



Department of

General Services

SUMMER GRANTS USER GROUP MEETING

August 20, 2018

Presented by

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Agenda

- I. Introduction and Contact Information.
- II. Training Assistance and Helpful Links.
- III. Housekeeping Matters.
- IV. Procurement Commission Updates.
- V. Upcoming Template Changes.
- VI. Useful Tips.
- VII. Rule Exception Request (“RER”) Tips.
 - I. Multiple Template Changes in an RER
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- XI. Negotiations of Template Language Prohibited.
- XII. Delegated Grant Authority (“DGA”).
- XIII. Q & A.

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Training Assistance and Helpful Links

Grants training is available upon request

CPO Website

<https://www.tn.gov/generalservices/procurement.html>

Library Page on CPO Website for Rules, Policies, and Procedures

<https://www.tn.gov/generalservices/procurement/central-procurement-office-cpo-library-.html>

F&A's Grants Information Sharing Page

<https://www.tn.gov/finance/grants-information-sharing/>

CPO's Resource Page for all Templates, Models, Requests, and Solicitation Documents

<https://www.teamtn.gov/cpo/resources.html>

Housekeeping Matters

- **Please contact Shravan for any status update inquiries** and feel free to cc me
- Next **Procurement Commission Meeting** is scheduled for Thursday, **September 20, 2018**, at 2:00 p.m. in the TN Tower, 3rd Floor, Nashville Room
- RER Submission Changes (Upcoming 2019)
 - Beginning sometime next year, all RERs will be submitted into Edison using populated RER forms in Edison as opposed to emailing RERs to Agsprs.Agsprs@tn.gov
 - This change following a process improvement suggestion is to change the Rule Exception Request approval process from a manual process to one that is performed within Edison.
 - While all agency and reviewer signatures will be captured in Edison, this proposal revises the instructional text on the RER to notify procurement professionals of the information that they will need to enter once they enter the new e-form in Edison.
 - This feature is in development now and once it goes live in Edison the revised instructions will be circulated to all procurement professionals.

Procurement Commission Updates

Updates from 2/15/18 Procurement Commission Meeting

- *Grant Contract (GR) Template Optional Section E.#, Insurance:*
 - This update replaces current insurance provision language in its entirety with the revised FA Template insurance language to ensure that all language comports with current industry standard insurance language requirements.
- *Central Procurement Office Policy Number 2013-007, Debarment and Suspension:*
 - This change adds Debarment and Suspension language to the CPO's Grant Policy, which will notify parties that Debarment and Suspension language is required in all State contracts and grants pursuant to Tenn. Comp. R. & Regs. 0690-03-01-.17 (2) (t).
- *GG and GR templates and GE model Section D. 34, Debarment and Suspension:*
 - Tenn. Comp. R. & Regs. 0690-03-01-.17 (2) (t) mandates having Debarment and Suspension language in all contracts. For this reason, the Debarment and Suspension provision in the FA template is included in all GR and GG contracts.
- Grant ("GR") and Governmental Grant ("GG") Templates – Section D.20., Procurement
 - Section D.20 has been revised to include the definition of "Equipment" from [2 C.F.R. 200.33](#) to promote clarity.
- *GG Template Optional Section E. #, Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency & Accountability Act (FERPA) and Rule 2 Compliance:*
 - The Procurement Commission meeting on 12/14/17 permitted the removal of indemnification language in the Interagency Agreement model. The CPO requested to also remove all indemnification language from the GG template.
 - The FERPA and Rule 2 Compliance provisions both contained indemnification and hold harmless language.
 - Since the GG template will only be used between a federal or Tennessee local governmental entity and their agents or instrumentalities, and these governmental entities have no legal authority to indemnify or hold harmless a counter party, there presents no need to have indemnification and hold harmless language.

Procurement Commission Updates Continued....

Updates from 2/15/18 Procurement Commission Meeting Continued...

- *GR and GG Templates and GE and Interagency Agreement (“IG”) Models Optional Section E. #, Incorporation of Required Clauses for Federal Grants Awards:*
 - The Office of Management and Budget regulations within the *Uniform Administrative Requirements, Cost Principles, and Audit requirements for Federal Awards* (“Uniform Guidance”) are the rules that govern non-federal entities’ procurement, use, and compliance as a condition for receiving federal awards. On December 26, 2017, the procurement rules (2 C.F.R. §§ 200.317 to 200.326) came into effect.
 - 2 C.F.R. § 200.326 applies to all non-federal entities, including state agencies, that utilize federal grant funds under a federally funded program. This rule mandates acceptance of certain federal acts, which are listed in Appendix II to Part 200. Grantees are now required to comply with these provisions in all grant contracts where federal awards are given. Subsequently, all grant templates and models must incorporate language where the Grantee acquiesces to the federal acts as optional Section E clauses.
 - Accordingly, the CPO has added the following language incorporating the following clauses:
 - Equal Opportunity Clause
 - Federal Equal Opportunity Clause for Federally Assisted Construction Contracts
 - Davis-Bacon and Copeland Anti-Kickback Act
 - Contract Work Hours and Safety Standard Act
- *Central Procurement Office Policy Number 2013-007 Section 4, Grantee Selection Process:*
 - Section 4, Grantee Selection Process, has been updated so that the new procurement standards of 2 C.F.R. §§ 200.317 to 200.326 are required as part of the CPO’s policy

Procurement Commission Updates Continued....

Updates from 6/21/18 Procurement Commission Meeting

- Grant (“GR”) and Governmental Grant (“GG”) Templates – Section D.13., Public Notice
 - Language has been added that would allow an agency to replace the standard D.13. Public Notice with this optional provision that allows a State Agency to add its State Agency Name to the notice without requiring a RER.
- Federal Awards Procurement Standards - Optional Purchase Order (“PO”) and Configurator Term
 - Optional language has been added to the configurator and purchase orders to include a requirement for the Contractor to comply with the federal awards requirements, if applicable.
- Grant (“GR”) and Governmental Grant (“GG”) Templates and Fee for Goods and Services Template (“FA”) and Configurator – Section E. #., Clean Air Act and Federal Water Pollution Control Act
 - If the grantee or contractor is receiving a federal award in excess of \$150,000, then the grantee or contractor must agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act, as applicable. Please see [Appendix II to Part 200](#) for more details.

Upcoming Template Changes

- Grantee Hosted Services Requirements and Confidential Data Options
 - Adding it as an optional Section E term in the GR and GG Templates, already in the FA

Option: Grantee Hosted Services Requirements and Confidential Data Options

Only use with prior approval and endorsement of Strategic Technology Solutions (STS).

Grantee Hosted Services Requirements and Confidential Data Options

General Instructions:

If the grant contract will allow a Grantee or subcontractor to host State services or State data in the cloud (e.g., Software as a Service (SaaS), Infrastructure as a Service (IaaS), Platform as a Service (PaaS)), then follow the instructions as described in the various options below. Include all applicable sections, renumbering as may be appropriate.

Upcoming Template Changes Continued...

- Grant Amendment Template and Delegated Authority Template
 - Adding **optional language** for the Amendment Effective Date so when the procurement professional did not have a particular date for when the amendment would go into effect, but rather wanted the amendment to become effective once the amendment has been fully approved.
 - Proposed language would increase flexibility, prevent gaps between approval and actual implementation when a request is time-sensitive, and eliminate the problem of a projected effective date that is earlier than approvals.

EFFECTIVE DATE

The effective date of an amendment may NOT be retroactive (e.g., before the date that the amendment is submitted for Edison approval routing).

Option: Effective Date Once Approved

In lieu of entering a specific date as the Amendment Effective Date, replace the standard Amendment Effective Date with the following.

Amendment Effective Date. The revisions set forth herein shall be effective once all required approvals are obtained. All other terms and conditions of this Grant Contract not expressly amended herein shall remain in full force and effect.

Useful Tips

- “Reserved”
 - Instead of renumbering sections that get removed, CPO and COT would prefer that the numbering is not altered in the contract so that the numbering is consistent within the template which helps a lot with the review process.
 - Please just delete the language of the section and after the numbering, please write “Reserved.”

D.26. **Reserved.**

- Insurance
 - Generally only applicable in the GR, please consult CPO Grants team if you have a question whether insurance is necessary in a non-GR contract

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E provisions that are not among the options below. Should any of these special terms and conditions conflict with any other terms and condition of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract’s other terms and conditions.

Insurance

Add the following Section as appropriate. Revise minimum coverage amounts and deleting any unneeded subsections. If unsure whether the Section is applicable, consult the CPO legal team.

Useful Tips Continued...

- Compliance Monitoring
 - Notice of Awards
 - Please make sure the contract abides by the grant assurances included in the Notice of Award
 - Due Diligence
 - Either in an agency's Subrecipient Monitoring Plan or throughout the period of performance of the contract, please monitor a sample of contracts to ensure that the flow-down provisions of 2 C.F.R. § 200.326 are being monitored for compliance
- Labeling Contracts in Edison
 - Please **Do Not Write "4 CPO_APP"** in front of any contract name, this is reserved for CPO only and is the way CPO, COT, and agencies know a contract has been reviewed and approved in the Document Manager page since CPO does not physically stamp contracts anymore
- COT Audit
 - COT Audit teams need agencies to remember to input the FY end date for entities in the Additional Contract Info page in Edison

Useful Tips Continued...

- Generally, **No Substitution** of agency name for “State” in contracts, unless the request is narrowly tailored and absolutely necessary
 - There will be no substitution for “State of Tennessee” because of jurisdictional and legal reasons
 - Preamble outlines that the agency name is synonymous with “State”

GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
STATE AGENCY NAME
AND
GRANTEE NAME

This grant contract (“Grant Contract”), by and between the State of Tennessee, **State Agency Name**, hereinafter referred to as the “State” or the “Grantor State Agency” and Grantee **Legal Entity Name**, hereinafter referred to as the “Grantee,” is for the provision of **Scope of Service Caption**, as further defined in the “SCOPE OF SERVICES AND DELIVERABLES.”

Rule Exception Requests Tips

When do you need a RER?

- Adding a new term to the grant contract.
 - Unless it is allowed within the template instructions. Example – adding “Prevailing Wage Rates” for construction projects.
- Deleting a term from the template.
 - Unless it is allowed within the template instructions. Example – deleting unneeded subsections in the “Insurance” term of the GR.
- Contracts that are longer than 60 months (5 years)
- Delegated Grant Authority longer than one year
- Any partial, periodic, or total advance payments (unless it is already approved optional language)
- Contracts submitted past the effective date
- Submitting contracts within (30) days of the effective date

Rule Exception Requests Tips - Continued

- **No RER required for:**
- Adding **approved** optional Section B, C, D, and E language
 - If the template language is different vs the language in the contract, check and see if there is approved optional language in the template the agency is utilizing. If the language is not approved optional language than an RER is required.
- Clerical/Ministerial Errors (e.g., grammatical mistakes)
- Interagency Grants (IG Model)
 - IGs do not require CPO and COT approval. However, CPO and COT would ask that an RER be put in the record in Edison for an IG contract, so there is a record of the change.
 - No RER needed in the file if it relates to an amendment or 30 day rule. Just go ahead and file the amendment or original contract.

Rule Exception Requests Tips - Continued

- **More Description, Details, and Clarification in RERs = Faster Approval**
 - Feel free to write as much as you think is necessary to accurately convey what is the program and what you need approved
- Try and put yourself in the Readers' Shoes
 - Draft the RER with the assumption that the person reading your RER has no knowledge of the program
- Write out the full language of the phrase, before using an acronym
- Apply citations to laws or regulations that are mentioned, so I can reference them
- If template language is being modified or removed, an RER is required
- Please remember to redline the template changes that are being requested

Requesting Multiple Template Changes in an RER

- A Single RER with Multiple Template Clause Alterations
 - In order for the agency to only need to submit one RER for all template changes, all the Edison numbers for any contracts that the agency wants the changes applied to, have to be listed on the RER and the changes have to be uniform.
- Example
 - So if there are four template language changes, the alterations have to apply to every contract listed on the RER and the changes have to be redlined in order to only submit one RER.
 - In this hypothetical, if there was one template alteration that only applied to one of the four contracts, then there would need to be an additional RER produced. That RER would have only that template language variation applied to that one contract.

Backdating Grant Effective Date via RER

- Submit an RER for a missed start date prior to the effective date whenever possible
 - An RER for a “late start” date is easier to get approved if it is submitted for in advance of the start date of the grant.
 - Submitting the RER well after the start date gives the impression that the grant “slipped through the cracks”. This will generate additional questions by myself and Comptroller.

RER - Submitting Grants within (30) Days of Effective Date

- Please provide a very detailed explanation in narrative form why the (30) day deadline was missed
- Submitting the Grant with less than (30) days to review makes it more difficult to approve the grant by the effective date which can put your grantee's award at risk
- Example RER

B. GRANT CONTRACT TERM

Procurement professionals should obtain the Grantee's signature first before submitting the Grant Contract for State signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Grant Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed Grant Contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may require that the Grant Contract be resubmitted with a new Effective Date or require a Rule Exception Request that explains why the Grant Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Grantee deliver goods or perform services prior to the Effective Date.

Blanket RERs

- Generally Prohibited but CPO and COT will permit blanket RERs on a case-by-case basis if it is in the best interest of the agency **and** the State
 - When approved, blanket RERs are only good for one year from the date of final approval per CPO and COT unofficial policy
- Future Policy Review Subcommittee Proposal
 - Most likely will be adding an Expiration field in the RER to list when the expiration occurs, i.e, either 1 year from final approval or for a specific year, such as fiscal or calendar

Expired Grants

- First, CPO cannot backdate for state funds, only federal
- Secondly, if the contract has expired and it involves only state funds and there wasn't an RER submitted to either extend or amend the contract until after the expiration date, then I am not permitted to approve the RER to backdate the Grant to allow any outstanding contract balance to be paid to cover an invoice(s).
 - If there are remaining invoices to be paid, the agency might have to issue a purchase order using their limited purchase authority (up to \$50,000.00) to potentially cover an outstanding invoice. However, this will most likely result in an audit.

Grant Contract Review Checklist

- Do the begin and end dates on the cover sheet match the dates in the body of the grant contract (under section B) and within Edison?
- Does the max liability on the cover sheet match the amount in Edison and within the grant contract (under section C)?
- Does the grantee identified on the cover sheet match the grantee identified in the body of the grant contract?
- Did the agency fully explain the competitive selection process on the cover sheet?
- Does the subrecipient/contractor designation on the cover sheet match the designation in Edison on the “additional contract information page”?
- Does the scope of services fit within the definition of a grant? Is the scope of services adequately.
- Do all attachments identified in the body of the grant contract actually appear as attachments?

Grant Contract Review Checklist – Continued

- If the Grant, **including an Endowment Grant, involves a partial, periodic, or total advance payment under C.3**, then there must be an approved rule exception request.
- If the contract involves federal funds and the grantee is a subrecipient, the federal award identification worksheet must be attached.
 - Don't forget to check the optional language provisions in the grant template if a section does not match the grant template language.
- Was the grant uploaded to Edison 30 days prior to the effective date? If not, an RER will be needed or the date will need to be pushed back to allow CPO time to review.
- Was the contract signed prior to the effective date? If not, is there a rule exception request for this?

Cheat Sheet – Notice of Audit Report and Parent Child Sheet

- GR Template
 - Send the Notice of Audit Report and Parent Child sheet (both blank) with the grant contract when the grant contract is sent to the grantee for signature.
 - The agency will not ever see the completed version of the Notice of Audit Report or the Parent Child sheet.
 - The grantee will submit to CPO (via email) one Notice of Audit Report at least 90 days before the end of its own fiscal year.
 - If the grantee indicates on the Notice of Audit Report that it is subject to audit, then the grantee will submit a completed version of the Parent Child sheet to the CPO.
- GG Template
 - Send the Parent Child sheet (blank) with the grant contract when the grant contract is sent to the grantee for signature. No Notice of Audit Report is necessary.
 - The agency will receive the completed version of the Parent Child sheet when the grantee returns a signed copy of the grant contract.

Negotiations of Template Language Prohibited

- Do not negotiate template language with Grantees.
 - If there is a situation where the grantee or a subrecipient is requesting deviation from template language, please inform me and we can work to address the issue together.
 - Under no circumstance is an agency permitted to privately negotiate CPO's template provisions.

Delegated Grant Authority Information– Summary of a DGA

- A DGA is a CPO approval allowing a State Agency to issue grants for an individual program within specified limits and guidelines.
- The DGA process allows State Agencies to issue grant contracts to multiple grantees without each contract requiring CPO approval. Thus a single DGA creates an “umbrella” for all contracts to fall under a DGA if certain provisions are met.
- All contracts within a DGA will have the same grantee selection process, will contain the exact “scope of services”, maintain the corresponding funding source, and keep the consistent objective to multiple grantees.

Delegated Grant Authority Information– Summary of a DGA - Continued

- The Grantor State Agency should also remember to attach the grant contract template that will be used for the DGA application. The attached contract template shall immediately follow Attachment 2, Exact Grant Contract Scope of Services Text. Since, this provision mimics Section A of the grant contract template, then the Grantor State Agency can follow Attachment 2 immediately with Section B, C, and so forth.
- Uploading a grant template to Edison does not attach the grant template to the DGA.
- Unless all required contract sections (B, C, D, etc.) are incorporated into the DGA, the Grantor State Agency Head is attesting his/her signature to an inaccurate statement, which risks personal liability to the Commissioner under T.C.A. § 12-3-304.
- Use the DA/DGAs RER form if there are requested modifications to the DGA itself.
- Use the Standard RER form if there are requested modifications to any of the contract templates under the DGA. Please highlight the changes in red and attach the template to the Rule Exception Request.

Delegated Grant Authority Information– Summary of a DGA - Continued

- Please process a new delegation each year for any new contracts to be issued in that year
- Applies to RERs that did not request a waiver from the policy of ONLY allowing grants to be written in the first year of the delegation
 - Rationale
 - The grant and contract templates periodically change. A new delegation each year helps to assure that the most current templates are being used
 - This has been the process for all agencies for several years. It was established to meet the needs of the agencies so that they could match the terms of the contracts with the terms of the funding sources
 - For budget control purposes, CPO and COT need annual assurance of funding availability prior to approving the delegations

Q & A

Questions????????