FIN 9.2 Grants Management – Funding Criteria and Oversight Requirements

A. **MAP Standard**

Assure State capital outlay appropriations granted by State agencies to other entities are expended in accordance with law and that grant funds and assets acquired with grant funds are properly accounted for and safeguarded.

B. **Purpose**

This document establishes uniform funding criteria for grantees to receive State capital outlay appropriations and grant management and oversight requirements.

C. **Authority**

Executive Order 2013-006 - Establishing Uniform Funding Criteria and Grant Management and Oversight Requirements for Grants of State Capital Outlay Appropriations by State Agencies to Other Entities.

NMSA 1978, Section 6-5-2(A) (granting FCD the authority to “devise, formulate, approve, control and set standards for the accounting methods and procedures of all state agencies” and to “prescribe procedures, policies and processing documents for use by state agencies in connection with fiscal matters”); Section 6-5-2.1(A) (authorizing FCD to “coordinate all procedures for financial administration and financial control and integrate them into an adequate and unified system”); and Section 6-5-2.1(Q) (authorizing FCD to “make improvements in the state's model accounting practices, systems and procedures”).

D. **Policy**

1. **Non-Tribal Government grantees – uniform funding criteria.** The following uniform funding criteria must be met for a non-Tribal Government grantee to be eligible to receive a grant of a State capital outlay appropriation:

   a. for the most recently concluded fiscal year, a grantee must have submitted the report of its annual audit or agreed upon procedures, as required by Section 12-6-3(A)-(B) NMSA 1978, if the due date for the report under 2.2.2 NMAC has passed;

   b. if the due date for the annual audit or agreed upon procedures report for the most recently concluded fiscal year was forty-five (45) or more days before the date on which a grant is made or a project is certified to the State Board of Finance, the report must be a public record pursuant to NMSA 1978, Section 12-6-5(A). For example, in July 2013, the relevant fiscal year for applying this and the previous criterion to counties is Fiscal Year 2012, since the Fiscal Year 2012 audit report was due to the State Auditor on November 15, 2012, and the Fiscal Year 2013 audit report is not due to the State Auditor until November 15, 2013. If a county’s Fiscal Year 2012 audit report was not a public record in July 2013, the county would not be eligible to receive a grant of a State capital outlay appropriation at that time;

   c. in the case of a grantee whose most recent annual audit report, agreed upon procedures report, or special audit report released since its most recent annual audit or agreed upon procedures report became a public record documents material weaknesses, significant deficiencies, or findings that raise concerns about the grantee's ability to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired with grant funds:
1. the grantee must have remedied the material weaknesses, significant deficiencies, and findings to the satisfaction of the State agency making the grant;

2. the State agency making the grant must have determined that it can impose and has the resources to implement special grant conditions that adequately address those weaknesses, deficiencies, and findings; or

3. the State agency making the grant must have determined that another appropriate entity is able and willing to act as fiscal agent for the grant;

d. in the case of a grantee that is not required to have annual audits or agreed upon procedures conducted under the Audit Act:

1. the grantee must have otherwise demonstrated to the satisfaction of the State agency making the grant that it has adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds;

2. the State agency must have determined that it can impose and has the resources to implement special grant conditions that will adequately address any relevant deficiencies in the grantee's accounting methods and procedures; or

3. the State agency must have determined that another appropriate entity is able and willing to act as fiscal agent for the grant; and

e. the grantee must have a budget approved by its oversight agency (if any) for the current fiscal year and be in compliance with any financial reporting requirements.

2. *Tribal Government grantees – uniform funding criteria.* The following uniform funding criteria must be met for a Tribal Government grantee to be eligible to receive a grant of a State capital outlay appropriation:

a. for the most recently concluded fiscal year, a grantee must have timely submitted to the federal government all forms and federal single audit documentation required under the federal Single Audit Act of 1984, as amended, and Office of Management and Budget Circular No. A-133, if the due date for the report under federal law has passed. A federal single audit report is timely submitted for purposes of this criterion if submitted by any extended due date granted by the grantee’s federal cognizant agency;

b. in the case of a grantee whose most recent federal single audit raises concerns about the grantee’s ability to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired with grant funds:

1. the grantee must have remedied the inadequacies in its accounting methods and procedures to the satisfaction of the State agency making the grant;

2. the State agency making the grant must have determined that it can impose and has the resources to implement special grant conditions that adequately address the inadequacies in the grantee’s accounting methods and procedures; or

3. the State agency making the grant must have determined that another appropriate entity is able and willing to act as fiscal agent for the grant.
3. *Uniform funding criteria are minimums.* The uniform funding criteria in paragraphs 1 and 2 of this Section D are minimums. State agencies are not precluded from imposing other, more stringent funding criteria or grant conditions.

4. **Prefunding determinations concerning uniform funding criteria.**

   a. State agencies are responsible for ensuring that the uniform funding criteria are met prior (i) to certifying to the State Board of Finance for the issuance of severance tax bonds, supplemental severance tax bonds, or general obligation bonds for a project or (ii) to making a grant of a State capital outlay appropriation to a grantee.

   b. In the event that more than one State agency receives an appropriation for the same grantee, those State agencies will coordinate their review concerning the grantee’s compliance with the applicable uniform funding criteria so as to (i) ensure that the grantee does not receive multiple requests for the same information and (ii) prevent inconsistent determinations on whether the grantee has adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds. COB shall notify State agencies that received an appropriation for the same grantee and designate a lead agency from among those agencies to coordinate the review of the grantee’s compliance with the applicable uniform funding criteria and interact with the grantee during the prefunding review process.

   c. If the State agency receiving the appropriation has determined that one or more of the uniform funding criteria has not been met, the State agency will communicate the results of its review to the grantee. At this time, the grantee will have an opportunity to respond to the State agency’s assessment and/or work and consult with the State agency to remedy deficiencies in the grantee’s accounting methods and procedures through corrective action, special conditions, or use of an appropriate fiscal agent. The State agency shall consider and give due deference to any corrective action plan submitted to or approved by a federal agency making an award to the grantee. The State agency may require Grantees to demonstrate that corrective action has been implemented through an agreed-upon procedures engagement with a certified public accountant. If the State agency determines that deficiencies have not been remedied through corrective action, special conditions, or use of an appropriate fiscal agent, the State agency will not certify for the issuance of bonds or initiate a grant agreement at that time.

   d. With respect to Tribal Government grantees, the following additional procedures will apply.

      1. **Use of data collection form for reporting on federal single audits.** State agencies will use federal Form SF-SAC (or its successor forms) to make an initial assessment of a Tribal Government grantee’s accounting methods and procedures. If the form reflects an unqualified opinion and no significant deficiencies, material weaknesses, instances of material noncompliance, or questioned costs, the State agency will make a determination of eligibility under the adequate accounting methods and procedures criterion. If the form reflects an opinion other than unqualified, a significant deficiency, a material weakness, a material noncompliance, or questioned costs, the State agency will request from the Tribal Government grantee relevant sections of the single audit report to analyze.

      2. **Contents of single audit report to be disclosed to State agency.** Tribal Government grantees will not be required to provide the State agency with copies of the
financial statements, notes to financial statements, or supplementary information sections of the single audit report for purposes of assessing whether the grantee has adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

5. Continual compliance with uniform funding criteria. Throughout the term of the grant, State agencies must monitor a grantee’s compliance with the applicable uniform funding criteria and take appropriate action to remedy non-compliance.

6. Template capital outlay grant agreements. State agencies shall utilize the applicable template capital outlay grant agreement developed by COB.

7. Private use of capital assets. State agencies must ensure that the private use of capital assets acquired by a grantee with State capital outlay appropriations complies with law. As a general condition to reimbursing the grantee for qualifying expenditures, the sale, lease, or license of capital assets to a private entity or an operating agreement with a private entity:

   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve of the transaction, the State agency must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the State agency may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the grantee for necessary expenditures incurred to develop the project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures.

8. Deviations and exceptions. Deviations from and exceptions to these policies, procedures, and related templates require the approval of the Secretary of Finance and Administration or the Secretary’s designee. More stringent or additional funding criteria and grant conditions are not deviations or exceptions and, therefore, do not require approval by the Secretary or the Secretary’s designee. Deviations and exceptions will be evaluated upon the following criteria:

   a. whether the underlying purposes of the policies, procedures, and related templates will be adequately served through other means;
   b. whether the programmatic needs of the State agency make compliance with the policies, procedures, and related templates impracticable;
   c. whether specific legal requirements of the State agency or Grantee make compliance with the policies, procedures, and related templates impracticable; and
   d. whether the requested deviation or exception is justified by other factors constituting good cause as determined by the Secretary of Finance and Administration or the Secretary’s designee.

E. Applicability

All State agencies, unless specifically exempted by law.
F. Procedures

State Agency

1. Prepare the questionnaire or other form developed by COB to document compliance with uniform funding criteria. Only upon COB's acknowledgement that requirements have been met should State agency certify to the State Board of Finance for issuance of bonds or initiate a grant to a grantee.

2. Use applicable template capital outlay grant agreement. More stringent or additional funding criteria and grant conditions may be added in an Attachment A to the grant agreement. Such more stringent or additional terms and conditions do not constitute deviations or exceptions and, therefore, do not require approval by the Secretary or the Secretary's designee.

COB

1. Notify State agencies that received an appropriation for the same grantee and designate a lead agency from among those agencies to coordinate the review of the grantee's compliance with the applicable uniform funding criteria and interact with the grantee with regard to the prefunding assessment of the grantee's compliance with the applicable uniform funding criteria.

2. Review submitted questionnaire or other form documenting compliance with uniform funding criteria. Determine if submission is compliant. Notify State agency of determination.


G. Definitions

1. “Adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds” means that the design and operation of the Grantee's internal controls allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, on a timely basis: (i) noncompliance with applicable laws, policies, and procedures related to the expenditure of grant funds, including, but not limited to, expending grant funds after expiration of the expenditure period; (ii) misstatements regarding grant funds, including, but not limited to, the failure to timely and accurately record and report grant revenue and expenditures; (iii) unauthorized or unsupported expenditures of grant funds; and (iv) the misappropriation of grant funds or assets acquired by grant funds, including, but not limited to, theft of grant funds or assets acquired by grant funds and the use of grant funds or assets acquired by grant funds for other than allowable purposes.

2. “COB” means the Department of Finance and Administration's Capital Outlay Bureau.

3. “Material weakness” means a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.
4. “Significant deficiency” means a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

5. “Tribal Government” means a federally recognized Indian Nation, Tribe or Pueblo located wholly or partially in New Mexico or any of its governmental entities or subdivisions.

APPROVED SEPTEMBER 30, 2013:

[Signature]

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