

(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.

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**§ 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

educational institution or other non-profit organizations within one or more of the following areas:

(i) Capturing student interest and/or improving student performance in science, mathematics, technology, or related fields;

(ii) Enhancing the skill, knowledge, or ability of teachers or faculty members in science, mathematics, or technology;

(iii) Supporting national educational reform movements;

(iv) Conducting pilot programs or research to increase participation and/or to enhance performance in science, mathematics, or technology education at all levels; and

(v) Developing instructional materials (e.g., teacher guides, printed publications, computer software, and videotapes) or networked information services for education;

(3) *Training grant.* A training grant is an agreement that provides funds primarily for scholarships, fellowships, or stipends to students, teachers, and/or faculty.

(i) NASA training grants are awarded to colleges, universities, or other non-profit organizations; not to individual students, teachers, or faculty members. It is the responsibility of the institution receiving the grant to approve the faculty, teachers, and/or students who will participate in the specific program, in cooperation with NASA. If a student, teacher, or faculty member ceases to participate in the program for any reason, the institution, with prior NASA approval, may appoint another student, teacher, or faculty member to complete the remaining portion of the grant period. Replacement students, teachers, and/or faculty electing to apply for the following program year are not automatically entitled to an award and are subject to the evaluation/selection procedures administered to new applicants. Any participant receiving support under a NASA training grant may not concurrently hold another Federal fellowship or traineeship.

(ii) No applicant shall be denied consideration or appointment on the grounds of race, creed, color, national origin, age, sex, or disability.

(iii) Students and faculty receiving direct support under a NASA training grant must be U.S. citizens, except for those supported by the NASA Earth and Space Science Fellowship Program, the NASA Earth System Science Fellowship Program, the Graduate Student Fellowship in Global Change Research Program, and the GLOBE Program.

(iv) Duration of the award is program specific. Refer to program policies and procedures for details. Renewal is contingent upon a successful performance evaluation as prescribed by the program, concurrence by the NASA technical officer, and the availability of funds.

(v) No substantial involvement is expected between NASA and the recipient. A student or faculty member receiving support under a NASA training grant does not incur any formal obligation to the Government.

(vi) The use of training grant funds to acquire equipment, or to acquire or construct facilities will not be permitted. Government furnished equipment will not be provided.

(vii) An Administrative Report must be submitted under the guidelines described by the specific program policies and procedures.

(4) *Facilities grant.* A facilities grant is used to provide for the acquisition, construction, use, maintenance, and disposition of facilities. Facilities, as used in this section, means property used for production, maintenance, research, development, or testing. Prior approval by the Associate Administrator of Procurement is required before proceeding with a facilities grant. To obtain prior approval, a package will be forwarded to the Director, Program Operations Division (HS), during the planning phase of the grant, that includes pertinent background information, details on Congressional Authorization, dollar value, and name of the recipient. Other information, such as a copy of the proposed facility grant award document, is not required. It is unlikely an award will be approved unless specifically authorized by Congress. A review by legal counsel to assure legal sufficiency is also required.

(d) Cooperative agreement. A cooperative agreement shall be used as the

legal instrument reflecting 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, and substantial involvement is anticipated between NASA and the recipient during performance of the contemplated activity (31 U.S.C. 6305). Characteristics inherent in a cooperative agreement include those that apply to a grant, plus the following:

(1) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment. This could involve an active NASA role in collaborative relations, access to a NASA site or equipment, or sharing NASA facilities and personnel. For example, a university investigator could work for a substantial amount of time at a NASA Center, a NASA investigator could work at a university, or when the collaboration is such that a jointly authored report or education curriculum product is appropriate;

(2) The project, conducted as proposed, would not be possible without extensive NASA-recipient technical collaboration;

(3) The nature of the collaboration shall be clearly defined and specified in the special condition at §1260.51.

(e)(1) Grants and cooperative agreements with foreign organizations. Grants and cooperative agreements with foreign organizations provide for research to be performed in whole, or in part, by a foreign organization, with funding being provided by NASA to the foreign organization as reimbursement for the work performed.

(2) It is NASA policy that, in general, research with foreign organizations will not be conducted through grants or cooperative agreements, but instead will be accomplished on a no-exchange-of-funds basis. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. NASA policy on performing research with foreign organizations on a no-exchange-of-funds basis is set forth at NFS 1835.016–70. In rare instances, NASA may enter into an international agreement under which

funds will be transferred to a foreign recipient.

(3) Grants and cooperative agreements to foreign organizations are made on an exceptional basis only. Awards require the prior approval of the Headquarters Office of External Relations (Code I) and the Headquarters Office of the General Counsel (Code G). Requests to award foreign grants or cooperative agreements are to be coordinated through the Office of Procurement, Program Operations Division (Code HS). Requests for approval shall contain:

(i) The identity of the foreign entity, the country or countries involved, and the purpose of the grant or cooperative agreement.

(ii) The Space Act Agreement(s) or underlying international agreement involved, if any.

(iii) A description of the effort to be undertaken by the entity described in paragraph (e)(3)(i) of this section, including their dollar value.

(iv) The reason why the grant or cooperative agreement requires a placement with a foreign organization.

(v) The reason why the work can not be accomplished on a no exchange of funds basis.

(4) Grants and cooperative agreements to foreign organizations require a review by the Office of General Counsel.

(5) The requirements of this section do not apply to the purchase of supplies or services (excluding research) from non-U.S. sources by U.S. grant or cooperative agreement recipients, when necessary to support research efforts.

(f)(1) The decision whether to use a contract, grant or cooperative agreement as an award instrument must be based on the principal purpose of the relationship. When NASA, within its authority, enters into a transaction where the principal purpose is to accomplish a public purpose of support or stimulation authorized by Federal statute, a grant or a cooperative agreement is the appropriate instrument. Conversely, if the principal purpose of a transaction is to accomplish a NASA requirement, *i.e.*, to produce something for NASA's own use, a procurement contract is the appropriate instrument.

Two essential questions must be asked to ensure that a grant or cooperative agreement is the appropriate instrument. The first question is: Will NASA be directly harmed in furthering a specific NASA mission requirement if the effort is not accomplished? The answer to this question must be “no.” The second question is: Is the work being performed by the recipient primarily for its own purposes, which NASA is merely supporting with financial or other assistance? The answer to this question must be “yes.” If these criteria are met, then the effort is not a NASA requirement, and can then be considered as to whether it supports or stimulates a public purpose.

(2) In applying the principal purpose test, it must be determined whether the Government is the direct beneficiary or user of the activity. If NASA provides the specifications for the project; or is having the project completed based on its own identified needs; or will directly use the report or result of the project for a scheduled NASA mission, then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of NASA, and thus, a contractual relationship exists. However, there may be cases where NASA expects to derive some incidental use or benefit from funded activities. In fact, any extramural expenditure that furthers the Agency’s goals or mission can be said to be of benefit or use to the Government. But not every expenditure produces for the Government a benefit or use that is direct; *i.e.*, immediate, uninterrupted, or specific. Where an expenditure will produce a benefit or use that is only indirect in nature, a grant or cooperative agreement may be used.

(3) The status of the entity involved is not a primary factor in determining the appropriate award instrument. For example, an entity that operates on a non-profit basis may receive funding through a contract, and is not limited to receiving grants or cooperative agreements. Similarly, a profit-making firm may receive funding through grants, cooperative agreements, or contracts.

(4) NASA offices may be mandated through their missions to support specific scientific, educational, or training

programs. The office may be accountable to NASA management, the Administration, or Congress for oversight and proper implementation of the program, may require direct oversight, may be directly accountable for the results of the program and that the work be successfully completed. Whenever the office requesting the grant or cooperative agreement would be directly harmed in performing its mission if an award was not made, a grant or cooperative agreement is not appropriate. Specific examples of situations requiring special scrutiny include—

(i) Education grants that for the administration of a program for which the education office is directly responsible;

(ii) Research or education grants to establish and support university laboratories on a non-competitive basis, with the resulting work of direct benefit to NASA; or

(iii) Training grants that hire university students, on a non-competitive basis, to perform work at a NASA Center in direct support of NASA personnel, and perform work which is required in support of a NASA mission.

(5) A grant may be used to provide funding to an association to hold a conference (among its members and NASA officials) where the benefits flow primarily to the association and its members, not to NASA. The principal purpose will be to advance research or other purposes of the association. Thus, NASA may not direct an association in arranging the conference or in providing other services for NASA’s benefit. The conference should be run by the association, not by NASA. Conferences sponsored or initiated by NASA primarily to meet a specific NASA need or obtain information for the direct benefit of NASA must be supported by means of a contract.

[65 FR 62900, Oct. 19, 2000, as amended at 71 FR 62209, Oct. 24, 2006]

#### § 1260.13 Award procedures.

(a) Award instruments are classified as follows:

(1) Annual grants are grants awarded for a short term (*e.g.*, on an annual basis).

(2) Multiple year grants support research projects that may span several