

## Contract Formation for Grants

This section of this Chapter prevails over guidance addressing the same matter in the procurement sections of the Guide. In addition to the Uniform Grant Management Standards published by the Governor's Office, agencies should follow any applicable federal or state grant funding source laws or regulations.

### Authority to Grant

There are a few Texas Constitutional provisions that limit the ability of a state agency to award grant funds. Article III, Section 51 of the Texas Constitution provides that the "Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever." Article III, Section 52 of the Texas Constitution prohibits the Legislature from authorizing any political corporation or subdivision of the state "to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever." Hence the intent of Sections 51 and 52 is to prevent the state from freely giving public funds to private persons; however, Sections 51 and 52 do not prohibit grants to a private person or entity "if the appropriate governing body (i) determined that the expenditures serves a public purpose and (ii) places sufficient controls on the transaction to ensure that the public purpose is carried out". Tex. Att'y Gen. Op. No. JC-0146 (1999); see e.g., Tex. Att'y Gen. Op. Nos. DM-256 (1993); JM-1146 (1990); JM-551 (1986); H-966 (1977).

Also, in accordance with Article III, Section 44 of the Texas Constitution, an agency must have statutory authorization to grant funds. The award of a grant from the federal government to a state agency does not, in itself, confer authority to the state agency to make grants from the funds without specific state statutory authorization and a state appropriation. The grantor state agency must verify that it has state statutory authority to make the grant even if there is an appropriation of money to fund the grant. Unless the grantor agency has pre-existing state statutory authority to make a grant, an appropriation to make a grant violates Article III, Section 44 of the Constitution. Tex. Att'y Gen. Op. No. JC-0244 (2000). Furthermore, under Article VIII, Section 6, of the Texas Constitution, the statutory language should be specific, which has been interpreted to mean it must specify its purpose. *National Biscuit Co. v. State*, 135 S.W.2d 687, 693 (Tex. 1940) ("[N]o particular form of words is required to render an appropriation specific within the meaning of the Constitutional provision under discussion. It is sufficient if the Legislature authorizes the expenditure by law, and specifies the purpose for which the appropriation is made.").

### Grant Contract Document

Agencies may use different forms of contractual documents to memorialize the grantor-grantee relationship. Some agencies choose to do a "Statement of Grant Award" signed by the grantor and a subsequent "Acceptance of Grant Award" signed by the grantee, with each document containing terms and conditions of the grant. Other agencies may choose to incorporate all the terms and conditions into one grant contract that is signed by both parties.

Regardless of form used, care should be taken to ensure that the basic elements of a contract are included as well as some special provisions that are applicable in a grant situation. These special provisions should ensure that the expenditure serves a public purpose and that sufficient controls are present to ensure the public purpose is carried out. Any other special provisions unique to a grant must be included in the contract or grant agreement.

## **Special Conditions and Specific Provisions**

Applicable standard certifications and assurances of UGM, Part III, Subpart B, Section 14, must be included in every grant contract document. Applicable state or federal laws as well as the administrative rules and regulations should be reviewed, and any applicable terms must be included in the grant contract document. For example, a federal agency, as grantor, may have specific certifications, assurances or requirements for compliance with certain financial guidelines applicable to grantees.

## **Recommended Terms**

Similar to any contractual document, there are various terms that warrant inclusion in a grant contract. The grant contract term and maximum liability amount (the “not-to-exceed” amount) should be clearly stated. A funding out provision in the event funds become unavailable must be included in the grant contract. Rights to inspect and audit, consistent with the state or federal audit agencies, must be included. Provisions regarding targets, outputs, outcomes and performance measures and standards as well as any required reporting by the grantee, may also be included.