

# STATE CONTROLLER POLICY

## COMPETITION REQUIREMENTS FOR GRANTS

The purpose of this Policy is to provide direction regarding the classification of Grants and Contracts, the applicability of Office of Management and Budget (OMB) Uniform Guidance (Title 2 of the CRS, subtitle A, Chapter II, Part 200) and the Procurement Code to Grants and Contracts, and the relationship between the OMB Uniform Guidance and the Procurement Code. This Policy is also intended to differentiate requirements between Grants and Contracts.

- 1) **Definitions.** For the purposes of this policy, the following terms shall have the meanings ascribed to them below:
- a. **Application.** A formal request to receive a Grant award from a State Agency.
  - b. **Award.** An award of funds by a State Agency or a federal awarding agency or by a recipient of an award of State or federal funds.
  - c. **Competitive Grant.** A Grant from the State that requires a Competitive Process under this Policy.
  - d. **Competitive Process.** Includes collecting information about Applications, assessing each Application on the basis of evaluation factors, comparing Applications on the basis of those assessments, and determining the best Application choice(s). Evaluation factors may include ability to meet the program and/or subaward objectives. The Competitive Process may vary based on the time and resources available to make a selection. A Request for Application is an example of a Competitive Process.
  - e. **Contract.** Any type of state agreement, regardless of what it may be called, between a governmental body and another entity or individual, where the principal purpose is to acquire supplies, services, or construction or to dispose of supplies for the direct benefit of the governmental body. Grants, as defined under this policy, are not “Contracts”.
  - f. **Contractor.** An entity that receives a Contract. (See 2 CFR §200.1).
  - g. **Federal Award.** An award to a Recipient of federal financial assistance or a commitment for cost-reimbursement under the Federal Acquisition Regulations by a federal awarding agency. A Federal Award does not include Contracts that a federal agency uses to buy goods or services from a Contractor. (See 2 CFR §200.38)
  - h. **Grant.** An agreement in which a governmental body transfers anything of value to a Grantee or Subrecipient to carry out a public purpose of support or stimulation authorized by law instead of acquiring property or services for the direct benefit of that governmental body. “Grants” include both Competitive Grants and Non-Competitive grants.
  - i. **Grant Specified.** A Grant that includes the name of a Subrecipient or Contractor on either of the following:
    - i. The application that the State submits to a federal Agency or other entity providing funds to the State; or
    - ii. The Award the State receives from the federal agency or other entity providing those funds.
  - j. **Grantee.** The recipient of a Grant that only uses State funds.
  - k. **Non-Competitive Grants.** A Grant from the State that does not require a Competitive Process under this Policy.
  - l. **Pass Through Entity (PTE).** A Recipient that provides a Subaward to one or more Subrecipients to carry out part of a federal program. Where the State is the Recipient of a Federal Award that will be subsequently awarded to one or more Subrecipients, the PTE for purposes of the OMB Uniform Guidance shall be the specific State Agency program that administers and monitors the Subawards. (See 2 CFR §200.74).

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- m. **Personal Services.** Services acquired for the state's direct benefit in its operations. (See CRS §24-50-502(2)).
- n. **Procurement Code.** The Colorado Procurement Code, 24-101-101 *et. seq.*, C.R.S.
- o. **Procurement Official or Program Administrator.** Any person duly authorized through a purchasing delegation from Department of Personnel & Administration to conduct a Competitive Process, enter into and administer Contracts, and make written determinations within the limits of his or her authority.
- p. **Program** – A type of grant or funding assistance that is broadly categorized as those awarded by the federal government and those awarded by a non-federal entity.
- q. **Program Administrator** – Any person duly authorized through a delegation from the department's Procurement Official to conduct a Competitive Process, enter into and administer Grants, and make written determinations within the limits of his or her authority.
- r. **Recipient.** A non-federal entity that receives a Federal Award directly from a federal awarding agency to carry out an activity under a federal program. The term does not include a Subrecipient. (See 2 CFR §200.86).
- s. **Request for Application.** A competitive selection method in which a State Agency announces that Grant funding is available and allows outside entities to present applications on how the funding could be used. A Request for Application qualifies as a Competitive Process.
- t. **Settlement Agreement – A legal binding agreement that outlines the resolution to a dispute, including disbursement of funds.**
- u. **Sponsoring Agency** – An agency or department that awards grant funds to individuals and entities either as original grantor or pass-through entity.
- v. **State.** The State of Colorado.
- w. **State Agency.** A governmental body of the executive branch of the State. (See CRS §24-101-105(1)(a))
- x. **Subaward.** An Award of federal funds provided by a PTE to a Subrecipient for the Subrecipient to carry out part of a Federal Award received by the PTE. A Subaward does not include payments to a Contractor or payments to an individual that is a beneficiary of a federal program. (See 2 CFR §200.92).
- y. **Subrecipient.** A non-federal entity that receives a Subaward from a Recipient to carry out part of a federal program, not including an individual beneficiary of such program, where the funds distributed include funds from a Subaward. A Subrecipient may also be a Recipient of other Federal Awards directly from a federal awarding agency. (See 2 CFR §200.93).

## 2) Application of this Policy.

- a. Awards Subject to the Requirements of this Policy
  - i. The requirements of this policy apply when awarding Grants, regardless of the funding source (e.g. regardless of whether the source is a federal award, a State appropriation or a private grant). All Grants are exempt from the Procurement Code.
    - 1. **Federal Awards** – A State Agency shall apply the following hierarchy for awarding competitive grants:
      - a. **Sponsoring Agency** – Federal awarding agency
      - b. **Program** – For the specific program
      - c. **This policy** – Absent guidelines from the sponsoring agency or program, the State Agency shall follow this policy when it awards Grants under a Federal Award. In this situation, when a Federal Award requires a State Agency to award funds in accordance with their state's procurement code, the State Agency shall follow the State's procurement code in awarding Contracts and this Policy for awarding Grants.

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2. **State Awards** – A State Agency shall follow this Policy when it awards Grants under a state appropriation and State statute that requires competition, or as a Sub-Grant when the State Agency receives a Grant from another State Agency or from a private entity.
  3. **Settlement Awards** – A State Agency shall follow the requirements set forth in the Settlement Agreement to:
    - a. Identify a State Agency with expertise to administer and manage the settlement funds via an Interagency Agreement
    - b. Conduct a competitive process
  - b. Awards not Subject to the Requirements of this Policy
    - i. The requirements of this policy do not apply when awarding Contracts, regardless of the funding source (e.g. regardless of whether the source is a federal award, a State appropriation or a private grant). The Procurement Code applies to all publicly funded Contracts entered into by all governmental bodies of the executive branch of the State, except for certain statutory exceptions. The requirements also do not apply when the State agency follows guidelines regarding competition from the Sponsoring Agency or Program.
      1. **Federal Awards** – A State Agency shall follow the Procurement Code when procuring property, services and construction under a Federal Award. When a Federal Award requires a State Agency to award funds in accordance with their state's procurement code, the State Agency shall follow the Procurement Code for awarding Contracts.
      2. **State Awards** – A State Agency shall follow the Procurement Code when procuring property, services and construction under a State Award.
- 3) **Requirements for Competitive Grants.** All Competitive Grants shall be conducted in a manner providing full and open competition where practicable and at the discretion of each State Agency's Procurement Official, in accordance with the Procurement Official's delegation. Grants are Competitive Grants if they require a Competitive Process as follows:
- a. Grant Specified Awards
    - i. Application - State Agencies shall use a Competitive Process when the federal Agency or other entity providing funds issues a notice of grant award 60 days or more from the Application deadline, the amount of each Award to each Subrecipient or Grantee is \$50,000.00 or greater, and the federal agency or other entity providing funds does not require the State Agency to use a specific Subrecipient or Grantee as a condition of accepting the State Agency's application.
    - ii. Award – No competition required.
  - b. Awards Other than Grant Specified
    - i. Application – no competition required.
    - ii. Award - State Agencies shall use a Competitive Process when the amount of each Award to each Subrecipient or Grantee is \$50,000.00 or greater.
- 4) **Requirements for Non-Competitive Grants.** Non-Competitive Grants are Grants that do not require a Competitive Process as follows:
- a. Intergovernmental Grants – State Agencies are not required to conduct a Competitive Process for Grants to other governments, unless a State Agency is required to use a Competitive Process for intergovernmental Grants as a condition of the Award to the state of funds or if the State Agency's Procurement Official requires a Competitive Process in his or her discretion.
  - b. Grants for less than \$50,000.00 – State Agencies are not required to conduct a Competitive Process for Grants to a Subrecipient or Grantee that are less than \$50,000.00 for that Subrecipient or Grantee, however, a State Agency may use a Competitive Process for Grants of

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less than \$50,000.00 per program guidelines or at the discretion of the State Agency's Procurement Official.

- c. Distributions – State Agencies are not required to conduct a Competitive Process for Grants where the State agency makes a statutory or formula-based distribution to recipients of the funds. When making this type of distribution, a State Agency shall make that distribution in accordance with the formula or statute that forms the basis for the distribution.
- 5) **Conducting the Competitive Process.** Unless otherwise specified by law, each State Agency's Procurement Official or Program Administrator shall conduct the Competitive Process for their State Agency when it is required under this Policy unless the Procurement Official has delegated this authority and responsibility for awarding Competitive Grants to other individuals within the State Agency.
- 6) **Lack of Competition.** In situations where a State Agency has conducted a Competitive Process and there are no responses or responses do not meet the State Agency's needs, then the State Agency can re-issue the solicitation or solicit additional applicants to address the reasons for the lack of responses.
- 7) **Compliance with Policy.** All State Agencies that receive federal funds or State funds for Grants shall comply with this Policy. Failure to comply with this Policy may result in the loss of purchasing and/or contracting delegation from the Office of the State Controller. A State employee who fails to comply with this Policy may be subject to disciplinary action by the employee's appointing authority.



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