

17. GUIDELINES FOR THE PREPARATION OF PUBLIC NOTICES ANNOUNCING THE AVAILABILITY OF FINANCIAL ASSISTANCE: NOTICE OF FUNDING OPPORTUNITY (NOFO) AND *FEDERAL REGISTER* NOTICES

A. Background

1. 2 CFR § 200.204 (Notices of funding opportunities) and Appendix I to 2 CFR Part 200 (Full text of notice of funding opportunity) contain the current requirements for NOFOs.

2. It is the policy of DOC that:

a. All NOFOs will conform to the formats set forth in the 2 CFR § 200.204 and Appendix I to 2 CFR Part 200.

b. All NOFOs are required to be cleared in accordance with established internal clearance procedures as well as applicable external clearance procedures (i.e. OMB clearance as required).

c. All NOFOs will be posted on the OMB-designated governmentwide website for finding and applying for Federal financial assistance; the current website is <http://www.grants.gov/>.

d. All amendments to NOFOs must undergo the same clearance protocol as the original NOFO.

Any changes to a competition's substantive application requirements, including but not limited to eligibility requirements, required forms, change of dates, and the evaluation and selection criteria, requires an amendment to the NOFO. Operating units may not change information concerning a competition's substantive application requirements in a Frequently Asked Question (FAQ) document without also amending the NOFO.

Questions pertaining to whether a NOFO amendment is required should be addressed to the Grants Officer responsible for the subject financial assistance program in consultation with the FALD.

e. Publication of Supplementary Materials. Operating units often produce webinars, FAQ documents, and other supplementary materials to provide additional guidance to potential financial assistance applicants, during the time a NOFO is open for applications. Supplementary materials, including FAQs or other informal clarifications external to the NOFO itself, should not be published while the competition is in process without first consulting the Grants Officer and FALD. This applies to any materials related to the competition the operating unit decides to make public via webinars, program web pages, printed handouts, or any other vehicle.

f. Further, for any supplementary materials published while a NOFO is open to applications, the operating unit must:

- (1) Require that the supplementary materials be accompanied by a disclaimer stating that the NOFO is the official competition document – nothing in the supplementary materials are intended to conflict with or supersede the NOFO in any way; and

- (2) Resolve any perceived conflicts by reference to the NOFO.

B. Format of NOFO

1. The NOFO has two parts. The first part provides summary information (see 2 CFR § 200.204, Notices of funding opportunities) and the second part includes the full text of the announcement (see Appendix I to 2 CFR Part 200). All DOC NOFOs shall adhere to the requirements outlined in 2 CFR 200.204 (Notices of funding opportunities) and Appendix I to 2 CFR Part 200. In addition, DOC NOFOs must include the following:

- a. Funding Restrictions. The applicant must be advised that it is DOC policy that DOC funds may not be used to pay for management fees in excess of costs or profits, unless statutorily authorized. Per Chapter 9 of this Manual, requests for fee or profit by recipients of any type should be referred to FALD for review.

- b. Other Information the operating unit finds necessary. This section must include the following two items:

- (1) Alert applicants to the need to identify proprietary information and inform them about the way the operating unit will handle it. The following language shall be included in all NOFOs:

The applicant acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by applicants, may be used by the Department of Commerce in conducting reviews and evaluations of its financial assistance programs. For this purpose, applicant information and data may be accessed, reviewed and evaluated by Department of Commerce employees, other Federal employees, and also by Federal agents and contractors, and/or by non-Federal personnel, all of whom enter into appropriate conflict of interest and confidentiality agreements covering the use of such information. As may be provided in the terms and conditions of a specific financial assistance award, applicants are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with Department of Commerce and external program evaluators. In accordance with 2 CFR § 200.303(e), applicants are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award.

In addition, Department of Commerce regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, are found at 15 CFR Part 4, Disclosure of Government Information. These regulations set forth rules for the Department regarding making requested materials, information, and records publicly available under the FOIA. Applications submitted in response to this Notice of Funding Opportunity may be subject to requests for release under the Act. In the event that an application contains information or data that the applicant deems to be confidential commercial information that should be exempt from disclosure under FOIA, that information should be identified, bracketed, and marked as Privileged, Confidential, Commercial

or Financial Information. In accordance with 15 CFR § 4.9, the Department of Commerce will protect from disclosure confidential business information contained in financial assistance applications and other documentation provided by applicants to the extent permitted by law.

(2) Include certain routine notices to applicants (e.g., that the Government is not obligated to make any award as a result of the announcement or that only a Grants Officer can bind the Government to the expenditure of funds).

C. Publication in the *Federal Register*

Grants.gov is the current OMB-designated governmentwide website for posting, finding and applying for Federal financial assistance. Operating units are no longer required to publish NOFOs in the Federal Register unless required by statute or regulation. Operating units may want to seek legal counsel from AGC/L&R or FALD regarding the decision not to publish a notice in the Federal Register. Should an operating unit determine that it will also publish a notice in the Federal Register, DOC policy is that the operating unit will publish only the minimum information legally required under the Administrative Procedure Act (5 U.S.C. §§ 551-559), which includes the following information contained in the notice of funding opportunity:

1. Summary description of the program;
2. Deadline dates;
3. Addresses for submission of applications;
4. Information contacts (including electronic access);
5. Amount of funding available;
6. Statutory authority;
7. Assistance Listings number;
8. Eligibility requirements, including any cost sharing requirements;
9. Intergovernmental Review requirements;
10. Evaluation criteria used by the merit reviewers;
11. Selection procedures, including funding priorities/selection factors/policy factors to be applied by the selecting official; and
12. Administrative and National Policy Requirements. See paragraph D.2.g.(9), below, for specific language.

To the extent any of the above have been codified or otherwise published in the *Federal Register* a cross reference to the appropriate CFR citation or *Federal Register* publication may be substituted.

D. *Federal Register* Format Requirements

Federal Register notices must be drafted in accordance with the guidelines delineated in Chapter 4 of the *Federal Register* Document Drafting Handbook, which includes the submission requirements. In accordance with the handbook, notices must be organized as follows:

1. **Heading.** The headings must identify the billing code, issuing agency, the CFR title, docket number, regulation identification number (RIN) (if applicable) and subject matter of the document and must be presented in the following format:

- a. Agency is always the Department of Commerce.
- b. Subagency (if necessary) identifies the operating unit which is issuing the notice.
- c. Docket number.
- d. RIN (if applicable).
- e. Subject heading describes the content of the notice in a concise statement.

The following is an example of how the headings must appear in the notice:

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
[Docket No. ____]
RIN ____
Financial Assistance for Oyster Disease Research

2. **Preamble.** The preamble is the main focus of the notice and shall follow the Subject Heading. It arranges the content of the document into a uniform format by providing information on “who, what, where, when, and why.” This allows the reader to review the document and assess its main points, determine whether it is of interest, and decide whether to respond to the notice. The preamble should be organized in the following format with the captions typed in all capital letters:

- a. **AGENCY.** Identifies the operating unit issuing the document. The caption usually repeats the name of the operating unit as carried in the document's headings. When a subagency and operating unit name appear together, the subagency name is carried first and the agency name is represented by its commonly used acronym or other shortened expression (for example, Economic Development Administration, DOC). This caption may, in addition, identify a smaller organizational unit within the operating unit (for example, National Marine Fisheries Service, NOAA).
- b. **ACTION.** Identifies the document category. This section must not be used to summarize the document. In this instance, the document category is a “Notice.”
- c. **SUMMARY.** Briefly describes in plain English what action is being taken, why the action is necessary, and the intended effect of the action. Any extensive discussion or details belongs under the SUPPLEMENTARY INFORMATION section.

d. DATES. Contains any pertinent dates that the reader may need to know such as the closing dates for submission of preapplications (if applicable) and applications, anticipated number of days required to process applications, and date when awards are expected to be made. To provide the public reasonable notice and an opportunity to apply, the Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. *See* 2 CFR § 200.204 (Notices of funding opportunities).

Because the publication date of the notice will not be known until it is submitted to the Office of Federal Register, inserting specific calendar dates is discouraged; rather, allow the Office of Federal Register to calculate the dates by including the following where dates must appear in the notice: {Insert (number of days, but no less than 60) after the date of publication in the *Federal Register*}.

e. ADDRESSES. Contains pertinent address(es) for the reader such as where to write to obtain an application package, where to send an application, or where to send correspondence for any other purpose.

f. FOR FURTHER INFORMATION CONTACT. Contains the name and telephone number of a person within the operating unit who can answer questions about the notice.

g. SUPPLEMENTARY INFORMATION. Contains detailed narrative information about the notice. Remember, as is illustrated in item (9), below, to the extent any of the following items have been codified or otherwise published in the *Federal Register* a cross reference to the appropriate CFR or *Federal Register* publication may be substituted. At a minimum, the following items must be included in this section:

(1) Authority. The statutory authority, EO, or any other legal authority that authorizes the program to provide financial assistance.

(2) Assistance Listings. The assistance listing number(s) and program title(s).

(3) Program Description. A concise description of the goals and objectives of the program. The description must explain why Federal assistance is being provided, the intended beneficiaries of funded projects, and expected project results/ achievements.

(4) Funding Availability. The amount of funds available, the expected amount of individual awards, and the purposes for which funds may be spent. If the publication of the notice precedes the passage of the appropriate fiscal year funding legislation, the announcement must state an approximate amount and that funds will be contingent upon availability of funding.

(5) Eligibility Criteria. An explicit description of who is eligible to apply (e.g., States, universities, non-profit organizations, for-profit organizations, individuals, etc.), including any limitations imposed by the funding operating unit. Include here whether any cost sharing is required to receive an award.

(6) Evaluation Criteria. The evaluation criteria that will be used in evaluating and selecting applications for discretionary funding consideration must be delineated. The criteria must be as

specific as possible, and the relative weight of each criterion must be given. The notice must state if each criterion is of equal weight. The criteria must provide an adequate basis for a review panel to review an applicant's capabilities and assess its likelihood of successfully performing under the award. Evaluation criteria must address such areas as adequacy of project plans, potential contribution to program objectives, key personnel qualifications, capabilities of the applicant organization, proposed costs, etc.

(7) Selection Procedures. Describe the process and procedures by which recommended applications will be selected. If the operating unit plans to select projects based upon funding priorities/selection factors/policy factors, those must be stated, and an explanation must be provided as to how they will be applied to select projects out of the rank order established under the merit evaluations.

(8) Intergovernmental Review. [Insert applicable statement below]

(a) Applications under this program are subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs).

(b) Applications under this program are not subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs).

DOC's OLIA has the responsibility of implementing EO 12372.

(9) Administrative and National Policy Requirements. This section must read as follows: "Department of Commerce Pre-Award Notifications for Grants and Cooperative Agreements, which are contained in the *Federal Register* Notice of 26 December 2014 (79 FR 78390), are applicable to this solicitation."

(10) Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. Section 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. Section 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. Section 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

(11) The Supplementary Information must also address EO 13132 (Federalism) and EO 12866 (Regulatory Planning and Review).

(12) Information Collection. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

3. Signature. The signature of the person authorized to sign a notice submitted for publication in the *Federal Register* must be placed at the end of the document. The signature must be handwritten in ink, and the name and title of the person signing must be typed directly beneath the signature.

E. Coordination and Clearance

1. Operating units are responsible for obtaining clearances of proposed NOFOs before they are posted. Those NOFOs with funding that exceeds \$100 million and announcements for new financial assistance programs will be forwarded by FALD to AGC/L&R so that AGC/L&R may coordinate the review and clearance of those announcements with OMB. FALD is the final Departmental clearance authority. Proposed NOFOs must be cleared by the Grants Officer, or designate, and the Grants Officer or designee's clearance and/or comments must be provided to FALD before FALD will clear a NOFO.

2. Operating units are responsible for processing and coordinating the clearance of all *Federal Register* notices. Operating units must distribute all notices to OAM, the Electronic Government Team within the Office of Information Technology Policy and Planning, AGC/L&R, and FALD for comment and/or clearance. Once all comments have been reconciled, and clearances received from OAM and the Electronic Government Team, operating units must submit the notice to FALD for final Departmental clearance. Once FALD provides its clearance, the operating unit must upload the notice into DOC's Regulatory Tracking System (RTS), which is the primary tracking system for all notices and regulations. AGC/L&R will approve the notice submitted through RTS and issue a docket number, which authorizes publication in the *Federal Register*. After issuance of the docket number by AGC/L&R, the operating unit is responsible for submitting the notice to the Office of the *Federal Register* for publication and to Congress and the General Accounting Office (GAO), as required by 5 U.S.C. 801 *et seq.*