropriated funds.

A department's "legislative authorization" includes general and special laws identifying a department's legislative mandate, the funding authority for a grant, or both. A department's "grant funding authority" includes the department's legislative authorization, trust language or federal grant award language authorizing the funding of a grant or the public purpose to be achieved by the department. The grant funding authority may not necessarily state the public purpose to be achieved by the funding. When reviewing questions of legislative authority, CTR looks to the plain language of the law, rather than what the drafters may have intended, but did not enact. CTR does not consider past practice to be binding as legislative authorization.

Legislative authorization that supports an award of a grant of appropriated funds to a non-public entity will either identify the non-public entity specifically by name or will identify an intended "class of recipients" which includes non-public entities. The following are several examples of classes of intended recipients which include non-public entities: "community centers", "rape crisis centers", "regional tourist councils", "community health centers", "local…councils", "regional emergency services councils", "community based …centers", etc. In addition, legislation may be interpreted to include non-public entities when the purpose of the grant is capable of being performed only by non-public entities because government entities do not perform the particular public purpose being funded.

Grants to non-public entities may be made from trust or federal funds since these funds do not constitute "public moneys" under Article 46. Even though federal funds are appropriated as part of the annual General Appropriation Act, and trust funds may include funds received on account of the Commonwealth, Article 46 limits its restriction on the use of public moneys to taxpayer funds (operating or capital appropriations).

Awarding Subgrants of Federal Grants

A department applying for, receiving, and disbursing federal grant awards is required to comply with M.G.L. c. 29, § 6B and associated policies and procedures issued by CTR in consultation with the Executive Office for Administration and Finance (A&F). Executive departments must notify A&F whenever a grant application has been submitted to the federal government for an award of federal funds. All departments are required to immediately notify CTR when a federal grant award has been received and must comply with the federal grant award accounting procedures issued by CTR. Please see the CTR Federal Grant Award Accounting Policy for more information.

Open Public Grant Award Process – Overview

Under 815 CMR 2.05, the CTR has the authority to prescribe an open and public competitive process through which discretionary grant funds shall be disbursed. Commonwealth funds must be expended so that no individual or entity receives an unfair advantage, opportunity or benefit not available to similarly qualified or situated individuals or entities. When grant funds are "discretionary," or not designated to be awarded, paid or otherwise made available to a specific individual or entity, funds must be disbursed by a department in an "open and public" manner that supports fiscal accountability, efficient and effective government, and the achievement of the department's legislative mandate.

"Open and public" means that the department will not unreasonably restrict access to grant awards and will provide reasonable notice of opportunities to apply for grant funds, based upon the unique circumstances of the grant funding authority.

Process Requirements for Awards of Discretionary Grant Funding

Absent an award exception, discretionary grant funds shall be disbursed through an open public award process, which supports the efficient and effective use of grant funds to fulfill the public purpose of the grant funding authority. The process under 815 CMR 2.00 is similar to the process under 801 CMR 21.00, with exceptions noted. The term "grant application" shall also include any other forms of solicitation documents that may be used instead of a grant application, such as a Request for Response (RFR), Request for Qualifications (RFQ) or Request for Interest or Information (RFI). The following terms shall apply even if not included as part of the grant solicitation or application process:

1. Announcement of grant funds availability. The grant application shall be disbursed through a formal public notice process through https://www.commbuys.com.
2. Contents of grant application. A grant application for each grant or grant program should identify the details of the grant or grant program and the terms of the grant. The grant requirements should reflect criteria reasonably designed to identify an eligible grantee(s) and may not be drafted to target a pre-selected grantee or otherwise unreasonably limit eligible grantees without a legitimate business need or justification. The grant application should include, but is not be limited to, the following:
    a. the public purpose to be funded or achieved through the grant;
    b. the scope of performance that will be eligible for grant funding;
    c. the type, class, number or qualifications of potential recipients that will be eligible for a grant award (unless grant recipients are already named or specifically identified in the grant funding authority);
    d. the anticipated amount of available grant funds (if grant amounts are not already specifically designated by grant funding authority). If grant funding authority specifies the award of a grant "not to exceed" a specified amount, the grant amount shall be determined through the award process;
    e. whether the grantee is required to provide matching funds, in-kind resources or performance if grant funds are awarded;
    f. the process for submission of invoices or requests for payment, including the timing of invoice submission, format and reporting or supporting documentation that will be required to verify or support payment;
    g. the anticipated payment methodology for the distribution of grant payments (i.e., whether the payments will be based upon cost reimbursement, periodic scheduled installments or lump sum payments) or other payment distribution which supports fulfillment of the grant purposes and supports state finance law and sound fiscal management, and whether grant funds must be segregated from other grantee funds and grant expenditures must be separately documented. See Grant Payments and Compensation section, below.
    h. for grants awarding capital funds, the requirement that grant funds be disbursed on a cost reimbursement basis, meaning that the grantee gets reimbursed for funds it has

already expended. If the grant is to a related party (i.e. an entity controlled by the Commonwealth), a grant may not provide that payments will be paid in lump sum amounts based upon need unless the amounts can be received and expended by the grantee within 60 days, in order to avoid arbitrage. Capital funds received by a grantee must be held in a segregated non-interest bearing account. Departments that have questions regarding these restrictions should contact CTR's General Counsel. See Grant Payments and Compensation section, below.

i. reporting requirements that will be required to verify grant performance and the appropriate use of grant funds;

j. ownership of equipment or other resources paid for with grant funds;

k. other state or federal legislative, regulatory or policy requirements;

l. the duration of the grant or grant program, which shall be subject to appropriation or the availability of sufficient non-appropriated funds under the grant funding authority;

m. any information or documentation that a grantee must provide to be considered eligible for a grant or to determine the amount of a grant award, including, but not limited to:

    i. a proposed budget and scope of performance for how grant funds will be used;

    ii. indication that the potential grantee will accept the applicable Commonwealth Terms and Conditions;

n. required attachments;

o. an IRS Form W-9 for grantees that have not previously received grant or contract payments from the Commonwealth;

p. certification of tax compliance (non-public entities);

q. a listing of signatories who will be authorized to legally bind the grantee, including the designation of a contract manager who will be responsible for management of grant performance; See Attachments – Contractor Authorized Signatory Listing.

    i. any instructions for submission of a completed grant application and a deadline date for submission.

    ii. the evaluation criteria that will be used for grantee selection and grant award amounts (unless the recipients or amounts are already specifically identified in the grant funding authority);

3. When a formal public notice of grant is required. A formal public notice of a grant application is required under 815 CMR 2.00 whenever a department plans to disburse discretionary grant funding (where legislative authorization does not specifically identify the grant recipients).

4. Method of formal public notice. A formal public posting of grant availability shall be made by posting the opportunity on www.COMMBUYS.com. Additional notices of the availability of the application on https://www.mass.gov/learn-about-commbuys may be posted or published by posting in the Central Register; publishing a notice in a newspaper or other publication reasonably targeted to reach the eligible grant recipients; posting on the department's website; or any other method of publishing or posting that will provide reasonable public notice to potential grant recipients of the availability of the grant on https://www.mass.gov/learn-about-commbuys.

5. Grant application amendments. Upon notice to potential grantees in the same manner as the original grant application was distributed, a department may, at any time prior to the execution of a contract and without penalty, amend a grant application or change the grant requirements, scope of performance or budget.

6. Grant application cancellations. Upon notice to potential grantees in the same manner as the original grant application was distributed, a department may, for any reason and at any time prior to the execution of a contract and without penalty, cancel a grant application and reject grant applications.

7. Corrections or clarifications to a submitted application. The department shall determine whether to allow correction of minor informalities in a grant application response. Minor informalities are matters of form rather than substance and include clerical errors or minimal or insignificant mistakes that can be corrected without unfairly prejudicing other potential grant recipients. Clarifications are explanations of what is stated in a response. No correction or clarification should be permitted which provides an unfair advantage to any potential grant recipient for a grant award.

8. Late submission of grant application. The department will have full discretion to determine whether or not to accept a late submission of a grant application, and whether acceptance of the late submission would be unreasonably unfair to other potential grantees that submitted timely applications. The justification for accepting a late submission must be maintained as part of the grant file.

9. Evaluation of grant application. Departments shall review all grant applications to determine whether minimum submission requirements have been met. Departments may continue evaluating only those grant applications meeting these requirements. Evaluations shall be based upon the criteria or eligibility requirements identified in the grant application.

10. Disqualification of grant application. A department may disqualify or reject a grant application for any reason, without penalty, including, but not limited to:

    a. grant applications that are received after the deadline for submission specified in the grant application (See "Late submission of grant application" above);

    b. failure of a grant application to meet, address or comply with material requirements in the grant application, including instructions for submission, content or format;

    c. grant applications which indicate collusion or unfair trade practices by one or more potential grantees agreeing to act in a manner intended to avoid or frustrate any of the provisions of 815 CMR 2.00 or any other general or special law or regulation;

    d. grant applications submitted by a potential grantee or which identifies a subcontractor, who is currently subject to any state or federal debarment order or determination (however, if the identified sub-contractor is replaceable without a material effect on the bidder's response, the bidder may be given the opportunity to select another subcontractor prior to the execution of a contract.);

    e. a potential grantee:

        i. is intentionally or unreasonably delaying the timely execution of the Standard Contract Form or is unable to execute timely even for reasonable delays;

ii. conditions execution of the Standard Contract Form upon the department's acceptance of additional material or amended contract terms and conditions or specifies that the grant application is "non-negotiable", "all-or-nothing" or that there can be "no substitutions",

iii. negotiates in bad faith;

iv. refuses to execute the Standard Contract Form;

v. demands that the department execute the potential grantee's contract form instead of the Commonwealth's Standard Contract Form, or

vi. is unable to reach final agreement on contractual terms with the department within a reasonable time as determined by the department.

11. References. A department shall have the right to request references, verify references or consider any written references submitted to the department, at any time during the grant award process and at any time during the period of the grant.

12. Debriefing. The department shall have the sole discretion to decide whether or not to provide unsuccessful grant applicants with the opportunity for a debriefing after a contract has been executed. Comparisons with other grant applications will not be made during a debriefing. If a grant application is silent as to an opportunity for a debriefing, the department shall have the option to grant or deny a debriefing and may limit the number of debriefings granted.

13. Notification of Selected Grantees. A department shall notify each grantee of their selection or non-selection for a grant award by letter or email, as outlined in the grant application. In addition to the individual notice to grantees, the results of final selection should be publicly posted or otherwise available for review upon request. If a grant solicitation was posted on https://www.commbuys.com, the results of the solicitation should also be posted on https://www.commbuys.com.

14. In order to support fulfillment of the open public award process, whenever grantee selection has been made through any process other than an open public award process as outlined above (excluding incidental grants and earmarked grants) the department must post on https://www.commbuys.com a notice of intent to award a grant(s) which identifies:

    a. the selected grantee(s);

    b. the grant amount(s);

    c. the purpose of the grant funding;

    d. the scope of grant performance to be achieved or funded under the grant;

    e. the duration of the grant; and

    f. reason why the selection of the grantee(s), without an open public process is either necessary, inefficient or would not support the purposes or timely disbursement of the grant(s), and why the award is fair and reasonable and in the best interest of the department, the grant funding authority, and the Commonwealth. The department will be required to respond to any legitimate challenges to the planned award made within 5 business days of the notice of award, including providing and posting additional information to justify the award. However, the department is required only to respond to challenges that identify a deficiency in the posting of the proposed award and may not merely be a disagreement as to the grantee selected. Provided the

department has identified a legitimate business need, and a sufficient justification for the non-competitive award that supports best value, the department may proceed with the award.

Open Public Grant Award Process Exceptions

A department may not make a grant award without an open public award process, in accordance with 815 CMR 2.05(3), unless the department determines that one of the following award process exceptions exist:

1. **Earmarked funding**. The grant funding is restricted or "non-discretionary", meaning the grant funding authority specifies:

    a. the name of a grant recipient(s), the specific amount(s) of a grant award(s) (or calculation for distribution) and the specific public purpose to be funded or achieved through the grant; or

    b. the name of a grantee(s), without identifying the amount of the award(s) or the specific public purpose to be funded or achieved through the grant award, or both (meaning that the grant funding is part discretionary and part non-discretionary).

    Incidental Grants. To maximize available resources, encourage best value and support funding timelines, small simple grant awards may be made as Incidental Grants, without a procurement or contract. Incidental Grants should not be used if the grant funding or the grant program is recurring from fiscal year to fiscal year. Incidental Grants may be awarded without the open public award process and the contractual requirements outlined in 815 CMR 2.00, provided that the grants meet all other requirements of 815 CMR 2.00. The Incidental Grant threshold will be set at the same limit established for Incidental Purchases under M.G.L. c. 7 § 22, or as determined by CTR.

    The grant will be disbursed as a one-time, non-recurring Incidental Grant(s) which, for the duration of the grant award need for that grantee under the grant funding authority, will not exceed the Incidental Purchase limit established under M.G.L. c. 7 § 22. Incidental Grants are available because the disbursement of small grants through the normal grant process is neither effective or an efficient use of administrative and staff resources.

    Departments may not split grants in order to disburse grants as Incidental Grants or to otherwise circumvent procurement or other grant requirements. Departments are required to maintain grant files for all Incidental Grants. As with any incidental purchase, if the terms of the grant are more extensive than a simple statement of funding, departments should use a contract to memorialize the grant relationship, or in any situation in which the department wants the added protection of a contractual agreement.

2. **Interim Grants**. Interim grants serve a transitional function to extend a grant which would otherwise terminate, in order to prevent a lapse in grant performance while a grant award process is being completed. The grant award process must have been timely commenced but, due to unforeseen delays, is incapable of being completed by the termination date of the grant(s). The interim contract amendment to extend the dates of performance, and

compensation, must be execute prior to the termination date of the original grant, and may extend performance only for the minimum period necessary to complete the grant award process. This period should not exceed three months. The grant file and the interim contract justification should document that the award process was started timely and that the delays were unforeseen and legitimate.

3. **Best Value Grant Award**. In certain circumstances, grant awards do not meet any of the procurement exceptions, but still present a situation in which conducting an open public process does not support the efficient use of administrative, staff resources or effective grant disbursement. For example, grant funding may not be earmarked, but the pool of eligible grantees is known and the grant disbursement methodology is formula-based or otherwise would not change if an application process was conducted. In these limited circumstances, and with solid justification, a department must post on www.COMMBUYS.com a notice of intent to award a grant(s) which identifies:

    a. the selected grantee(s)

    b. the grant amount(s)

    c. the purpose of the grant funding

    d. the scope of grant performance to be achieved or funded under the grant

    e. the duration of the grant; and

    f. a justification of why the selection of the grantee(s), without an open public process, is necessary, efficient and supports the purposes or timely disbursement of the grant(s). In addition, the justification should include why the award is fair and reasonable and in the best interest of the department and the Commonwealth.

    The posting of the grant application, RFR or other solicitation should be made available for a reasonable time prior to final awards to allow for any responses or challenges. The department may proceed with the awards if no challenges are filed, or if the challenges that have been filed do not merit an alteration of the award process. However, if significant legitimate challenges are presented (which provide reasonable doubts as to the appropriateness of the award process) the department should consider conducting an open public grant application process to address these considerations.

Awards of Non-Discretionary or Earmarked Grant Funding

Some departments will have grant funding authority providing non-discretionary grants, which means that the Legislature, trust language, or federal grant award specifically designates or "earmarks" the grant funds. Grant funds may be designated or earmarked in a variety of ways, such as:

1. specifically identifying grant recipients by name;

2. specifically identifying the "class of recipients" eligible for grant awards;

3. specifically identifying the amounts to be awarded to a grant recipient or class of recipients. Amounts may be specified by a dollar amount or a formula, such as a formula that awards are based upon population;

4. specifically identifying the method of grant disbursement or the criteria for eligibility for a grant award (i.e., based upon need, or based upon the grantee exhibiting certain characteristics, having certain qualifications, or a recipient willing to provide matches of funding or resources);

5. specifically identifying the details of the public purpose to be funded or achieved through the grant (i.e., funding to provide additional training resources at community based employment centers.)

The more specifically the Legislature earmarks or designates grant funds, the less discretion a department will have when dispersing the grant funds. For example, legislative authorization which identifies the specific name of a grant recipient, the specific amount of a grant award and the details of the public purpose to be funded or achieved through the grant will be considered "non-discretionary" grant funding which provides the department with little to no discretion about how the grant will be disbursed. However, the designation also satisfies the department's obligation to conduct an open public award process, which saves on staff time and administrative resources.

Commonwealth Terms and Conditions and Standard Contract Form

A department cannot issue grant payments until the contractual documents outlined in 815 CMR 2.00 are properly executed in accordance with policies and procedures issued by CTR, including mandatory enrollment to receive payments electronically.

An authorized signatory of a grantee and the department must execute a written contract, which includes the applicable Commonwealth Terms and Conditions and Commonwealth Standard Contract Form and Instructions for grants awarded under 815 CMR 2.00, absent prior written approval from CTR that circumstances exist supporting the use of a different contract form or no contract. See the CTR Department Head Signature Authorization Policy.

Each city and town has an identified vendor code for operations. Departments must execute the Contract under the primary vendor code for that local government entity, even if the funds ultimately will be disbursed to a subdivision, such as a school, fire department, or other unit.

Contract Attachments

Contract attachments will be determined by the type of procurement conducted for a grant. The following sections identify the key contract components. The record (original) copy of a contract is maintained by the department in a grant file. See Records Management section below.

Open and Public Awards; Best Value Awards, Exceptions

- **Evidence of Posting, Evidence Exception.** Screen print of grant posting on COMMBUYS; screen print of best-value posting on COMMBUY; documentation of other exception or specific legislative earmark for non-discretionary or formula grants;

- **Scope of Grant Performance Requirements, eligibility terms**.
    - Copy of grant application, request for response (RFR), other grant solicitation or detailed scope of performance for exceptions (or location where posted on COMMBUYS);
    - Grantee response to grant application, RFR or other solicitation;
    - Detailed budget breakdown of costs, maximum cap on payments (maximum obligation on contract or maximum cap for a rate contract), payments schedule, eligibility terms, invoicing requirements and other cost terms and conditions;
    - Any additional terms (such as reporting requirements, federal grant terms, HIPAA terms etc.) that are not included in the application or response that are negotiated by the parties or required by the type of funding or grant funding being provided.

Incorporating Supplier Diversity Considerations

Departments providing grants to municipalities for construction purposes must consult with the SDO's Municipal Construction Affirmative Marketing Program (MCAMP) for guidance on including program terms into the grant application process. For additional information, please contact the SDO at webmaster.sdo@mass.gov.

Departments providing goods and services (non-construction) related grants to public entities and non-public entities are encouraged to consider including the applicable Small Business Purchasing Program (SBPP) or Supplier Diversity Program (SDP) language, if appropriate, into their grant applications. For additional information, please see SDO's Program Resources for Departments webpage, or contact the SDO at webmaster.sdo@mass.gov.

Departments providing construction related grants to non-public entities are encouraged to consider including the appropriate measures referenced above into their grant applications.

Procurement Exceptions Justification

- Supporting documentation justifying procurement exception with a description of the grant selection process, including any posting of a notice of intent to award, and why a competitive selection was not performed and a justification of the grantee selection

Other attachments (required for all grants)

- Contractor Authorized Signatory Listing (all);
- Other attachments required by department or procurement

Other Contract Forms (required for all grants)

- IRS Form W-9 if contractor is not listed as a vendor in the Mosaic Vendor/Customer file. Grantees receiving federal funds will be required to obtain a Unique Entity Identifier (SAM) number. See the CTR CTR Federal Grant Accounting and Reporting Policy.
- Electronic Funds Transfer (EFT) Authorization Form (unless EFT presents hardship to grantee).

Scope of Performance, Budget and Reporting Requirements

A grant must identify the amount, duration and scope of the grant, and applicable fiscal or programmatic reporting requirements for documenting grant expenditures or performance, and the grant compensation or budget. This information may be included as part of the grant application, RFR, as a separate scope of performance and budget, or as additional terms negotiated as part of the grant.

The grant scope and budget should include:

- the amount of the grant,
- the anticipated payment methodology,
- the anticipated timing of distribution of grant payments and
- whether the payments will be based upon cost reimbursement, lump sum, or periodic installments.

The grant should also indicate:

- what performance will be eligible for reimbursement or funding,
- what documentation is necessary to support payments under a grant;
- what reporting is required (periodic and final reports) to document that grant performance has been completed or other actions have been initiated or completed to trigger grant payments

Grant Effective Start Date

Notwithstanding verbal representations by the parties, or an earlier start date stated in the Standard Contract Form, the effective start date of a grant shall be the latest of the following dates:

a. the date the Standard Contract Form was executed by an authorized signatory of the grantee;
b. the date the Standard Contract Form was executed by an authorized signatory of the department;
c. a later date specified by attachment to the Standard Contract Form.

The Standard Contract Form and ISA Form contain the following options for identifying the effective start date, depending upon when the parties execute the contract.

> **ANTICIPATED START DATE:** (Complete ONE option only) The parties certify for this Contract, ISA, or Amendment, that obligations:
>
> __ 1. may be incurred as of the Effective Date (latest signature date below) and **no** obligations have been incurred **prior** to the Effective Date.
>
> __ 2. may be incurred as of _____**, 20**___, a date **LATER** than the Effective Date below and **no** obligations have been incurred **prior** to the Effective Date**.**
>
> __3. were incurred as of _____**, 20**___ , a date **PRIOR** to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

Legislative authorization for grant funding or earmarking of funds does not create authorization for a grantee to incur any obligation or begin performance under a grant. Departments and grantees must date the contract as of the date of their actual signature and may not pre-date or retroactively date a contract to effect an earlier start date. In the event a grant begins prior to the signature date, or the Grantee has begun performance that is included in the grant for compensation, Option #3 is used to indicate when the grant services began to enable payments to be entered back to that date as a settlement.

The identification of a grantee in a notice of grant award creates no contractual or legal obligation for a department or the Commonwealth. A grantee may not rely on an award letter, or any other verbal or written assurances from any source, to begin performance or otherwise incur obligations (signing contracts, hiring personnel, purchasing services or goods, etc.) for which the grantee anticipates funding through the grant. Grant performance for which a grantee seeks compensation may not be delivered outside the scope of a properly executed grant, and a grantee assumes the risk that funding will not be available for any costs incurred.

Note that legislation provides no entitlement to funding and Grantees are not authorized to begin performance for which grant funds are anticipated, even with legislative earmarks, without an executed contract. Legislative language supporting a grant earmark only removes the open and public competitive selection process, but does not remove the requirement to execute a contract outlining the terms and compensation under a grant, performance eligible for compensation, the timing of funding, reporting requirements and other terms and conditions that will apply to the Grantee and funding. Legislative earmarks provide no authorization to Grantees to independently perform services, incur obligations or demand payment for any funding that is not memorialized in a contract.

Prior to submitting a Mosaic encumbrance transaction to final status, the grant administrator is responsible for verifying the correct start date based upon the contract documentation. Submission of the transaction to final status acts as the department head's certification that Mosaic reflects the legal effective start date based upon the contract documents. Departments must look at the execution dates of the contract and approval dates and calculate the start date when entering and reviewing a Mosaic encumbrance transaction and may not routinely enter "July 1st" as a default date.

For example, a grant executed on June 29, 2025 by the Grantee and July 5, 2025 by the department must use July 5, 2025 as the effective start date, unless a later date is specified by attachment. A grant executed by the grantee on May 31, 2025 and the department on June 1, 2025 with no later date specified by attachment would have a June 1, 2025 start date, subject to grant funding authority. If the funding for the grant is fiscal year 2025 funding, contract performance could not start until July 1, 2025 or until funds are appropriated (General Appropriations Act or interim budget) and the contract effective start date should be entered as July 1, 2024.

Grants may be executed for multiple-fiscal years even if the grant program is funded annually through the General Appropriations Act (GAA). All grants are subject to appropriation by the Legislature and an annual award of grant funds by the grantee. Grantees may not incur obligations in anticipation of either a grant award or appropriation unless the grantee would be making performance anyway and has sufficient non-grant funding to support the performance.

In the event grant funding is not available, either because the funds were not appropriated, the grantee was not offered a grant award, or the amount of an anticipated grant was reduced, neither the grantor department nor the Commonwealth will be under any obligation to make payment for such performance, even if a grant award was made. Since all grants are subject to appropriation, a multi-year contract for a grant merely enables the grantor department to establish the grant paperwork for the anticipated grant period, instead of through an annual grant execution process. The multi-year contract creates the grant "shell" of terms and conditions for performance "subject to" appropriation and award. The contract does not in any way create a guarantee or entitlement to funding during the period of the contract unless and until funds are appropriated, allotted and awarded to the grantee under the contract.

Secretariat approval or signoff may be required for executive departments in a secretariat. This requirement is a purely internal administrative step that should be completed prior to contract execution. CTR will not verify secretariat signoff as part of pending review to process grants which exceed the department's transaction delegation limit, nor as part of more in-depth quality assurance reviews. Internal controls should be implemented to ensure that the secretariat signoff process does not unduly delay the contract execution process.

Department Head Authorization of Mosaic Transactions

Every Mosaic action must be authorized by the department head or an authorized signatory. For more information about the ways in which approval may occur and the certifications that accompany approval, see the CTR Department Head Signature Authorization Policy.

Any changes or other communications which affect material terms of the grant must be memorialized in a formal amendment. See the CTR/OSD Amendments, Suspensions, and Terminations Policy.

Mosaic Transaction Delegation

Mosaic transaction delegation enables departments to process Mosaic transactions for grants within certain dollar limits to final status without prior review by CTR, provided the department complies with identified laws, policies and procedures and the use of required contract forms.

CTR may conduct Quality Assurance (QA) reviews on selected grants. Grants are subject to post audit by the Office of the State Auditor, the Inspector General's Office, the State Ethics Commission and the Office of the Attorney General.

See the CTR/OSD Delegation of Mosaic / Contract and Transaction Processing Authority and Quality Assurance Policy for additional information.

Grant Payments and Compensation

Payments must be made in accordance with the contract and the CTR Bill Payment Policy. Standard payment is Electronic Funds Transfer (EFT) within 45 days of receipt of invoice or payment request, unless periodic payments are authorized under the grant. EFT will be required for all grantees unless a grantee can demonstrate a hardship. Payments may be made as lump sum, periodic installments or cost reimbursement in accordance with the grant and funding authority. A grant should identify the number and timing of installments and invoice, supporting documentation or reporting requirements. A grant should also identify what costs are eligible for reimbursement. Payments of current fiscal year grant funds must be disbursed within current fiscal year.

Unless otherwise provided by law, all grant payments are subject to appropriation pursuant to M.G.L. c. 29, §§ 26, 27, and 29, or the availability of sufficient non-appropriated funds for the purposes of the grant. Grant payments may be subject to intercept pursuant to M.G.L. c. 7A, § 3 and 815 CMR 9.00. Grant payments are not subject to late penalty interest under 815 CMR 4.00.

Disbursement of federal funds must be made in accordance with policies and procedures issued by CTR in consultation with A&F. All departments are required to immediately notify CTR when a federal grant award has been received and comply with the federal grant award accounting procedures issued by CTR. Special care must be made to ensure the draw down procedures for payments using federal funds comply with federal funding requirements. See CTR's Federal Grant Accounting and Reporting Policy for compliance responsibilities.

Extra care must be used when grants involve capital funds. Capital grants must include the requirement that grant funds are either received on a cost reimbursement (the grantee invoices for the costs of performance when rendered) or if lump sum amounts are made, the fund received by a grantee must be held in a segregated non-interest bearing account and, if the grant is to a related party (i.e. an entity controlled by the Commonwealth), must be expended by the grantee within 60 days in order to avoid arbitrage. Departments that have questions regarding these restrictions should contact CTR's General Counsel.

When negotiating grants, departments are required to identify a budget detailing the expenditures, costs, obligations and other performance that will be eligible for reimbursement or funding under a grant. Since grants are financial assistance and not tied directly to a fee-for-service, grant distribution can take a variety of forms based upon the grant program and the needs of the grantee. Therefore, dates of services for payments are not tied to the start of performance like a traditional fee-for-service contract. Dates of service reflect payment "due dates" which may be upon execution, listed installment dates, other periodic payments dates, or disbursement dates based upon grantee financial needs.

A grant should identify what performance or costs are eligible for reimbursement. The grant should identify how funding will be provided. The following options for disbursement of funds are listed in the order of associated risk to the grantor. Departments are responsible for disbursing grant funds in the most fiscally responsible manner, to prevent fraud waste and abuse of public funds, and to support the needs of the grant legislation, to ensure the appropriate and efficient use of taxpayer or federal funds, and to support the needs of the Grantees.

Lump Sum Payment: single payment of a grant award or a single partial payment at the beginning of a grant when start-up funds are needed at the beginning of the grant to establish a program. Disbursement at the beginning of the grant, prior to any grant performance, or prior to obtaining documentation that eligible costs or obligations have been incurred supporting the funding, creates a risk that the funds may not be used for authorized grant purposes unless the department exercises careful oversight and requires routine reporting of expenditures. Administrative ease to issue grant payments in a single sum rather than managing periodic installments is discouraged.

- **Periodic Installments:** multiple payments at scheduled intervals or on specific dates to enable the establishment of new, or the continuation of current, grant performance or programs. Periodic installments can be set up in the accounting system, similar to lease payments, to be

issued weekly, bi-weekly, monthly and quarterly. This option has a lower degree of risk and ensures a regular cash flow to grantees while enabling departments to receive periodic progress reports and monitor ongoing grant activity.

- **Cost reimbursement:** payment for completed grant performance or for obligations authorized to be incurred by the grantee or obligations or costs deemed eligible for reimbursement under a grant. This option has the lowest financial risk as departments obtain confirmation or validation that grant performance has been achieved prior to payments. The grant must specify whether, after grant execution the grantee:
    - first completes performance and pays for grant performance or obligations from other funds of the grantee and then seeks cost reimbursement under the grant; or
    - first completes performance and then requests reimbursement for eligible performance or costs in order to make payments; (when making a payment, the dates of service would be the dates, after contract execution, that the grantee completes and confirms delivery of performance in order to request reimbursement.)
    - the grantee documents that costs eligible for reimbursement have been incurred and requests cost reimbursement.

Departments must establish the most efficient, cost effective and fiscally responsible method of grant disbursement for the type of grant, the type of funding, the grantee needs and the public purpose to be supported by the grant funds. For audit purposes, departments should document the basis for the payment options chosen for a grant program.

The department must balance the financial needs of the grantee with the fiscal responsibility of ensuring funds are properly used. In some circumstances, grants will have multiple payment models, such as lump sum payment upon execution of the grant or at the beginning of the grant program (often considered "seed money" to get a program or grant work started) and then periodic installments or cost reimbursement throughout the grant period. Departments are free to establish whatever compensation structure is appropriate for the grant program in accordance with the grant funding authority, provided this structure supports fiscally responsible expenditure of public funds.

As part of the budget or grant application, the department should specify whether or not invoices must be submitted and what reporting, supporting documentation, or justification must be submitted to support compensation under the grant. For lump sum and periodic installments scheduled as part of the budget, invoices are not required. The schedule of payments in the budget is used in lieu of invoices to support entry of the periodic installments or payments. Periodic payments should be scheduled in the state accounting system to ensure timely payment of grantees in accordance with the grant terms. Although recurring payments provide an efficient method for regular payments, the department is still responsible for reconciling the payments made with grant performance. Cost reimbursement grants can require invoices and documentation of eligible costs.

Departments should not make final payment to a grantee until all reports, unexpended program income and other deliverables required under the grant agreement have been submitted to the department in acceptable form, but in no event later than 45 days following the end of the fiscal year. The exception is where a department has legislative authorization to carry over funds into the next fiscal year for payment (i.e., extension of disbursement authorized by the administration until September 15, prior appropriation continued, or a continuing account). Departments may include language in a grant for a hold back of a percentage of grant payments (referred to as "retainage") from

each grant payment, or at the end of a grant to ensure grant performance. See the CTR Retainage Policy for additional information.

When departments are disbursing federal grant funds (often referred to as "pass-through" funds), even though the department does not expend the funds for its own use, the department still remains responsible for sufficient oversight of the funds to ensure that the funds are spent in accordance with federal grant requirements. The same oversight responsibility applies regardless of the type of funds granted by a department, even if the funds are earmarked to another entity and considered pass-through funds.

Overpayments

Payments may be made only for authorized expenses or grant costs. Departments shall have the right to recoup or offset overpayments made for grant performance. To be entitled to grant funds, a grantee must be able to document that performance was completed in accordance with the terms of the grant or that payments reflect authorized costs or expenses. Special rules apply for reimbursement of disallowed costs from federal grant awards. Departments must comply with the federal grant award and should work with CTR to ensure compliance with federal disbursement and reporting requirements.

In the event that an overpayment is discovered within the fiscal year in which the related payment was authorized, the grantee must repay the overpayment, or the amount may be used to offset remaining payments during the current fiscal year (including the accounts payable period, July-August of a fiscal year), or may be used to offset additional grant-related costs or expenses consistent with the purposes of the grant, as negotiated with the department.

Overpayments made in one fiscal year may not be used to offset grant costs or payments in a subsequent fiscal year, unless the funding authorization supports a continuing account (trust, capital or federal); the grant authorizes that funds may be carried over into another fiscal year, as determined in the grant application; or upon written amendment or approval by the department, in accordance with state finance law requirements.

For non-continuing accounts or for any funding for which the authorization for the grant has expired, overpayments discovered after the close of the accounts payable period of the fiscal year in which the funds were authorized for payment should be repaid to the department and deposited in the General Fund or the appropriate fund as determined by CTR. These funds may not be used to offset grant payments in a subsequent fiscal year, or used for a different grant program unless authorized by the grant language.

Records of overpayments, recoupment, or offset must be maintained by the department in the grant file and will be subject to quality assurance and audit review.

Departments must comply with the CTR Expenditure Correction (EX) Policy and CTR Expenditure Refund (ER) Policy when managing grants.

Amendments

A department can negotiate a change in any element of contract performance or cost identified in the grant application, RFR or the grantee's response which results in lower costs, or a more cost-effective or better value grant result than was presented in the grantee's original proposal. Changes can be negotiated which result in overall increased costs, provided the overall result is the best value or a "better value" than was originally proposed. In summary, as long as the subject of negotiation results in a better value within the scope of the original grant application or contract than what was proposed by the grantee, it is negotiable. The same best value standard applies to contracts and interdepartmental services.

See the CTR/OSD Amendments, Suspensions, or Terminations Policy for detailed information regarding amendments.

Grant Management and Close Out

Even if not specified in a grant, this policy requires departments to include provisions in grants, and ensure that grantees:

1. maintain accurate, current and complete records and provide disclosure of all financial activities related to a grant in accordance with Generally Accepted Accounting Principles (GAAP);
2. maintain records that clearly identify the source and application of all funds used for the purposes described in the approved grant application. These records shall, at a minimum, identify obligations, un-obligated balances, assets, liabilities, outlays and program income related to implementation of a grant, and document the fulfillment of any requirements for the expenditure of matching funds or the provision of in-kind services or resources;
3. implement effective internal and accounting controls to ensure a system for safeguarding all grant funds, property and assets for the life of the grant and ensure that these are used solely for authorized grant purposes.
4. if a grant awards capital funds, ensure that funds are not accepted unless the funds will be deposited into a non-interest bearing account and, if the grant is to a related party (i.e. an entity controlled by the Commonwealth), expended by the grantee within 60 days of receipt; expenditures shall include transfers from the grant account to another grantee account from which the original costs were paid.
5. reimburse to the department at the end of a grant, or as otherwise directed by a department, all un-obligated grant funds or overpayments. Grant funding may not be retained by a grantee at the end of a grant but must be returned to the department and refunded into the account from which funding was originally authorized, or if the account originally authorizing funding has expired, into the General Fund or as otherwise provided by law;
6. return any property or assets funded with grant funds to the department at the end of the grant, or in the alternative, commit under contract to use the assets only for grant purposes after the grant has terminated, which shall be considered a contractual obligation which survives the termination of a contract;
7. inform the department immediately in writing (by letter, email or fax) of all conditions that may negatively affect or are negatively affecting program objectives or performance as soon as known. These conditions include, but are not limited to, circumstances and problems that prevent the meeting of time schedules and goals or preclude the attainment of project work units within established time periods. The disclosure shall be accompanied by a statement of

the action taken or contemplated by the grantee to correct the problems and the time frame within which corrective action will be taken;

8. properly account for all income earned as a result of the provision of grant funding, which shall be returned to the department, used to offset grant approved costs, or towards the cost of additional grant performance consistent with the grant purposes, as authorized by the funding authority and as directed by the department as part of the grant.

Records Management

A department shall maintain a grant file, in accordance with 815 CMR 10.00 and disposal schedules issued by the Secretary of State Records Conservation Board, with complete records of a grant or grant program which shall include, but shall not be limited to:

a. grant applications and all documentation related to the distribution, publication or posting of a grant application;
b. all documentation related to the award process including justifications or documentation supporting awards;
c. the original record copies of all contractual documents, grant reports, document approvals (including a Mosaic Document Authorization/Records Management Form for recording the Transaction ID. For Mosaic transaction to file with supporting documentation or for Department Head Signature Authorization of the Mosaic transaction) and records of payments.

For more information, see the CTR Fiscal Records Management Policy.

Federal Grant Quarterly Reporting Requirements

CTR is required to report quarterly to the House and Senate Committees on Ways and Means on the status of federal funds applied for, received, and expended. To comply with this mandate, CTR will gather pertinent information from departments regarding the status of federal funds applied for and compile quarterly expenditure reports via data from the statewide enterprise accounting and financial reporting system ("Mosaic") regarding the status of federal funds received and expended.

Departments disbursing federal funds also have additional reporting requirements to the federal agency awarding the federal funds and other central reporting agencies. See the CTR Federal Grant Accounting and Reporting Policy.

Internal Controls

Departments shall develop internal control procedures to ensure that grants are disbursed in accordance with 815 CMR 2.00, CTR policies and procedures and other requirements of law. Departments granting federal funds must ensure appropriate grantee (sub recipient) monitoring to ensure that funds are spent in accordance with the federal grant award, as specified in OMB's Uniform Administrative Requirements, Cost Principles, and Requirements for Federal Awards. Pursuant to the CTR Protocols for Audits, Audit Follow-Up, Department Initiated Audit Activity, departments must notify CTR if there is an audit or review of a federal or state program or grant.

For additional information, see the CTR Internal Controls Policy and the CTR Sub-Recipient Monitoring Policy.