



MARYLAND
DEPARTMENT OF
BUDGET & MANAGEMENT

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Lieutenant Governor

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Secretary

MARC L. NICOLE
Deputy Secretary

July 13, 2016

TO: Chief Financial Officers for State Agencies

FROM: Marc Nicole *MN*

RE: Interagency Agreements between State Agencies and Institutions of Higher Education

This memo spells out the reporting and approval requirements for interagency agreements (Agreements) between Maryland State agencies (Agencies) and State of Maryland institutions for higher education (Institutions).

Section 29 of the Fiscal 2017 Budget Bill requires both Agencies and Institutions to report to the Department of Budget & Management (DBM), by August 1, 2016, on Agreements in place between Agencies and Institutions during the preceding fiscal year that involve potential expenditures in excess of \$100,000 over the term of the Agreement. DBM, in turn, is required to submit a consolidated report of these Agreements to the legislative budget committees and the Department of Legislative Services. The reporting instructions for FY16 Agreements have recently been mailed to your Agency's Interagency Agreements Report Coordinator (see **Attachment A** for list of Agency Report Coordinators).

Section 29 also continues the requirement for DBM review and approval of Agreements between Agencies and Institutions in excess of \$500,000. Specifically, no *new* Agreement with a potential value exceeding \$500,000 over the full term of the Agreement may be entered into during FY 2017 without *prior* approval of DBM. Responsibility for obtaining DBM approval of Agreements has been vested with the Agencies. The process and requirements for DBM review of these Agreements are detailed in the sections that follow.

I am asking that you distribute this memo with its attachments to all appropriate program and administrative personnel in your Agency to ensure all necessary parties are aware of these reporting and approval requirements so that your Agency properly complies. Additionally, if your Agency plans to coordinate the DBM review and approval process through a single individual or office, please make sure your staff is aware of your Agency's point of contact. In most Agencies, that individual will be the same person listed on **Attachment A**.

Please be advised that DBM will be selectively auditing Agreement invoicing and payments during the upcoming year, and your Agency may be requested to produce documentation such as deliverables, invoices, and supporting detail. Thank you in advance for your cooperation in this matter.

Should you have any questions about these requirements, please contact Mary Naramore by email (mary.naramore@maryland.gov) or phone (410-260-7471).

Existing Agreements

For each Agreement between an Agency and Institution in effect during FY16 that continues into FY17 and is expected to exceed \$500,000 in value over the full term of the Agreement, the Agency is to provide DBM a copy of the complete Agreement, including any accompanying scope of work proposal, budget detail and justification, personnel detail, as well as any modifications or Task Orders (for Task Order based Agreements) that have been approved by the Agency to date. The only exception to this requirement is for those Agreements that received DBM approval in FY 16. For existing Agreements that require DBM approval, Agencies should email the above information to: dbm.iaar@maryland.gov. Please include, within the subject line of the email, the DBM report tracking number that has been, or will be, assigned to your Agreement. If you are unsure what the DBM report tracking number is, or should be, please contact your Agency's Interagency Agreement Report Coordinator listed in **Attachment A**.

For Agreements in effect during FY 16 that continue into FY 17 and are not expected to exceed \$500,000 in value over the full term of the Agreement, DBM approval is not required. In the event that such an Agreement is modified and the modification causes the expected value to exceed \$500,000, DBM approval is required *prior* to Agency execution of the modification (see Modification section below).

Note: in determining potential value of an Agreement, the value, or potential value, of option periods should be considered.

New Agreements

For new Agreements that will be effective July 1, 2016 or after, that are anticipated to exceed \$500,000 in value over the full term of the Agreement, DBM approval must be obtained *prior* to execution by the Agency. Agencies are to send the complete Agreement, including scope of work proposals, budget detail and justification, and personnel detail along with a completed **Attachment B**, by email to: dbm.iaar@maryland.gov. Please include, within the subject line of the email, the DBM report tracking number that will be used for this Agreement on the Annual Interagency Agreement Report. This number should be obtained from your Agency's Interagency Report Coordinator (**Attachment A**).

Agencies should anticipate, at minimum, a two-week review and turnaround time by DBM after all necessary documents have been provided.

New Agreements that will be effective July 1, 2016 or after, that are not expected to exceed \$500,000 over the full term of the Agreement do not require DBM approval. In the event such Agreements are modified causing the expected value to exceed \$500,000, then DBM approval is required *prior* to Agency execution of the modification (see Modification section below).

Note: in determining potential value of an Agreement, the value, or potential value, of option periods should be considered.

Modification of Agreements

If existing or new Agreements that have not received DBM approval because their anticipated value of did not exceed \$500,000 are modified, and the modification will cause the anticipated value of the Agreement to exceed \$500,000 over the full term of the Agreement, DBM approval is required *prior* to Agency execution of the Modification. For such Agreements, the Agency is to provide a copy of the complete Agreement including any accompanying scope of work proposal, budget detail and justification, personnel detail, all modifications to date, including the modification requiring DBM approval, and a completed **Attachment C**.

Additionally, any substantive modifications to Agreements that have already received DBM approval require DBM approval *prior* to Agency execution of the additional modification. Substantive modifications would include, but are not limited to, modifications that:

- significantly alter or expand the cost or scope of work,
- make changes to the amount or rate of the approved overhead (Facilities and Administrative) rate, or
- reduce the scope of work without a comparable reduction in payment obligations.

When emailing Agreement modifications to dbm.iaar@maryland.gov, please include, within the subject line of the email, the DBM report tracking number that is used for this Agreement on the Annual Interagency Agreement Report. This number should be obtained from your Agency's Interagency Report Coordinator (**Attachment A**).

Agencies should anticipate, at minimum, a two-week review and turnaround time by DBM after all necessary documents have been provided.

Agreement Requirements

Interagency Agreements are contracts and should be treated as such. They involve the commitment and expenditure of government funds. Consequently, Agencies are to be prudent in their commitment and management of these funds, and should take steps to ensure that rates and prices charged are reasonable, administrative costs are not excessive, deliverables are clearly identified and obtained, and work performed under the Agreement is well documented. When preparing the detailed scope of work, Agencies should ensure that the Agreement with the Institution is not being entered into in order to circumvent procurement laws and regulations, personnel guidelines or budget restrictions.

Before finalizing Agreements, Agencies are to ensure that charges (labor or unit rates, fixed amounts) are reasonable, that the Agency has procedures in place to ensure that it is only paying for services/products delivered and/or results achieved, and that the following elements are clearly specified in sufficient detail to assure desired outcomes are achieved:

- **Deliverables** –Agreements should include detail relating to volume, quality/functionality, and timeframes for delivery of services/products. The Agreement should also define acceptable documentation to be provided as evidence of the services provided.
- **Governing policy for acquisitions, subcontracting and personnel hiring** – Agreements should specify which regulations and policies are to be followed when items must be purchased, or subcontracting or hiring of personnel is necessary.
- **Reporting requirements** – Agreements should clearly define any reporting requirements, including content and frequency of status reports.
- **Payment provisions** –Agreements should specify what the basis of payment will be; where possible, payments should be tied to a deliverable. Rates and fixed price amounts, as well as any administrative fees, should be reviewed for reasonableness. Explanation or clarification may be requested where expected charges appear excessive.
- **Invoicing requirements** – Agreements are to specify invoice period/frequency and supporting documentation to accompany invoicing.

Additionally, Agencies are required to maintain documentation of all Agreements, modifications, task orders, invoices, invoice supporting documentation, and work performed by the Institution. This documentation is to be maintained until the Office of Legislative Audits has audited the period which includes the date which the Agreement ended.

Publishing Notice of Agreement Awards

Finally, for those Agreements that are for human, social or educational services and exceed \$25,000, COMAR requires that notice of the contract (Agreement) is to be posted in eMaryland Marketplace not more than 30 days after approval and execution of the contract award, extension or renewal. (COMAR 21.14.01.02.B)

While contracts or like business agreements between two State Agencies (such as Agreements between Agencies and Institutions) generally are exempt from COMAR Title 21, there is an exception for the requirements to publish awards exceeding \$25,000 for human, social and educational services. This requirement only applies to certain Agreements involving the Departments of Health and Mental Hygiene, Human Resources, Labor, Licensing and Regulation, Juvenile Services, Aging and Disabilities. See **Attachment D** for information related to this requirement to publish notice of award.

For Agencies to be able to publish notice of award of these Agreements, the Institutions will be required to register on eMaryland Marketplace as a vendor. Therefore, you will want to make sure that the Institution you are contracting with for human, social or educational services has registered on eMaryland Marketplace prior to execution of the Agreement.