

DEPARTMENT OF DEFENSE

CFDA 12.401 NATIONAL GUARD MILITARY OPERATIONS AND MAINTENANCE (O&M) PROJECTS

I. PROGRAM OBJECTIVES

The National Guard Bureau (NGB) enters into cooperative agreements (CA) for Army National Guard (ARNG) Facilities Programs (FP) and Air National Guard (ANG) Facility Operations & Maintenance Activities (FOMA) with States to provide Federal support for services provided by the State Military Departments for authorized facilities for leases, facilities operations, and sustainment, restoration, and modernization, including operations and maintenance (O&M) and minor construction costs (NGR 5-1/ANGI 63-101).

II. PROGRAM PROCEDURES

NGB, a joint Bureau of the Department of the Army (DA) and the Department of the Air Force (AF), enters into a CA with a State when NGB transfers something of value, through funding or otherwise, to the State to support the State ARNG FP and ANG FOMA instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the ARNG or ANG and substantial involvement is expected between the NGB and the State when carrying out the activity contemplated in the agreement (NGR 5-1/ANGI 63-101, chapter 1-1).

Generally, a CA consists of two parts, the agreement and appendices (Master Cooperative Agreement (MCA) and as many Appendices as apply to that State). Policies and procedures to be followed for cooperative agreements with States are contained in National Guard Grants and Cooperative Agreements NGR 5-1/ANGI 63-101. The MCA includes standard terms and conditions applicable to all Appendices under the MCA and the required signatures of the parties. There will be a separate Appendix for each CA functional area applicable to the State. Each Appendix shall contain terms and conditions, allowable costs, reports, approved budget, management controls, and administrative information applicable only to that functional area (NGR 5-1/ANGI 63-101, chapter 2-1).

The Adjutant General (TAG) and the United States Property & Fiscal Officer (USPFO) are responsible for the execution of the MCA and Appendices. A CA is the means of providing all financial assistance and other support to States for the operation of the National Guard except for financial assistance and support provided under separate authority (e.g., military and technician pay and the military supply system). Single-purpose CAs will specify the responsible parties (NGR 5-1/ANGI 63-101, chapter 2-1).

The sum of Federal reimbursements and program income may not exceed the requirements listed for each program in the approved budget. The State Military Department must have prior written USPFO approval of an amended budget before it may request a reimbursement or receive program income that would bring its receipts above the maximum program funding level. Funding transfers into the FP (chapter 13-1e) or FOMA (chapter 33-3b) programs or funding transfers within each program do not require prior written approval of the appropriate NGB program managers. However, funding may not be transferred from the FP (chapter 13-1d) or FOMA (chapter 33-3c) programs without a signed modification to the Appendix that includes

justification for the transfer from FP or without the prior written approval of the FOMA program manager for the transfer from FOMA.

Source of Governing Requirements

The NGB and States are authorized to enter into CAs under: (1) 31 USC, Subtitle V, General Assistance Administration, Chapter 63, Using Procurement Contracts and Grant and Cooperative Agreements; (2) 31 USC Subtitle V, General Assistance Administration, Chapter 61, Program Information, and Chapter 65, Intergovernmental Cooperation; (3) 32 USC National Guard, Chapter 1, Organization; (4) 32 USC Section 101 (19); and (5) 32 USC Section 106/107, which authorizes the NGB to contribute funds for the support of the operation/training of the ARNG/ANG. The MCA is a CA within the meaning of 31 USC sections 6301 through 6308.

DoD Grant and Cooperative Agreement Regulations (DoDGARs), 3210.6R, Part 21, DoD Grant and Agreements, General Matters, implements the preceding Federal statutes.

Availability of Other Program Information

The National Guard Internal Review Office (which reports to the USPFO) can provide information about risk assessments and audits performed by their office which may be helpful in planning the audit. Contact Duane Griffith, National Guard Headquarters Internal Review Office, at (703) 607-0760 or Duane.Griffith@us.army.mil, for information on the Internal Review Offices for a particular State.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Federal funding under the CA shall be on a requirements basis within Federal budget limitations and funding availability. Funding shall be provided to support those items designated in the CA or facilities authorized support in the Facilities Inventory and Support Plan (FISP). Facilities used in excess of those authorized shall be supported with other than Federal funds (NGR 5-1/ANGI 63-101 chapters 13-5a, 33-5a, 33-4b, and 33-6a).
2. FP (NGR 5-1/ANGI 63-101 chapter 13-5c) and FOMA (NGR 5-1/ANGI 63-101 chapter 33-6a and 33-6b) Appendix support shall be provided within available funding limitations for authorized facilities and supporting elements such as sidewalks, fire hydrants, gasoline and diesel fuel dispensing systems, flammable materials buildings, roads, utilities systems, fencing and hard stand. Sustainment, restoration, and modernization, facilities operations, and minor construction support is provided for space or facilities as detailed in the NGR 5-1/ANGI 63-101 chapter 13-3a(2)-(4), 33-4(a), and 33-4(b).

3. Funds may be used for sustainment/restoration/modernization or construction of real property and facilities if authorized on the FISP. Construction is the erection, installation, or assembly of a new facility; the relocation of a facility; the complete replacement of an existing facility; or the addition, expansion, alteration, or conversion (to a new type use) of an existing facility. This includes equipment (but not fixed or moveable personal property) installed and made a part of a facility and related site preparation, excavation, filling and landscaping, or other land improvements. It also includes increases in components of facilities for functional reasons and the extension of utilities to areas not previously reserved. The State may complete these projects with employees reimbursed under the FP Appendix or they may subcontract with a private firm or another governmental agency to do the work.

If the estimated cost to restore/modernize a facility exceeds 50 percent of the cost to construct a replacement facility, a new facility should be constructed. If the State elects to do a repair project, if the estimated cost to repair the facility exceeds 50 percent of the cost to construct a replacement facility, and if the project costs exceeds \$750,000, then the TAG must request approval through NGB-ARI to the Assistant Secretary of the Army (Installations and the Environment) (NRG 5-1/ANGI 63-101, chapter 13-5k(5)). The Federal share of project costs cannot exceed the statutory ceiling in 10 USC 18233b (NRG 5-1/ANGI 63-101, chapter 13-5l(1)).

4. Unallowable activities are those activities that are described as unauthorized charges and detailed in the NGR 5-1/ANGI 63-101, chapters 13-6 and 33-7.

B. Allowable Costs/Cost Principles

1. *Budget* - Costs must be in accordance with any restrictions, limitations, or instructions contained in the CA budget (NRG 5-1/ANGI 63-101, chapter 13-4 and 33-5).
2. *Indirect costs are unallowable* - Indirect costs, except fringe benefits, are unallowable (NRG 5-1/ANGI 63-101, chapter 5-4).
3. *Employee compensation* - Individual employee compensation comprises a significant portion of total costs charged to CA appendices. The auditor should give particular attention to the allocability of these costs. The distribution of individual employee compensation to projects must follow applicable Federal cost principles, NGR 5-1/ANGI63-101, and the terms and conditions in agreement appendices. Therefore, the auditor's testing should include tests of the time and effort reporting system to support the distribution of compensation costs.
4. *Fringe benefits* - Fringe benefits for which the State does not bill the State Military Department directly, such as workmen's compensation, unemployment compensation, State sponsored life and health insurance, and retirement benefits are allowable if they are part of the State's Central Service Cost Allocation Plan

approved by the Department of Health and Human Services (HHS). However, for these costs to be reimbursable, all of the following conditions have to be met (NGR 5-1/ANGI 63-101 chapter 5):

- a. The individual cost items have to be reimbursable under the terms of individual appendices.
- b. Fringe benefit costs for which the State does not bill the State Military Department directly shall be reimbursable by applying a fringe benefit rate to the costs of actual salaries paid to employees.
- c. Fringe benefits which are neither direct costs nor included in the billed central services section of the State's Central Service Cost Allocation Plan approved by HHS are not reimbursable.

D. Davis-Bacon Act

The Davis-Bacon Act applies only to environmental remediation construction subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. Environmental remediation construction is that portion of the remedial work which calls for excavation, substantial earth moving, removal of contaminated soil, and the actual mobilization of the incinerator followed by restoration of the landscape, regardless of whether such activities are performed with any other construction activities done any other buildings or other structures at the cleanup site (NGR 5-1/ANGI 63-101 chapter 14-1c).

G. Matching, Level of Effort, Earmarking

1. Matching

The rate of reimbursement to the State for all authorized charges, unless expressly stated otherwise, shall be based on the FISP support code for the facility generating the expenditure. For example, employee, repair, supplies, equipment, utility, etc. costs directly and exclusively associated with a facility authorized 75 percent support shall be reimbursed to the State Military Department 75 percent. Costs that are generated for facilities that are authorized at several different support levels shall be reimbursed at a rate that reflects the actual level of effort. However, nothing shall preclude the State Military Department from requesting reimbursement at a rate less than what is authorized (NGR 5-1/ANGI 63-101, chapter 13-5).

2. Level of Effort - Not Applicable

3. Earmarking - Not Applicable

H. Period of Availability of Federal Funds

1. National Guard Operations and Maintenance agreements are funded with one year appropriations and, as such, State obligations may not be incurred against Federal funds for a specified year before or after the Federal fiscal year in which the funds were appropriated. State obligation means any action under State law or procedure requiring payment by the State. A representation by competent authority within a State that it obligated funds under State law may be relied upon (NGR 5-1/ANGI 63-101, chapters 12-1, 12-6, 32-1, and 32-6).
2. A CA shall be executed by the USPFO and the TAG prior to any request for reimbursement or advance payment. The State shall also have an approved Appendix covering each functional area for which the reimbursement or an advance is requested. The State shall not request reimbursement for any expenditures it made before the date that all required parties execute the MCA and the covering Appendices unless the MCA or appropriate Appendix expressly authorize expenditures made during the funding period, but prior to the date of final signature (NGR 5-1/ANGI 63-101, chapter 2-1).
3. Work or task performance must serve a bona fide need that exists in the fiscal year in which the work or tasking is issued; otherwise, a valid obligation is not accomplished. It is not intended that the rule of bona fide need of the fiscal year rule be construed to preclude lead time. Thus, where materials, for example, cannot be obtained in the same fiscal year in which they are needed, a provision for delivery in the subsequent fiscal year does not violate the bona fide need rule so long as the time intervening between placing of the order and delivery is not excessive and the work order is not for standard commercial items readily available from other sources. Bona fide need generally is a determination of the NGB activity and not that of the State performing the activity. The State shall prepare and the USPFO shall review and approve a bona fide need determination (NGR 5-1/ANGI 63-101, chapter 2-2b) and finding to reflect this need. A State performing the activity should, however, refuse to accept a work order if it is obvious that the work order does not serve a need existing in the fiscal year in which issued (NGR 5-1/ANGI 63-101, chapter 2-2).
4. Within 90 days after the end of the Federal fiscal year or upon termination of the CA, whichever is earlier, the State Military Department shall promptly deliver to the USPFO, as a representative of NGB, a final accounting of all funding and disbursements under the agreement for the fiscal year (NGR 5-1/ANGI 63-101, chapters 12-6 and 32-6).
5. If unliquidated claims and undisbursed obligations arising from the State's performance of the agreement will remain 90 days after the close of the fiscal year, the State Military Department shall provide a detailed listing of uncleared obligations and a projected timetable for their liquidation and disbursement no later than 31 December. The USPFO shall then set an appropriate new timetable for the State Military Department to submit their final accounting.

6. Costs incurred in a fiscal year which are not disclosed by the State Military Department within 90 days of the end of the fiscal year, except costs associated with unliquidated claims and undisbursed obligations arising from the State's performance of the agreement which the State Military Department has reported per paragraph 12-6c, shall not be eligible for reimbursement by NGB. The USPFO may extend the 90 day limit for good cause shown.

J. Program Income

Program income in an NGB CA shall mean the gross income, received by a State Military Department from fees for services performed and from the use, rental, or sale of real or personal property, the operation and maintenance of which is supported under the CA. The following exceptions are applicable (NGR 5-1/ANGI 63-101, chapter 7):

1. Income received from the use or rental of State-owned, federally supported armories is not program income. However, the State must fulfill its obligations under 10 USC 18236(c) on the use of these funds. 10 USC 18236(c) permits States to rent out armories if the State uses the rental income to maintain the armory. In addition, as a condition for continued Federal support, the State must increase its contribution to the CA by at least the amount of all Identifiable Incremental Costs (IIC), as defined in NGR 5-1/ANGI 63-101, chapter 7-3b(2), for which it receives Federal support (e.g., utilities).
2. Reimbursements made to NGB by another Federal agency for the use of an NGB-supported National Guard facility are not program income but are considered to be direct reimbursement of costs incurred. However, they will increase the maximum funding limitations of the appropriate appendices to the CA.
3. Amounts paid directly to a State Military Department by a Federal agency, a State agency, or any other user for the use of a State Military Department-owned, leased, or licensed real property (exclusive of armories) or equipment acquired or supported under an NGB CA pursuant to a direct relationship between the Federal or State agency, or other user and the State Military Department are program income.

L. Reporting

1. Financial Reporting

- a. SF-269, *Financial Status Report* - Not Applicable
- b. SF-270, *Request for Advance or Reimbursement* - Applicable
- c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* - Not Applicable
- d. SF-272, *Federal Cash Transactions Report* - Applicable

2. **Performance Reporting** - Not Applicable
3. **Special Reporting** - Not Applicable