

9. PRE-AWARD ADMINISTRATIVE REQUIREMENTS

A. Application Package

For discretionary competitive programs, each DOC Program Officer must prepare an application package, which may be in electronic format. Application packages should include all the information and forms that prospective applicants need to apply to a NOFO. The Program Officer should consult the Grants Officer when preparing the application package, and prior to issuance, the application package must be cleared by the Grants Officer and reviewed by FALD prior to issuance. Application packages must include the following minimum information:

1. Copy of the applicable NOFO prepared in accordance with Chapter 17 of this Manual.
2. Application Forms. Program Officers must use the following OMB standard forms, as applicable, and/or other forms approved by DOC and cleared by OMB for inclusion in the application package. Generally, in the case of paper applications, the applicant is required to submit one original and two copies of these forms. Additional copies of these forms and unique or program-specific forms must be approved by DOC and OMB in accordance with the requirements of 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public).
 - a. Standard Form 424 - Application for Federal Assistance
 - b. Standard Form 424A - Budget Information - Non-Construction Programs
 - c. Standard Form 424B - Assurances - Non-Construction Programs
 - d. Standard Form 424C - Budget Information - Construction Programs
 - e. Standard Form 424D - Assurances - Construction Programs
 - f. Standard Form 424 - Family of Forms for Research and Related Programs
 - g. Standard Form 424 - Short Organizational Family
 - h. Standard Form 424 - Individual Form Family
 - i. Standard Form 424 - Mandatory Family
 - j. Standard Form LLL - Disclosure of Lobbying Activities
 - k. Form CD-511 - Certification Regarding Lobbying
 - l. Form CD-512 - Certification Regarding Lobbying - Lower Tier Covered Transactions
3. Information about Intergovernmental Review of Federal Programs in accordance with the provisions of EO 12372, Intergovernmental Review of Federal Programs. If applicable, the following information shall be provided:

- a. Reference to the current Intergovernmental Review State Single Point of Contact (SPOC) List, including names, addresses, and telephone numbers;
- b. The address to which the SPOCs should send any state process recommendations; and
- c. The specific due date for State process recommendations (formally 60 days after the application deadline date), and a statement that the funding agency does not guarantee to “accommodate or explain” for State process recommendations received after that date.

B. Recommendation for Funding

Once an application has been identified as one that will be recommended for funding, the Program Office staff will ensure that complete application recommendation packages are prepared to be forwarded to the Grants Officer. The following are minimum requirements for a complete application recommendation package:

1. Application (Form 424 Series or SF-424 Family of forms, or other authorized forms) with original or electronic dated signature, including complete application with any revisions; a detailed budget narrative; a copy of the current approved negotiated indirect cost agreement (if budget includes indirect costs and the applicant has a negotiated agreement), as applicable; and signed Forms CD-511, and SF-LLL, as applicable.
2. Recommendation memorandum from the Selecting Official, indicating if the award instrument is recommended to be a grant or a cooperative agreement. If the award instrument is recommended to be a cooperative agreement, the package must include a description of the funding agency’s substantial involvement. The Grants Officer will make the final decision concerning the type of funding instrument.
3. Copy of the applicable NOFO or the justification for noncompetitive award as provided in Chapter 8 of this Manual; the original documentation of the review panel’s evaluations; and the Selecting Official’s basis for determination to recommend for funding based on program priorities if not already provided in a summarized package in accordance with Chapter 8 of this Manual. When institutional awards are providing additional funding without competition through either a new award or an amendment, a summary including the date of the most recent report and brief description of the results of the last program review conducted in accordance with provisions of Chapter 15 of this Manual must be included.
4. The Budget Officer’s or other responsible official’s certification of availability of funds.
5. Copy of all pertinent pre-award correspondence with the applicant.

C. Budget Analysis

Prior to award of Federal financial assistance, the Program Officer and Grants Officer must perform a thorough review and evaluation of the applicant's proposed budget data, documentation of which will be maintained in the official award file. Costs charged to a financial assistance award must be allocable, allowable, and reasonable. See 2 CFR §§ 200.403, 200.404, and 200.405.

1. When the budget data provided by the applicant does not provide the level of detail sufficient for an informed analysis to be performed, the Grants Officer or Program Officer shall contact the applicant for additional information or clarification. In the unusual circumstance that an award is approved without proper and complete budget information, a specific award condition must be included in the award requiring submission of information needed within a specified time period. The official award file must contain a written justification for approving the award prior to receipt of complete budget information.

2. The budget analysis must include the evaluation of cost data, including a determination that the costs proposed are in accordance with applicable cost principles; the evaluation of specific elements of costs; and projection of these data to determine the effect on such factors as:

- a. The allowability and necessity for individual cost categories;
- b. The reasonableness of amounts estimated for necessary costs;
- c. The basis used for allocating indirect or overhead costs; and
- d. The appropriateness of allocating particular overhead costs to the proposed project as direct costs.

3. Projects may be funded in increments as described in Chapter 18, Multi-Year Funding Procedures.

D. Costs

Costs under a DOC financial assistance award must be in accordance with the applicable cost principles (2 CFR Part 200, Subpart E).

If the Grants Officer applies 48 CFR Part 31 to an award to a for-profit organization, then 2 CFR Part 200 Subpart E would not apply.

1. Cost Sharing. Cash and in-kind contributions that are included in the budget of the award must be valued in accordance with 2 CFR §§ 200.434 and 200.306.

a. All awards that include Federal and non-Federal sharing incorporate a budget (using SF 424a or SF 424c) consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over

the life of the award. The recipient must create and maintain sufficient records justifying all non-federal sharing requirements to facilitate questions and audits.

c. Waiver for Insular Areas. In accordance with provisions of Public Law 95-134, Title V, § 501 (1977), as amended (48 U.S.C. 1469a), DOC has determined that any requirement for local matching funds less than \$200,000 (including in-kind contributions) to be provided by American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands shall be waived, notwithstanding any other provision of law. Any matching funds, otherwise required by law, to be provided by government entities of an insular area may be waived at the discretion of the operating unit.

2. Direct Costs. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. See 2 CFR 200.413 - Direct costs. For example, if the award budget provides direct costs only for Personnel, Fringe Benefits, Supplies, Equipment, and Travel, the recipient is not allowed to charge to the award costs for Contracting or Consultants without the prior written approval of the Grants Officer.

3. Federal Employee Expenses. Program Officers and Grants Officers should contact the FALD for guidance should a recipient propose to pay any expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from recipients or applicants regardless of the source.

4. Indirect Cost Rates. 2 CFR § 200.414(c), the Uniform Guidance requires Federal agencies to accept negotiated indirect cost rates unless certain exceptions apply. See the most current version of the Financial Assistance Memorandum, 2021-02 (*Department of Commerce Policies, Procedures, and General Decision-Making Criteria for Deviations from Negotiated Indirect Cost Rates under Federal Financial Assistance Programs and Awards* for direction.

5. Pre-Award Costs. Pre-award costs under a DOC financial assistance award must be in accordance with 2 CFR §§ 200.458 (Pre-award costs) and 200.308 (Revision of budget and program plans). It is DOC's policy to waive the prior approval requirement for pre-award costs (up to 90 days) for research awards. However, such costs incurred remain at the applicant's risk. The Grants Officer should approve in writing any pre-award costs of more than 90 days and should consult FALD if questions arise about the availability of authority.

6. Profit or Fee. Fee or profit or other increment above cost may not be paid under DOC financial assistance awards unless there is statutory authorization to do so. Requests for fee or profit by recipients of any type should be referred to FALD for review. Conference fees to cover allowable costs, such as meals (excluding entertainment and alcohol) or room space and materials, are considered program income and not fees. Program income is allowable. Recipients should refer to the guidance for program income in item 7 below.

7. Program Income.

a. Recipients are required to account for program income related to projects financed in whole or in part with Federal funds. Program income is gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income excludes interest earned on advances and includes, but is not limited to, income from service fees, conference fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

b. Proceeds from the sale of real and personal property purchased in whole or in part with Federal funds is not program income and shall be handled in accordance with the property management provisions set forth in the award.

c. Recipients have no obligation to the Federal Government with respect to program income earned from license fees and royalties, copyrighted material, patents, patent applications, trademarks, or inventions produced under the award, unless otherwise required by statute, agency regulations, or the terms and conditions of the award. Inventions made under an experimental, developmental, or research award must comply with the requirements of 35 U.S.C. Chapter 18 (Patent Rights in Inventions Made with Federal Assistance) and 37 CFR Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements).

d. The disposition of program income shall be in accordance with the terms and conditions of each award. See 2 CFR § 200.307 (Program income).

E. Executive Order (E.O.) 12372 (Intergovernmental Review of Federal Programs)

In accordance with E.O. 12372, each operating unit shall provide the states the opportunity for consultation on proposed Federal financial assistance and direct Federal development programs. The E.O. was issued with the desire to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. Under the E.O., state and local officials, not the Federal Government, will determine what Federal programs and activities to review and the procedures for the review.

F. Applicant's Management and Financial Capabilities

DOC policy is to make financial assistance awards to applicants and recipients who are competently managed, responsible, capable, and committed to achieving the objectives of the awards they receive. It is essential, therefore, that precautions be taken to award Federal financial assistance only to reliable and capable applicants who can reasonably be expected to comply with award terms and conditions. Therefore, operating units will conduct a review of risk posed by applicants in accordance with 2 CFR § 200.206 (Federal agency review of risk posed by applicants).

G. Review of Recipient's Risk

1. The Grants Officer is charged with determining whether an applicant is sufficiently responsible to receive Federal financial assistance in accordance with the requirements established in 2 CFR §§ 200.206 (Federal agency review of risk posed by applicants) and 200.208 (Specific conditions), as applicable.

2. If sufficiently adverse factors about the applicant are discovered during the course of reviewing an application, the Grants Officer may, depending on their nature and severity:

- a. Not make the award;
- b. Delay the award until conditions are corrected; or
- c. Impose additional specific award conditions as needed, in accordance with 2 CFR § 200.208 (Specific conditions).

3. In any instance where a Grants Officer intends to deny, or a program office fails to recommend, Federal financial assistance to an applicant on the basis of pre-award concerns relating to the applicant's present responsibility, the applicant must be given notice of DOC's determination. In addition, per 2 CFR § 200.213 (Reporting a determination that an applicant is not qualified for a Federal award), the Grants Officer must determine if a report must also be made in the System for Award Management at SAM.gov. Such a determination relates solely to the applicant's present responsibility and the award for which the determination is being made and does not affect the applicant's eligibility for future awards. The notice to the applicant must provide the applicant with an opportunity to submit information showing that DOC's determination is in error or otherwise warrants reconsideration. Once an adverse determination has been made, an award may be made to the next appropriate applicant. Whenever a determination is made which will deny an award based on responsibility concerns, and the denial is part of a long-term plan to disqualify the applicant, DOC's formal debarment and suspension regulations (2 CFR Part 1326) must be followed. These regulations provide procedures for excluding organizations from participating in Federal procurement and nonprocurement activities on a government-wide basis. Failure to follow the appropriate procedures may expose DOC to a valid claim of de facto debarment based on an argument by the applicant that it has been denied due process of law.

4. The Grants Officer may take any of the steps identified below if adverse information on the recipient, or any key individual associated with the recipient, reflects significantly and adversely on the recipient's honesty or financial integrity, and is discovered after an award is made:

- a. Require the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements; and
- b. Impose additional specific award conditions as needed, in accordance with 2 CFR § 200.208 (Specific conditions); or
- c. Terminate or suspend the award until corrective action has been taken. Such action should be taken only after the recipient has been afforded adequate due process as noted in section G.3. of this chapter.
- d. Require the recipient to make other changes, as appropriate.

5. If any of the adverse factors set forth in this chapter are present, the Grants Officer shall document the official award file to indicate the circumstances, the nature of the action taken, and the reason.

H. Awards to Insular Areas

Operating units are encouraged to consolidate financial assistance awards to insular areas when project activities are similar. If awards are consolidated, operating units shall take the following actions:

1. Provide a single set of written program and financial reports for each consolidated award, instead of individual reports for each project activity which has been consolidated;
2. Receive centrally and distribute all requested reports to appropriate program offices;
3. Designate a primary contact with the recipient on all administrative matters related to the consolidated award;
4. Maintain one official award file on the consolidated award; and
5. Review cost sharing requirements in accordance with provisions of section D.1. of this chapter.

I. Preparation of Financial Assistance Award

1. The Uniform Guidance at 2 CFR Part 200 applies to most DOC awards, regardless of the type of recipient. The Uniform Guidance consolidates and supersedes the administrative requirements and cost principles that had been codified prior to 2014 at 15 CFR Parts 14 and 24 (applicable to institutions of higher education, hospitals, other non-profit, and commercial organizations and state and local governments, respectively) and 2 CFR Parts 220, 225, and 230, applicable to educational institutions; state, local, and Indian Tribal governments; and non-profit organizations.

In accordance with 2 CFR 200.101(a)(2), the operating unit may apply Subparts A through E of 2 CFR Part 200 to for-profit organizations, foreign public entities, or foreign organizations as permitted in agency regulations or program statutes, except when a Federal agency determines that the application of subparts A-E would be inconsistent with the international responsibilities of the United States or the laws of a foreign government.

As specified below, DOC Grants Officers should apply the below protocol to DOC financial assistance awards to for-profit organizations that budget for indirect costs, unless otherwise determined by the Grants Officer due to the facts and circumstances of a particular award or program. With limited exceptions for those nonprofit organizations listed in Appendix VIII to 2 CFR part 200, only for-profit recipients that are subjected to 48 CFR part 31 may use DCAA/DCMA rates and no adjustments need to be made to these rates.

a. If a for-profit organization is budgeting for indirect costs, but does not have a current DCAA/DCMA rate or a current negotiated indirect cost rate (NICR) from its Cognizant Federal Agency (CFA), the Grants Officer may either:

1. Apply 2 CFR part 200 to the award, including the Cost Principles in Subpart E, and require the organization to obtain a NICR with its CFA (which may be DOC); or

2. Apply 2 CFR part 200 to the award (*see* 2 CFR § 200.101(b)), including the Cost Principles in Subpart E, and allow the for-profit organization to elect the de minimis indirect cost rate pursuant to 2 CFR § 200.414(f); or

3. Apply 48 CFR part 31 to the award and require the organization to secure a DCAA rate.

b. If a for-profit organization is not budgeting for indirect costs, the Grants Officer may, in his/her discretion, apply either 48 CFR Part 31 or 2 CFR Part 200 to the subject award. *See* 2 CFR § 200.101(a), which allows a DOC Grants Officer to apply Subparts A through E of 2 CFR Part 200 to for profit organizations.

The application of either 2 CFR Part 200 or 48 CFR Part 31 to the financial assistance award, as well as the indirect cost rate (ICR) for the award must be indicated in the Notice of Award (a Specific Award Condition may be used to satisfy this requirement) using the following guidance:

1. By applying 48 CFR Part 31 to the award, the Grants Officer has authorized the for-profit organization to use DCAA/DCMA rates.

2. By applying 2 CFR Part 200 to the award, the Grants Officer is applying 2 CFR Part 200, including the Cost Principles in Subpart E, and the recipient will need to negotiate an ICR with its CFA or use the de minimis ICR (pursuant to 2 CFR § 200.414(f)). In this situation, the recipient may not use DCAA rates.

c. Appendix E to 45 CFR Part 74 (Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals) applies to hospitals other than those that are non-profit.

2. Award Document. The Notice of Award or Amendment shall be used as the award documents for all Federal financial assistance awarded by DOC and must comply with 2 CFR § 200.211 (Information contained in a Federal award). In addition to the information required for a Federal award, the following must be included.

a. Period of Performance.

(1) The award must include a start date and end date. Periods of performance should not ordinarily exceed five (5) years.

(2) In order to avoid delays that could possibly jeopardize the success of a project or possibly result in the recipient putting itself at risk by incurring costs without having a properly executed award document, applications should be requested and processed in a timely manner.

(3) Procedures for funding proposals that include a project description and budget incorporating more than one year of activity when only a portion of the entire amount of Federal funding is available are found in Chapter 18 of this Manual.

b. Budget. A budget must be included in every financial assistance award. It shall be used as the established standard for financial monitoring purposes. Changes made to the budget once the

award is issued must be made in accordance with the DOC General Terms and Conditions, applicable regulations, and OMB Circulars. Each budget contains a detailed listing of categories of costs which are allowable under the award. Only those categories of costs which have funding included in the approved budget are considered allowable costs under a financial assistance award. The recipient cannot add a new budget category to an approved budget without prior written approval from the Grants Officer.

c. **Specific Award Conditions.** In addition to the laws, regulations, 2 CFR Part 200, DOC General Terms and Conditions, and Program-Specific Terms and Conditions controlling the administration of an award, specific award conditions may also be imposed when justified by circumstances. Specific award conditions imposed after the award has been made must be agreed to by both the recipient and the Federal Government unless Federal law or regulation provides the Federal Government with the right to impose specific award conditions under the award in accordance with 2 CFR §§ 200.206 (Federal agency review of risk posed by applicants) and 200.208 (Specific conditions). DOC-wide or program specific award conditions should be used, as applicable, in all DOC Federal financial assistance awards. Other specific award conditions may include the following:

(1) When a cooperative agreement is selected as the funding instrument, the award must include, at a minimum, those items described in subparagraphs a. through c. below. When not clearly and specifically provided for in the application, proposal, or other statement of work that is incorporated in the award, specific award conditions shall be included that provide:

- a. A project management plan identifying the respective role, responsibility, obligation, and accountability of each project participant;
- b. A statement of how project performance will be measured; and
- c. A statement delineating the expected level of substantial Federal involvement.

(2) In the event the evaluation of risk of the recipient warrants specific award conditions, the Grants Officer will comply with 2 CFR §§ 200.206 (Federal agency review of risk posed by applicants) and 200.208 (Specific conditions), as applicable.

(3) Where OMB guidance or DOC regulations and policy permit, the Grants Officer may use specific award conditions to waive certain administrative requirements, including requirements in the DOC GT&Cs. When waiving these prior approval requirements, the Grants Officer may elect to require that the recipient provide notification after a specific action has been taken.

d. **General Terms and Conditions.**

(1) The DOC GT&Cs must be incorporated into each award, except EDA construction awards and revolving loan fund (RLF) awards.

(2) EDA includes separate standard terms and conditions in its construction-related awards and revolving loan fund (RLF) awards, respectively, which derive from the DOC GT&Cs in consultation with, and after timely consideration and comment from, OAM and FALD.