

# **Arkansas Department of Human Services**

## **SUB-GRANT POLICY**

**Office of Finance and Administration**

**Contract Support Section**

# Arkansas Department of Human Services

## SUB-GRANT POLICY

### I. Background

- A. A sub-grant is an award of resource assistance to promote a program or goal of public benefit, as authorized by the applicable funding legislation. The nature of the sub-grant, the eligible recipients, the method of award, and the terms and conditions depend on the specifics of the statute that created the grant program (if publicly funded) and the implementing regulations.
- B. In choosing whether to award funds by contract or sub-grant, states generally follow the selection logic established in the federal Grant and Cooperative Agreement Act of 1977, as amended, which indicates:
  - 1. Use of a legal instrument of acquisition **(contract)** is appropriate when the principal purpose is to acquire property, products, or specific services for the direct use of the government in carrying out its primary functions;
  - 2. Use of a legal instrument of assistance **(sub-grant)** is appropriate when the principal purpose is more generalized public support, stimulation or capacity-building functions.
  - 3. **If there is a question as to the most appropriate agreement format, the division should consult with Contract Support Section (CSS).**

### II. Selection Methods for Sub-grants

The typical forms of source selection for sub-grants are as follows:

- A. Request for Application (RFA)
  - 1. The RFA is very similar to the Request for Proposals used for selecting contractors, in that it includes the following:
    - a. Public notice and solicitation
    - b. Determination of evaluation factors in advance
    - c. Documentation of evaluation, selection, and award process
  - 2. With an RFA, there are often multiple awards made.
  - 3. The recipient(s) is normally a government unit or non-profit organization.
  - 4. This is the “best practice” methodology to promote the best programs through competitive assessment and to maintain public trust in the integrity of the allocation of public resources. It should be used when practicable.
- B. Unsolicited Proposal

Unsolicited proposal is the term used when the recipient approached DHS with a request for funding of a proposed collaborative program of benefit.

**C. Solicited Proposal**

Solicited proposal is the term used when DHS approached the recipient with a request for their participation in a proposed collaborative program of benefit.

**III. Sub-grant Requirements**

- A.** In accordance with Arkansas statutory requirement (Act 1032 of 1999 and Arkansas Code Annotated [A.C.A.] §19-4-2201 and §19-4-2202), certain sub-grants are subject to review by the legislature prior to implementation.

Legislators would like to provide meaningful oversight of the expenditure of public resources and they are interested in learning about service programs that might benefit their constituents. During the legislative committee sessions, representatives from the program divisions should be ready to answer all the logical questions that legislators might have about the specific sub-grants on that day's agenda, as well as more general questions concerning the entire program. Typical questions include:

1. How and why was the sub-grant recipients selected?
2. If there were a competitive selection process,
  - a. How many responses were received?
  - b. How did the other proposals or applications stack up?
  - c. Who was involved with the selection process?
3. How much program discretion is left to the state and how many of the program parameters are dictated by the federal funding agency (in the case of federally funded programs)?
4. How does the program division monitor performance?
5. What are the results of previous programmatic monitoring for this sub-grantee and this program?
6. Are there any special or extraordinary federal reporting requirements?
7. What is the geographic distribution of sub-grantees in this program throughout the state?
8. What is the current funding level, and what are the future plans for this program?

- B.** Non-discretionary sub-grants are exempted from prior legislative review.

**NOTE: Non-discretionary sub-grants are defined as those for which the enabling legislation identifies the specific sub-grantee(s) or group(s) of sub-grantee(s) and Department of Human Services (DHS) has no discretion concerning selection of sub-grantee(s). Sub-grants are NOT considered non-discretionary just because the funding entity (typically the federal government) agreed to a selection made by DHS.**

- C.** Certain discretionary sub-grants are exempted from prior legislative review. Exempted discretionary sub-grants include:

1. Sub-grants for \$10,000 or less;
2. Sub-grants to governmental entities;
3. Sub-grants for disaster relief;
4. Sub-grants for scholarships to post-secondary students;
5. Sub-grants containing confidential information, the disclosure of which is determined by the agency to constitute a violation of other provisions of law regarding disclosure.

**NOTE: Discretionary sub-grants are defined as those for which DHS has discretion in the selection of the sub-grantee(s).**

**SPECIAL NOTE APPLICABLE TO SUB-GRANTS:**

- Specific selection procedures for sub-grants should conform to the parameters specified in the originating legislation and implementing program directives.
- If any discretionary selection authority is left to the DHS granting division/office, the selection methodology should be open and competitive to the greatest extent practicable.
- In selection activities and documentation, the program division/office has an obligation to uphold public trust for managing public resources fairly and effectively.

- D.** Much of the administrative guidance that applies to Professional and Consultant Service (PCS) contracts also applies to sub-grants. Some of those requirements include:
1. Office of Chief Counsel (OCC) Audit Section must provide clearance concerning current audit status for sub-grantees that are not State agencies.
  2. Sub-grantees should be corporate or governmental entities and not individuals or sole proprietors. Any exceptions must be approved in writing by OCC.
  3. Prior to award, DHS should insure that the intended sub-grantee is not debarred or excluded from participation in government programs.
  4. Any sub-grant with a Constitutional Officer or member of the General Assembly, or his/her spouse, requires the sub-grantee to disclose, in accordance with Executive Order (EO) 98-04, and Act 34 of 1999. Prior approval of the Joint Budget Committee during legislative sessions or the Legislative Council between sessions AND the Governor is required.
  5. Certification regarding lobbying is required for those sub-grantees receiving over \$100,000 in federal funds. State and/or other funding do not require certification regarding lobbying.
  6. ALL completed sub-grants and all supporting documentation of selection, award, and monitoring activities should be retained on file for a minimum of five years from the expiration date of the sub-grant (six years if Health Insurance Portability and Accountability Act [HIPAA] -related).
  7. Sub-grantees shall insure non-discrimination and equal opportunity by sub-grantees in compliance with all applicable federal laws, regulations, executive orders and civil rights rules and regulations.

8. To be considered valid and binding, a stamped or automated signature by the parties agreeing to the sub-grant must be:
  - a Unique
  - b Capable of being verified, and
  - c Under the sole control of the signatory
- E. It is the responsibility of the applicable program division to comply with Act 1032 of 1999 by categorizing each sub-grant as:
  1. Discretionary, and subject to legislative review,
  2. Discretionary, and exempt from legislative review, or
  3. Non-discretionary (and, therefore, not subject to legislative review).
- F. **Discretionary sub-grants subject to legislative review are due to CSS in final form two weeks prior to the meeting of the Legislative Review Subcommittee** for the desired cycle of review, depending upon intended implementation date. The Legislative Review Subcommittee normally meets the first Wednesday of each month.
- G. The initial term of a sub-grant should not extend past the end of the applicable period of legislative appropriation.
- H. **Funding Guidelines**

The sub-grantee and division should agree upon the method of reimbursement before a sub-grant is developed. In no case shall payments exceed the maximum liability of the sub-grant. The following methods are acceptable for public or private sub-grantors.

**1. Actual Cost Reimbursement**

Actual cost reimbursement is based on a complete budget/cost allocation and a line-item justification.

**2. Scheduled Reimbursement**

Scheduled reimbursement is based on a schedule of costs or line-item budget that is on file with the division. The cost schedule or budget is derived from recurrent preset expenses. Through the cost schedule or budget, the sub-grantee assures that certain expenses will be incurred during specific periods of time. Reimbursement is based on the cost schedule or budget.

**3. Other**

Other methods of funding may be used when there are extraordinary circumstances that warrant such AND upon coordination through CSS for approval at appropriate level of authority.

**I. Sub-grant Format**

1. A certain degree of latitude and discretion is involved in selecting the appropriate format for a sub-grant. Since each sub-grant program must conform to the parameters, constraints, and conditions of the founding legislation and implementing directives that created it, there is no single standardized form designated for use by state agencies.

2. For all sub-grants that exceed one thousand dollars (\$1,000), there must be a Notice of Sub-grant Award (NGA) to serve as a definitive source document to provide clear communication of sub-grant terms to the sub-grantee and to provide audit reference.
3. In some cases, highly specialized sub-grant formats and related NGAs have been developed to carry out the sub-grant program and corresponding state plan for implementation. Examples include sub-grant programs in fulfillment of the Community Services Block Grant, welfare reform, childcare legislation, and benefit programs for the elderly.
4. In the absence of an existing sub-grant format tailored to the specific program requirements, the program division should use the form **DHS-9600 (Sub-grant Agreement)** as a standardized agreement format.
5. Creation and utilization of a NEW tailored sub-grant format (to be used in place of the form **DHS-9600**) should be approved by CSS and OCC before being utilized. The form **DHS-9600** suffices as an NGA.

**NOTE:**

**If a specialized format is used, it is the responsibility of the program division/office Director to insure that all required elements are covered. These include, at a minimum, assurances regarding**

- **Compliance with federal non-discrimination legislation**
- **Administrative assurances and monitoring**
- **Programmatic assurances and monitoring**
- **Financial terms and conditions**

- J. For sub-grants that total one thousand dollars (\$1,000) or less, the creation of an NGA is optional at the discretion of the program manager. A “stand alone” purchase order can be created, with notation of the purpose of the sub-grant award entered into the purchase order text,
- K. **All sub-grants with associated NGAs shall be entered into Arkansas Administrative Statewide Information System (AASIS) as outline agreements, against which corresponding purchase orders are to be created.** This provides a mechanism for tying together all purchase orders for a specific sub-grant and providing an over-arching audit portal. The outline agreement number shall be used as the sub-grant number.

#### **IV. Development of Sub-grants**

- A. Development of the sub-grant agreement is normally accomplished by assigned program staff, since all sub-grants must conform to the unique parameters of their respective funding legislation and associated regulatory guidance
- B. In special circumstances, CSS may develop sub-grants for the programs divisions upon receipt of authorizations to do so (see B. below). Divisions desiring CSS to develop their sub-grants shall submit a request for such to the CSS Assistant Director.
- C. **The following procedures apply to development actions executed by CSS (for development actions executed by the division, proceed to C. below):**

**NOTE: Contracting Automation Platform (CAP)** is the electronic system through which sub-grants are authorized, developed, reviewed, approved, and signed.

1. Division shall submit authorizations to CSS in electronic format.
2. Required elements for the authorization from the program division include:
  - a. Completed **Authorization/Input Form (DHS-9190)**
  - b. Any legal attachments
  - c. Any other information necessary, including financial information
3. Upon receipt of the authorization, assigned CSS individual(s) shall review the authorization and outline agreement, consult with the sub-grantee, develop the sub-grant proposal, and review the completed proposal electronically for technical compliance and completeness. Division Director or designee shall review the sub-grant and indicate approval of such electronically on the sub-grant. The Administrative Compliance Officer (ACO) shall submit the sub-grant to the sub-grantee for his/her review, approval, and signature.

**D. Required elements for the complete sub-grant proposal**

1. The complete sub-grant proposal shall include the **NGA** and the **Transmittal Sheet for Non-Standard Sub-grant Agreements (DHS-9602-AA or DHS-9602-CO)** **OR** the **Sub-grant Agreement** form (**DHS-9600**) and the **Authorization/Input Form (DHS-9190)**.
2. Other elements that may be required to complete the proposal include:
  - a. Attachments
    - (1.) All attachments should be numbered in sequential and consistent form.
    - (2.) Each page of each attachment should be labeled at the top of the page with the following information:
      - (a.) Attachment number (in numerical, consistent, and sequential format)
      - (b.) Page number (starting with page #1 for each attachment)
      - (c.) Sub-grant number
      - (d.) Action (i.e., NEW for initial sub-grants)
  - b. Budget Information
    - (1.) For sub-grants reimbursed on an **Actual Cost** basis
      - (a.) An itemized listing of allowable program expenses and justification are required elements. The total itemized listing should equal the total DHS funding in the sub-grant.
      - (b.) The itemized listing shall be made a legal attachment.
    - (2.) For sub-grants reimbursed on a **Scheduled Reimbursement** basis
      - (a.) Scheduled reimbursement is based on a schedule of costs or a line-item budget that is on file with the program division.

- (b.) The schedule should clearly indicate that payments are based on actual expenditures incurred and no advance payments are allowed.
    - (c.) The schedule should include the amount and dates of payments to be made during the sub-grant period. The first payment should not be earlier than three weeks after the effective date of the sub-grant.
    - (d.) The schedule should address the requirements for invoicing, expenditure reporting, and payment adjustments, if applicable.
    - (e.) The reimbursement schedule shall be made a legal attachment.
  - c. **Contract and Grant Disclosure and Certification Form PCS-D, if applicable**
    - (1.) Any sub-grant with a Constitutional Officer or member of the General Assembly or his/her spouse requires the sub-grantee to disclose, in accordance with EO 98-04 and Act 34 of 1999. Prior approval of the Joint Budget Committee during legislative sessions or the Legislative Council between sessions AND the Governor is required.
    - (2.) Disclosures requiring prior approval should be resolved prior to signature on the sub-grant.
    - (3.) The **Contract and Grant Disclosure and Certification Form** shall not be made a legal attachment.
  - d. **Provider Audit Sign-Off Sheet (PASOS)**
    - (1.) During development of every sub-grant, except for those sub-grants to State agencies, developer shall determine that an OCC-approved **PASOS** is on file.
    - (2.) This approval should indicate the sub-grantee's audit status is "current".
- E. Other elements may be required to complete the sub-grant. These include, but are not limited to:
- 1. **Certification Regarding Lobbying**
    - a. Anytime a sub-grant exceeds \$100,000 in federal funds, the form **DHS-9350, Certification Regarding Lobbying**, must be made a legal attachment.
    - b. The \$100,000.00 threshold pertains to **ALL** federal funding in the sub-grant, as opposed to all the federal funding received by the sub-grantee from all sources.
    - c. The \$100,000.00 pertains to the sub-grant TOTAL, not the amount per fiscal year.

2. **Matching Terms**

- a. Specification of matching terms is required when funds included in the sub-grant have a required match from state and/or local funds.
- b. Matching terms shall be made a legal attachment.

3. **HIPAA Business Associate Agreement (BAA), Form DHS-4001**

- a. A BAA, when required, is to be signed by the sub-grantee to demonstrate the sub-grantee's compliance with HIPAA. It shall be included as a legal attachment to the sub-grant.
- b. A BAA, when required, is to be signed by the sub-grantee to demonstrate the sub-grantee's compliance with HIPAA. It shall be included as a legal attachment to the sub-grant.
- c. BAAs are required for ALL new sub-grants for the following divisions ***IF*** those sub-grants grant access to or disclose with Protected Health Information (PHI):
  - (1.) Division of Behavioral Health Services
  - (2.) Division of Developmental Disabilities Services
  - (3.) Division of Medical Services
  - (4.) Division of Youth Services

4. **Independent Contractor Checklist, Form DHS-9356**

- a. This form should be completed by program division/office if grantee is an individual or sole proprietor.
- b. This form is used to assess the status of the individual or sole proprietor as an independent grantee rather than a DHS employee.
- c. The **DHS-9356** shall not be made a legal attachment.

5. **Certificate of Authority from the Secretary of State of Arkansas**

- a. The Certificate of Authority, or documentation of its issuance, is required for sub-grants with out-of-state corporations transacting business in Arkansas.
- b. If the out-of-state sub-grantee does not operate within Arkansas or is otherwise exempt, a Certificate of Authority is not necessary.
- c. The Certificate of Authority or documentation shall not be made a legal attachment.

**F. Signing and Processing of Sub-grants**

- 1. For those sub-grants developed by CSS:
  - a. The division shall secure electronic approval of the division Director or designee on the sub-grant proposal.
  - b. CSS ACO shall secure the signature of the sub-grantee on the sub-grant proposal.

- c. CSS shall route the signed sub-grant to Records Management Unit (RMU) for processing.
- 2. For those sub-grants developed by the division:
  - a. The division shall secure the signature of the division Director or designee and the signature of the sub-grantee on the sub-grant proposal before the effective date of the agreement.
  - b. The division shall route the signed sub-grant to RMU for processing.

**G. Legislative Review of Sub-grants**

- 1. For a discretionary sub-grant requiring legislative review, the division or CSS is responsible for submitting the completed agreement to RMU by the 15<sup>th</sup> of the month prior to the month in which the sub-grant is to be legislatively reviewed.
- 2. It is very important for the division to have knowledgeable representatives in attendance at the Legislative Review Subcommittee meeting to answer programmatic and budgetary questions about the specific sub-grants on the agenda as well as general questions concerning the entire program.
- 3. Upon completion of their review, the Legislative Review Subcommittee will send recommendations to the Legislative Council for consideration.
- 4. The Legislative Council, which usually meets the third Friday of each month, reviews the recommendations of the subcommittee and, typically, makes an announcement of favorable review. .

**H. Distribution of Sub-grants**

- 1. RMU shall distribute sub-grants to the sub-grantees only for those sub-grants that were developed on the form **DHS-9600**. For those that were developed on an alternative form, the division is responsible for distribution to the sub-grantee.
- 2. RMU shall post all sub-grants utilizing the form **DHS-9600** to the DHS Contract Archival System (CAS). RMU shall post all sub-grants NOT utilizing the form **DHS-9600** to DHS Share (DHS/OFA/CSS/RMU/SubGrant-NonStandard).
- 3. RMU shall notify the division, the CSS Supervisor, and the OFA Comprehensive Annual Financial Report Unit (CAFR Unit) that the sub-grant is available on CAS.
- 4. RMU shall maintain the original sub-grant on file in the Records Room. All requests for sub-grant information from the RMU Records Room should reference the sub-grant number and sub-grantee name.

**I. Entry of Sub-grants into AASIS**

- 1. In most cases, sub-grants must be reflected in AASIS by the creation of corresponding standard purchase orders from the outline agreement. Purchase order creation in AASIS can be accomplished by the division or by the CAFR Unit, at the discretion of the division.
- 2. For those purchase orders created by the CAFR Unit:
  - a. CAFR Unit shall create the purchase order in AASIS upon notification of sub-grant archival in CAS.

- b. CAFR Unit shall send the purchase order number to the division (and a going to the CSS Deputy Team Leader responsible for tracking all sub-grants) with the request that the division approve the purchase order in AASIS.
  - c. Division shall approve the purchase order in AASIS and notify the CAFR Unit of such, upon which the CAFR Unit shall send a copy of the purchase order to the sub-grantee.
3. For those purchase orders created by the division, it is the responsibility of the division to assure technical congruency between the sub-grant and the purchase order and to send a copy of the purchase order to the sub-grantee.

## V. Amendments to Sub-grants

### A. Timeframes

Sub-grant amendments should adhere to the same timeframes outlined for the development of new sub-grants.

### B. Amendment Requirements

1. Amendments to sub-grants are required when any element on the form **DHS-9600** (or approved alternative format) or any of the legal attachments is revised to the extent that it materially affects the sub-grantee or DHS in any way. Amendments shall be mutually agreed upon by the sub-grantee and DHS.
2. Minor revisions or administrative corrections that affect only the internal administration of a sub-grant do not require an amendment; these may be accomplished as "Change" actions. Refer to section V.
3. The effective date of an amendment to extend an otherwise expiring sub-grant **shall be no later than** the expiration date of the expiring sub-grant.
4. Discretionary, non-exempt sub-grants that are amended to exceed \$10,000 require Legislative approval.
5. In the absence of an existing sub-grant amendment format tailored to the specific program requirements, the program division/office should use the form **DHS-9601 (Sub-grant Amendment)** as a standardized agreement format. Creation and utilization of a new tailored sub-grant amendment format (to be used in lieu of the form **DHS-9601**) should be approved by CSS and OCC.

### C. Development of Amendment

1. The program division/office should submit an authorization to CSS to develop the amendment. **(In those instances where the program division/office developed their own sub-grant, they shall also develop the amendments to that sub-grant. Proceed to #5 below.)**
2. The authorization from that program division/office is required to include
  - a. **Input/Authorization Form (DHS-9190)**
  - b. Revised or new attachments, if any
3. Upon receipt of the authorization, assigned CSS individual(s) shall review the authorization, consult with the sub-grantee, develop the sub-grant amendment, and review the completed amendment electronically for technical compliance

and completeness. Division Director or designee shall review the sub-grant amendment and indicate approval of such electronically. The ACO shall print the sub-grant for manual signature by the sub-grantee following electronic review and approval by the Division Director or designee.

4. If the original sub-grant was developed on the form **DHS-9600**, the amendment to that sub-grant shall be developed on the form **DHS-9601, Sub-grant Amendment**. An alternate amendment form may be used to amend a sub-grant that was developed on an alternate NGA.
5. The complete amendment is required to include:
  - a. **Sub-grant Amendment (DHS-9601)** and **Authorization/Input Form (DHS-9190)** for a standard sub-grant  
**OR**
  - b. An **alternate NGA** and the form **DHS-9602**, for a non-standard sub-grant.
6. The complete amendment is also required to include a PASOS if the sub-grantee is NOT a State agency and if the time period covered by the previous PASOS has expired.

**D. Signing and Processing of Amendments to Sub-grants**

Same as for new sub-grant above

**E. Legislative Review of Amendments to Sub-grants**

Same as for new sub-grant above.

**F. Distribution of Amendments to Sub-grants**

Same as for new sub-grant above.

**VI. Changes to Sub-grants**

- A.** Minor revisions or administrative corrections may be accomplished by a change action. Change actions affect only the internal administration of a sub-grant and do not materially affect the sub-grantee or DHS in any way.

1. Any change in financial amount MUST be executed as an amendment action.
2. Any change that creates a material impact on either party MUST be executed as an amendment action.

- B.** CSS shall develop change actions for all sub-grants that were developed by CSS, upon receipt of authorizations from the division requesting such change actions. For those sub-grants that were developed by the division, the division shall develop the change action.

- C.** The following procedures apply to change actions executed by CSS.

1. Division shall submit the authorization electronically. Required elements for the authorization for CSS to develop a change action include:
  - a. **Form DHS-9190**; and

- b. **Explanatory memo** explaining change, if necessary,
  - 2. Upon receipt of the authorization, assigned ACO shall review the authorization, notify the sub-grantee of the change, complete the change proposal, and review the completed proposal for technical compliance and completeness.
  - 3. Assigned ACO shall notify RMU for processing.
  - 4. RMU shall transfer all documents from CAP to CAS and notify the CAFR Unit of the change.
- D.** The following procedures apply to change actions executed by the division.
- 1. The complete change packet shall be submitted to the CTL and division liaison. The completed change packet shall include, at a minimum:
    - a. **Form DHS-9190**; and
    - b. **Explanatory memo** from division explaining change, if necessary.
  - 2. Upon receipt of the complete change packet, CTL or division liaison shall review the completed proposal for technical compliance and completeness.
  - 3. CTL or division liaison shall submit the completed change proposal to RMU for processing.
  - 4. Upon receipt of the change packet, RMU shall scan all documents into CAS and notify the CAFR Unit of the change.

## **VII. Sub-grant Monitoring**

Program division policy and procedures and requirements of the funding source determine monitoring requirements for sub-grants. At a minimum, there should be **sufficient programmatic and fiscal monitoring** to insure that sub-grant assurances are being met and to evaluate the effectiveness of program expenditures.

## **VIII. Sub-grant Reporting**

- A.** For departmental tracking, CSS maintains a compilation of all DHS sub-grant programs. Semi-annually, CSS requests the divisions to update their listing of sub-grant programs on file with CSS. This list is available on CSS Share.
- B.** For statewide tracking, all state agencies are required to submit a quarterly report to DFA regarding disclosures made during that period. CSS makes this report on the OSP website, from data provided by the divisions, on all sub-grants over \$25,000 to Constitutional Officers, members of the General Assembly, or their spouses.