

**GRANTS AND COOPERATIVE AGREEMENTS
HANDBOOK**

**U.S. FISH AND WILDLIFE SERVICE
GREAT LAKES-BIG RIVERS REGION
CONTRACTING AND FACILITIES MANAGEMENT
FORT SNELLING, MN 55111-4056**

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I. Introduction.

The Fish and Wildlife Service's (Service) "Project Officer's Guide to Financial Assistance: Cooperative Agreements and Grants" (guide) is a tool to assist project officers and administrative personnel. The guide is designed for anyone who has a role in processing assistance agreements with State and local governments, nonprofit organizations, educational institutions and private sector organizations. Other recipients might include quasi-public and private nonprofit organizations such as, but not limited to, research institutions, educational associations, and foreign or international organizations. The Division of Contracting and General Services (CGS) Washington Office will maintain the guide and welcome suggestions for improving the guide.

II. Purpose.

This guide provides information that will promote consistency and uniformity for accurate and timely processing of financial assistance agreements. Uncertainty, as to the meaning of the two assistance agreement types (cooperative agreement and grants) and the relationships they reflect often causes operational inconsistencies, confusion, inefficiency, and waste for recipients of awards and for the Service. The purpose of this guide is to clarify terminology, and to provide a better understanding of the responsibilities of individuals and offices involved in the process of awarding assistance agreements. An important aspect of most assistance agreements includes printing and publications. This guide includes the official definition of printing and guidance on how to properly include publications and printing in assistance agreements.

III. Background and Definitions.

The Service has mission-related legislative authorities to award financial assistance agreements. Attachment A lists the statutes authorizing programs by which the Secretary of the Interior or the Director of the Fish and Wildlife Service may provide assistance to various categories of recipients. Before the program office cites any statute as an authority to enter into an assistance relationship, the section(s) cited should be reviewed to determine if the citation is appropriate and in compliance with:

- the stated Congressional objectives,
- the types of assistance authorized,
- the identified eligible recipients, and
- any other specified requirements, conditions or limitations.

The Federal Grants and Cooperative Agreement Act, title 31, U.S.C. sections 6301-08, governs the use of grants, cooperative agreements and contracts as stated below:

- A. A **procurement contract** shall be used as the legal instrument reflecting a relationship between the Service and a State, a local government, nonprofit organization or other recipient when the principal purpose of the instrument is to acquire (by purchase, lease, or exchange) property or services for the direct benefit or use of the Government. A procurement contract can also be used when other conditions apply such as the Government needs to protect its interests (e.g., to ensure performance).
- B. A **cooperative agreement** shall be used as the legal instrument when the relationship between the Service and a State, Tribal, local government, nonprofit organization or other recipient has as its principal purpose, the transfer of a thing of value to carry out a public purpose or support stimulation authorized by law; and the program office expects substantial involvement¹ with the recipient when carrying out the activity contemplated in the agreement. The recipient can also provide services or anything of value. The agreement must list what resources each party is committing.
- C. A **grant agreement** is the same as a cooperative agreement but there is no program involvement by the Service during the performance of the grant. A grant agreement can provide the transfer of Federal assistance (usually funds, but can be other items such as property, services, or anything of value) to State(s), Tribal, or local government; nonprofit organizations, or other recipients.

Hereinafter, cooperative agreement and grant agreement will be referred to as agreements. Exclusive to the above legal instruments are intra-agency and inter-agency agreements, memorandums of understanding or agreements, and concession contracts or permits. For information on other types of assistance agreements see Attachment H, a summary of the Departmental Manual on Federal Assistance Programs – Part 505.

When the Service awards agreements, there must be some indirect benefit to the Government, otherwise, we have no authority to spend appropriated funds. The pivotal question in deciding to use a contract versus an agreement is not whether the Government receives any benefit, but “what is the Service’s principal or primary purpose for the agreement?” *If the primary purpose is to meet a mission need, a contract is used.* If the Service’s primary purpose is one of support or stimulation for a non-Federal entity or public purpose, and legislative authority exists, an agreement may be used.

¹When the assistance agreement indicates the recipient can expect program office collaboration or participation in the management of the project, substantial Federal involvement is anticipated.

IV. Policy.

It is the policy of the Service to:

Make uniform and proper use of assistance agreement relationships and award instruments, while ensuring that they are not used for bypassing the acquisition laws and regulations;

Plan assistance efforts well in advance, coordinating with the Division of CGS and other affected divisions, so that the needs of program managers and their recipients can be met while also complying with the applicable laws and regulations;

Encourage competition in the selection of applicants by using broad agency announcements, including ongoing projects in the Catalog of Federal Domestic Assistance (CFDA)², and advertising proposed projects in the Federal Register. (Attachment G lists CFDA numbers commonly used by the Service). The project manager may also choose to post additional announcements in the Commerce Business Daily or other media appropriate to the target audience.

V. The Assistance Requisition Package.

Assistance requisition packages submitted to the Division of CGS must include the following:

Acquisition Request (FWS 3-2109) which indicates certification of funding and cites specific authority to enter into a grant or cooperative agreement;

Application for Federal Assistance (Standard Form 424) completed by the recipient (except international grants);

Recipient's proposal, including budget and any budget/technical analysis or changes agreed upon by the recipient and program office; and

Draft agreement, which is optional, in a hard copy or electronic format (See Section VI. Steps 3 and 4).

The standardized format (Attachments B (1) and (2)) can be used to create either a grant or cooperative agreement and should be revised to meet project specific circumstances.

² The Catalog of Federal Domestic Assistance is a compilation of Federal programs, projects, services, and activities that provide assistance or benefits to the public. The CFDA includes financial and nonfinancial assistance programs administered by departments and establishments of the Federal government.

VI. Process for Awarding Federal Financial Assistance Agreements.

The following nine steps outline the process by which the Service manages an assistance agreement from beginning through final closeout. The office(s) responsible for each step have been highlighted in bold italics.

Step 1 – Solicitation Process. According to OMB Circular No. A-102 guidelines, Federal agencies are required to give the public an advance notice in the Federal Register, or by other appropriate means, of intended funding priorities for discretionary assistance programs, unless funding priorities are established by Federal statute. The *program office* is responsible for providing advance notice of opportunities for assistance funding in the CFDA, and for announcements of proposed projects in the Federal Register. (See 507 DM 1.7 for suggested information requirements for Federal Assistance Program Announcements in the Federal Register).

Program offices should be aware that survey data collected from more than ten public respondents will require OMB clearance before an award, and this action should be coordinated with the Division of Policy and Directives Management.

Step 2 – Applicant’s Proposal. Applicants should include the following standard application forms unless the *program office* obtains OMB approval to use alternate forms. (Paperwork Reduction Act of 1980, 44 U.S.C. 35, and 5 CFR Part 1320, “Controlling Paperwork Burdens on the Public”):

SF 424	Application for <u>Domestic</u> Federal Assistance
SF 424a	Budget Information (Non-Construction)
SF 424b	Standard Assurances (Non-Construction)
SF 424c	Budget Information (Construction)
SF 424d	Standard Assurances (Construction)

The *program office* is responsible for obtaining prior OMB approval when the Service requires the recipient to provide different or additional information to comply with legislative requirements or to meet specific program needs.

The *program office* is responsible for requesting applicants to submit the following documentation as part of the proposal.

A. Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Discuss the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. The applicant should include or footnote any relevant data based on planning studies.

B. Results or benefits expected. Identify costs and benefits to be derived. For land acquisition or development projects, explain the benefits to the public.

C. Approach. Outline a plan of action relating to the scope of the project and describe the proposed accomplishments for each assistance program. Cite factors that might accelerate or decelerate the work and reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Describe the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. The applicant should explain the methodology that will be used to determine if the project needs are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project and include a short description of the nature of their contribution.

D. Geographic location. Give a precise location of the project and area to be served by the proposed project. The applicant may attach maps or other graphic aids. Applicants should specify if the project is on Service land.

E. Key personnel. Applicants should provide a brief biographical sketch of the program director with the following information:

- (1) name
- (2) address
- (3) telephone number
- (4) background; and
- (5) other qualifying experience for the project.

Also, list the name, training and background for other key personnel engaged in the project.

F. Budget. The applicant's budget proposal must be directly related to performance. The budget should identify the following categories and rates, as applicable:

- (1) Labor

Classifications
Labor hours and rates of pay

- (2) Travel

Destinations(s)
Number of travelers x travel days x per diem
Mode of transportation and costs (airfare, personal vehicle, etc.)

(3) Equipment

Expendable supplies
Capital equipment
Unit acquisition cost

(4) Cost-sharing contribution

The applicant should itemize the total cost-sharing percentage contributed to the project. Contribution could be in the form of cash, labor, material, equipment, etc. Value should be determined based on current market value of service or supply.

Pursuant to 43 CFR §12.934, title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to certain conditions. Supplies acquired under a grant or subgrant will vest, upon acquisition, in the recipient or Subrecipient respectively. *Refer to CFR section 12.73 for guidance on disposition of unused supplies exceeding \$5,000 in fair market value.*

Step 3 – Draft Agreement. The *Program Offices* are responsible for ensuring the following provisions are considered when preparing the requirements for agreements.

A. Availability of funds. When a funding period is specified, a recipient may charge to the agreement only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Contracting Officer.

B. Pre-agreement costs. OMB Circular authorizes agencies to waive cost-related and administrative approvals required by OMB Circulars A-21, A-110, and A-122. Such waivers may include authorizing applicants to incur pre-award costs 90 calendar days before an award or more than 90 calendar days with the prior approval of the *program office*. All pre-award costs are incurred at the applicant's risk (i.e., the Service is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

C. Special provisions.

(1) Copyrights. Federal assistance recipients may generate pamphlets, books, maps, videos and other tangible creative materials. Federal rules give the grant recipient the right to copyright and license any products it produces under the award, although the Federal government is guaranteed certain rights of usage. The Service reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal purposes:

(a) The copyright in any work developed under a grant, subgrant or a contract under a grant or subgrant, and

(b) Any rights of copyright to which a recipient, subrecipient or a contractor purchases ownership with grant support.

(2) Printing and publications. “Printing,” as defined in the Government Printing and Binding Regulations (S. Pub. 101-9) does not cover regular photocopying processes. However, the regulations require prior approval of any copying projects exceeding 5,000 production units (one side of one page) or less than 25,000 production units in total of multiple pages. Page size may not exceed a maximum image size of 10¾ by 14¼ inches. Consult your Regional Printing Coordinator about these requirements. The same regulation, at paragraph 36-1, Printing Requirements Resulting From Grants, supports non-government publications, provided such grants are authorized by law, and are not primarily for agency use. If the grant is the sole source of funding, any printing and publishing must be performed through the Government Printing Office (GPO). The Department’s appropriation includes language authorizing publications funded under cooperative agreement if the cooperator provides *at least 50 percent of project costs using non-Federal funds* and has adequate quality control standards.

The “rule of thumb” for regulatory compliance is, if the intent of the agreement is to acquire printing services for the benefit of the Service or to fulfill a Service mission requirement, the printing should be done through the GPO. However, if a publication is simply one element of an approved assistance proposal initiated by a non-Federal applicant, then it should be considered as a “nongovernmental publication” exempt from the general prohibition. To support this exemption claim in assistance awards involving publications, the *program office* should:

- (a) Emphasize the initiative for the publication came from the applicant and not the Service.
- (b) Limit the Service’s involvement to supplying project-related data, such as photographs. The *program office* can also stipulate a general review of the final product for scientific accuracy and consistency with Service policies. Avoid formal “approvals” of the publication or final product.
- (c) Avoid making the Service the primary distributor of the publication. Obtaining a few free copies for record purposes and internal distribution is acceptable. Service distribution should not exceed 10 percent of the total copies printed. The *program office* may also offer available distribution lists to the recipient “for use if needed,” but the Service should not mandate large numbers of specific addresses.
- (d) Always include the specific requirement that the Service shall have the right to make copies for Government purposes and to obtain, upon request, all of the masters needed to reproduce the publication.

(3) Governmentwide requirements. OMB Circular A-102 Common Rule, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” and OMB Circular A-110, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Non-Profit Organizations” prescribe standards for financial management systems.

Step 4 – Submission of Requisition Package to the Division of CGS. The *program office* is responsible for reviewing the Applicant’s package. The *program office* should provide a written technical and budgetary evaluation in support of the Applicant’s proposal. Proposals for follow-on projects or modification should refer to the Agreement number of the preceding grant or cooperative agreement. This evaluation and the technical proposal and budget should be attached to an Acquisition Request (FWS 3-2109) and submitted to the Division of CGS. The *program office* is responsible for certifying that funds are available for obligation on the Acquisition Request. Providing a draft agreement to the Division of CGS is optional and can be sent via cc: mail, paper copy or diskette. Each assistance agreement should identify the appropriate statutory authority and CFDA number (if known). The Division of CGS will assign or confirm the CFDA number for reporting purposes (See Step 6).

The *program office* should incorporate within each grant or cooperative agreement, a provision that specifies the appropriate OMB Circular; any exceptions to these provisions that OMB has approved; and notification that failure of a recipient to comply with any provision may be the basis for withholding payments for proper charges made by the recipient and for cancellation of support. The following OMB Circulars apply to assistance agreements to recipients and subrecipients.

A-102, Grants and Cooperative Agreements with State and Local Governments

A-110, Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

A-87, Cost Principles for State and Local Governments

A-21, Cost Principles for Educational Institutions

A-122, Cost Principles for Non-Profit Organizations

A-133, Audits of States, Local Governments, and Non-Profit Organizations

The following websites are helpful in locating OMB Circulars, other directives and general assistance information.

<http://www.whitehouse.gov/OMB/grants/index.html>

(Provides other links to CFDA and forms referenced in OMB Circulars)

<http://www.doi.gov/pam/pamfaeg.html>
(DOI Departmental Manual)

<http://www.fws.gov/laws/digest/digest.html>
(Summarizes authorities and links to other websites. Link to Federal Wildlife and Related Laws)

Step 5 – Preparation of Agreement for Award. A *Division of CGS* Contracting Officer or designated official is responsible for preparing the award document, determines if appropriate agreement is identified, reviewing terms and conditions of the draft agreement, and including special provisions, as needed. The *Division of CGS* will also review the recipient's proposal and project budget, and discuss any issues with the project officer and/or recipient. The agreement is then prepared in final form and forwarded to the recipient for signature. After signing the agreement, the recipient returns it to the contracting officer for execution and distribution. The *Division of CGS* retains the original agreement document. The *program office* has the primary responsibility to maintain and administer the agreement through its closeout. The *Division of CGS* will issue and distribute executed copies of the agreement and modifications to the recipient, program office and financial office.

The Fish and Wildlife Service and its award recipients must comply with the nonprocurement debarment and suspension common rule implementing Executive Orders 12549 and 12689, Debarment and Suspension, subpart D of 43 CFR part 12. This common rule restricts subawards and contracts with certain parties debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Step 6 – Federal Assistance Award Data System Reporting (FAADS). This is a statutory report under title 31, U.S.C. section 6102 (a). The data covers Federal expenditures or obligations for formula, project, and block grants; cooperative agreements; direct and guaranteed loans; direct payments for individuals; and insurance. Federal assistance payments are identified not only by the type of assistance, but also by the type of recipient (state or local government; state or private institution of higher education; Native American tribes; individual; or profit making or nonprofit, etc.). The code identifies data assigned to each assistance program listed in the CFDA, or by a similarly constructed pseudo-code unique to Service programs not listed in the CFDA.

The *Division of CGS* is responsible for preparing the DI 1961 and submitting a quarterly FAADS report to the Department. The reports show actions by type of recipient, type of action, and type of assistance dollars.

Step 7 – Administration of Agreement. The *program offices* have the primary responsibility for providing oversight of the terms and conditions of the agreement and ensuring the recipient is meeting the requirements of the award. The *Division of CGS* is responsible for the issuance of modifications to indicate any changes to the terms and conditions of the agreement such as an extension to the period of performance.

Modifications to agreements typically will include one or more of the following revisions:

- changing the performance responsibilities of the parties and related government funding,
- extending the completion date at no additional cost to the Service,
- affecting due dates for reports,
- changing project officers, and
- deobligating unused funds.

If the recipient is asking for funds to support an existing project, the *program office* should require the recipient to describe the relationship between the current Federal assistance project and other work planned or anticipated. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If the scope of work or objectives has changed or an extension of time is necessary, explain the circumstances and justify the request. If the applicant has exceeded the total budget or if the individual budget items have changed more than the prescribed limits, explain and justify the change and its effect on the project.

When any modification to an agreement is needed, the *program office* will submit an acquisition request to the *Division of CGS* for action whether or not a change in funding is involved. The *program office* will cite the number on the basic agreement and describe the required change as an attachment to the acquisition request. The *Division of CGS* will:

- review request as related to the agreement;

- create the modification;

- request a signature of acceptance from recipient;

- obtain the signature of appropriate Service personnel (usually the assigned Contracting Officer); and

- distribute copies to recipient, the program office, and the financial office.

Recipients may be allowed a one-time extension of the expiration date of the award up to 12 months unless one or more of the following conditions apply.

- The terms and conditions of award prohibit the extension.

- The extension requires additional Federal funds.

The extension involves any change in the approved objectives or scope of the project.

The recipient will carry forward unobligated balances to subsequent funding periods.

For one-time extensions, the recipient must notify the *program office* in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for using unobligated balances.

Step 8 – Payment. The Service will reimburse recipients for work performed or allowable costs incurred. The *program office* is responsible for reviewing and approving invoices submitted by the recipient. After the *program office* has approved the invoice, it should be submitted to the Denver Finance Center for payment. The *program office* will provide a copy of the payment to the Contracting Officer for the official file.

The *program office* shall authorize recipients to request advances and reimbursements at least monthly when electronic fund transfers are not used. The two forms authorized for requesting advances and reimbursements are SF-270, Request for Advance or Reimbursement, and SF-271, Outlay Report and Request for Reimbursement for Construction Programs. OMB standards require recipients to submit only an original and two copies of these forms.

The standards governing the use of banks and other institutions as depositories of funds advanced under awards are stated below.

Except situations described in OMB Circular a-110, the Service shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must account for the receipt, obligation and expenditure of funds.

Recipients shall deposit and maintain advances of Federal funds in insured accounts whenever possible.

Recipients are encouraged to sue women-owned and minority-owned banks for their accounts.

The budget plan is the financial support approved during the award process that may include either the Federal and non-Federal share, or only the Federal share, depending upon program-specific requirements. Costs that require prior approval for revision are described in applicable OMB Circulars A-87, Cost Principles for State and Local Governments, or A-122, Cost Principles for Non-Profit Organizations.

Step 9 – Closeout of Agreement. The closeout process is initiated when the project has been successfully completed, the recipient has met all terms and conditions of the agreement, and has submitted a final report and final invoice to the program office. The *program office* is responsible for notifying recipient, in writing, before the end of the grant period when and where they must submit final reports. A written request to initiate a closeout should be forwarded to the Division of CGS including a copy of the final report and final invoice. The *program office* should include recommendations for disposition or recovery of federally-owned assets (as distinct from property acquired under the grant).

The *Division of CGS* will notify the recipient and the program office of its intent to closeout the agreement file. Closeout procedures include, coordinating with the program office to verify the final invoice matches any remaining balance, preparing the supplemental agreement to deobligate remaining funds, and forwarding the file to the Service’s storage facility for archive and scheduled destruction.

Other Forms of Assistance. In accordance with 033 FW 11, Procurement Contracting, Assistant and Regional Directors can execute grants, cooperative agreements, and other assistance awards that involve the obligation of funds, the transfer of Federal property, or the receipt of technical assistance services when authorized by the Federal Cooperative Agreement Act, 31 U.S.C. 6301, and other substantive law.

Before Regional program offices award assistance agreements, a copy of the agreement and supporting documents should be sent to the Division of CGS for a sufficiency review. The Regional program office should also send a copy of the fully executed agreement to the Division of CGS for FAADS reporting.