

Lessard-Sams Outdoor Heritage Council

Action Agenda Item Memo

DATE: January 16, 2014

SUBJECT: Executive Committee Report: Direct Support Services Authorization and Limits

PRESENTER: Jane Kingston

Background:

The Executive Committee met on January 9, 2014 to discuss indirect costs, administrative expenses and direct support services. Council staff presented a summary of materials presented at meetings on this subject. To-date, the DNR, Ducks Unlimited, and The Nature Conservancy have developed methodologies to estimate and claim reimbursement for direct support services. Amanda Graeber and Dave Schad, DNR, and Neal Feeken, The Nature Conservancy, testified before the council about the development of their approaches to estimate direct support services. Executive Committee members discussed a variety of charges that should be excluded in the direct support services and referenced LCCMR's and the DNR's Conservation Partners Legacy Grant programs' list of ineligible expenses.

A motion was made by Jane Kingston to include the LCCMR list of ineligible expenses outlined in the LCCMR programs and include that list in the LSOHC Call for Funding Request for full Council discussion. The motion was adopted.

Suggested Motion:

Motion to approve the addition of the LCCMR list of ineligible expenses in the FY 16 Call for Funding Requests.

Suggested Procedure:

The council members will discuss the motion before the council, ask questions, and vote on the motion.

Attachment:

- 1) LCCMR Guidance on Allowable Expenses
- 2) CPL Legacy Grant Program Eligible and Ineligible Expenses

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**Merged List of "Ineligible Expenses"
CPL and LCCMR**

Ineligible Expenses
A. Any expenses incurred before the project is authorized, or before the grant agreement is executed, whichever is latest
B. Work on project sites not identified and approved in the Work Plan
C. Engineering and design costs (exception: may be used for pre-award match costs, when incurred within 18 months prior to application deadline and approved in the Work Plan- see RFP/Program Manual for more information)
D. Research, planning, or plan development
E. Education activities
F. Capital equipment
G. Fund raising
H. Back taxes or other taxes, except sales tax on goods and services
I. Insurance, except title insurance
J. Attorney fees, except for acquisition and clearing title to land
K. Loans or subsidies to persons or entities
L. Bad debts, late payment fees, finance charges, contingency funds, interest, and investment management fees
M. Lobbying and political contributions
N. Memberships (including subscriptions and dues)
O. General operations, overhead, and other indirect expenses, including office maintenance, office utility expenses, refreshments for staff, decorations, office material and supplies
P. Directors or Officers salaries and benefits unless they are directly engaged in the program/project as a project manager
Q. Office rental fees (including storage space rental)
R. Publications, periodicals, and subscription fees
S. Merit awards and bonuses
T. Employee worksite parking

U. Entertainment, gifts, prizes, food and refreshments
V. Audio visual equipment
W. Advertising expenses or marketing expenses
X. Communication expenses incurred for telephone calls, web access, postage, and similar services
Y. Purchase of communication devices such as pagers, cell phones, smart phones, etc.
Z. Computers (unless unique to the project and approved in the Work Plan)
AA. Conference attendance and associated costs and fees, except if to participate in formal presentation of project findings
BB. Out of state transportation and travel expenses

GUIDANCE ON ALLOWABLE EXPENSES

ELIGIBLE EXPENSES

Eligible expenses are those expenses **solely** incurred through project activities that are **directly related to and necessary for** producing the project outcomes described in the proposal. **All proposed expenses *must be specified in the proposal submitted***. Please note that for non-state entities all funds get awarded on a reimbursement basis, unless otherwise authorized, and all eligible expenses will need to be documented. **Eligible expenses may include:**

- a. Eligible expenditures incurred only after the effective date as approved by LCCMR.
- b. Wages and expenses of salaried Recipient employees if specified, documented, and approved. For State Agencies: use of unclassified staff only OR request approval for the use of classified staff accompanied by an explanation of how the agency will backfill that part of the classified staff salary proposed to be paid for with these funds. This is subject to specific discussion and approval by LCCMR.
- c. Fringe benefit expenses limited to salary, FICA/Medicare, retirement, and health insurance of Recipient's employees if specified.
- d. Professional services specified in the approved Work Plan that are rendered by individuals or organizations not a part of the Recipient;
- e. Materials and supplies specific to the project and incoming freight charges for them.
- f. Capital expenditures for facilities, equipment, and other capital assets as expressly approved. For expenditures greater than \$3,500, the Recipient must provide an explanation as to how all the equipment purchased with the appropriation will continue to be used for the same program through its useful life, or, if the use changes, a commitment to pay back to the Environment and Natural Resources Trust Fund an amount equal to either the cash value received or a residual value approved by the director of the LCCMR if it is not sold.
- g. Publication and printing/copying expenses (including the process of composition, plate-making, press work, binding, and the end products produced) necessary for contract administration, work products production, and semi-annual reports relating to accomplishments.
- h. In-state transportation and travel expenses such as lodging, meals, and mileage of personnel directly involved in the Project in the same manner and in no greater amount than provided for in the current "**Commissioner's Plan**" promulgated by the Commissioner of Management of Budget and as provided by LCCMR or, for University of Minnesota projects, the University of Minnesota plan found at <http://policy.umn.edu/policies/finance/travel/travel.html>. Allowable meal and lodging expenses are for employees only. Purchasing meals for others is not an allowable expense.

GENERALLY INELIGIBLE EXPENSES— UNLESS EXPLICITLY APPROVED

Generally ineligible expenses for reimbursement mean all expenses not defined as eligible expenses, but for which an explicit exception can be sought from LCCMR if the expenses can be **clearly justified and individually documented as directly related to and necessary for** a project. **No broad allocations for costs in either dollars or percentages are allowed.** In deciding whether to seek exception for these costs consider that cash and in-kind leverage are criteria considered in proposal evaluation. **Generally ineligible expenses include but are not limited to:**

- a. General operations, overhead, and other indirect expenses, including office maintenance, office utility expenses, and office materials and supplies.
- b. Office rental fees (including storage space rental).
- c. Communication expenses incurred for telephone calls, web access, postage, and similar services.
- d. Insurance, except title insurance.
- e. Attorney fees, except to acquire and clear title to land.
- f. Purchase of communication devices such as pagers, cell phones, or smart phones.
- g. Purchase of computers or audiovisual equipment.
- h. Generally available food and refreshments, except if explicitly approved for certain types of events.
- i. Conference attendance and associated costs and fees, except if to participate in formal presentation of project findings.
- j. Out of state transportation and travel expenses.

PROHIBITED EXPENSES

Prohibited expenses for reimbursement mean all expenses indicated below, **including but not limited to:**

- a. Any expenses incurred before the project is authorized, before July 1, 2014, or before LCCMR work plan approval—whichever is latest.
- b. Fundraising.
- c. Taxes, except sales tax on goods and services.
- d. Lobbyists or political contributions.
- e. Advertising and marketing expenses.
- f. Loans, grants, or subsidies to persons or entities for development.
- g. Bad debts, late payment fees, finance charges, or contingency funds.
- h. Interest or investment management fees.
- i. Directors or officers salary.
- j. Merit awards and bonuses.
- k. Memberships (including subscriptions and dues).
- l. Publications, periodicals, and subscription fees.
- m. Employee worksite parking.
- n. Entertainment, decorations, gifts, and prizes.

Current Approach to Recovering Administrative Costs

Status

The Council has heard testimony on direct support services, the reimbursable joint administrative expenses attributable to effort generated by Outdoor Heritage Fund (OHF) appropriations. The DNR has made three presentations to the Council explaining their methodology to allocate part of joint costs of support services to OHF efforts. Two NGOs (Ducks Unlimited and The Nature Conservancy) have negotiated with DNR's contract administration and adopted methodologies allocating joint organization expenses to OHF programs. NGO methods quantify the necessary portion of joint expenses. Each method is reviewed by DNR under the Department's executive branch appropriation authority. The American Bird Conservancy, Minnesota Deer Hunters Association, and US Fish and Wildlife Service have included these costs in their budgets, but have not yet sought reimbursement.

Legal Foundation

The laws guiding the calculation of charges is founded on Minnesota's constitutional amendment requiring money from the Outdoor Heritage Fund to "be spent only to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife." The Constitutional direction is implemented in the annual session laws appropriating money out of the OHF to specific purposes such as ML 2013, Ch. 137, Art. 1, Sec. 2, Subd. 7 "money appropriated in this section may not be spent on activities unless they are directly related to and necessary for a specific appropriation... Money appropriated in this section must not be spent on indirect costs or other institutional overhead charges that are not directly related to and necessary for a specific appropriation."

Oversight

The Office of the Legislative Auditor (OLA) looked at the issue of which expenses can be reimbursed in their Nov. 2011 report "The Legacy Amendment." The report summarized two approaches used to allocate joint administrative expenses: the percentage cap and the "direct and necessary" standard. During the 2011 legislative session, the "direct and necessary" standard was adopted for all legacy funds.

The OLA asked the Department of Management and Budget (MMB) to develop "principles, policies, and procedures" on allowable joint administrative costs for programs funded with Legacy Funds.

To this end, MMB issued "MMB Guidance to Agencies on Legacy Fund Expenditure" on Sept. 14, 2012. The report contained these main findings:

- Agencies are responsible for the efficient and appropriate use of legacy dollars.
- "The concept of 'direct and necessary' is similar to the federal concept of needed, reasonable, and consistent, which guides states' use of federal dollars."
- State law and policy require all state funds pay their fair share of administrative costs. MS 16A.127, Subd. 3 and MMB policy require agencies to reimburse the general fund for all statewide indirect cost

- The “direct and necessary” requirement does not prohibit the use of indirect cost billing for necessary administrative costs when that is the most efficient mechanism. (emphasis added)
- Agencies can use federal policy as a guide for understanding allowable legacy fund expenditure. Agencies can use OMB Circular A-87, Attachment B, which lays out several types of costs the extent they are allowable. The key determinant is whether the cost is necessary for the specific appropriation.

Principles for Guiding Allowable Cost

- Need and reasonableness
- Consistency
- Adequately documented
- Rationally allocated

Approved Methodologies

DNR uses an approach similar to one used by the federal government to prorate joint costs such as depreciation, rental, operation and maintenance facilities telephone.

- Each division determines their own rate for direct and necessary support services by estimating the necessary and direct costs as a percentage of over all indirect costs.
- Direct and necessary costs are determined on an appropriation by appropriation basis. Adjustments are made for activities necessary for the appropriation purpose that require little in the way of support services such as acquisition funding or large contract and pass-through dollars.
- The department monitors the allocation methodology through annual spending plan development process.

DNR Office of Management and Budget approved similar methodologies presented by Ducks Unlimited (DU) and The Nature Conservancy’s (TNC) for direct support services reimbursement. TNC’s methodology breaks down their federally negotiated indirect cost rate and uses actual costs from the previous year. It is calculated as a ratio of unassigned costs to those that are easily linked to OHF effort; the ratio is adjusted annually based upon actual costs. Excluded from these costs are obvious organization building and general welfare expenses for things like fundraising efforts, lobbying, government relations, membership development, and other costs directly assigned to the project.

All parties must have audit-ready files for all Legacy Fund reimbursement claims designed to meet the “direct and necessary” directive. This approach to direct allocation of costs provides the means to comply with the state and federal law and practice.