

Department of the Interior Departmental Manual

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Series: Federal Assistance Programs

Part 505: Grants Administration

Chapter 2: Procurement Contracts, Grant Agreements and Cooperative Agreements

Originating Office: Office of Acquisition and Property Management

505 DM 2

2.1 Purpose. This chapter provides Departmental guidance to implement provisions of the Federal Grant and Cooperative Agreement Act, the Federal Financial Assistance Management Improvement Act, and related guidance issued by the Office of Management and Budget (OMB) and it updates Departmental guidance to incorporate P.L. 106-107 and Grants.gov requirements and processes.

2.2 Background. The OMB final guidance on the Federal Grant and Cooperative Agreement Act was published in the Federal Register on August 18, 1978, (43 FR 36860). The Federal Grant and Cooperative Agreement Act of 1977 (revised and incorporated in Title 31 U.S.C. 6301-6308) and hereinafter referred to as the "Act", characterizes the relationship between executive agencies and contractors, States, local governments, and other recipients in acquiring property and services and in providing United States Government assistance. The Act also prescribes criteria for executive agencies in selecting appropriate legal instruments to achieve (a) uniformity in their use by executive agencies; (b) a clear definition of the relationship they reflect; and (c) a better understanding of the responsibilities of the parties to them. The Act seeks to promote increased discipline in selecting and using procurement contracts, grant agreements, and cooperative agreements, to maximize competition in making procurement contracts, and to encourage competition in making grant agreements and cooperative agreements. Title 31 U.S.C. 6301-6308, however, shall not be cited as the authority for any grants, contracts, or cooperative agreements.

2.3 Authority. The Federal Financial Assistance Management Improvement Act of 1999, Public Law (P.L.) 106-107, was enacted to improve the effectiveness and performance of Federal financial assistance programs, to simplify Federal financial assistance application and reporting requirements, to improve the delivery of services to the public, and facilitate greater coordination among those responsible for delivering such services. Grants.gov, one of 24 E-Gov initiatives, supports the requirements of P.L. 106-107.

2.4 Applicability.

A. The authorities for this chapter apply to all bureau and office programs which will result in procurement contracts, grant agreements, and cooperative agreements, and to all recipients eligible for these awards such as State and local governments, institutions of higher

education, hospitals, other non-profit organizations, and individuals. This chapter also applies to Federally recognized Indian tribal governments, except for those awards made pursuant to the authority of the Indian Self-Determination and Education Assistance Act (P.L. 93-638, 88 Stat. 2204), as amended. However, Sec. 9 of P.L. 93-638 does provide for use of a grant agreement or cooperative agreement when mutually agreed to by the Secretary of the Interior and the tribal organization involved.

B. Relationships not included within the coverage of this chapter include instruments such as intra- and inter-agency agreements, international agreements (excluding grants and cooperative agreements with foreign recipients), memoranda of understanding or agreement, concession contracts or permits. Licenses, sale documents, leases, and special use permits are covered by this issuance only when issued for the purpose of public support or stimulation.

2.5 **Definitions.**

A. Head of the Agency - (also called "agency head") is defined as the Secretary of the Interior and the Assistant Secretary - Policy, Management and Budget (AS/PMB).

B. Discretionary Grant - A grant program that permits the Federal Government, according to specific authorizing legislation, to exercise judgment in selecting the project, grantee/recipient organization, and/or the amount of the award through a competitive grant process. Grant programs with limited eligibility, e.g., Cooperative Ecosystem Studies Units (CESUs), and matching or cost sharing requirements may still be considered discretionary in nature as they contain competitive components.

C. Mandatory Grant - A grant program in which the Federal agency is required to make an award if the eligible entity meets the prerequisites specified by statute or implementing program regulations, e.g., an entity submits an acceptable State Plan or application that meets the eligibility and compliance requirements of the statutory and regulatory provisions of the grant program. There is generally no competition for funds among eligible entities in mandatory grants.

2.6 **Policy.** Bureaus and offices shall use the following criteria when determining to use a procurement contract, grant agreement or cooperative agreement:

A. Procurement contracts shall be used as legal instruments reflecting a relationship between the bureau or office and a State, local government, or other awardee when the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the Government or when the head of the agency determines, in a specific instance, that the use of a procurement contract is appropriate.

B. Grant agreements shall be used as legal instruments when the relationship between the bureau or office and a State, local government, or other recipient has as its principal purpose the transfer of a thing of value to the recipient in order to carry out a public purpose of support or stimulation authorized by a law of the United States and substantial involvement is

not expected between the bureau or office and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

C. Cooperative agreements shall be used as legal instruments when the relationship between the bureau or office and a State, local government, or other recipient has as its principal purpose the transfer of a thing of value to State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States and substantial involvement is expected between the bureau or office and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

2.7 Exemptions.

A. The Federal Grant and Cooperative Agreement Act provides for the Director of the Office of Management and Budget to exempt individual transactions or programs from the Act.

B. Requests for exemptions to the Act shall be submitted by heads of bureaus and offices through the appropriate program Assistant Secretary (through the Office of Acquisition and Property Management) to the Assistant Secretary - Policy, Management and Budget (PMB). The Office of Acquisition and Property Management will review and coordinate such requests for PMB prior to forwarding to OMB. Requests for exemptions shall be coordinated with the Office of the Solicitor prior to forwarding of the requests to the appropriate program Assistant Secretary.

2.8 Responsibilities.

A. Assistant Secretary - Policy, Management and Budget. The Assistant Secretary - Policy, Management and Budget is the Secretarial officer responsible for implementing the Act and the supplemental guidance issued by the Office of Management and Budget.

B. Office of Acquisition and Property Management (PAM). PAM is responsible on behalf of the Assistant Secretary - Policy, Management and Budget for Departmental oversight, assisting the Assistant Secretary - PMB in implementing the Act, and serving as the DOI representative to OMB on all matters relating to the Act. PAM is also responsible for coordinating with the Office of Small and Disadvantaged Business Utilization on all matters involving business development programs which relate to the requirements of the Act.

C. Program Assistant Secretaries. Each Program Assistant Secretary is responsible for ensuring that bureaus and offices under their jurisdiction implement and comply with the Act, supplementing Office of Management and Budget guidance, and requirements of this chapter. Assistant Secretaries shall also review, reject or recommend approval of all requests prepared by bureaus and offices under their jurisdiction for exemptions to the Act in accordance with the provisions of 505 DM 2.7.

D. Office of the Solicitor. The Office of the Solicitor shall assist bureaus and offices with legal questions which may arise as the result of implementing the Act, the OMB guidance,

and the provisions of this issuance, and will review, normally within seven (7) workdays, all proposed grants or cooperative agreements that obligate or may obligate in excess of \$750,000 of government funds or of which the bureau or office otherwise seeks legal review.

E. Bureaus and Offices. Heads of bureaus and offices shall identify the actions required to carry out the policies, procedures, and guidelines established in this issuance and designate those officials responsible for them. Necessary actions include, but are not limited to:

(a) establishing procedures for determining proper selection of award instruments to be used for supporting bureau or office programs. These procedures may include official determinations that instruments to be used in making awards within a specific program are contracts, grant agreements, or cooperative agreements in keeping with 505 DM 2.6. Procedures shall also be established for the conduct of reviews at an organization level separate from the level where the determinations are made to ensure objectivity in the decision-making process and to ensure that assistance instruments are not being used to circumvent applicable Federal procurement laws or regulations. Determinations regarding selection of award instruments shall be in writing and contain complete information on the nature of the relationship between the bureau or office and the recipient to justify the use of the instrument selected. Public notices, solicitations, or requests for applications should indicate the type of relationship contemplated (procurement or assistance), the instrument to be used, and for cooperative agreements, an explicit statement of Federal programmatic involvement.

(b) establishing procedures for requesting approval to use a procurement contract in lieu of a grant or cooperative agreement in a specific instance (see 505 DM 2.6A). The determination shall be in writing and shall contain specific justification for the action.

(c) assuring that recipients of Federal funds are required to maintain adequate records to permit audit or review by the Secretary, the Inspector General, the Comptroller General of the United States, or their authorized representatives.

(d) preparing for each cooperative agreement an explicit statement of Federal programmatic involvement which includes the nature, character, and extent of the anticipated Federal involvement. This statement is to be part of the official agreement file.

(e) establishing oversight and review procedures to ensure compliance with the Act, the OMB final guidance, and this issuance.

(f) obtaining review by the Office of the Solicitor of all proposed grants or cooperative agreements (i) that obligate or may obligate in excess of \$750,000 of government funds or, (ii) regardless of dollar amount, when review is advisable because of complexity, novelty, intellectual property issues, potential conflicts of interest, or other such concerns.

2.9 **Selection of an Award Instrument.**

A. Procurement Contract. The basic criterion for selection of a procurement contract is that the relationship between the bureau or office and a State, local government, or other

recipient is for the principal purpose of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal Government.

B. Grant Agreement and Cooperative Agreement.

(1) The basic criteria for selection of a grant agreement or cooperative agreement is that its primary function is to carry out a public purpose of support or stimulation, and for the cooperative agreement, substantial involvement is expected between the bureau or office and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

(2) Anticipated substantial Federal involvement is a relative rather than an absolute concept. In general, when the terms of an assistance instrument indicate the recipient can expect to perform the project without bureau or office collaboration, participation, or intervention (as long as performance is in accordance with the terms of the assistance instrument) substantial involvement is not anticipated. When the assistance instrument indicates the recipient can expect bureau or office collaboration or participation in the management of the project, substantial Federal involvement is anticipated.

(3) The following examples are not meant to be a checklist or to be considered as individual determinants, but as a basic guide to selecting the proper assistance instrument:

(a) Anticipated substantial involvement during performance does not include: (i) Government approval of recipient plans prior to award; (ii) normal exercise of Federal stewardship responsibilities during the project period such as site visits, performance reporting, financial reporting, and audit to insure that the objectives, terms and conditions of the award are accomplished; (iii) unanticipated Government involvement to correct deficiencies in project or financial performance from the terms of the assistance instrument; (iv) general statutory requirements understood in advance of the award such as civil rights, environmental protection, and provisions for the handicapped; (v) Government review of performance after completion of the assisted activity; and (vi) general administrative requirements, such as those included in OMB Circulars A-21, A-87, A-102, A-110, A-133, and applicable implementing regulations.

(b) The practice of providing technical assistance, advice or guidance to recipients in assistance awards does not constitute substantial involvement if: (i) it is provided at the request of the recipient; or (ii) the recipient is not required to follow it; or (iii) the recipient is required to follow it, but it is provided prior to the start of the assisted activity and the recipient understood this prior to the assistance award.

(4) The determination to use a cooperative agreement will in all cases be based on the need for substantial Federal involvement in the assisted activity after considering a variety of factors including the current state of the technology's stage of development, and the management, financial, and technical needs of the recipient.

(5) Federal involvement in cooperative agreements shall be limited to the minimum required consistent with program requirements. Nothing in the Act should be construed as allowing the Government to increase its involvement beyond that which is authorized by applicable legislation.

(6) **Alternative Uses of Cooperative Agreements.**

(a) Should bureau or office programs now using grant agreements require in the future the award of cooperative agreements exclusively for particular activities, this determination should be based on statutory requirements or policy level determinations of substantial Federal involvement in the performance of an assisted project.

(b) Other programs may use grant agreements or cooperative agreements, depending on the nature of the project or the capability of the recipients. For example: (i) some projects may start out as cooperative agreements in the first year and may be converted to grant agreements after recipient capacity has been established; or (ii) other projects, initially funded as grant agreements, may have to be renewed or continued for subsequent budget periods as cooperative agreements if there is a need to revise the project, upgrade recipient capacity, or protect the Federal interest.

2.10 Grant Agreement and Cooperative Agreement Structure.

A. The grant agreement or cooperative agreement shall be structured in a manner which:

(1) adequately describes the relationship based upon the degree of involvement of the parties; and

(2) defines and allocates respective responsibilities, obligations, rights, and accountability as appropriate to the particular project.

B. The grant agreement or cooperative agreement shall set forth the respective rights and obligations of the parties in such areas as project performance and management, partial or total termination of the work, changes in the scope of work, period of performance, application of funding and resources, title to property, liability, etc. Each agreement shall be clear and concise and shall include terms agreed upon between the parties.

2.11 Administrative Requirements for Grant Agreements and Cooperative Agreements.

A. The basic administrative requirements applicable to an individual grant agreement or cooperative agreement shall be determined by the type of recipient.

B. For recipients covered by OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments," and implementing regulations at 43 CFR Part 12, Subpart C or OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and implementing regulations at 43

CFR Part 12, Subpart F, the administrative requirements specified in these circulars and regulations will apply unless a waiver has been obtained from the Office of Management and Budget (see 505 DM 3.5 or 505 DM 5.5).

C. The administrative requirements will always reflect the cooperative effort and the respective interests, investments and rights of the parties to the agreement.

D. The Federal Audit Clearinghouse operates on behalf of the Office of Management and Budget (OMB) and maintains a database of completed audits, provides appropriate information to agencies, and is responsible for following up with known auditees that have not submitted the data collection forms and reporting packages.

E. Bureau/office programs are responsible for accessing the Federal Audit Clearinghouse website (<http://harvester.census.gov/sac/>) to determine when audit reports have been submitted. If audit reports have not been submitted, bureau/office programs shall request follow-up action by the Clearinghouse. At their discretion, and in accordance with guidance at 43 CFR 12, programs may consider the imposition of sanctions, e.g., award no new grants, in cases of continued inability or unwillingness of applicable financial assistance awardees to have audits conducted in accordance with the requirements of the Single Audit Act of 1984 and OMB Circular A-133.

2.12 Contents of a Grant Agreement or Cooperative Agreement. This section is to be used as a guide for indicating the components that should be considered for inclusion in an agreement. Requirements contained in statutes and implementing regulations shall govern. A grant agreement or cooperative agreement shall include, as a minimum, the following components or items:

A. Notification of Award shall:

(1) identify the agreement by entering thereon a document number which will be compatible with the Department's Federal Assistance Award Data System;

(2) provide the name and address of the recipient in the award agreement; the names, titles, office address, and telephone numbers for the respective bureau/office and recipient project managers should also be included;

(3) identify the project by program code (e.g., CFDA number) and provide a brief summary of the purpose of the project;

(4) identify basic funding information (e.g., the total amount of funds initially obligated by the grant agreement or cooperative agreement);

(5) specify the project period;

(6) identify the bureau or office assistance program office which has been assigned responsibility for execution and administration of the agreement; and

B. The grant or cooperative agreement shall include correct U.S. Code citation(s) to the statutory authorization and/or appropriation permitting expenditure of the identified funds. If the authority is not codified, then the citation(s) shall identify the Public Law by name and year and provide the specific section and, as appropriate, title or subtitle containing the authority. The Federal Grant and Cooperative Agreement Act shall not be cited as authority.

C. A grant or cooperative agreement should also include a statement of joint objectives, schedule, if applicable, project management plan, general terms and conditions (e.g., OMB Circulars, property management and disposal, payment methods) or a referenced Departmental Internet site where general terms and conditions may be found, and special conditions (e.g., technical requirements, special reporting/legislative requirements), if required.

2.13 Posting of Grant and Cooperative Agreement Funding Opportunities. In order to provide the public maximum opportunity to view potential funding opportunities (as recipients and possible sub-grantees) thereby maintaining transparency consistent with the customer service mandates prescribed in P.L. 106-107, all discretionary grant and cooperative agreement funding opportunities including those under CESUs must be posted to Grants.gov (www.grants.gov). (Exceptions include: a) announcements of funding opportunities for awards less than \$25,000 for which 100 percent of eligible applicants live outside of the United States; and b) the exception cited at 505 DM 2.4A).

2.14 Grant and Cooperative Agreement Applications. Bureaus/offices will make every effort to meet or exceed annual goals assigned to the Department of the Interior in support of the standardization and streamlining requirements of P.L. 106-107 and the President's Management Agenda's E-Gov initiatives, by posting mandatory and discretionary grant and cooperative agreement application packages using the appropriate Standard Form 424 on Grants.gov. Additionally, bureaus will strongly encourage potential applicants to use Grants.gov when submitting responses to posted applications.

2.15 Competition for Discretionary Grant Agreements and Cooperative Agreements. Maximum competition in awarding discretionary grant agreements and cooperative agreements is encouraged.

A. Independent Objective Evaluation of Grant Agreement and Cooperative Agreement Applications. If consistent with the statute authorizing the program, bureaus and offices shall develop procedures which provide for an independent objective evaluation of the applications prior to award. In developing the procedures, consideration shall be given to ensuring that applications are reviewed and evaluated by qualified reviewers; applications are scored on the basis of announced criteria; applications are ranked; and funding determinations made. Submissions from debarred or suspended applicants may be considered and reviewed because the applicant's debarred or suspended status may change between proposal submission and actual award.

B. Notification to Unsuccessful Applicants. Unsuccessful applicants include both those whose applications were disapproved and those whose applications were approved but not

funded. Both types of unsuccessful applicants shall be promptly notified of the actions taken on their request and are entitled to a full explanation of the reasons why their applications were disapproved or approved but not funded.

2.16 Authority to Vest Title in Tangible Personal Property for Research.

A. The Act provides for the head of an executive agency to vest title in tangible personal property in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research when the property is bought with amounts provided under a procurement contract, grant agreement, or cooperative agreement with the institution or organization to conduct basic or applied scientific research. This authority may be exercised when the head of the agency decides the vesting of title furthers the objectives of the agency, there is no further obligation to the United States Government, and other conditions, if any, the head of the agency considers appropriate are met.

B. Unless authority has already been delegated to a bureau/office as identified in 200 DM, requests for the use of this authority shall be submitted from heads of bureaus and offices through PAM to the Assistant Secretary - Policy, Management, and Budget who shall exercise this authority for the Department. Such requests shall be coordinated with the Office of the Solicitor before they are sent to PAM for review.

2.17 Use of Multiple Relationships for Different Parts of Jointly Financed Projects. The Act does not require an executive agency to establish only one relationship between the United States Government and a State, local government, or other recipient on a jointly financed project involving amounts from more than one program or appropriation when different relationships would otherwise be appropriate for different parts of the project.

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