

§ 1260.11

(i) Require or prohibit recipients, potential recipients or subrecipients to enter into or adhere to agreements with one or more labor organizations (as defined in 42 U.S.C. 2000e(d)) on the same or other related construction projects; or

(ii) Otherwise discriminate against recipients, potential recipients or subrecipients for becoming, refusing to become, or remaining signatories or otherwise adhering to agreements with one or more organizations, on the same or other related construction projects.

(2) Nothing in this section prohibits the recipient, potential recipients or subrecipients from voluntarily entering into project labor agreements.

(3) The Assistant Administrator for Procurement may exempt a construction project from this policy if, as of February 17, 2001—

(i) The agency or a construction manager acting on behalf of the Government had issued or was party to bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions in paragraph (d)(1) of this section; and

(ii) One or more construction contracts (includes any contract awarded by the recipient) subject to such requirements or prohibitions had been awarded.

(4) The Assistant Administrator for Procurement may exempt a particular project, contract, or subcontract from this policy upon a finding that special circumstances require an exemption in order to avert an imminent threat to public health or safety, or to serve the national security. A finding of “special circumstances” may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of, or affiliated with, a labor organization.

[65 FR 62900, Oct. 19, 2000, as amended at 66 FR 54121, Oct. 26, 2001; 67 FR 77667, Dec. 19, 2002; 68 FR 35290, June 13, 2003; 69 FR 2831, Jan. 21, 2004; 69 FR 21704, Apr. 22, 2004; 72 FR 19784, Apr. 20, 2007]

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§ 1260.11 Evaluation and selection.

(a) Technical evaluation of proposals will be conducted by the cognizant NASA technical office and may be based on peer reviews.

(b) Under NRA's, AO's, other BAA's, and CAN's, the selecting official will furnish documentation requested by the grant officer, (including a copy of the NRA, selection statement, and peer review evaluation if requested), to confirm that the award is being made as a result of a selection under a NRA, AO, other BAA, or CAN. The technical office will forward to the grant office a completed award package, including a funded procurement request, technical evaluation of the proposed budget, and other support documentation, and any data deliverables that may be required when potentially hazardous operations, such as those related to flight and/or mission critical ground systems have been proposed (e.g. Payload Safety Data Review Package) at least 29 days prior to the requested award date, or before the expiration of the funded period in the case of the renewal of an existing effort.

(c) If a proposal is not selected, the proposer will be notified by the selecting official in accordance with the procedures set forth in the NRA, AO, CAN, or BAA.

(d) For unsolicited proposals, see § 1260.17.

(e) For awards made non-competitively, written justifications for equipment or travel will be submitted by the technical office for grant officer approval when more than half of the proposed budget is for equipment or travel and associated indirect cost. The justification shall describe the extent to which the equipment or travel is necessary. The grant officer's signature on the award will indicate approval of the justification.

(f) The evaluation of the proposal budget will conform to the following procedure:

(1) The technical officer will review the proposer's estimated cost for conformance to program requirements and fund availability. The results of this review shall be recorded in Column B of the proposed Budget Summary Form (Exhibit A to subpart A of this part 1260, available at the address given in

Exhibit A). New budgets are not required when the program office recommended funding is within twenty percent (20 percent) of the proposed amount, provided that, if requested by the proposer, a revised scope of work based on the recommended funding is submitted by the proposer for acceptance by the technical officer. However, when funding decreases in equipment and/or subcontracts are involved, the cognizant program office is required to identify the cost element(s) affected by the change in funding level.

(2) The grant officer will review the budget, and any changes made by the technical officer, to identify any item which may be unallowable under the cost principles, or which appears unreasonable or unnecessary. The grant officer will complete Column C of the Budget Summary after discussing significant changes with the recipient and/or technical office. Requests for details from the recipient should be limited.

(3) The grant officer will address requests for direct charge of equipment in the negotiation summary, and state whether the purchase is approved as a direct cost.

(g) 42 U.S.C. 2459d prohibits NASA from funding any grant for longer than one year if the effect is to provide a guaranteed customer base for new commercial space hardware or services. The only exception would be if an Appropriations Act specifies the new commercial space hardware or services to be used.

(h) NASA reserves the right to either fully fund or incrementally fund grants based on fiscal law and program considerations. Incremental funding of grants and cooperative agreements shall conform to the following procedure:

(1) When the period of performance for a grant crosses Government Fiscal Years, the grant will usually be incrementally funded, using appropriations from different Government Fiscal Years. In other circumstances, incremental funding may be appropriate. The special condition at § 1260.53, Incremental Funding, will be included in any grant that is incrementally funded. The grant officer will determine the number of incremental funding actions that will be allowed.

(2) Specific limitations on incremental funding are as follows:

(i) Grants that are funded using appropriations from different Government Fiscal Years should provide funding from the prior fiscal year that carries at least one month into the subsequent fiscal year in order to facilitate transition of the grant to the subsequent fiscal year's funding cycle.

(ii) Only those grants whose anticipated funding exceeds \$100,000 of appropriations from a single Government Fiscal Year may be incrementally funded within that fiscal year's appropriations.

(iii) Incremental funding actions to obligate or deobligate funds shall not total less than \$25,000 unless the action is necessary to comply with the requirement to use appropriations from different Government Fiscal Years, to fully fund a grant, to close out a grant, or to make a corrective accounting adjustment.

(3) On an exception basis, and with the concurrence of the installation Chief Financial Officer (CFO) or Deputy CFO for Resources, the procurement officer may waive the restrictions set forth in paragraphs (h)(2)(i) through (h)(2)(iii) of this section for individual funding actions on individual grants. The procurement officer shall maintain a record of all such approvals during the fiscal year.

(4) The restrictions set forth in paragraphs (h)(2)(i) through (h)(2)(iii) of this section are not applicable during the period of a continuing resolution. During such a period, NASA will nonetheless endeavor to fund individual grants using reasonably sized increments.

(i) Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the Government Printing and Binding Regulations, No. 26, February 1990, S. Pub. 101-9, U.S. Government Printing Office, Washington, DC 20402, published by the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO). The grant officer will be advised in writing of the results of the ICPMO review.

(j) The provision at §1260.30, Rights in Data, is to be inserted as a standard provision into grants and cooperative agreements that don't require cost sharing. Additional language is required for cost sharing and/or matching efforts, and in cooperative agreements, as set forth in the provision.

(k) By acceptance of a grant (containing the provision at §1260.34) the recipient agrees that it is in compliance with the Clean Air and Federal Water Pollution Control Acts. The Administrator may approve exemptions from this prohibition under certain circumstances under Executive Order 11738. Requests for exemptions or renewals thereof shall be made to the Office of Procurement, NASA Headquarters, Program Operations Division (Code HS), Washington, DC 20546.

(l) Requests for acquisition of property may be made by a recipient either as part of the original budget proposal or subsequent to award. Comprehensive guidance on evaluating requests for acquisition of property, vesting of title, and administration issues, is set forth at §1260.74.

[65 FR 62900, Oct. 19, 2000, as amended at 66 FR 54121, Oct. 26, 2001; 67 FR 30544, May 7, 2002; 68 FR 28709, May 27, 2003; 68 FR 35290, June 13, 2003]

§ 1260.12 Choice of award instrument.

(a) This section and §1260.111 provide guidance on the appropriate choice of award instruments consistent with 31 U.S.C. 6301 to 6308. Throughout §1260.12, the term "grant" does not include "cooperative agreements."

(b)(1) A procurement contract is a mutually binding legal relationship obligating the seller to furnish supplies or services (including construction), and the buyer pays for them.

(2) The principal purpose of a procurement contract is to acquire, for NASA's direct use or benefit, a well-defined, specific effort clearly required for the accomplishment of a scheduled NASA mission or project.

(3) If it is determined that a procurement contract is the appropriate type of funding instrument to meet NASA's purposes, the procurement shall be conducted under the FAR and the NFS (48 CFR Chapter 18).

(4) If an action is to be awarded for a dollar amount below the simplified acquisition threshold, the action may be completed by a contracting officer as a purchase order. The purchase order must be properly modified to include necessary language pertaining to data rights, key personnel requirements, and any other necessary requirements as determined by the contracting officer.

(c) A grant shall be used as the legal instrument to reflect a relationship between NASA and a recipient whenever the principal purpose is the transfer of anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. Grants are distinguished from cooperative agreements in that substantial involvement is not expected between NASA and the recipient when carrying out the activity. Grants are distinguished from contracts in that grants provide financial assistance to the recipient to conduct a fairly autonomous program; contracts entail acquisition. Various types of NASA grants contain different provisions and conditions as described in §§1260.20 and 1260.50. The major types of grants and cooperative agreements are defined as follows. Grants and cooperative agreements to carry out other authorized purposes should be used to the extent appropriate, and must be in compliance with OMB Circular A-110.

(1) *Research grant.* A research grant shall be used to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or phenomena under study, or attempting to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques and advance the state of the art. The recipient will bear prime responsibility for the conduct of research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the resources provided;

(2) *Education grant.* Students and faculty receiving direct support under a NASA education grant must be U.S. citizens. An education grant is an agreement that provides funds to an