

Contracts and Grants Section (CGS) / OMB
Presentation on Contracts and Grants (CnG) Requirements
ARRA Meeting - June 24, 2009

1. Introduction & Formality.
 - A. Overview on NN rules on external contracts and grants.
 - B. NN requirements in applying for \$787 billion economic stimulus \$\$ via P.L. 111-5.
 - C. Focus on process from application submission to authorization to expend budget. Briefing only on:
 - 1) Implementation – procurement, service delivery, etc.
 - 2) Monitoring, Reporting & Closeout.
 - D. Cover only major points; leave rest for leisure reading.

2. Role of Navajo Nation (NN).
 - A. Fiduciary responsibility to account for public funds & manage wisely.
 - B. To plan adequate funding of services desired by Navajo People.
 - C. Maximize service delivery with available resources.
 - D. Provide for essential public facilities and maintenance thereof.

3. About OMB.
 - A. Org. Structure – Admin. Support, Budget, Mgmt Policy, Systems and CGS.
 - B. Plan of Operation (PlanOp) at Subchapter 9, 2 NNC Section 1201-1205:
 - C. OMB is NN Clearinghouse on business with Funding Agencies.
 - D. Vision Stmt: “Budget Appropriately, Spend Responsibly”.

4. Overview of CGS/OMB:
 - A. Responsibilities per § IV. C., of the PlanOp are:
 - 1) Develop policies on contracts and grants for adoption by NN.
 - 2) Provide TA on appropriation process of external funding to ensure optimum NN participation and benefit.
 - 3) Assure funding application or agreements comply with current NN:
 - Strategies, goals, objectives, work plan; and

- Policies and procedures; and recommend approval or disapproval.
- 4) Negotiate Contracts/Agreements to serve the best interest of the NN.
 - Scope of work (SOW) consistent w/ level of funding request or award.
- 5) Administer CnG & monitor compliance to realize performance.

B. Size of Contracts and Grants (CnG).

- 1) Number of approx. 70 programs and 50 different CnGs.
- 2) Funding Ratio on FY 2009 NN Comprehensive Budget of \$584m.
 - 52% or \$302.2m is special revenue (non-NN).
 - 48% or \$281.8m NN Funds.
- 3) Summary of Budget Expenditure Report (BER) as of 4/29/09. Detail 25 pages report on OMB Web.

No. Contracts	No. of Business Units	Revised Total Budget	Exp/Oblig.	Balance
Active -710	1152	\$1,165,695.089		288,917,908
Expired -827	1569	1,376.704,555		129,717,378
Total - 1537	2721	2,542,399,644		418,632,285

- 4) ARRA funding - \$169.48m: IHBG; IRR; HIP; WIA; Weathrz; Energy Eff., BIA school, Child Care; Com Serv.

5. CGS' Work Includes.

A. Year round activity; Contract term begins and end every month.

B. Signature Approval Sheet (SAS) Review.

- 1) Prime (Funding) contracts only - funding appl., award & contract mods.
- 2) Procurement or subcontracts reviewed by OOC - 9/25/06.
- 3) Submit complete SAS packet & in advance of due date.
- 4) CGS complete review by next business day after receipt.
- 5) Use NN SAS form issued by OMB; assure review is in order of reviewer listed on form.
- 6) Surname substantive SAS; return non-substantive.
- 7) OOC / DOJ rely on OMB review.

C. Budget Requests / Submission.

- 1) Federal - request / advocacy.
 - Submitted 2 years in advance of applicable year.
 - Advocate for continued funding and seek increase.
 - 2) NN – report anticipated funding award.
 - 3) Review budget for compliance w/ NN rules to authorize spending.
 - Account code, calculation, matching fund, contract support cost, etc.
 - 4) Process Budget Revision Requests.
- D. Set up Contracts in FMIS.
- 1) Assign company number and business unit (K).
 - 2) Set up includes grant number; budget; term begin and end date; etc.
- E. Develop rules and orientate program to implement same e.g., Single Audit, Budget Process – Fed. & NN.
- F. Single Audits.
- 1) Issue procedures on audit process.
 - 2) Arrange meetings – entrance conf., pre & final exits.
 - 3) Findings.
 - a) CAPs & CAPs status reports on findings are responsive.
 - b) Submit CAPs to Auditor for audit reporting.
 - c) Respond to funding agency inquiries.
- G. Indirect Cost.
- 1) Submit IDC Rate Proposal.
 - 2) IDC Negotiated Agreement is executed.
 - 3) Projection on IDC Recovery for annual NN Comp. Budget.
 - 4) Advise on allocation of IDC for budget – central service providers e.g., OMB, OOC, etc.
- H. Monitor Contracts – Contract Monitoring (CM) form fill out to check compliance on reporting requirements.
- I. Provide Technical Assistance.
- 1) Inform program on current events on CnG matters.
 - 2) Interpret rules.
- J. Prepare report and attend meetings – Provides hard copies.
- 1) Reports – quarterly to OPVP; request by BFC and Oversight.
 - 2) Meetings – crisis mgmt called by OPVP; BFC and Oversight

6. Procedures & Internal Control:

A. Contract Process:

- Application → Award → Acceptance → Execute Contract → Implementation → Monitoring → Reporting/Decision → Close out.

B. SAS review - purpose:

- 1) 2 NNC § 164. B., administrative review.
 - a) Reviewers - Div., Controller and DOJ; OMB & NN President.
 - b) Abbreviated (unilateral contract mods.) - Program, Division, OMB.
- 2) Ensure document is substantive for execution by NN President.
 - Applicable NN rules are satisfactorily addressed 2 NNC, 12 NNC, etc.
 - Analysis – verify accuracy of information e.g., date, amount, consistent w/contract requirements.
- 3) Division Director & OMB address comments raised by reviewers.
- 4) OMB is repository of completed SAS; original in contract files & copies program/CA-OOC.
- 5) Call to action – timely review & monitor SAS; work the system & not wait.
- 6) NN's approval to proceed w/ intended measure for action.
- 7) Benefit – Application review & surnamed SAS result on cursory of subsequent doc.

C. Pursuant to Executive Order 2004-01 by President Shirley, measures initiated by Executive Branch programs for legislative action must first obtain Executive Branch clearance.

D. Contracts must include funding to cover cost of administering such - contract support cost.

- 1) Use Rate IDC Negotiated Agreement – FY 2006 is 21.6%.
- 2) Central service providers – budgeting, accounting, reporting, personnel, procurement, etc.

E. Request for Services forms required by – CGS/OMB; DOJ and OPVP. Legislation drafted by Office of Legislative Services.

- CGS form summaries required documents and checks.

F. Tracking – SAS log in/out at OMB and Sponsor.

G. Reports – FMIS BER e.g., contract no., CFDA; Funding Agency; C /K#; funding period; award amount; etc.

H. Transmittal issued by CGS/OMB attests that funding award is authorized for implementation.

7. Importance of Contracts and Grants:

A. Contract type:

- 1) **Prime** – contract that provides funding to the NN (contractor) from federal, state, county and corporation/ foundations (owner):
 - a) Recurring (previous funding likely to continue) and non-recurring (one time funding).
 - b) Funding awards per application or automatic renewal.
 - c) Terms are annual or multiple years with annual funding i.e., 638 BIA contract for 5 years and funding allocation is annual.
 - d) Receipt of funds is: 100% advance on 638; rest are cost reimbursement (Navajo dollars expended up front) and reimbursement request submitted to funding agency.
- 2) **Procurement** a.k.a. subcontracts – contract by the NN (owner) which expends funds for goods and services provided by 3rd party contractor and vendor.

B. Contract is premised on:

- 1) A legally (written agreement) enforceable promise or set of promises made by one party to another.
 - a) Mutual promises / binding legal agreement (terms and condition) between contracting parties, owner & contractor.
 - b) Describes services or program to be delivered.
 - c) Requirements that the parties must perform e.g., progress, SF 269 and audit reports.
 - d) Term (period of the agreement) and price (cost).
 - e) Time is money cliché – set time period and cost limits.
- 2) Performance Required.
 - a) Performance Plan - clear goals and quantifiable objectives and corresponding budget.
 - b) Complete project/service delivery within budget and on time.
 - c) Show results on funds awarded via reporting: progress, financial status, audit – key are:
 - Reports accurate and submit by due date (timely).
 - Shows manner contract is serving purpose; compliance w/ granting authority.
 - Use to plan and evaluate program.
 - Progress major activities and accomplishments.

- 3) Contract Administration – measures parties should take to assure that terms and condition in the contract are carried out.
 - a) Contract Administrators are competent and fully aware and faithful to their roles – read & know contract.
 - b) Encompasses dealings from award to until closeout.
 - c) Focuses on achieving performance so owner receives goods/service of requisite quality/quantity.
 - d) In procurement area, ensures owner get what it paid for and maximize return on public funds.
 - e) Personnel exercise skill and judgment to protect effectively the public interest.
 - f) Parties has right to expect performance by all.
 - g) Parties has responsibility to performance what was agreed to;
 - h) Contractor submit progress and financial status reports; Single Audit; and monitoring i.e., develop plan, TA by fund source, the Tribe itself and the subcontractor.
 - i) Achieve objectives and fully expend funds w/in funding period.
 - j) **Signs of C/A exist:** clear, performance based SOW; end user satisfied with end product, capacity of and commitment by personnel.
 - k) **Signs of C/A non-exist:** unclear SOW; backlog contracts, no closeout; unclear roles; improperly trained staff; more time spent on award that administration; and no guidance on contract administration.

8. Governing Rules, Compliance Checks & Implication.

A. Purpose of Rules.

- 1) America is government of law not men.
- 2) Tunes level of discretion among legislators, administrator and judges.
- 3) Fair if those to whom it applies know what is required – clarity & specificity.
- 4) Solve problem of administrative discretion.
- 5) Control action of users.

B. NN law applicable to CnGs.

- 1) Review of Proposed Legislation - Title II amendments of 2004.
 - a) Per 2 NNC § 164. A., IGR accepts funding award from **gov't** entities (federal, state and county) by legislation.
 - Awards from **non-gov't** entities i.e., foundations and corporations executed by the President.

- Some funding awards are subcontract since it is “pass through”.
 - b) Per 2 NNC § 164. B. 2., funding appl. / award require administrative review (SAS).
- 2) Funding Application.
- a) Submit per Notice of Fund Availability (NOFA) issued by funding agency or per regulation.
 - Instructions, Due Date, Amt., Required Documents, etc.
 - b) Per 2 NNC § 1005 2. NN President negotiates and executes (signs) contracts subject to applicable laws.
 - c) Application submission is agreeing to comply with related requirements.
 - d) Application / Award Content.
 - Contract/Agreement - correct, current and address NN law e.g., sovereignty,
 - Scope of Work (SOW) - Description of service to be delivered and action plan to achieve end result.
 - In measurable, quantifiable end results or outcome form.
 - Budget – proposed, final and revisions must comply with FY 2010 BIPM.
 - NN Budget Forms 1-6;
 - Budget at FMIS level of detail 6.
 - Amount justified - show formula calculation & explanation.
 - IDC - 2 NNC § 824 (b) (9) rule on indirect cost are:
 - ✓ programs requesting waiver demonstrate a statutory/regulatory requirements that limits the IDC for a particular contract or grant, or
 - ✓ there is a showing of necessity and a commitment of available general funds by the program requesting a waiver which is available to offset the loss of IDC.
 - Matching Funds – Appropriation Act and NN BIPM. Program provide:
 - ✓ citation of regulation on matching requirements and
 - ✓ calculation on amount.
 - e) Protocols.
 - Address deficiencies raised by funding agencies.
 - Secure IGR endorsement on appli. & authorization to accept award - legislation.
- 3) Funding Award.
- a) Based on notice of grant award (NOGA) by funding agency.
 - b) Finalize SOW and budget base on amt. of award.

- c) Secure SAS review for acceptance and execution.
- 4) Acceptance of Funding Awards.
 - a) Per 2 NNC § 824 (b) (6) IGR:
 - Reviews, approves & accept funding contracts between the NN and funding agency.
 - Authorizes NN President to execute the contract.
 - b) Per 2 NNC §164. A., IGR accepts award by governmental entity.
 - Speaker assigns legislation to Committee.
 - Council Delegate sponsors and presents to Committee.
- 5) Contract Execution - required threshold and issues.
 - a) Per 2 NNC § 1005 2., NN President negotiate & execute (signs) contracts subject to applicable laws.
 - b) Executed contract should exist on day one of contract term.
 - c) Issues:
 - SAS review on application and acceptance of award is duplication.
 - Executing Contract delayed by:
 - Untimely submission of SAS by program & review.
 - Untimely acceptance of award and execution of contact.
 - CD sponsor difficult to retain or absent at IGR meeting; wait future meeting.
 - President not available.
 - Program don't monitor SAS for expedient review.
- 6) Implementation of Contract – required threshold and issues.
 - a) Budget entered in FMIS & TRANSMITTAL processed authorize expenditure on award based on:
 - SAS, original and surnamed.
 - IGR legislation accepting award.
 - Executed Contract – signed by NN Pres.
 - Budget per NN BIPM.
 - b) Contract Mod. - change in term, SOW, budget or any provision to a contract.
 - c) Role of Program/Division.
 - Expend budget to fulfill intent of contract.
 - Deliver quality, timely and customer satisfaction services.

- Review budget expenditure reports & close open commitments.
- Submit timely required reports – progress, financials, etc.
- Resolve performance issues – behind schedule spending and progress.
- Complete contracts by term ending date. More central service cost is incurred when completion is prolonged.

b) Issues:

- Implementation starts after term effective date not day one of funding period due to:
 - No contract award due to late submittal of funding application.
 - Untimely distribution of federal funds.
 - Contract award pending acceptance & execution per Navajo law.
- Funds are not fully expended by the end of funding period.
- Budget Revision – too many and daily routine; Total 562 or avg. of 281 per qtr. in FY 2008.
- Provide program reports to CGS; Expired contracts not closed out.
- Enforce applicable rules, NN PPM!!

7) Contract Monitoring (CM) / Close out.

a) Budget Implementation, Monitoring and Control, § 850 of Appro. Act:

- Budgetary Monitoring & Expenditure Controls. Controller/OMB monitor actual expenditures versus budget and report quarterly to the BFC.
- Budget Performance Measures. OMB develop system & standard for evaluating whether requirements have been met for the NN; and include the projected performance measures for all program in the annual budget.
- Program Evaluation: is to determine and recommend positive program improvement and whether a program warrants continuation at its current level of activity or modified to a new level or should be discontinued. All NN programs shall develop a detailed annual plan with performance indicators.

b) Verify compliance on required action or reports by due date including.

- Progress and Financial Status Reports (SF 269s, 272s, etc) - due date vs. actual submission date.
- Certification required i.e., firearms, training, etc.

- Resolve audit & monitoring review findings.
- c) Compare actual to target e.g., service delivery and expenditure at particular point in time – are results on schedule?
 - FMIS BER - % expended vs. % of funding period expired...
- d) Powers that be assess program reports and take action warranted.
- e) Audit and resolve findings.
- f) Monitoring reviews by funding agencies i.e., BIA, Head start, etc.
- g) Close out – Clear Open Commitments; Term of contract fully achieved, all funds accounted for or expended and release of claim process.
- h) Protocol / Issues - Due to hundred of contracts & different requirements, OMB monitoring / tracking is difficult. **Help / workload.**

C. Federal Laws – available at www.usomb.gov.

- 1) P. L.
- 2) OMB Circulars
 - a) A-87 – Cost Principles for State, Local and Indian Tribal Gov't. - IDC
 - b) A-102 – Grants and Cooperative Agreements w/ State and Local Gov't.
 - c) A- 110 and - 122
 - d) A-133 – Audits of State and Local Gov't.

9. Performance Management Module.

A. Need – assess and identify.

B. Set Priority.

- 1) Agreeing on budget priority before appropriation process.
- 2) Clear priorities locks budget plans.
- 3) Elaborating on priorities is essential. Example, Home land Security is extended to state of the art weapons and border patrol.
- 4) Priority setting involves making concessions and sacrifices i.e., public need versus political promises; eliminating programs; etc. What becomes of resolved priority?
- 5) Budget debate should not only for next year but also for multiple years. Today's decision will determine the nation' fiscal priorities and how to fund those for period at hand.

C. Importance of Budgeting.

- 1) Budget be fiscally responsible; economically sound (return on investments) i.e., tax cut stimulate economy.
- 2) Limits expenditures to revenues available
- 3) Provides amount of resources necessary to accomplish the objective.
- 4) Allocating scarce resources wisely and fund the important needs.
- 5) Accountability on how government spends public funds.
- 6) Reflects priorities and choices.
- 7) Cost Estimate by qualified person.
- 8) Projects fully funded.

D. Implementation; Monitoring; Reporting; Decision and Close out.

10. Questions and Comments.

- Effective application of P.L. 111-5.
- Give equal attention and priority to existing CnGs.
- Advice on success.

11. Consult CGS/OMB for guidance on contracts and grants matter at:

Contracts and Grants Section /OMB

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Website: www.omb.navajo.org

Thank You.