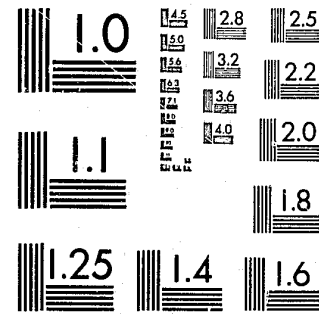


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DEPARTMENT OF FINANCE

**A REVIEW OF STATE CONTRACT AND GRANT
POLICIES AND PROCEDURES**

A Staff Reference Report



A REVIEW OF STATE CONTRACT AND GRANT
POLICIES AND PROCEDURES

This is a Staff Reference Report, providing information, analyses, or techniques which may contribute to the refinement of public policies and programs. It does not necessarily reflect the official policies or views of the California State Department of Finance.

PREPARED BY

STATE OF CALIFORNIA
DEPARTMENT OF FINANCE
PROGRAM EVALUATION UNIT

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MARCH 1979

PREFACE

This study was conducted at the request of the Department of Finance budget units in response to concerns that policies and procedures relative to the administration of contracts and grants appear to vary greatly from program to program. A preliminary investigation of statewide grant activity was undertaken as part of this study, but the primary study focus was upon the policies and procedures of the Department of Health Services, Maternal and Child Health Branch, contract and grant programs.

We wish to express our thanks for the cooperation and the information which was supplied by the staff of the Department of Health Services, the staff of the Maternal and Child Health Branch, and the personnel of the other State agencies who assisted us during the course of our study.

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SUMMARY

State agencies use a variety of financial transactions in conducting their programs. These transactions include "contracts" and "grants." Because of vagueness of statutory definitions, inconsistent restrictive covenants, and undeveloped case law, the similarities and distinctions between contracts and grants are not readily evident.

We found the problems are not confined to the State of California. In 1972, the Federal Commission on Government Procurement reviewed the definitions and use of Federal contracts and grants. Congress subsequently enacted the Federal Grant and Cooperative Agreement Act of 1977 which required Federal agencies to categorize their financial transactions as contracts, grants, or cooperative agreements by February 1979. The Office of Management and Budget is conducting a study of the relationship of these transactions for a report to Congress by February 1980.

Contracts and grants are statutorily defined in California's Civil and Government Codes. The State Administrative Manual (SAM) identifies the procedures and processes for State agencies to follow when awarding contracts, as well as the role of the State control agencies (e.g., Department of Finance, Department of General Services, State Personnel Board and the State Controller). However, the statutes

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and SAM are silent about grant processes and procedures other than Section 0900 of SAM which describes the procedures by which State agencies shall apply for Federal grants. The role of the control agencies in reviewing grants is consequently left to the discretion of the State grantor agencies. This situation has created concern about accountability for State grants.

We were uncertain about the number and dollar value of grants awarded annually by State agencies. Consistency of procedures and policies used in administering grants similarly were unknown. Consequently, we requested information from 30 departments regarding grants awarded during 1977-78 and the policies and procedures followed by the involved agency. Twenty-one agencies responded and identified 5,583 grants totaling \$511.3 million for Fiscal Year 1977-78.

Our initial survey revealed that a statewide evaluation of grant activities would greatly exceed the time and staff allocated to this study. Therefore, we focused on one program area to determine similarities and distinctions between contracts and grants as well as possible areas of conflict among policies and procedures. We hoped to identify specific issues which might be incorporated into a statewide study effort from this "pilot" project.

The program selected for analysis was the Maternal and Child Health Branch (MCH) of the Department of Health Services. MCH utilizes both contracts and grants in conducting their programs. Further, MCH deals with governmental agencies, non-profit organizations and educational institutions. The combination of different transaction

agreements and different client entities provided us with an opportunity to compare and contrast the relative effectiveness of the several combinations.

The Department of Health Services has an internal contract review unit which routinely checks MCH contracts for procedural compliance; however, grants are not reviewed by this unit. Our survey revealed fewer procedural problems in contract agreements than grant agreements. One might conclude, therefore, that some review of grants would be appropriate, in order to minimize procedural problems.

Monitoring project performance was found to be inadequate for both MCH contracts and grants. Accountability for project accomplishment is a critical issue. Revisions in MCH program monitoring and project evaluation, therefore, appear to be in order and are suggested in Chapter II of this report.

We identified five major issues during this study which should be considered for inclusion in a statewide study. The following five issues are discussed in Chapter II of this report:

1. Definition of types of agreements (i.e., contracts and grants)
2. Development of critical pre-agreement review standards
3. Determination of appropriate review functions of issuing state agencies
4. Identification of necessary post-agreement audits
5. Review and evaluation of the status of the Federal OMB agreement categorization study for possible State statutory and/or procedural changes.

CHAPTER I
CONTRACTS AND GRANTS: STATEWIDE OVERVIEW

Introduction

This study was undertaken because of concern over accountability and budgetary control of certain grant programs. There also was interest in identifying the volume and dollar amounts of grants awarded by State agencies. Four questions were identified for analysis in this study:

1. What are the similarities and distinctions between contracts and grants?
2. What are existing State statutes and administrative procedures related to contracts and grants?
3. What is/should be the role of State control agencies with regard to contracts and grants?
4. How is program accountability achieved?

Definitions

State regulations for contract and grant transactions may be found in the State Administrative Manual (SAM) and the California Civil and Government Codes. The codes and manual provide definitions and outline issuing procedures and review responsibilities. The term "agreement" as used in this report, includes both contracts and grants.

The legal definition of a contract is found in the Civil Code (Sec. 1549). A contract is an "agreement to do or not to do a certain

thing" and must contain four essential elements--parties capable of contracting, their consent, a lawful object and sufficient cause or consideration.

A grant is also defined in the Civil Code (Sec. 1053)--as a transfer in writing or a bill of sale. According to this definition, it appears that a grant is a document by which a transfer of goods or property is effected; however, it is not clear whether the transfer document could be in contract form.

The distinctions between contracts and grants are not clearly defined in the California Civil Code, and some similarity between these two types of transactions is apparent. The similarity is further strengthened, at least where Federal funds are involved, by provisions of Article 1, Section 10 of the United States Constitution and related court decisions. The Courts have found that:

. . . "grants" by the State have since early days been held to be "contracts" within the meaning of the Contract Clause of the United States Constitution.^{1/}

With this interpretation, it appears that grants of Federal funds by the State encompass some legally binding aspects of contracts, such as, financial liability for delivery of services, and/or goods, and the reimbursement of funds as might be required.

The California Attorney General has provided further insight on the distinctions between contracts and grants through an opinion issued regarding transactions of the Office of Criminal Justice Planning.^{2/}

^{1/}Dartmouth College v. Woodward, 17, US 518 (1819).
^{2/}Attorney General Opinion No. CV74-315, Volume 58, August 14, 1975, p. 586-591.

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In general, the opinion indicates that the Office of Criminal Justice Planning receives Federal grant funds for local law enforcement agencies, to be used for local programs, which have been approved in a statewide plan by the State and Federal Government. The Attorney General's opinion contends that the Office of Criminal Justice Planning receives no direct benefit from the Federal grant and that it serves as a conduit for the funds to local government. Therefore, the Office of Criminal Justice Planning has been exempted by the Attorney General from certain State control agency review functions described later in this report.

Related Federal Government Investigations

The Federal Commission on Government Procurement studied Federal contract and grant usage. Their report noted the difficulties in distinguishing between the two types of agreements as evidenced by the following statement.

Almost all agencies acknowledge the need for Government wide guidance on grant-type activities, provided that the guidance is well conceived and administered. . . . The problem is that the agencies and the recipients often differ on whether a transaction or relationship is assistance (grant) or procurement (contract). The problem is becoming more noticeable because some agencies' "grants" are more complicated than other agencies' contracts.^{3/}

^{3/}Report of the Commission on Government Procurement, Vol. 3, Dec. 1972.

Subsequent to the Commission study, Congress enacted the Federal Grant and Cooperative Agreement Act of 1977 (PL 95-224) to address the inconsistencies in the use of "grants" and "contracts" by Federal agencies and the various parties with whom they negotiate the transactions. The Federal Grant and Cooperative Agreement Act requires categorization of Federal transactions into three areas: contracts, grants and cooperative agreements (see Appendix 1 for discussion of these terms). All Federal agencies were to implement the provisions of this act by February 3, 1979. As a follow-up effort, OMB is to conduct a study of Federal assistance relationships and provide a report to Congress no later than February 1980.

It may be appropriate to anticipate Federal Government action by requiring State agencies to adopt similar categories and procedures for administration of Federal grants in the future. The OMB categorization effort appears to be consistent with the interpretation of the U.S. Constitution Contract Clause noted earlier. Since there may be some question about potential State responsibility, it seems reasonable that the State might wish to consider some form of review over grants similar to the current contract review process. However, it might be appropriate to complete a penetrating investigation of the related time and costs involved prior to enactment of any standardized grant review process. The following sections describe the results of a preliminary and limited survey of State grant activity conducted for this study.

Current State Agreement Procedures and Policies

The existing State review and approval process for financial agreements is directed towards contracts and interagency agreements. Grant agreements, where the State is grantor, are not specifically mentioned in the Government Code or SAM. However, the Government Code and SAM do provide for fiscal and legal review of State contracts by the Department of Finance and the Department of General Services. Section 13078 of the Government Code requires the Department of Finance to exert prior approval of all State contracts over \$25,000 and authorizes exemptions for any contract less than that amount. The Department of Finance has exempted from prior approval all contracts and interagency agreements under \$15,300, as well as interagency agreements meeting administrative criteria under provisions set forth in Section 1200 of SAM. The Department of Finance, under Section 14616 of the Government Code, also has authority to establish appropriate controls over the Department of General Services' contract approval process, which is established in Section 14780 of the Government Code.

The Department of General Services, under provisions of Section 14780 of the Government Code, must review and approve all contracts before they become effective. This section defines the types of contracts to be approved by the Department of General Services and

exempts certain programs from approval.^{4/} Section 14616 of the Government Code further states that the Department, in carrying out its approval function over State contracts, may exempt from approval any transaction under \$25,000. Through provisions of Section 1200 of SAM, the Department of General Services has exempted, from prior approval, contracts less than \$7,000 and interagency agreements less than \$20,000.

The State Personnel Board is also involved in the approval of certain contracts. Under Section 1204 of SAM, contracts are not to be used for personal services which could be performed by civil service employees. Accordingly, any contract for personal services must be reviewed and approved by the State Personnel Board before it can be submitted to the Department of General Services for review and approval.

The State Controller also is involved in the contract and grant process. The State Controller's function is to verify invoice claims submitted against agreement provisions to ensure recipient compliance with agreement terms. Presently all claims of over \$1,200, unless they have been exempted by the Attorney General, are reviewed by the State Controller's Office.^{5/}

Regardless of whether the terms "contracts" and "grants" are mutually exclusive, both are financial transactions which commit State

^{4/}Section 14780 of the Government Code does not apply to any contract let by a department under the State Contract Act or the State College Contract Law and certain contracts written by the Department of Transportation.

^{5/}Interview with Ms. Betty Baxter, State Controller's Office, February 20, 1979.

funds and appear to be legally binding documents, although case law in this area is not defined. Therefore, an argument might be made that legal and fiscal controls over grants issued by the State, similar to those presently exercised for contracts, are essential to ensure a comparable level of protection to the State. Knowledge about the volume of grants issued by State agencies, is essential in order to estimate the time, cost and benefits of any grant review process. Accordingly, a survey of State grant activity was undertaken as part of this study.

Current State Grant Activity

In December 1978, we requested information, on the policies and procedures used to review and monitor grant awards from each of 30 Departments identified as grantors by Department of Finance Budget Units. The responses received from 21 State agencies identified 5,583 grants with a minimum total value of \$511.3 million during 1977-78 (see Appendix II). Incomplete data from the Department of Transportation, Department of Education and the Department of Health prevented definitive survey totals for the numbers of grant and total dollar values. For example, the Department of Education was unable to provide any information on Departmental grants, although the staff alluded to the possibility of over 1,000 grants to school districts, valued in excess of several million dollars. The survey also revealed that a variety of financial transactions are considered "grants" by State agencies in the operation of their programs.

Due to the estimated time required to gather the missing data for the Department of Transportation and the Department of Education and to evaluate the impact of recommendations on programs of all State grantors, compared to the limited time available for this study, we chose to focus our analysis upon one program, rather than proceed with a statewide evaluation at this time. Since the Health and Welfare Budget Unit originally suggested the Department of Health Services (DHS) for a study of their contracts and grants, we directed our study toward that Department. In particular, we focused the study upon the Maternal and Child Health Branch (MCH) of the Department of Health Services. MCH presently writes both contracts and grants, with a variety of clients, including non-profit organizations, educational institutions and local governmental agencies. The study of the MCH Branch enabled us to compare and contrast pre-agreement and monitoring policies and procedures of both contracts and grants. In addition, the MCH Branch has been the subject of a number of previous studies which provided substantial background information about the Branch's operations. Chapter II describes, in greater detail, the current MCH agreement process and the issues identified by our study.

CHAPTER II
MATERNAL AND CHILD HEALTH BRANCH SURVEY

Overview

The MCH Branch of the Community Health Services Program provides health services to women and children by funding projects with local public and private agencies and with educational institutions. Projects are located in three major program areas: Genetic Disease Prevention, Maternal and Infant Health, and the Women, Infant, and Children Supplemental Food Program (WIC). Typical projects range from Genetic Counseling to Perinatal High Risk Projects. Sources of funding include Federal Title V (Social Security Act) and the State General Fund, totaling \$20.3 million for Fiscal Year 1978-79. Both contract and grant agreements are utilized by MCH to fund projects. Grants are currently reserved for disbursing funds to local governmental agencies and contracts are utilized for projects associated with private nonprofit organizations and educational institutions.

Agreement Review Procedures

All legal and fiscal review procedures for agreements entered into by MCH have been focused primarily on contracts. Grants being written by MCH currently are not reviewed by outside agencies. All MCH

contracts are reviewed initially by the DHS Contract Management Section to assure that appropriate legal provisions are incorporated. The DHS accounting officer also assures the necessary funds are available and encumbers them.

MCH contracts, as well as other DHS contracts, have been subject to both prior and post review by several control agencies. The Department of General Services' (DGS) reviews contracts in excess of \$7,000 prior to approval. The review typically focuses on procedural requirements and legal provisions of contracts. DGS General Counsel review of MCH contracts ascertains whether the necessary provisions to protect the State have been included, such as the "indemnify, save harmless" provision which exempts the State from liabilities resulting from injuries or damages inflicted by the contractor. Other provisions, as applicable, are noted for inclusion depending on the types of services for which MCH is contracting. The Performance Appraisal Review Division, a small unit in DGS, also provides post audits of departmental agreement procedures every few years to assess compliance with established SAM procedures.^{1/}

^{1/}In the most recent review of the DHS legal office, the DGS Performance Appraisal Review Division was critical of the lack of sufficient competitive bids and qualifying proposals before contracts were let. Also, Contractor Evaluation Sheets were not prepared in most cases. The deficiency which DGS General Counsel identified as a major problem was the lack of sufficient lead time when contracts were being submitted to DGS for approval. They found that out of 162 sampled contracts requiring DGS approval, only 16 were approved before commencement of work (from a DGS report entitled, "Compliance Review of Control Activities of Department of Health," February 28, 1978, page 25).

The Department of Finance (DOF) conducts a fiscal review of contracts over \$15,300. The DOF does not routinely conduct a post audit of MCH contracts.^{2/} Audits of MCH projects are conducted internally by DHS on a sample basis.^{3/}

Sampling Procedures

We surveyed 12 contracts and 10 grants awarded by the MCH Branch for Fiscal Year 1977-78 to analyze the policies and procedures used for contracts and grants. The sample included about 20 percent of the agreements executed by the Branch^{4/} and represented various funding levels and sources. Federal Title V funds (from the Social Security Act) represented the bulk of funds disbursed, about \$9.7 million. Additionally, the General Fund provided support for projects amounting to \$3.7 million.

Review of projects conducted during 1977-78 enabled us to analyze the original agreements, any amendments negotiated and performance monitoring procedures. Some deficiencies were identified in both contracts and grants.^{5/}

^{2/}A special review by the Department of Finance Fiscal Management Audits Unit was conducted in 1977 to assess the fiscal and administrative controls over Title V funds disbursed by MCH.

^{3/}A sample of 1975-76 projects which DHS currently is auditing was partially determined by random selection, but the MCH Branch chief also identified some projects for auditing based on project problems encountered by the MCH staff during the year.

^{4/}The sample excluded contracts for the WIC program.

^{5/}Criteria for our review of grants and contracts were developed by discussions with a number of individuals involved in the processes, including DGS General Counsel, DHS contract managers and DOF audits and budget staff, as well as by reviewing DGS records and DHS Deficiency Transmittal Forms. Statutory provisions and the applicable State Administrative Manual sections were also carefully scrutinized.

Findings

Agreements

Generally, we found that "standard" clauses designed to protect the State in case of agreement litigation (see Appendix 3) were present for nearly all contracts but were missing from most grant agreements. Clauses such as those providing for Fair Employment practices (required in the disbursement of any Federal or State funds) and provisions "to indemnify, save harmless" were not included in grant agreements. Other clauses noted in Appendix 3 pertaining to subcontracts, equipment, etc., are provisions required by SAM with which contractors, as applicable, must comply. Frequently, these clauses were missing from both contracts and grants.

A number of problems associated with budget and cost justifications were identified in the agreements. Instances were found where budget totals were incorrect and items not allowed by policy were included within the budget.^{6/} Grants had 50-60 percent more of these types of deficiencies than contracts.

Performance Monitoring and Progress Reports

Fiscal and program performance monitoring problems were noted both for contract and grant projects. For example, a number of discrepancies in invoices submitted were noted for both types of agreements. Claimed salaries frequently exceeded the rate of pay listed in the budgets (many of which were corrected by DHS prior to invoice

^{6/}For example, MCH policy does not allow for funding for indirect costs, which were budgeted and claimed in several agreements.

approval). In the case of equipment, we found that MCH procedures were generally adequate for retrieving the equipment at the end of the contracts with only one exception. The MCH equipment inventory covers Title V and the State funded Genetic Disease agreements, but has not been updated as yet for other State funded projects. Without adequate standards and procedures for reviewing budgets, invoices and equipment purchases, accountability for funds is uncertain.

It was evident from reviewing project progress reports that the agreements lacked specific requirements for the content of progress reports. Many reports were descriptive of the project process rather than the project output. Without prior agreement on specific information required for reports, MCH may not obtain the data essential to adequately evaluate the project output.

Very few contractors or grantees submitted all the quarterly or final reports required by MCH policy. Frequently reports, as well as invoices, were transmitted to MCH late--contributing to the generally poor accountability of projects. Late progress reports or the complete lack of progress reports was not in compliance with agreement specifications. Moreover, MCH had not levied penalties for late final reports. MCH site visits, which are required on a quarterly basis, were spotty and had not occurred at all for many projects.

Suggested MCH Actions

Selected standardized provisions should be specified in agreements to insure that Federal and State statutory, administrative

and policy provisions are adequately addressed (see Appendix 3). DHS administrative manuals^{7/} should include appropriate check lists and/or instructions to insure such provisions are incorporated into the appropriate agreements (see Appendix 3).

To improve performance monitoring, standards and procedures should be developed, adopted and included into MCH Branch manuals. Performance specifications should be incorporated into agreements and subjected to critical monitoring through review of progress reports and onsite evaluations. Also, the contents of progress reports should be specified in agreements to insure that essential information will be available for adequate performance monitoring and approval of invoices submitted.

Full payment of invoices should be dependent upon adherence to performance specifications.

To compensate for what seems to be a lack of emphasis on project evaluation, we feel that some organizational changes may be appropriate. Currently, health professionals are assigned the responsibility of monitoring projects for performance. These positions report to the program manager. We suggest that by reclassifying selected health professional positions to analytical/evaluation oriented positions and by locating those positions in the DHS Office of Planning and Program Analysis (OPPA), earmarked specifically for MCH project evaluations, the necessary time and organizational independence necessary for evaluating program accomplishments might be better

^{7/}Sections should be added to existing incomplete Title V administrative manuals and to other manuals when they are developed for other MCH program areas.

achieved. An annual report should be prepared which provides information on the impact which grant and contract projects have had upon the client population. Such reports might be submitted to DHS administration and DOF budget staff for review and appropriate action. The reports might further assist in the selection of certain projects for post project audit by DHS and DOF Audit staffs.

Need for a Comprehensive Statewide
Study of Financial Agreements

We believe that the major problems and issues identified in this study are representative of statewide contract/grant problems and issues. This assumption emanates from the following points: (a) MCH seems representative in that they work with a variety of agreement recipients, similar to those one might expect to find statewide, and (b) the MCH agreement process seems to bear a resemblance to the agreement process used by other State agencies contacted in our study.

This study revealed a lack of complete information on California's grant programs and suggests that a comprehensive statewide study of grant programs is needed to (a) identify the types of State financial agreements used, (b) develop guidelines for correct characterization and utilization of financial agreements, and (c) develop the appropriate legal and fiscal review processes. Accordingly, the following five issues should be addressed in a statewide study in order to completely examine the State agreement process and develop appropriate recommendations for improvements in that process.

The first issue is one of definition. Standard definitions need to be developed so that State program analysts can become more knowledgeable of the differences among types of agreements. Guidelines for using of the various types of agreements are also needed.

The second issue is the development of critical standards for pre-agreement review by the State agency originating the transaction. Legal and procedural standards should assist State agencies in developing financial agreements which provide safeguards to the State. These provisions should be incorporated into the agreement only where applicable to the specific conditions present and the services required. (A preliminary list of such legal and procedural checkpoints was developed in this study--see Appendix 3).

The third issue involves determining the appropriate review functions of the initiating State agency and of control agencies. Statewide recommendations and guidelines should be developed which outline the pre-agreement review functions for all participants in the agreement process. Further, any potential agreement processing delays attributable to such recommendations should be addressed.

The fourth issue involves the post-agreement audit function. Recommendations should be developed for the frequency and scope (e.g., fiscal and program) of audits, identification of the appropriate State agency to conduct the audits and reasonable time frames for audit completion so that State funds might be recovered if necessary from the recipient.

The fifth issue concerns Federal grant, contract and cooperative agreement regulations. The statewide study should review Federal

regulations and determine their effect on both initiating State agencies and control agencies. Any statutory and/or procedural changes necessary to comply with Federal regulations should be identified. The statewide study might find it appropriate to request changes in Federal contract, grant and cooperative agreement regulations.

The issues noted above are fundamental to a comprehensive study of financial agreements and should be fully explored before legislation is proposed or SAM amendments are adopted. An adequate examination of these areas may prove to be time intensive and costly; however, the resulting agreement process might provide statewide consistency in the construction and review of State financial agreements.

APPENDIX 1

SELECTED PROVISIONS: FEDERAL GRANT
AND COOPERATIVE AGREEMENT ACT OF 1977

The Federal Grant and Cooperative Agreement Act of 1977, signed into law on February 3, 1978, required that all Federal executive agencies define their financial transactions as either contracts, grants or cooperative agreements by February 3, 1979. The objective of the requirement is to ensure that financial transactions are consistent in application by all Federal executive agencies. According to definitions set forth in the Federal Register, (Volume 43, No. 98, May 19, 1978), contracts are to be used:

(1) whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or (2) whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate.

Grant agreements are to be used whenever:

(1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and (2) no substantial involvement is anticipated between the executive agency, acting for Federal Government, and the State or local government or other recipient during the performance of the contemplated activity.

Cooperative agreements are to be used whenever:

(1) The principal purpose of the relationship is the transfer of money property, services, or anything of value to the State or local government or other recipient to accomplish a public purpose of support or stimulation authorized by Federal statute rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and (2) substantial involvement is anticipated between the executive agency, acting for Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

In addition, the Federal Office of Management and Budget (OMB) was required by the Act to conduct a two year study to examine the variety of methods available to implement Federal assistance programs and, if possible, develop a manual which would lend guidance to Federal assistance programs for selecting and administering the appropriate type of financial transaction. At this point in time, the ultimate content and recommendations of the study are unknown and purely speculative. However, it will be necessary to review the OMB study in February 1981 and evaluate the impact it might have on State contract and grant transactions.

APPENDIX 2
SURVEY OF GRANTS
Fiscal Year 1977-78 Data

<u>State Organization</u>	<u>Number of Grants</u>	<u>Grant Expenditures (in millions)</u>
Department of Aging	149	\$40.0
Department of Alcohol and Drug Abuse	184	20.3
Business and Transportation Agency	270	18.3
California Arts Council	660	3.3
California Coastal Commission	21	0.6
California Public Broadcasting Commission	43	0.6
Department of Economic and Business Development	5	0.7
Department of Education	1,000 +	N/A
Department of Health Services	N/A	N/A
Department of Housing and Community Development	12	0.8
Department of Navigation and Ocean Development	18	2.5
Office of Criminal Justice Planning	430	38.6
Office of Emergency Services	594	41.0
Department of Parks and Recreation	914	97.2
Department of Rehabilitation	131	4.8
Resources Agency	53	0.5
State and Consumer Services Agency	43	1.6
State Personnel Board	455	11.7
Department of Transportation	14 +	24.2+
Water Resources Control Board	547	204.6
Department of Youth Authority	40	0.03
Total	5,583	\$511.33

N/A: Not Available

SOURCE: Department of Finance Survey.

APPENDIX 3
CHECKPOINTS AND PROVISIONS

The following check points and provisions were found useful in the review of the Department of Health Services' Maternal and Child Health Branch contracts and grants. Since a comprehensive statewide review of financial agreements was not undertaken, it is not known if these criteria would be applicable to all financial transactions. However, they provide a beginning point for the development of a statewide pre-agreement legal and procedural check list.

The pre-agreement checks and provisions, if applicable to the terms and services required of the financial agreement, should be made by the issuing State agency. A number of these provisions presently are required for certain contracts by SAM. Pre-agreement review should include but not necessarily be limited to the following checkpoints:

1. Beginning and ending dates of the performance period are stated in the agreement.
2. Made and entered date, or effective date, of the agreement is not after the commencement date.
3. Written justification is present in agreement documentation if the agreement performance period exceeds a State fiscal year.
4. Funding information (codes and statutes) is stated correctly in the agreement.

5. Signature of the State representative for the issuing State agency is authorized by the Director of such Agency.
6. All exhibits are attached, numbered and incorporated into the agreement.
7. Services required by in the agreement are stated with clarity.
8. Location of services is stated.
9. Documentation explains costs and how such costs were determined.
10. Agreement is auditable in terms of services or product provided.
11. Time, basis and method of payment to recipient is stated in the agreement.
12. Agreement contains a budget and the budget is made a separate exhibit and incorporated into the agreement.
13. Performance period of the agreement is stated on the budget exhibit.
14. The Budget is arithmetically correct.
15. Salary and wage rates in the budget of the agreement are consistent with State Personnel Board salaries and wages for comparable work responsibilities. If salaries and wages exceed State Personnel Board rates, justification in agreement documentation is provided.
16. Agreements between the State and local assistance agencies and non-profit organizations should not provide payments for construction, renovation, alteration, improvement and repair of privately owned property which would enhance the value of such property to the benefit of the owner.

17. Documentation, if the agreement is an amendment for additional State money, of need for additional money.
18. Agreement, if an amendment, states the effective date of the revision. If possible, the effective date of amendment should be made a provision within the body of the agreement.
19. Provisions which make the agreement invalid and of no further force and effect if Federal funds become unavailable to the State.
20. Provisions for a 30-day advance written cancellation notice available to either the agreement recipient or the issuing State agency.
21. Provisions for a final report including specified evaluative criteria. Such provisions should indicate a final report due date and a withholding amount if the agreement recipient does not comply with the provision.
22. If the agreement provides for the organizing and/or conducting of training seminars, conferences or workshops, provisions are included in the agreement which make the following areas subject to prior approval by the issuing State agency:

- A. Location
 - B. Dates
 - C. Agenda
 - D. Instructors
 - E. Instructional material
 - F. Attendees
23. Provisions in agreements between the State and local assistance-subvention agencies and non-profit organizations which state that all equipment procurement will be conducted by the Department of General Services. Such a provision is not necessary if the Department of General Services has granted approval for the agreement recipient to conduct his own purchases.
 24. If the agreement is signed by the recipient and approved by the Department of General Services prior to July 1 of the funding budget year, the following provisions are incorporated into the agreement:
 - (1) It is mutually understood between the parties that this contract may have been written and executed prior to July 1, 19__ for the mutual benefit of both parties in order to avoid program and fiscal delays which could occur if the contract were executed after July 1, 19__
 - (2) This contract is valid and enforceable only if sufficient funds are made available by the Budget Act of 19__ for the Fiscal Year 19__ for the purposes of this program. In addition, this contract is subject to any additional restrictions, limitations or conditions enacted by the Legislature and contained in the Budget Bill or any statute enacted by the Legislature which may affect the provisions, terms or funding of this contract in any manner

(3) It is mutually agreed that if the Budget Act of 19__ does not appropriate sufficient funds for the program, this contract shall be invalid and of no further force and effect. In this event the State shall have no liability to pay any funds whatsoever to the contractor, or to furnish any other considerations under this contract and the contractor shall not be obligated to perform any provisions of this contract

- 25. Provisions for care and maintenance of any State furnished equipment or equipment purchased with State money.
- 26. Provisions for regularly scheduled progress reports (e.g., quarterly) to include output measures which would assist the evaluation of the project's progress in respect to meeting the agreement goals and objectives. A due date for each progress report would be stated and a withholding amount assessed to insure compliance.
- 27. Other provisions such as the following:

- (1) The Contractor/Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract
- (2) The Contractor/Grantee, and the agents and employees of Contractor/Grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of State of California
- (3) The State may terminate this agreement and be relieved of the payment of any consideration to Contractor/Grantee should Contractor/Grantee fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the

State. The cost to the State shall be deducted from any sum due the Contractor/Grantee under this agreement, and the balance, if any, shall be paid the Contractor/Grantee upon demand.

- (4) Without the written consent of the State, this agreement is not assignable by Contractor/Grantee either in whole or in part
- (5) Time is the essence of this agreement
- (6) No alteration or variation of the terms of this contract/grant shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto
- (7) The consideration to be paid Contractor/Grantee, as provided herein, shall be in compensation for all of Contractor/Grantee expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided

END