

To: Nonprofit Association of Oregon

From: Amanda Manjarrez, Consultant

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Subject: Public Grants and Contracts Analysis with Policy Recommendations

Executive Summary

This memo presents an analysis of government grant and contract provisions among Oregon state agencies and their impact on the financial stability and ability to provide fair wages. Nonprofits are essential in providing culturally responsive services in Oregon, yet they face consistent challenges due to inequitable and inconsistent funding relationships with state agencies. This analysis highlights the differences in how agencies like ODHS, OHA, OHCS, and ODE manage these agreements and the financial strain caused by inequitable payment provisions in nonprofit contracts with the state, such as reimbursement requirements versus advance payment for nonprofits delivering services to the public.

To address these issues, this memo includes policy recommendations to create a comprehensive grantmaking system for Oregon. This system would provide uniform guidance and support to implement more equitable grantmaking practice across all state agencies.

Research Objectives

1. Examine the legal framework governing Oregon's grant-making and procurement systems and develop policy recommendations for more equitable and streamlined grant-making practices between government agencies and nonprofits providing social services.¹
2. Identify specific government grant and contract provisions that may impact the Oregon nonprofit sector's ability to maintain long-term financial stability and capacity to provide fair wages to their employees.

¹ For purposes of this research, "social services" refers to:

- a) Human Services (e.g. senior care, disability services, programs for foster youth, etc)
- b) Housing Affordability and Homelessness service
- c) Health and Behavioral Health treatment and support

Background and Context

Nonprofit organizations are vital to Oregon, providing essential and culturally responsive programs and services that the government may not be able to effectively deliver on its own. While the state relies heavily on these partnerships, the funding relationships between public agencies and nonprofits are often inequitable and inconsistent. This imbalance can negatively impact nonprofits' financial health and their ability to sustain high-quality services that many Oregonians rely on.

In 2022, the Nonprofit Association of Oregon (NAO) released a survey highlighting key challenges nonprofits face when contracting with the government.² These include inadequate funding for administrative or program costs, inequitable payment models requiring nonprofits to front costs for social services and wait for reimbursement from the government, and contract rates that fail to adjust for rising costs over time.

In response to concerns raised by the nonprofit community, the Oregon legislature established the Modernization Grant Funding and Contracting Task Force. This group was charged with examining how the state's grantmaking and procurement practices limit the wages of nonprofit organizations and reporting their findings to the legislature.³ The data and materials published by the Task Force, along with feedback and examples provided by NAO's membership, informed the scope and approach of this research.

To complement the Task Force's work and NAO-sponsored projects, this analysis focuses on the legal foundations and policy requirements driving decisions across Oregon's grantmaking and procurement systems, how those policies are being implemented by state agencies, and how those decisions are impacting nonprofit organizations providing social services to the public.

Oregon's Public Contracting System

The Oregon legislature established ORS chapter 279A "Oregon's Public Contracting Code" to govern the state's system of procurement for public contracts used to purchase goods and services for the government. Importantly, this section of law explicitly states that it does not apply to grants, which are the types of agreements used to contract for programs

² "Services, Systems, and Solutions: A Study of the Government to Nonprofit Contracts in Oregon," NAO (2022), at <https://nonprofitoregon.org/resources/nonprofit-work-pending-government-contract-and-grants/>.

³ Senate Bill 606 (2023), <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB606>.

and services that benefit the broader public.⁴ The state does not have a statutory scheme similar the Public Contacting Code to guide how state agencies engage in grantmaking with external partners.

The lack of uniform requirements has created a disjointed system where agencies are applying many different systems, procedures, and templates when contracting with nonprofits providing social services. Some agencies have developed separate grantmaking systems and procedures to guide how their own agency engages in grantmaking with nonprofits. In other cases, agencies use public contracting templates designed for agency operations to contract with nonprofits providing programs and services to the public. As a result, nonprofits are left to navigate complex and inconsistent procedures and requirements that vary across agencies and programs.

Key Contract Provisions Impacting Nonprofits

Based on my review of a subset of nonprofit contract agreements and agency templates, the standard provision that appears to have the greatest effect on a nonprofit's financial stability are payment provisions that require those organizations to front costs and request reimbursement after services are delivered. Some nonprofits also referenced concerns about low administrative rates, agreements without cost-of-living adjustments, and limits on allowable uses. However, in each case, those provisions are included in an attached scope of work and seem to vary across programs and agencies. The implication is that these terms are either specifically required by the program source, are discretionary but still applied consistently in each program grant, or each nonprofit is being treated differently in their grant agreements with each agency.

Methodology

NAO provided seven contract agreements for review from five different nonprofit organizations offering social services. Additionally, three nonprofits shared narrative descriptions via email about their experiences contracting with the state, including examples of the unique financial barriers they have faced. I also reviewed contract templates created by DAS, ODHS, and OHA and the materials each agency submitted to the Modernization Grant Funding and Contracting Task Force.

⁴ ORS 279A.025(2)(d)

Analysis of Contract Agreements and State Agency Practices

Oregon Department of Human Services (ODHS)

ODHS systematically uses Personal/Professional Service Contract templates, designed for procurement purposes, to contract with nonprofits providing state-funded social services such as addiction treatment, counseling, community outreach, family supports, and services for foster youth. The Personal/Professional Service contracts have standard payment provisions that require nonprofits to front program costs, including flexible funds for families, and request reimbursement from the agency after services are delivered, which also take time for the agency to process.⁵ Moreover, nonprofits waiting for reimbursement do not have a guarantee of payments because these templates also include “performance-based contracting” terms, allowing the agency to determine if performance criteria are met and potentially withhold funding.⁶

Oregon Health Authority (OHA)

OHA, on the other hand, has created a grant agreement template for state-funded programs that complies with pre-approved templates provided by DAS but are distinct from the contract templates used to procure goods and services for the agency. The standard payment provision that OHA uses for grant agreements is a distribution schedule that provides advance payment to nonprofits offering public programs and services within the scope of its mission, rather than the reimbursement model applied in public contracting templates. Nonprofits receive funding based on the schedule and are then required to report back actual costs and return unused funds at the end of the grant term. In these cases, the nonprofits who provided agreements with OHA expressed concerns about the indirect administrative rates and the limits on expense categories that were included in their respective scopes of work.

⁵ Another issue to consider in a future analysis is that these Personal/Professional Service contract templates are for independent contractors, which legally limits the agency’s ability to control the manner and means of delivery of services. However, in some of the agreements I reviewed for this project, the attached statement of work includes very detailed descriptions of exactly how services should be delivered by the nonprofit and their subcontractors.

⁶ None of the nonprofits that provided agreements for review cited a situation where the agency withheld a reimbursement for performance-based reasons.

Other State Agencies (OHCS and ODE)

The nonprofits that provided agreements with the Oregon Housing & Community Services Department (OHCS) and the Oregon Department of Education (ODE) did not express any concerns with the standard provisions in their agreements, which appear to be tailored specifically for grants. These agreements included distribution schedules for payments rather than reimbursement requirements. Additionally, the details of the distribution amounts, timeline, administrative rates, and allowable uses were included in the attached scope of work for each contract. Therefore, it is difficult to determine if these items are standard provisions applied agency-wide or if they are specific to each program.

Conclusions and Policy Recommendations

Key Conclusions

Based on my analysis, the following conclusions can be drawn:

1. **ODHS Contract Agreements Are Not Suitable for Grants with Nonprofits:** The consistent use of Personal/Professional Service contract templates by ODHS for social services creates an unnecessary financial strain on nonprofits due to the reimbursement model, delays in payment processing, and performance-based terms that could result in withheld payments.
2. **OHA, ODE, and OHCS Grant Templates Are More Suitable for Agreements with Nonprofits:** OHA's use of grant agreement templates that allow advance payments offer more favorable financial arrangements for nonprofits. However, there are still concerns regarding administrative rates and expense category limits, indicating a need for more flexible terms.
3. **A Need for Standardization Across State Government:** The discrepancies between agencies highlight the need to standardize how agencies determine which agreement templates and provisions are used for grants and which are used to procure services for the agency. A standard payment provision for grant agreements that includes a distribution schedule for advance payment, rather than a reimbursement model that requires nonprofits to front costs, seems to better meet the financial needs of nonprofits contracting with the state.

Policy Recommendations

1. **Establish a Comprehensive Public Grantmaking Code in Statute**

This new Grantmaking Code should include general standard procedures and requirements for all state agencies engaged in grantmaking. This Code should be separate from Oregon's Public Contracting Code, which guides the state's procurement system for purchasing goods and services for the government.

2. **Develop Uniform Guidance for Grantmaking**

Require the administration to develop uniform guidance, aligned with the federal system,⁷ incorporating equitable grantmaking practices and baseline requirements for each grant agreement (i.e. consistent use of payment schedules, cost of living adjustments, de minimis admin rates, flexible indirect costs, etc). The uniform guidance should be tailored to Oregon context and apply to all agency grants unless otherwise specified by law.

3. **Create a Chief Grantmaking Officer Position**

Establish a new Chief Grantmaking Officer position within the Department of Administrative Procedures (DAS) to oversee grantmaking for the state of Oregon. This officer should be responsible for standardizing grantmaking procedures across all agencies and providing support and training, including how to determine whether a grant agreement or a procurement is the appropriate mechanism for a contracting with a nonprofit for services.

⁷ Federal regulations and uniform guidance applied to federal grants can serve as a model to guide the development of a comprehensive grantmaking system for Oregon. See 2 CFR 200.400, <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E> and OMB Circular A-110, <https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/circulars/a110/2cfr215-0.pdf>. The federal guidance includes language to distinguish between grants and public contracts used for procuring goods and services, as outlined in 2 CFR 200.331 Subrecipient and contractor determinations. Finally, Oregon state agencies already have procedures and agreement forms that align with federal law because they are required to follow federal law when federal grant funds are involved. ORS 283.020.