

March 9, 2023

Office of General Counsel

Grants and Grant Agreements

Mary Al Balber Assistant General Counsel
Daniel McCabe Assistant General Counsel

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.



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		

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 Administra	

Small Business Administra [(D)-4.4 (e)-1 (pa)0.8 (r)-7.7 (t)-4.8 (m)90(s)-.7 (s)]TJ EMC /P <</MCID 122 >>BDC /TT1 1 Tf 0 Tc 0 Tw 46.

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



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. §1.345, 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,



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 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



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



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.



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](#)



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



Grant Management



Grant and Grant Contracts Management Pre and Post Award

Understand your campus contract process for reviews, approval, and grants management.



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.



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



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



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





Before you Finalize Your Grant





What Remains Important (2)

5. Date grant contract ends? This refers to date the contract



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 6.04 -04i (f)10/ am



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 ot1y <(M)2-1.7



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.



Contact Information

Mary Al Balber

Assistant General Counsel

maryal.balber@minnstate.edu

651-201-1752

J. Adam Sorenson

Assistant Attorney General

J.Adam.Sorenson@ag.state.mn.us

(651) 7574202

Daniel McCabe

Assistant General Counsel

daniel.mccabe@minnstate.edu

651-201-1833

Gary D. Pihlstrom

Assistant Attorney General

gary.pihlstrom@ag.state.mn.us

(651) 7574314

[Contacts for Contracts](#)

30 East 7th Street, Suite 350
St. Paul, MN 55107804

651-201-1800
888-667-2848

MinnState.edu