

This is an amendment to 1.12.21 NMAC, Sections 8 and 10

1.12.21.8 GENERAL RULES: These rules govern all subject grant programs:

A. Program administrator. A sponsoring body shall designate at least one person to serve as the program administrator for each grant program. The sponsoring body for a program shall notify applicants and grantees (as applicable) of any change to the program administrator(s) within 30 days of the change.

(1) The program administrator for a subject program shall be retained and subject to discharge by the sponsoring body subject to the provisions of the State Personnel Act and procurement laws, and to the advice and consent of the sponsoring body, as applicable.

(2) The program administrator shall report to the sponsoring body for a subject grant program.

B. Program purpose. A sponsoring body shall design a grant program to accomplish a purpose authorized by the funding source and that conforms to all applicable laws. The purpose and scope of a program shall be determined by the sponsoring body. The program purpose shall be stated in the NOFO for a merit-based program, and in the authorization order for an assistance grant program.

C. Appropriations. These rules do not apply to any appropriation lawfully used by a sponsoring body:

- (1) to fund program administration;
- (2) for a purpose specified in a funding source;
- (3) budgeted for a purpose other than program funding; or
- (4) for contracting.

D. Notice. Whenever these rules require notice, the required information shall be directed to the intended recipient(s) through e-mail, or through first-class mail if no e-mail address is on file. Notice shall be deemed delivered one day after transmission for e-mailed notice and three days after posting for mailed notice.

E. Publication. Whenever these rules require publication, the required information shall be disseminated through mass communication channels reasonably calculated to reach the intended recipients. Such channels shall include display on the public notice section of the DoIT website, and may also include, but are not limited to, website postings, text messaging, subscription list-serves, newspapers and social media outlets.

F. Service. Whenever these rules require "service", that shall be accomplished either through e-mail or first-class mail to the intended recipient. E-mail service shall be effective upon the sender's receipt of a return receipt, acknowledgment of receipt, or reply to the service e-mail. Mail service shall be effective three days after posting.

G. Time. In computing any period of time prescribed or allowed by these rules:

(1) the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

(2) the time allowed to respond or do some other act within a prescribed period after service of a notice, pleading or paper, and the service is by first class mail, three calendar days shall be added to the prescribed period.

H. Waiver and variance. For good cause, a program administrator may waive, vary or excuse compliance with, any time limit or ministerial requirement in these rules or of a NOFO. Upon a finding of good cause, a program administrator may waive substantive requirements of a NOFO, subject to veto of the sponsoring body within 30 days of receiving notice of the waiver.

(1) A waiver shall only be valid if documented in a writing physically or digitally signed by the program administrator.

(2) A person aggrieved by a program administrator's determination to grant or not grant a waiver or excuse pursuant to this rule may, within seven days of receiving notice of the program administrator's determination, appeal the determination to the sponsoring body by serving notice of appeal to the sponsoring body's legal department or lawful designee.

(3) The sponsoring body shall have 10 days to affirm or reverse any waiver-related appeal. A reversal that results in granting a waiver request shall only be valid if documented in a legally authorized written order or resolution, as applicable, of the sponsoring body. If the sponsoring body does not reverse a program administrator's determination within 10 days of receiving notice of the appeal, that determination is deemed affirmed.

I. Award agreement. Every award agreement shall, where applicable:

- (1) identify the grantor (sponsoring body) and the grantee;
- (2) identify the funding source and award amount;
- (3) specify the award deliverables, goals, standards and benchmarks with sufficient particularity to verify performance and to eliminate or minimize subjective assessments of performance;
- (4) identify the program administrator;
- (5) identify the administrative, financial, oversight and verification standards and processes applicable to the award;
- (6) specify tax reporting and payment obligations applicable to the award;
- (7) identify the grantee's grant administrator or primary contact;
- (8) specify record keeping and reporting requirements;
- (9) specify the amount, form and timing of the grantee's matching contribution, if any;
- (10) specify limitations on assignment or transfer of award rights, obligations or deliverables;
- (11) describe ownership rights to tangible or intangible property created by the grantee pursuant to the award, including any limitations on the right to voluntarily or involuntarily transfer any property created or purchased with award funds, and reversion rights and triggers, if any;
- (12) identify by citation or codified nomenclature any and all laws, regulations, and published guidance that govern award administration or establish program compliance obligations;
- (13) identify by citation or codified nomenclature the procurement laws, if any, that apply to contracting with award funds;
- (14) specify contracting documentation requirements and processes, including any approval or authorization requirements, and any non-standard contracting limitations;
- (15) consistent with the provisions of these rules, include terms governing default; remedies; termination criteria and processes; recoupment; cure processes and standards; choice of law; remedy limitations (if any); and rehabilitation rights and processes;
- (16) include pertinent disclaimers and notices concerning compliance obligations, including tax payments, prevailing wage laws and preferences;
- (17) identify key deadlines;
- (18) specify end user or customer service terms or conditions applicable to the award, including price or discount agreements, service level commitments, co-share or cooperation requirements;
- (19) incorporate the terms and conditions of the NOFO;
- (20) incorporate all statements and representations in the application as actionable representations and warranties;
- (21) include any other covenants or conditions required by the funding source or pertinent to the requirements of a particular program.
- (22) specify a process for the grantee to request modifications or accommodations responsive to unexpected or changed circumstances during project performance.

J. Disqualification and debarment. A sponsoring body shall not make an award, or consider an application for an award, made by any person who, within the preceding five years, violated any federal, state or local law or rule governing theft, fraud, misrepresentation, trade practices, undue influence, business ethics, lobbying or political contributions.

(1) Subject to New Mexico laws governing res judicata, a sponsoring body may treat a final judgment, order or similar legal instrument against a person as conclusive or prima facie evidence of a disqualifying violation.

(2) A sponsoring body may establish that a person has committed a disqualifying violation after conducting a duly noticed hearing with sufficient procedural safeguards to provide due process.

(3) Unless a disqualification or debarment is final by operation of law, a person may challenge a disqualification or debarment pursuant to the challenges and disputes section of these rules.

K. Grant program coordination and collaboration. Where a funding source or controlling law requires or contemplates coordination between DoIT, OBAE and the council, these entities shall collaborate on the development, award and administration of a program subject to a specific or generally applicable memorandum of understanding (MOU). A MOU may incorporate a responsibility matrix that may be customized for a particular program. These rules do not preclude subject entities from cooperating in the development or administration of a grant program in the absence of a specific legal or program directive to do so.

L. Award modification. A sponsoring body may increase an award for good cause and as necessary to accomplish the project objectives. A modified award shall be published in the same manner as publication of the initial award. As used here, good cause refers to an unexpected and unforeseeable change in economic

circumstances beyond the control of the awardee that would prevent completion of the project if the award is not modified.

M. Tribal collaboration. A sponsoring body shall comply with the NM State Tribal Collaboration Act regarding Indian nations, tribes or pueblos in the development or administration of programs subject to these rules that directly affect American Indians. An applicant who proposes to provide service on tribal lands, as identified in the project area, must obtain a Certification of Consent from the tribal council, or authorized tribal entity. The tribal consent must note whether the project area is unserved or underserved, note how that determination was made, and will disclose all tribally-approved state and federal funded enforceable network buildout commitments.

[1.12.21.8 NMAC - N, 04/11/2023; A, XX/XX/XXXX]

1.12.21.10 ASSISTANCE GRANTS: These additional rules apply to assistance grant programs.

A. Authorization. An assistance grant is authorized if the:

- (1) total available program funding does not exceed \$2,500,000,
- (2) funding source specifies the grantee or subrecipient;
- (3) funding source requires program funds to be fully expended in fewer than 18 months;
- (4) sponsoring body determines that the grantee or subrecipient is the only person who can satisfy program requirements specified by a funding source in a timely, correct and cost-effective manner;
- (5) delay inherent in the merit-based program would likely create or exacerbate a threat to life, health, physical security, economic security, cyber security or educational development of state residents or to the State, or would likely delay meaningful mitigation of such an existing threat; or
- (6) grantee or subrecipient is a ~~[governmental unit or tribal government]~~ local governmental unit, tribal unit, electric cooperative, or telephone cooperative and the funding source does not expressly require a competitive or merit based process.

B. Justification order. An assistance grant shall be authorized by an order or resolution of the sponsoring body, supported by findings and conclusions justifying an assistance grant, and published at least 21 days before the award.

C. Grant proposal. An assistance grant shall be based on a grant proposal presented by the grantee or subrecipient that, at a minimum, includes:

- (1) a detailed description of the proposed project, how the project would accomplish a purpose specified in, and satisfy conditions of, the funding source, the project timeline and the source and availability of other funds required to complete the project;
- (2) the identity, financial and performance qualifications of each grantee, vendor or contractor who will be directly or indirectly receive award funds, including qualifications of the project manager and all key grantee, vendor and contractor personnel;
- (3) the form and substance of each contract the grantee proposes to procure with the award funds;
- (4) the identify and qualifications of the grantee's fiscal agent, if required;
- (5) sufficient information to establish that the proposal meets an exception to the merit-based program; and
- (6) any other information requested by the sponsoring body.

D. Match requirement. Unless a funding source prohibits requiring a match, or specifies a match requirement, a sponsoring body may specify match, and match waiver, requirements. Match and match waiver requirements shall be specified in the justification order and included in the award agreement.

E. Contracting. To the largest extent possible, the sponsoring body will encourage the funding program participation by New Mexico-based organizations, organizations located (and hiring from) within the proposed project footprint, woman and minority owned organizations, veteran owned businesses and tribally-owned/based organizations and businesses.

[1.12.21.10 NMAC - N, 04/11/2023; A, XX/XX/XXXX]

History of 1.12.21 NMAC: [RESERVED]