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Office of General Counsel

Grants and Grant Agreements

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MINNESOTA STATE

Session Overview

- Minnesota State's Grants in General
- Grant Policies and Procedures
- 2015 Grants Audit
- Minnesota State Grant Agreement Template to be updated
- Grant Management
- Grants, Data Privacy, and Intellectual Property
- Before you Finalize Your Grant



OGC Contract trainings and webinars

- **A contract is:** a legally binding document that defines the rights and obligations of the parties and sets “ground rules.”
- Contracts training and resources are available on the [Office of General Counsel’s webpage](#).
- Minnesota State Standard Contract Templates can be found on the [Finance webpage](#).



Lead Time (louder for the ones in back!)

- Plan accordingly— expect the best and plan for the worst.
- Use System templates and forms if allowable
- If not System templates, plan for legal review of grant contracts.
- Allow time for negotiation.
- Answer questions, WHO, WHAT, WHEN, WHERE, HOW MUCH.
- Pay attention to Grant contract end dates, especially if wanting to amend the Grant or make changes!
“Amend before end.”
- Not every contract can be an emergency.



Minnesota State's Grants in General



What is a Grant?

- Financial assistance from federal or state government or private entities.
- No “deliverables.” Grants are not contracts to provide services.
- Some grants have complex reporting requirements.
- Government grants may be subject to limited oversight or control by awarding agency.
- Federal grants in particular are subject to the OMB Uniform Guidance and/or the Federal Acquisition Regulations.



Grant Revenue for Fiscal Years 2021 and 2022 (in Thousands)

Grant Revenue for Fiscal Years 2021 and 2022		
Type of Grant	2022	2021
Federal Grants	\$ 59,875	\$ 56,473
Federal HEERF	\$ 133,145	\$ 92,528
State Grants	\$ 16,972	\$ 16,903
Private Grants	\$ 30,014	\$ 25,303
Total	\$ 240,006	\$ 191,207

* HEERF stands for Higher Education Emergency Relief Fund and is all federal grant in nature. HEERF is one time revenue and will be ending this year.

Federal Agencies Minnesota State has Obtained Grants

Federal Agency	# of Institutions
Department of Education	39
National Science Foundation	21
Department of Health and Human Services	16
Department of Agriculture	8
Department of Labor	7
Department of the Treasury	7
Department of Defense	6
Department of Veteran Affairs	5
Small Business Administration	5
Department of the Interior	4
Department of Commerce	3
National Aeronautics and Space Administration	3
National Endowment for the Arts and the Humanities	2
Department of Housing and Urban Development	1
Department of Justice	1
Department of State	1
Environmental Protection Agency	1



Grant Policies and Procedures



Minnesota State Board Policies and Contract and Procurement Procedures

- [Board Policy 5.14 Contracts, Procurement and Supplier Diversity](#)
- [Procedure 5.14.2 Consultant, Professional or Technical Services and Income Contracts](#)
- [Procedure 5.14.5 Purchasing](#)
- [7.7 Gifts and Grants Acceptance](#)



7.7 Gift and Grants Acceptance (1)

Part 1. Authority. Pursuant to Minnesota Statutes §136F.80, the Board of Trustees has the authority to apply for, receive and accept on behalf of the state and for the benefit of state colleges or universities any federal, state or private gift or grants. Each gift or grant must be consistent with the college, university or system mission.

Part 2. Responsibility. Each college and university president is authorized on behalf of the board to accept gifts and grants made to the institution, other than gifts or grants of real property. All private gifts and grants over \$100,000 shall be reported to the chancellor as detailed in Part 4 of this policy. In accordance with policy 5.14 Contracts and Procurements all private grants exceeding \$3,000,000 must be approved by the board.

Also in accordance with policy 5.14 Contracts and Procurements, any grant agreements that do not adhere to system approved contract templates must be approved in advance by the office of general counsel or attorney general's office.

The chancellor is authorized on behalf of the board to accept gifts and grants made to the system office.

All gifts and grants of real property shall be approved by the chancellor and are subject to Policy 6.7.

All gifts and grants must be recorded in the Minnesota State Colleges and Universities financial system.



7.7 Gift and Grants Acceptance (2)

Part 3. Transfer of Gift. A college or university that receives a gift or bequest as provided in Minnesota Statutes §136F.80 and §136F.81 that is intended for the purposes performed by a foundation approved under Minnesota Statutes §136F.46 may transfer the money to its foundation, provided the money is used only for public purposes.

Part 4. Accountability/Reporting. No proposal shall be submitted to any funding authority without the signature of the president (for institutional grants) or the chancellor (for system office grants), or a person designated by the president or chancellor.

The chancellor or designee will be periodically updated on the nature and the amount of all private gifts and grants with a value in excess of \$100,000 accepted by the colleges, the universities, and the system. The colleges and universities shall maintain a list of all private gifts and grants for incorporation into a comprehensive annual report to the chancellor.



5.14 Contracts, Procurements, and Supplier Diversity (1)

Part 1. Authority

Pursuant to Minn. Stat. §136F.581, the board has authority for contracts and purchases consistent with Minn. Stat. §471.345, the Uniform Municipal Contracting Law, and other pertinent statutes, as well as the authority to utilize any contracting options available to the commissioner of administration under Minn. Stat. Chapters 16A, 16B, and 16C.

Part 2. Policy Statement

Minnesota State serves as a good steward of tuition funds, state appropriations, and other resources entrusted to it by Minnesotans and the students we serve. In that pursuit, system contracting and procurement practices and processes shall be transparent and fair, consistent with the authorities afforded in state statute.

Minnesota State is committed to creating and maintaining a supply chain that resembles the diversity of the students and communities it serves. The Board supports the use of its purchasing power to enhance and optimize business and contracting opportunities for historically underutilized businesses. For the purposes of this policy, Targeted Businesses (TGBs) are defined as Minority-owned (MBE) and Women-owned businesses (WBE) pursuant to Minn. Stat. 16C.16 Subd. 5.



5.14 Contracts, Procurements, and Supplier Diversity (2)

Part 3. Responsibilities

The colleges, universities, and system office are responsible for procurement of necessary goods and services and the implementation of contracts that maximize the use of financial resources.

The Minnesota State procedures for procurement and contracts shall be consistent with Minn. Stat. §471.345, the Uniform Municipal Contracting Law, as applicable, and in compliance with other pertinent state and federal laws. The procedures shall provide detailed instructions for campus and system implementation.

Part 4. Accountability/Reporting

Subpart A. Compliance

College and university presidents will be held accountable by the chancellor for complying with state and federal laws, board policy, and system-wide procedures for all purchases and contracts.

Subpart B. Contract form approval

Any contracts or other legally binding agreements, including grant agreements, or memorandums of understanding/agreement that create legally binding obligations and responsibilities, that do not adhere to system approved contract templates must be approved in advance by the Office of General Counsel or Attorney General's Office.



5.14 Contracts, Procurements, and Supplier Diversity (3)

Subpart C. Board approval required

Any procurement, lease agreement, or professional/technical/consulting service contract with a value in excess of \$1,000,000 or contract amendment that would increase the total value of a contract to more than \$1,000,000 must be approved in advance by the board.

The following contracts and agreements must be approved in advance by the board if the total value of the initial contract/agreement and/or subsequent amendments exceeds \$3,000,000:

- Inter-agency agreements;
- Joint powers agreements;
- System master contracts if the total purchases made for goods or services under the master contract are expected to exceed \$3,000,000; individual purchase orders made under a system master contract approved by the board are not subject to separate Board approval;
- Grant agreements other than federal grants or grants from Minnesota state agencies.

Joint powers agreements that create a joint powers board, regardless of the dollar value, must be approved in advance by the Board.

Subpart D. Five year limit

Contracts, including real property leases, must not exceed five years, including renewals, unless a longer period is otherwise provided for by law, or approved by the board for contracts subject to approval under Subpart C, or by the chancellor or the chancellor's designee.



5.14 Contracts, Procurements, and Supplier Diversity (4)

Subpart E. Exemptions

The following contracts are not subject to the approval process under Subpart C:

Design and construction contracts associated with projects approved by the Board as part of a capital bonding request or revenue bond sale.

Purchase orders made under a master contract of the Minnesota Department of Administration or MnIT.

Federal grants and grants from Minnesota state agencies.

On-going Utility Contracts for colleges and universities where the area provider is the only feasible source of services such as electricity, gas, and other energy sources (steam, propane, or fuel oil).

Subpart F. Reports

Semiannual reports on all contracts with values greater than \$1,000,000, except those listed in Subpart E, must be provided to the board's finance committee and available on the system's website.



Not a Minnesota State Form or Template?

- College/university must review for essential elements, prohibited provisions, practicality and business decisions; and communicate any objectionable or problematic provisions to legal counsel and others as applicable for review.
- Don't assume that a provision suggested by a party can't be changed or modified;
- If other party wants to use its contract form, consult with Minnesota State system legal counsel for legal review and possible negotiation and recommended changes, or drafting addendum or amendment;
- If Minnesota State is "Grantor" -Use most current template directly from Finance website each time you draft to avoid use of outdated form. Use Intra-agency agreement for campus to campus or system office transactions.



2015 Grants Audit



Lessons Learned from 2015 Grants Audit (1)

- There needs to be guidance addressing grant management practices.
- Have procedures in place to ensure C/U system compliance with time and effort requirements for federal grants.
- Have procedures to ensure compliance with federal conflict of interest requirements.
- Grant agreements may require review by system legal counsel prior to contract execution
- Some grant agreements need approval by Board of Trustees.
- College, university, and system office leaders should consider alternative models for managing grants by leveraging the knowledge of larger institutions with more mature processes.



Lessons Learned from 2015 Grants Audit (2)

- Delegations of authority need to be in place for employees that apply for grants and sign grant agreements.
 - Delegation of Authority Resources
 - [Board Policy 1A.2.2](#)
 - [Process and forms on Finance website](#)
 - Ask: Does the person signing the pre-award submittal and post-award contract have written delegated authority to legally bind the college/university? If not sure, check with your campus business office or administrator.

Under Construction: Minnesota State Grant Agreement Template

- OGC is currently updating the Minnesota State Grant Agreement template for use when Minnesota State is “granting” funds to third party.
- Generally, Minnesota State receives grant funds, but occasionally grants to fund to a third party (GRANTEE).
- The template is not intended for:
 - Grants between C/U/system: use intra-agency agreement
 - Federal grant sub-awardee: contact OGC for assistance with sub-awardee agreement terms



Grant Management



Grant and Grant Contracts Management Pre and Post Award

- Understand your campus contract process for reviews, approval, and grants management.
- Is the proposed grant related to college/university mission?
- Does the college/university/system have expertise or resources to be successful grantee?
- Coordinate with other campus areas (HR, ITS, ASA, Marketing, Facilities, etc.) which may be necessary to carry out the grant
- Ask for copy of grant contract, letter, etc. (request word version)
- The person responsible for...
 - Knowing the duties and deliverable timelines;
 - Developing a contract administration plan;
 - Monitoring and reporting grant contract performance and accountability;
 - Monitoring the grant contract budget and how it is being reported;
 - Negotiating grant contract changes, scope of work and resolving disputes;
 - Closing the grant contract upon completion or termination.
 - Grant Contract Management should remain ongoing for the duration of the contract to ensure work is satisfactory, and the grant contract is being adhered to.



Compliance with Federal Grant Provisions

- Principal investigators must report potential financial conflicts of interest and propose plans to address them.
- Colleges and Universities typically must agree to statements prohibiting lobbying and prohibiting doing business with entities prohibited from doing business with the Federal Government (“Debarred Entities”).
- Written policies on research misconduct are required (assessment, inquiry, investigation) and so are reporting of final determinations to federal agencies.
- Sponsored programs offices must be aware of export control restrictions (EAR, ITAR, etc.).



Direct and Indirect Costs

- Direct costs – specifically identified in the award or contract
- Indirect costs – Facilities and Administrative Costs
- Campuses have indirect cost rate agreements with the federal government.
- Contact your campus business office if you have questions about direct and indirect costs.



“Flow-Down” Requirements

- Many grants have provisions that must apply to subcontractors or subawardees.
- You must include these “flow-down” provisions in subawards and, and sometimes, subcontracts.
- “Subawards” for Federal grants are a specialized subject. If your campus does not have a dedicated sponsored programs office and this comes up, please contact our office.



Grants, Data Privacy, and Intellectual Property



Data Privacy and Compliance

- Don't delete or revise data practices language included in the template. If you have questions, please seek guidance from OGC or AG Office.
- MGDPA and sometimes FERPA provision may need to be added to grant award contracts if using non-Minnesota State contract templates.



Confidentiality Clauses Proposed By Others

May be overbroad

- Can't agree to keep everything confidential
- Alternative language available if needed
- We can't agree to confidentiality unless the materials in question are classified as private, confidential or protected nonpublic under the Data Practices Act.
- "Trade Secret Information" may also be withheld from disclosure. It is defined in Minn. Stat. § 13.37, subd. 1 (b): "Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use."
- Pay attention to this during the grant submittal and pre-award process.



Intellectual Property Ownership

- By law, the creator is usually the owner. Grant contract may be different!
- Know what the grant contract or funder requires before agreeing and signing!
- Board Policy approaches ownership differently. Policy 3.26, Part 4 sets forth basic ownership categories and default expectations:
 - Institutional works
 - Scholarly works
 - Personal works
 - Student works
- It may be impossible to identify ownership after the fact. Get agreements in place early. Ensure any IP agreements are in compliance with grant agreements requirements and ownership interests.



Modification of Basic IP Ownership and Rights

- If there is no agreement, ownership is determined by a number of factors present in the situation.
- This result may be surprising / unsatisfactory.
- Modification may produce more desirable results.
- Know before signing! A written agreement or modification of the grant agreement is the desired way to modify policy-driven result ([Board Policy 3.26, Part 4, Subpart B](#)). These may include:
 - Joint Creation & Ownership Agreements
 - Specially Commissioned Work Agreement
 - Sponsored Research agreements
 - IP Assignments
 - License Agreements

Invention Reporting for Federal Grants

- The Federal Government has “march-in” rights to inventions developed using Federal dollars per the “Bayh-Dole Act.”
- This is irrespective of either CBA with faculty unions.
- Additionally, inventions must be reported to funding agencies.
 - The NIH has an electronic reporting system called “iEdison.”
 - Funding agencies have different reporting requirements at the completion of grants.



Before you Finalize Your Grant



What Remains Important Before You Finalize and Sign!

1. Description of services to be delivered or received by C/U/system office? Clear and understandable description of the subject of the contract. Limit use of highly technical terms and jargon when possible.
2. Grantor/Funder's legal name, full address (not a P.O. Box), phone, email, fax? Verify current information.
3. Contact person(s) name, address, phone, fax, email address? Verify current information, especially if anything differs from (2).
4. Date grant contract is to begin? This may or may not be the date the contract is signed, however standard Minnesota State contracts state "whichever occurs later." Do not begin work until the contract is "effective."

What Remains Important (2)

5. Date grant contract ends? This refers to date the contract would normally end unless terminated earlier for any reason.
6. Other important dates (deadlines, mileposts, reports due, etc.)? Dates should be clearly identified. Use full dates (ex: “June 3, 2024”) whenever possible.
7. Has work started prior to execution of contract? If the work or obligation has already started prior to the execution of the contract complete the Minn. Stat. 16 A form found on the contracts website. By law, contracts must be in place prior to Minnesota State taking on an obligation.
8. Procedure for renewal clearly identified and understood? Avoid “automatic renewals” or trigger periods to terminate or extend. Minnesota State contracts cannot extend beyond 5 years without additional authorizations. Agreeing to “auto renew” may require additional contract management/monitoring.



What Remains Important (3)

9. Clear description of the budget use and purposes or other consideration for contract? Partial payments should be stated with due dates; amount tied to other amounts (e.g., deliverables, percentages) should be stated in clear terms. Is equipment or materials to be purchased with grant funds identified?
10. Rights, obligations, duties of every party clearly listed? Each party's responsibilities identified in understandable wording.
11. Time and place for performance of work or services? If performance of work or service extends over a period of time, include due dates if necessary.

What Remains Important (4)

12. If insurance is required, types and levels of coverage listed? The Minnesota State Director of Risk Management and the State of Minnesota Risk Management office should be consulted if there are questions about the levels of coverage and/or carriers.
13. Indemnification, liquidated damages, attorney's fees, waiver of contractor's liability, waiver of statutes of limitations.
 - a. These types of clauses are not allowable because of state constitutional restrictions. Notify Grantor/Funder that these must be deleted.
 - b. AFTER attempting to have these deleted, and not agreed to, contact System Legal Counsel for further assistance.
14. Governed by laws of the State of Minnesota? Minnesota State colleges/universities/system office may not agree to be governed by the laws of another state. Contact OGC/AGO if other party wants different law to control.



What Remains Important (5)

15. Venue for suits in court located in Ramsey County?
16. Confidentiality provisions? Minnesota State cannot agree to keep information confidential if it is subject to public disclosure under the Minnesota Government Data Practices Act.
17. Is the intellectual property ownership and use rights undetermined? Consult system legal counsel if necessary.
18. Is the contract a Minnesota State template or the other party's document? If using a grantor/funder's contract document, contact AGO or OGC for review. If using a Minnesota State template and the contract has been modified or required clauses deleted, contact AGO or OGC for review.
19. Spelling, formatting, grammar, punctuation, math, and general appearance of document are professional and accurate. Minnesota State is one of the largest higher education systems in the U.S. Your work product should reflect the professionalism expected of a college or university.



Please Take Our Survey

A link to our survey is provided in the chat. We appreciate your feedback and are always looking for ideas for future webinars and ways to improve.



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