

8. MERIT REVIEW, SELECTION, APPROVAL, AND NOTIFICATION PROCEDURES

A. Overview

It is the policy of DOC to seek full and open competition for award of discretionary funds. Operating units must conduct application reviews in accordance with the requirements stipulated in 2 CFR Part 200. Moreover, DOC financial assistance must be awarded through a merit-based review and selection process whenever possible. This chapter prescribes the standards and procedures for reviewing, selecting, approving, and notifying applicants of funding decisions.

B. Review Standards

1. Applications. All applications for financial assistance must receive a fair, equitable, and objective review.

a. The following are minimum general requirements that must be met for any application to be processed for funding under DOC financial assistance programs:

- (1) Legislative authority to perform the work with financial assistance;
- (2) Funding availability;
- (3) Complete application package; and
- (4) Scope of work that is consistent with DOC's mission.

b. Applications should undergo an initial screening for conformance with the minimum general requirements and any mandatory technical and administrative requirements stated in the program's regulations and NOFO. The Program Office must document and maintain a record of reason(s) if any application is determined to be incomplete. The operating unit, in its sole discretion, may continue the review process for applications with non-substantive issues that may be easily rectified or cured.

c. Applications that meet the requirements of the initial screening are then subject to the merit review as provided in B.4., below.

2. Nondiscretionary Funds. All awards made with nondiscretionary funds shall be subject to a merit review of technical and/or cost matters by at least one reviewer who is professionally and technically qualified.

3. Discretionary Funds. Except as provided below, all applications to be awarded with discretionary funds shall be subject to an objective merit review by a group of at least three professionally and technically qualified reviewers. A merit review is an objective process of evaluating Federal award applications in accordance with the written standards of the Federal agency. See 2 CFR 200.205. This review is limited to technical and/or cost matters and is separate from any programmatic review of program and policy factors, which may be considered in the selection decision.

4. Merit Reviews of Competitive and Noncompetitive Awards.

a. Merit Review of Competitive Awards:

(1) An objective merit review of financial assistance applications is advisory and does not replace the authority of the Program Official who is responsible for deciding whether to recommend funding for an award.

(2) The merit review criteria for new competitive awards and competitive renewal amendments must be in accordance with evaluation criteria set forth in the applicable program regulations and NOFO. The merit review procedures must describe the relationship between the reviewer(s) and the official who has the final decision-making authority. In defining this relationship, the program must set out, at a minimum, the decision-making and documentation processes to be followed by the Selecting Official. This should cover the procedures to be used when an adverse recommendation has been received through the objective merit review process or when selection may be made out of rank order or when selection for funding differs from the recommendations resulting from the merit review process. Published selection factors, including a program's funding priorities, may affect final selection for funding.

b. Merit Review for Noncompetitive Awards:

(1) The merit review for new noncompetitive awards shall consist of a merit review by a group of at least three professionally and technically qualified reviewers.

(2) Amendments for noncompetitive renewals and continuations of noncompetitive awards are not subject to a merit review by at least three qualified reviewers if there has been no substantial change in the scope of work of the original project.

5. Reviewers of Applications.

a. The Program Office shall select reviewers based on their professional qualifications and expertise. Reviewers of any application may be a mixture of Federal or non-Federal experts, including individuals from within the cognizant Program Office.

b. The Selecting Official should not be involved in the review of applications for the purpose of determining whether to recommend the application for approval. If it becomes necessary for a Selecting Official to review applications for this purpose, the Program Office must coordinate a conflicts of interest review with FALD and the official award file must contain documentation demonstrating that there is no conflict of interest or that any conflict is resolved. In addition, a review panel should have at least one member who is outside the chain of command of the Selecting Official whenever possible.

c. Reviewers must evaluate and, in some cases, score the technical merits of applications and accompanying proposals.

d. Reviewers must comply with the requirements for the avoidance of conflict of interest discussed in Chapter 15, Section C., of this Manual. In addition, each reviewer must use the application information only for review and treat the application as confidential except to the extent that the information is available to the general public from any source without restriction as to its use. Further, each reviewer must agree to comply with any notice or restriction placed on the application. Upon completion of the review, the reviewer shall return to DOC or destroy all copies of the application and accompanying proposals (or abstracts, if any). Unless authorized by DOC, the reviewer shall not contact the applicant concerning any aspect of the application. Non-Federal reviewers must complete the *Reviewer Conflict of Interest and Confidentiality Certification for Peer Reviewers* certification. If an equivalent certification is used, FALD should review it for completeness before it is used.

e. When using experts from the private or public sector to review Federal financial assistance proposals, program officials must assess whether the [Paperwork Reduction Act \(PRA\)](#), 44 U.S.C. § 3501 *et seq.*, applies to the recruitment. The PRA likely applies if potential reviewers are asked to supply information other than a standard resume. Contact the appropriate information collection office for a determination on whether the PRA applies.

6. Review Groups. A review group may take the form of the following:

a. Field Readers/Mail Review. A merit review may be administered by using field readers to whom applications are sent for review and comment. Field readers may be used to assist review committees when, for example, the type of expertise needed is not available or there is a high volume of applications.

b. Panels/*Ad Hoc* Committees. A panel or *ad hoc* review committee can be used to obtain consensus advice or independent recommendations on the technical merits of applications. Panels including more than one non-Federal member should not use consensus scoring unless they comply with the requirements of the [Federal Advisory Committee Act](#) (FACA), 5 U.S.C. App. 1.

c. Federal Advisory Committees. Any advisory group, with limited exceptions, that is established or used by a Federal agency and that has at least one member who is not a Federal employee, may implicate the Federal Advisory Committee Act. A program office should consult OGC if it contemplates using a group that includes any non-Federal individuals, to review financial assistance applications.

C. [Evaluation and Selection Requirements for Competition](#)

This Section contains procedures to be followed in conducting a full and open competition for discretionary awards. The selection procedures fall into two categories. One category, Group Competition, is that in which all applications are grouped together to compete with one another and are ranked in order of the independent reviewers' scores. The second category, Individual Qualification, is a review where each single application (the letter of intent (LOI), pre-application, or full proposal) is judged individually to determine its qualifications based on published criteria (e.g., the NOFO may stipulate that the first complete applications received that meet the minimum published requirements will be approved until the available funds are exhausted). The minimum requirements for each selection category are listed below.

The Program Office may also implement additional tiers of internal reviews between the independent or technical review and the final selection stage. Additional internal reviews should be described in the NOFO, along with the evaluation and selection criteria.

1. Group Competition. The Program Office must prepare a rank ordering of the applications based solely on independent reviewers' evaluation and scoring of each complete application that meets the notice requirements. The Selecting Official must use the reviewer evaluation and any other selection criteria published in the NOFO as the standard for making recommendations to determine successful applicants. *See also* 2 CFR § 200.306 (Cost sharing). The Selecting Official must prepare a package: (1) demonstrating that the selection process follows the procedures published in the NOFO and any program regulations that may apply, and (2) summarizing the results of the competitive review, consisting of the following documentation:

- a. The authorizing legislation and appropriations act (only relevant pages);
- b. The NOFO soliciting applications, and the *Federal Register* Notice (FRN), as applicable;
- c. Any review instructions and checklists and other review documents provided to the independent reviewers;
- d. List of reviewers (which may be coded to protect the identity of the reviewers);
- e. List by rank order of the results of the merit review of all LOIs or pre-applications (if the LOIs and pre-applications were mandatory and a basis of precluding applicants from submitting full proposals), including the review of the LOIs and pre-applications by the independent reviewers, reviewers' scores, and the ranked scores of each application;
- f. List of all applications/proposals rejected and the reason(s) for rejection;
- g. List by rank order of the results of the merit review of applications (including the review of pre-applications, if such a review will result in one or more applicants being prohibited from submitting full applications and thereby not being able to compete further for an award) by the independent reviewers, to include reviewers' scores and the ranked scores of each application;
- h. Copies of completed reviewer's score or evaluation sheets;
- i. List of applications selected and recommended for funding by the Selecting Official and the reasons as allowed by the published criteria for selection, including justification for funding application if out of rank order;
- i. A copy of FALD's guidance or comments, if any, and the Program Officer's response; and
- j. Identification of the Selecting Official.

2. Individual Qualification. The Program Office must document the selection process based on the reviewer evaluations of each complete application that meets the NOFO requirements. The Selecting

Official will use the reviewer/panel evaluations and other selection criteria published in the solicitation in making recommendations to determine the successful applicants. The Selecting Official must prepare a package: (1) demonstrating that the selection process is in compliance with the procedures published in the NOFO, the *Federal Register* notice, as applicable, or in the program regulations, and (2) summarizing the results of the review consisting of the following documentation:

- a. Authorizing legislation and appropriations act (only relevant pages);
- b. The NOFO soliciting applications, and the *Federal Register* Notice (FRN), as applicable;
- c. Any review instructions and checklists and/or other review documents provided to the reviewers;
- d. List of reviewers (may be coded to protect the identity of the reviewers);
- e. Evaluation of the application and basis for selection;
- f. FALD's guidance or comments, if any, and the Program Officer's response; and
- g. Identification of the Selecting Official.

D. Review Process for Applications for Competitive Awards

1. Posting a NOFO on the OMB-designated governmentwide website or publishing a *Federal Register* Notice, as applicable. Applications must be solicited via a NOFO posted on the OMB-designated governmentwide website, currently Grants.gov or via a *Federal Register* Notice, in accordance with Chapter 17 of this Manual.

2. Program Office Review. Upon receipt of applications, Program Office staff will review applications for completeness and ensure that all requirements of the NOFO, authorizing statute, and *Federal Register* Notice, as applicable, have been met. The Program Office will arrange for all complete applications to be reviewed by a group of three or more reviewers in accordance with Section B. of this chapter. In coordination with the Grants Office, the Program Office may conduct negotiations with applicants deemed meritorious by the review panel and determined by the Program Office to stand a reasonable chance of being funded.

3. Grants Office Review. The Grants Office will conduct a final review of all applications recommended for funding by the Selecting Official. The Grants Officer is the DOC official who makes the final decision for the Government on whether to fund an application. The Grants Officer's final decision must be consistent with published policies.

4. FALD Review. FALD will review grant applications and supporting documents for proposed awards where Federal funding exceeds the Simplified Acquisition Threshold (unless a waiver has been granted under the provisions of Chapter 4.C.3 of this Manual). FALD will advise the Grants Officer on all matters related to law and the legal form and effect of these proposed award actions and will be available to assist and respond to questions about any individual financial assistance action.

E. Review Process for Applications for Institutional Awards

1. **New Recipients.** New recipients under institutional award programs must be selected after full and open competition. The procedures in Section D. of this chapter should be followed in the initial selection of a new recipient under a discretionary institutional program.
2. **Future Awards.** Once a recipient has been approved for funding under an institutional award, the procedures used for applications for nondiscretionary funding in Section G. of this chapter will be followed for future applications for subsequent new awards under the program if the incumbent recipient is performing satisfactorily.
3. **Periodic Reviews.** Reviews of programs that make institutional awards must be conducted at least once every five years to evaluate the effectiveness and continued desirability of the use of institutional awards in accordance with Chapter 15 of this Manual. The results of these reviews must be considered by both the Program Officer and the Grants Officer in making a determination to continue providing funding without competition to each recipient of an institutional award.

F. Review Process for Applications for Noncompetitive Awards Made with Discretionary Funds

The following procedures will be followed when the Program Office is considering a noncompetitive application for discretionary funding:

1. **Program Office Review.**
 - a. The Program Office initiates the process of determining whether to fund a noncompetitive award with discretionary funds by ascertaining whether the application meets the criteria listed below. The Program Office will arrange for the application to be reviewed in accordance with the review standards in this chapter. The purpose of this review is to provide advice to the Selecting Official as to the technical soundness and merits of the application. If the application does not meet the criteria for consideration as a noncompetitive award, the Program Office will return the application to the applicant with an explanation as to why it cannot be considered.
 - b. If the application warrants review on a noncompetitive basis, an appropriate program official must provide a Non-Competitive Justification Memorandum to the Grants Officer for approval. The justification for the noncompetitive award must include one or more of the conditions listed below and must provide sufficient basis for the determination(s):
 - (1) **Only One Source Identified.** There may be instances where only one responsible applicant can perform the work of the proposed award. The following are some of the circumstances in which this may occur:
 - (a) The applicant organization has proprietary information necessary for the conduct of the work.
 - The Program Officer must describe the applicant's proprietary information and why no others could possibly possess the information.
 - The Program Officer provides this noncompetitive justification documentation. An applicant's claim is not sufficient justification.

- The Program Officer must state in writing that, based on his or her own expertise or the expertise of others he or she has consulted, the applicant has proprietary information necessary for the conduct of the work.

(b) The applicant organization has made a substantial investment in the activity.

- The Program Officer must describe the nature and amount of the substantial investment.
- The applicant's receipt of previous Federal awards for the activity does not constitute a substantial investment. The applicant's own resources must be involved.

(c) The applicant organization is proposing a project that involves a unique idea, method, or approach. The Program Officer must describe what makes the idea/method/approach unique.

(d) The applicant organization is the only organization known to possess the capability to perform the work. The program officer must describe how it was determined the organization is the only one who possesses the capability to perform the work. The justification could be based on:

- the specific situation involving the project (for example, the recipient needs to be a university that awards doctoral degrees, and the identified recipient is the only one in the targeted geographic area which does that), or
- the Program Officer's efforts to determine if other organizations can do the work (for example, by contacting other potential recipients to determine if they have the capability or interest in carrying out the proposed project).

(2) Unusual and Compelling Urgency. The work to be conducted is of such an unusual and compelling urgency that the public interest would be seriously compromised unless the Program Office is allowed to limit or suspend competition for the proposed award.

(3) International Agreement. Competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization.

(4) National Security. Full and open competition is not required when the Secretary of Commerce determines in writing that public disclosure of the proposed support to be provided under the award would compromise the national security.

(5) Public Interest. Competition is not required when the Head of the operating unit or designee determines in writing that it is not in the public interest in a particular case to seek full and open competition for an award. A rational basis must be set forth in the written determination. An example of a situation that might support a public interest determination is the implementation of a pilot project.

c. If the application is determined to be meritorious and appropriate for funding on a noncompetitive basis, the Program Office, in conjunction with the Grants Office, will negotiate the terms and conditions of the award and the level of funding.

2. Grants Office Review. The Grants Office will conduct a final review of all proposed noncompetitive applications recommended for funding by the Selecting Official. The Grants Officer is the DOC official who makes the final decision for the government on the acceptability of the justification for award without competition and whether to fund noncompetitive applications.

3. FALD Review. FALD reviews all noncompetitive applications and supporting documentation proposed for the award to advise the Grants Officer as to legal form and effect of proposed award actions, unless review has been waived by the FALD Chief.

G. Review Process for Applications for Awards Mandated or Limited by Statute

1. Notice. Only eligible applicants must be notified of the availability of funds for nondiscretionary awards. The notice must be in writing, and it may take the form of a *Federal Register* notice, letter to all eligible applicants, or other appropriate form(s) of written notice.

2. Program Office Review. The Program Office will conduct the initial screening of the application(s) in accordance with Section B. of this chapter, review the application(s) for accuracy and completeness, and will conduct any necessary negotiations with the applicant(s). The Program Office will arrange for the application(s) to be reviewed by at least one merit reviewer. The purpose of this review is to provide advice to the Selecting Official as to the technical soundness and merits of the application. If deficiencies are identified, the applicant will be contacted by the Program Office staff and asked to revise the proposal and application accordingly.

3. Grants Office Review. In coordination with the Program Office, OGC, and other offices as appropriate, the Grants Office will conduct a final review of all applications for nondiscretionary funds that are recommended for funding by the appropriate program official. The Grants Officer is the DOC official who approves the application for funding. The Grants Officer's final decision must be consistent with published policies.

4. FALD Review. FALD will review all nondiscretionary applications and supporting documents for proposed awards to advise the Grants Officer on all matters related to law and the legal form and effect of the proposed award actions, unless review has been waived by the FALD Chief.

H. Congressional Notification

Once an award with Federal funding is ready to be approved, the Grants Office shall provide information for the Congressional notification to DOC's OLIA using the respective Grants Office's procedures as established with OLIA.

I. Obligation of Funds

The cognizant Grants Officer is the only official authorized to sign awards to obligate funds for DOC for Federal financial assistance. The Grants Officer's decision to obligate funds must be an independent decision, made only after he/she is personally satisfied that it is appropriate to make the award. The Grants Officer's signature on the Notice of Award or on the Amendment constitutes an obligation of

Federal funding. Grants Officers must promptly notify Program and Accounting/Finance Offices when funds have been obligated.

J. Notice to Applicants

1. Successful Applicants. The Grants Officer will notify successful applicants in a written Award Notice when they have been selected for an award. Prior to official Grants Officer notification, other officials and employees from the operating unit are prohibited from either formally or informally notifying applicants verbally or in writing that they will receive awards.

2. Unsuccessful Applicants.

a. The Program Officer shall determine the best method for notifying unsuccessful applicants. These notifications must be in writing and can take place in either of the following ways:

(1) As soon as the Grants Officer has notified the successful applicants in writing that they have been selected for an award, the Program Office will notify all unsuccessful applicants that they were not selected for funding.

(2) The Program Office may notify applicants whose applications will not receive merit review at the time of this decision.

(3) The Program Office may notify all unsuccessful applicants that their applications are not being recommended for funding when the Selecting Official has decided which applications to recommend to the Grants Officer for further action.

b. Applications, correspondence, and other records relating to unsuccessful (rejected, withdrawn, or unfunded) applications may be destroyed three years after rejection or withdrawal.

c. Applications not meeting application deadlines or minimum review requirements may be returned to the applicant.

d. The policy concerning disposition of unsuccessful applications should be included in the NOFO.

e. Unsuccessful applicants may request a debriefing, which will provide constructive feedback that can assist in developing improved applications in the future. Briefings should take the form of advice to applicants on the strengths and weaknesses of their own application in terms of the published evaluation and review criteria; however, score sheets, redacted or otherwise, should generally not be released to unsuccessful applicants and bureaus are encouraged to consult with FALD.