

Department of the Interior Departmental Manual

Effective Date: 8/7/96

Series: Federal Assistance Programs

Part 505: Grants Administration

Chapter 2: Using Procurement Contracts, Grant Agreements and Cooperative Agreements

Originating Office: Office of Acquisition and Property Management

505 DM 2

2.1 Background. Revised Title 31 U.S.C. 6301-6308, 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, maximize competition in making procurement contracts, and encourage competition in making grant agreements and cooperative agreements.

2.2 Purpose. This issuance provides Departmental guidance to implement provisions of the Act and related guidance issued by OMB. The OMB final guidance was published in the Federal Register on August 18, 1978, (43 FR 36860).

2.3 Applicability.

A. This issuance applies 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 issuance also applies to recipients which are Federally recognized Indian tribal governments except 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 issuance include instruments such as intra-agency and inter-agency agreements, international agreements, memoranda of understanding or agreements, concession contracts or permits, and when not for the purpose of public support or stimulation, licenses, sale documents, leases, and special use permits.

2.4 Policy. Bureaus and offices shall use the following criteria when determining to use a procurement contract, grant

agreement or cooperative agreement:

A. A procurement contract shall be used as the legal instrument reflecting a relationship between the bureau or office and a State, a local government, or other recipient 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 a bureau or office determines, in a specific instance, that the use of a procurement contract is appropriate.

B. A grant agreement shall be used as the legal instrument 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. A cooperative agreement shall be used as the legal instrument 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.

2.5 Exemptions.

A. The 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 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.

2.6 Responsibilities.

A. **Assistant Secretary - Policy, Management and Budget.** The Assistant Secretary - Policy, Management and Budget is the Secretarial officer responsible for implementation of 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 overview and implementation of the Act and serves as the representative of the Department before 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. Assistant Secretaries. Each 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 issuance. Assistant Secretaries shall also review, reject or recommend approval of all requests prepared by bureaus and offices under their jurisdiction for exceptions to the Act in accordance with the provisions of 505 DM 2.5.

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.

E. Bureaus and Offices.

(1) 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. 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 determining that use of a procurement contract is appropriate in a specific instance (see 505 DM 2.4A). 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.

(2) Copies of bureau or office instructions for implementing this issuance will be forwarded to the Director, Office of Acquisition and Property Management, for review prior to issuance.

2.7 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, a 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 criterion for selection of a grant agreement or cooperative agreement is that for the latter 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. This criterion should be used when deciding to use either a grant agreement or cooperative 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 guide to selecting the proper assistance instrument:

(a) Anticipated involvement during performance would exist and, depending on the circumstances, could be substantial, where: (i) the Government has the option to immediately halt an activity if detailed performance specifications are not met (This option would go beyond the suspension remedies for nonperformance under 43 CFR 12.83 and 43 CFR 12.962); (ii) Government review and approval of one stage is required before work can begin on a subsequent stage during the period covered by the assistance instrument; (iii) Government review and approval of substantive provisions of proposed subgrants or contracts (These would be provisions that go beyond existing policies on Federal review of participant procurement standards and sole source procurement.); (iv) Government involvement in the selection of key recipient personnel (This does not include assistance instrument provision for the participation of a named principal investigator for research projects.); (v) Government and recipient collaboration or participation in the performance of the assisted activity; (vi) Government monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other related Government projects; or (vii) substantial, direct Government involvement during performance is anticipated prior to award to insure compliance with such statutory requirements as civil rights, environmental protection, and provisions for the handicapped. Such participation would exceed that normally anticipated under subparagraph (3)(b)(iv) below; and (viii) highly prescriptive Government requirements prior to award limiting recipient discretion with respect to the scope of services offered, organizational structure, staffing, and other management processes, coupled with close Government monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to insure compliance with these requirements.

(b) 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; 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.

(c) 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 authorizing the Government to increase its involvement beyond that 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.

2.8 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 only those provisions necessary to implement terms agreed upon between the parties.

2.9 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 3.4 or 505 DM 5.4).

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

2.10 Contents of a Grant Agreement or Cooperative Agreement. This section is to be used as a guide for indicating items which should be considered for inclusion in the agreement. Requirements contained in statutes and implementing regulations shall govern. Bureaus and offices may make format changes by substituting standard forms when desired as long as basic information is available. A grant agreement or cooperative agreement shall include, as a minimum, the following items: a face page, a schedule, general provisions, and special provisions.

A. The face page 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) cite the appropriate program statutory authority for the award (the use of Revised Title 31 U.S.C. 6301-6308 shall not be cited as the authority);

(3) 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;

(4) identify the project by title, and provide a brief summary of the purpose and objectives of the project;

(5) stipulate the funding sources, including accounting and appropriation data and the amount of funds to be provided pursuant to the agreement by the bureau/office and the recipient; the estimated cost ceiling for the project, and include, where appropriate, the funding amounts to be obligated by budget period, indicating, where applicable, the percentage of funds to be provided by each of the participants in the agreement; and identify the total amount of funds initially obligated by the grant agreement or cooperative agreement;

(6) identify the class of recipient, (e.g. State or local governments or elements thereof, institutions of higher learning, hospitals, other nonprofit organizations, individuals or for-profit organizations);

(7) specify the effective date of the agreement and the agreed completion date;

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

(9) provide signatures of the bureau or office official awarding the agreement and the responsible official of the recipient who has authority to accept the award.

B. The schedule of a grant agreement or cooperative agreement will contain articles which clearly reflect the cooperative relationship intended and the respective interest and investment of the parties, including their respective rights, obligations, and accountabilities. The articles will include as a minimum:

(1) A Statement of Joint Objective Article which identifies the purpose and objectives of the agreement as well as the benefits to be derived by the recipients from the contemplated relationship established pursuant to the agreement.
The statement must be in sufficient detail to demonstrate:

(a) the agreement is in fact an undertaking of a clearly defined objective;

(b) the basis for the endeavor is founded on support or stimulation of a public purpose authorized by Federal statute;

(c) the activity to be undertaken is in furtherance of the bureau or office mission; and

(d) the benefits to be derived from performance of the project.

(2) A Project Management Plan Article which includes the following:

(a) identification of the respective role, responsibility, obligation and accountability which each participant to the agreement will assume in its effort to achieve the stated joint objective(s);

(b) for cooperative agreements, an explicit statement of the nature, character, and extent of anticipated DOI involvement. This statement must be developed with care to avoid unnecessarily increasing the Government's liability under the cooperative agreement;

(c) a statement of how the project and performance will be measured to evaluate the meeting, and/or achievement of, specific milestones or agreed objectives; and

(d) the details of the resources, such as services, facilities, equipment, materials, supplies, personnel, that the Government and the recipients will provide, and a schedule indicating when they will be provided.

Dependent upon the complexities of the project, the management plan may be a simple narrative included in the schedule of the agreement or it may be a detailed management plan that may be incorporated as an appendix to the agreement and referenced in the agreement schedule.

(3) A Financial Support Article which must address the following:

(a) financial support arrangements for the project. The bureau or office and the participant's share contribution to the project will be specified in the article. Such financial support will identify the dollar costs assigned to each participant, acceptable in-kind contributions (other than funds), and will specify when these contributions will be committed or delivered to support the proposed project. The details of the planned financial support of the project must be clearly defined with regard to financial support ceilings, minimum contributions, and percentage ratios, and whether the funds are to be committed, obligated at award, or incrementally obligated at specified time/performance intervals;

(b) details concerning alternative approaches and responsibilities as agreed to by the bureau or office and the

recipient(s) in the event that changes in the scope of activity, or changes in the period of performance occur, which may impact the estimated cost. This article will also provide for steps to be taken with respect to each recipient's financial obligations in the event of termination of the agreement;

(c) coverage on any revenue derived as a result of the agreement. For recipients subject to OMB Circulars A-102 and A-110, 43 CFR 12.65 and 12.924 respectively, will normally apply. Also, the agreement shall specify whether any revenue from funded activities shall accrue to the Government after the conclusion of the agreement; and

(d) the guidelines governing allowability of costs. The Federal cost principles listed below will be used as guidelines to determine allowability of costs in performance of the project.

(i) OMB Circular A-87 for State, local and Indian Tribal recipients covered by OMB Circular A-102; and

(ii) OMB Circular A-21 for Institutions of Higher Education recipients and OMB Circular A-122 for nonprofit organizations covered by OMB Circular A-110.

(4) A Payment Article which specifies that:

(a) For recipients covered by OMB Circulars A-102 and A-110, 43 CFR 12.61 and 43 CFR 12.922, respectively will normally be used;

(b) Financial support of the project will be arranged so that each participant to the agreement will provide its prorata share in a timely manner so as not to cause undue hardship to the other participant(s) and to avoid placing performance in jeopardy.

(5) A Term of the Agreement Article which establishes the effective date of the Agreement and the date the agreement will end. Where appropriate, provisions with resultant conditions and/or restrictions which might occur and which may be used to extend or otherwise change the completion date of the agreement may be included pursuant to this article.

(6) A Project Information System Article which specifies the pertinent technical data requirements, administrative information, and/or reports to be generated in performance of the project, the manner and times in which this information will be submitted, the responsibilities of the recipient in acting upon information generated, and the mutual support to be provided to the respective recipient's management information system. Appropriate standards for reports to be generated and submitted to DOI will be specified in this article.

(7) A Property Management and Disposition Article which is in accordance with the Property Management Standards in 43 CFR 12.71, 12.72, and 12.73 for recipients covered by OMB Circulars A-102 and 43 CFR 12.930 - 12.937 for recipients covered by OMB Circular A-110 shall normally apply to recipients covered by the Circulars and be reflected in the agreement.

2.11 Competition for Discretionary Grant Agreements and Cooperative Agreements. Maximum competition in awarding discretionary grant agreements and cooperative agreements is encouraged. Bureaus and offices shall establish procedures for ensuring competition when awarding discretionary grant agreements or cooperative agreements in consonance with program objectives. The following guidance shall be considered in establishing these procedures:

A. **Open competition.** Open competition should be initiated by publication of an announcement inviting applications. Other essential information, including the program regulations and the application evaluation criteria, must be published prior to or at the same time as the announcement inviting applications. This announcement must also include a best estimate of the amount of funds available for the program; awards, if applicable; what the average amount of a new award will be; any applicable closing date; and under what circumstances, if any, late applications will be considered. The program description in the Catalog of Federal Domestic Assistance (see 507 DM 1) may be used to meet this requirement or publication in the Federal Register may be used.

B. **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 reviewing and evaluating applications by qualified reviewers; scoring applications on the basis of announced criteria; ranking applications; and determining applications to be funded.

C. **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.

2.12 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. 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.

2.13 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, a 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.

8/7/96 #3080

Replaces 9/12/86 #2708