

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) with the 50 States, District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, and Guam (recipients) to provide support to the Army and Air National Guard in minor construction, maintenance, repair or operation of facilities, and mission operational support to be performed by recipients as authorized by NGB through Operations and Maintenance (O&M) appropriated funding.

II. PROGRAM PROCEDURES

NGB uses a CA as the means of providing financial assistance and other support to recipients for the operation of the NGB program in the recipient's jurisdiction, except for financial assistance and support provided under separate authority (e.g., military and technician pay and the military supply system). Recipients enter into a Master Cooperative Agreement (MCA) with the NGB. Generally, an MCA consists of two parts: (1) the agreement and (2) the Appendices. The agreement includes the standard terms and conditions applicable to all Appendices. The Appendices contain the terms and conditions, policy, administrative procedures, scope of work, authorized and unauthorized activities/charges, budget information, funding limitations, and agreement particulars applicable to that functional area (e.g. Real Property Operations and Maintenance, Security Guard activities, etc.). Funding for the CA is identified in each of the Appendices to the MCA. The total sum of Federal reimbursements to the recipient for an MCA Appendix may not exceed the approved funding limits identified in the Funding Limitation section of the Appendix. .

The Adjutant General (TAG) for each recipient and the United States Property & Fiscal Officer (USPFO) are responsible for the execution of the MCA and Appendices.

In FY 2009, NGB also awarded O&M funds under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) for the sustainment, restoration, and modernization of National Guard facilities. Projects funded with O&M ARRA funds were issued under a separate CA titled "ARRA of 2009 Sustainment, Restoration, and Modernization Projects, Special Military Cooperative Agreement." ARRA CAs are numbered as 9000 series projects to distinguish them from all other NGB CAs.

The total amount of Federal funding authorized for recipient expenditure for ARRA projects is shown in Section 8, Funding Limitation, of the ARRA of 2009 Sustainment, Restoration, and Modernization Projects, Special Military Cooperative Agreement.

Source of Governing Requirements

The NGB and recipients 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); (5) 32 USC Section 106/107, which authorizes the NGB to contribute funds for the support of the operation/training of the ARNG/ANG; **and (6) ARRA**. Policies and procedures to be followed for CAs with recipients are contained in the National Guard Grants and Cooperative Agreements Regulation, NGR 5-1, and, for facilities and engineering projects, in NG Pamphlet 420-10, Facilities and Construction Management Office Procedures (July 18, 2003), which is available at <http://www.ngbpdcc.ngb.army.mil/publications.htm>.

Availability of Other Program Information

The NGB Internal Review Office in each State and Territory (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 Derrick Miller, National Guard Bureau Headquarters Internal Review Office, at (703) 607-0755, DSN 327-0755, or email to Derrick.E.Miller@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. For other than ARRA-funded projects, allowable activities are those designated as authorized in each separate Appendix to the MCA or, for facilities for which support is authorized, listed in the Facilities Inventory and Support Plan (FISP) (National Guard Pamphlet 420-10, Chapter 2, and Article IV of the MCA). Unallowable activities are those listed in the Unauthorized Activities/Charges section of each individual Appendix.
2. **Authorized and unauthorized activities for ARRA projects are listed in Sections 4 and 5 of the ARRA of 2009 Sustainment, Restoration, and Modernization Projects, Special Military Cooperative Agreement.**

B. Allowable Costs/Cost Principles

1. Indirect costs, except fringe benefits, are unallowable (NGR 5-1, Chapter 5).

2. 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, 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 (NGR 5-1, Chapter 5).
3. 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 (CSCAP) approved by the Department of Health and Human Services (HHS). However, for these costs to be reimbursable, all of the requirements of NGR 5-1, Chapter 5 have to be met (NGR 5-1, 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 CSCAP approved by HHS are not reimbursable.

D. Davis-Bacon Act

1. Other than for ARRA projects, the Davis-Bacon Act applies only to NGB O&M agreements requiring environmental remediation construction subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Environmental remediation construction is that portion of the remedial work which calls for excavation, substantial earth moving, removal of contaminated soil, 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 (MCA Appendix 22, ANG Environmental Program Management, Section 2208).
2. **ARRA funded projects are subject to the Davis-Bacon Act (see Part 3 of the Compliance Supplement). In those instances where projects are funded with both non-ARRA and ARRA funds, the auditor should ensure that the recipient is in compliance with the requirements of the Davis-Bacon Act for the portion of the project that was executed using ARRA funds (ARRA of 2009 Sustainment, Restoration, and Modernization Projects, Special Military Cooperative Agreement, Article VIII, Section 815).**

G. Matching, Level of Effort, Earmarking

1. Matching

- a. The recipient's required matching percentage varies by Appendix and is listed in the Funding Limitation section of each MCA Appendix. The NGB share of all authorized charges, unless expressly stated elsewhere in the Appendix, is based on the FISP support code for the facility generating the expenditure. For example, the NGB share of employee, repair, supply, equipment, utility, and other costs directly and exclusively associated with a facility that is authorized 75 percent Federal support is 75 percent. NGB participation in costs that are generated for facilities that are authorized at several different support levels will be at a rate that reflects the actual level of effort but not to exceed 25 percent of such costs (NG Pamphlet 420-10, Chapter 2).
- b. Whenever the USPFO provides "in-kind" assistance, the CA provides the value for that assistance, which is added to NGB funds received to determine the total amount on which the recipient's share is calculated.
- c. Program income may not be used to meet a matching requirement (NGR 5-1, Chapter 5).

2. Level of Effort - Not Applicable

3. Earmarking - Not Applicable

H. Period of Availability of Federal Funds

1. NGB non-ARRA O&M CAs are funded with one-year appropriations and, as such, recipient 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. Recipient obligation means any action under State law or procedure requiring payment by the recipient (NGR 5-1, Chapters 3 and 11).
2. **ARRA funds are available for recipient obligation through September 30, 2010.**
3. A CA shall be executed by the USPFO and the TAG prior to any request for reimbursement or advance payment. The recipient shall also have an approved Appendix covering each functional area for which the reimbursement or an advance is requested. The recipient shall not request reimbursement for any expenditures it made before the date that all required parties execute the MCA unless the USPFO expressly authorizes expenditures made during the funding period, but prior to the date of final signature (NGR 5-1, Chapter 11).

4. 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 be construed to preclude lead time. Thus, for example, where materials 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 (NGR 5-1, Chapter 11).
5. Within 90 days after the end of the Federal fiscal year or upon termination of the CA, whichever is earlier, the recipient shall promptly deliver to the USPFO a final accounting of all funding and disbursements under the agreement for the fiscal year (NGR 5-1, Chapter 11).
6. If unliquidated claims and undisbursed obligations arising from the recipient's performance of the CA will remain 90 days after the close of the Federal fiscal year, the recipient 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 recipient to submit its final accounting (NGR 5-1, Chapter 11).
7. Costs incurred in a Federal fiscal year which are not disclosed by the recipient within 90 days of the end of the Federal fiscal year, except costs associated with unliquidated claims and undisbursed obligations arising from the recipient's performance of the CA which the recipient has reported, shall not be eligible for reimbursement by NGB. The USPFO may extend the 90 day limit for good cause shown (NGR 5-1, Chapter 11).

J. Program Income

CA program income is the gross income, received by a recipient 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 except as indicated in paragraph 2 below (NGR 5-1, Chapter 6)

1. Any amount paid directly to a recipient by a Federal agency, a State agency, or any other user pursuant to a direct relationship between the Federal or State agency or other user and the recipient for the use of recipient-owned, -leased, or -licensed real property (exclusive of readiness centers) or equipment acquired or supported under a CA is considered program income.
2. Income received by the recipient from the use or rental of recipient-owned, federally supported readiness centers is not considered program income. However, the recipient must fulfill its obligations under 10 USC 18236(c) on the use of these funds. 10 USC 18236(c) permits recipients to rent out readiness centers if the recipient uses the rental income to maintain the readiness center. In

addition, as a condition for continued Federal support, the recipient must increase its contribution to the CA by at least the amount of all Identifiable Incremental Costs (IIC), as defined in NGR 5-1, Chapter 6, for which it receives Federal support (e.g., utilities).

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* – Not Applicable
- e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting - Not Applicable

3. Special Reporting - Not Applicable

4. Section 1512 ARRA Reporting - Applicable