

OFFICE OF JUSTICE PROGRAMS
NATIONAL INSTITUTE OF JUSTICE (NIJ)

**GUIDELINES ON THE ADMINISTRATION
AND MANAGEMENT OF NIJ GRANT PROGRAMS**
For NIJ Use Only

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Version 3 – Modified July 2010

PURPOSE OF THESE GUIDELINES

These modified Guidelines document new and additional policies and procedures for the administration and management of all NIJ grant programs with the objective of addressing several Office of Inspector General (OIG) findings and recommendations noted in Audit Report Number 09-38, *National Institute of Justice's Practices for Awarding Grants and Contracts in Fiscal Years 2005 through 2007*.

Kristina Rose, Acting Director
National Institute of Justice

**GUIDELINES ON THE ADMINISTRATION AND MANAGEMENT
OF NIJ GRANT PROGRAMS**

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I. BACKGROUND

In the Fiscal Year (FY) 2008 Appropriations Act, Congress directed the Office of the Inspector General (OIG) to audit competitive NIJ programs, projects, and activities, including contracts and grants, awarded in the last three fiscal years to determine whether these grants and contracts were awarded through a fair and open competitive process. In response, the OIG initiated an audit to: (1) evaluate whether competitive NIJ grants and contracts awarded in fiscal years (FY) 2005 through 2007 were awarded based on fair and open processes; (2) determine whether non-competitive NIJ grants and contracts awarded in those fiscal years were properly justified; and (3) identify costs related to NIJ grants and contracts that were administrative in nature and explain how those costs were determined¹. OIG performed audit work at the NIJ headquarters in Washington, D.C., from March 2008 through July 2009.

A. OIG Audit Focus Areas

The OIG accomplished their objectives by first obtaining data from OJP that showed that NIJ awarded the following grants and contracts from FYs 2005 through 2007:

- 1,459 grants and grant supplements totaling more than \$567 million, and
- 131 contract actions totaling more than \$64 million.

B. OIG Results in Brief

Overall, for the grant awards OIG tested, deficiencies in administrative practices and controls did not allow OJP and the NIJ to demonstrate that grant award practices were based on fair and open competition. NIJ did not maintain adequate pre-award records to document that its grant award process ensured a fair and open competition. In addition, OIG identified instances where NIJ staff involved in the grant award process had potential conflicts of interest with grantees receiving awards, but nevertheless participated in the approval process for the grants in question. OIG also found that the NIJ's grant application review process, including initial program office reviews, peer reviews, documentation of program office recommendations, and documentation of NIJ Director selection, raised concerns about the fairness and openness of the competition process. In addition, OIG found that NIJ did not have knowledge of grantees' lobbying activities when making the award decisions because NIJ grantees and sub-grantees did not fully disclose lobbying activities that were potentially related to the NIJ grants or sub-grants.

For the non-competitive grants OIG tested, NIJ usually did not document the basis for non-competitively awarding discretionary grant funds. OIG also found instances where the NIJ improperly directed a grantee to use a specific organization to perform sub-grantee work without documenting the basis for directing that the work be non-competitively awarded to the organization.

For the competitive contract awards OIG tested, OIG found that certain aspects of the award process, such as approved requisitions, certifications of fund availability, and conflict of interest

¹ While the audit work concentrated on the NIJ's grant and contract awards in FYs 2005 through 2007, the OIG expanded their testing to awards made outside this time period, as necessary, to fully explore the NIJ's competitive award practices.

forms, were not consistently documented for the awards. For the non-competitive contract awards OIG tested, OIG found that NIJ did not adequately justify the sole-source basis for some awards. As a result, NIJ could not demonstrate that these contract awards were properly exempt from the competitive process required by government contracting regulations.

OIG also attempted to identify costs related to NIJ grants and contracts that were administrative in nature to examine how those costs were determined. However, OIG was not able to do this for all of the 1,459 grants listed on the grant universe listing provided by OJP. OIG found that 2 of the 1,459 grants were adjusting accounting entries and not actual grant awards for the period they reviewed. For 57 of the remaining 1,457 NIJ grants awarded during FYs 2005 through 2007, the grant budgets maintained in the OJP's Grants Management System (GMS) did not match the grant award amounts. Without the final budgets, OIG was unable to determine the administrative costs for these 57 grants. For the remaining 1,400 grants, OIG reviewed the final grant budgets and determined the administrative costs for the grants totaled about \$64.1 million, or about 12 percent of the \$551 million awarded for these grants. OIG found that 812 of the 1,400 grants had no administrative costs, while the administrative costs for the remaining 588 grants ranged from 0.03 to 65.65 percent of the total grant award amounts.

For 130 of the 131 contracts awarded by NIJ during FYs 2005 through 2007, OIG determined the administrative costs totaled about \$990,000, or about 1.5 percent of the \$64 million awarded for these contracts. The administrative costs were not readily identifiable for the other contracts. OIG found that 86 of the 130 contracts had no administrative costs, while the administrative costs for the remaining 44 contracts ranged from 0.02 to 41 percent of the total contract award amounts.

C. OIG Notable Findings

The audit report contains three findings related to NIJ's competitive award practices, NIJ's non-competitive award practices, and the administrative costs included in grants and contracts.

Finding 1 – Competitive Award Practices

- Grant Award Processes and Practices
- Pre-award Records
- Management of Conflicts of Interest Between Employees' Official Duties and their Private Financial Interests
- Application Review Process
- Contract Award Processes and Practices
- Lobbying Activities
- Program Oversight

Finding 2 – Non-competitive Award Practices

- Grant Award Processes and Practices
- Smith Alling Lane Awards
- National Forensic Science Technology Center (NFSTC) Awards
- Relationship Between NIJ and NFSTC
- Contract Award Processes and Practices

Finding 3 – Administrative Costs

D. OIG's Recommendations

There are nine recommendations for improving NIJ's grant and contract award practices to ensure fair and open competition, which include:

1. Establish procedures to ensure that key aspects of the pre-award and award process for grants and cooperative agreements are documented, such as:
 - identifying and working with OJP's Office of General Counsel to remedy any conflicts of interest, or the appearance of conflicts of interest, among agency staff involved in the pre-award evaluation process;
 - maintaining Disclosure of Conflict of Interest forms for peer reviewers selected to review grant applications and ensuring that peer reviewers are not allowed to participate when they identify conflicts of interest;
 - maintaining the NIJ Director's approved list of peer reviewers for each solicitation and ensuring that peer reviewers selected are on the approved list;
 - maintaining individual peer review comments or evidence that the peer reviewers agree with the peer review consensus report; and
 - ensuring that the reasons for denying applications are accurately recorded in GMS and that copies of rejection letters sent to rejected applicants are maintained.
2. Establish procedures to ensure that key aspects of the pre-award and award process for contracts are documented, such as:
 - completion of requisitions,
 - completion of fund certifications, and
 - identifying and remedying conflicts of interest among individuals involved in evaluating proposals.
3. Establish procedures to ensure that the required lobbying disclosure forms are submitted for all grantees, sub-grantees, and contractors and that the disclosures are considered when evaluating grant applications for award.
4. Ensure that the Office of Audit, Assessment, and Management (OAAM) periodically reviews the NIJ's process for awarding grants to ensure that NIJ grants are awarded based on fair and open competition.
5. Require NIJ to document the basis for non-competitive grant awards and issue guidelines for what constitutes a reasonable basis for making non-competitive grant awards.
6. Require NIJ to assess the independence of grant applicants for performing research studies before awarding the grants.
7. Require NIJ to document the basis for requiring grantees to use specific sub-grantees to perform work related to the grants.

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8. Ensure that non-competitive justifications for contract awards fully explain the circumstances that led to the sole-source awards.
9. Ensure that the final approved grant budgets for formula grants are maintained in GMS and that the budgets match the amount of funds awarded to the grantees.

The final OIG audit report may be found at <http://www.usdoj.gov/oig/reports/OJP/a0938.pdf>

II. CONFLICTS OF INTEREST

Beginning in FY 2010, all NIJ staff members involved in the pre-award evaluation process (including Program Managers, Office Directors, Associate Office Directors, Division Directors, Assistant Division Directors, Grant Program Managers, Program Operations Specialists, Grant Management Officer, etc.) will review the Guidance on Conflicts of Interest (Appendix 1) and grant proposals submitted for all assigned solicitations. After reviewing the Guidance and grant proposals, the employee will prepare and submit a memorandum to his/her immediate supervisor for each assigned solicitation. See Appendix 2 for a sample memorandum. If no conflict is noted, the employee will deliver the signed memorandum to his/her immediate supervisor and a copy to the Office of Operations primary points of contact. Jamissen Freitag is the primary point of contact for the Office of Investigative and Forensic Sciences and Office of Science and Technology. Sherran Thomas is the primary point of contact for the Office of Research and Evaluation and International Center.

If an employee reports a potential conflict of interest, the signed memorandum should be delivered to the employee's immediate supervisor for action. The supervisor will review the signed memorandum, consider the conflict, review the subject employee's Confidential Financial Disclosure Report - OGE Form 450, and make a determination about whether or not a conflict exists. If the supervisor determines a conflict exists, he or she may require the staff member to recuse from dealing with a specific grant application or from an entire solicitation. The immediate supervisor will make a case by case determination. The determination will be noted in the memorandum and communicated to the employee. The signed memoranda will be provided to the Office of Operations primary points of contact for retention for a period of three years.

If the supervisor requires assistance from the Office of General Counsel (OGC) to make a determination, the Office of Operations primary points of contact will work with OGC and the supervisor to obtain OGC input.

III. CONFLICTS OF INTERESTS – PEER REVIEWERS

As each peer reviewer is confirmed by the OJP peer review contractor, each peer reviewer will be sent via email a conflict of interest form. The signed form must be returned to the peer review contractor within five business days of receipt. If a reviewer fails to return the form, the program manager will be notified and the reviewer will be removed from the panel. The Office of Operations primary points of contact will be responsible for ensuring that the conflict of interest forms are returned to the contractor prior to the start of the peer review process and maintained in the Grants Management System (GMS).

If a reviewer reports a potential conflict of interest, the contractor will communicate this to the program manager, the assigned Office of Operations primary point of contact, and the COTR. The program manager will resolve the issue by making a determination (e.g., assigning the reviewer to another application or removing the individual from the review), as appropriate, to retain the integrity of the peer review process. The assigned Office of Operations primary point of contact will maintain documentation on the final action taken to address the potential conflict of interest.

IV. APPROVAL OF PEER REVIEWERS LISTS

The program manager will identify and compile a list of proposed reviewers including contact information and take into consideration any specific reviewers the program office would like to use, the number of times a reviewer has reviewed for the particular organization, and new reviewers who possess the desired expertise. Working with the program manager, the assigned Office of Operations primary point of contact will prepare a memorandum for the program manager's signature to the NIJ Director through the appropriate Deputy Director, Office Director, and Division Director requesting approval of the proposed peer reviewers. See Appendix 3 for a sample template. Using NIJ's Consultant Information System (CIS), the Office of Operations primary points of contact will reformat a list of recommended peer reviewers and attach this list to the memorandum. The Office of Operations primary points of contact will ensure that peer reviewers are registered in both the NIJ CIS and the OJP Peer Reviewer data base.

If additional reviewers are needed, the Office of Operations primary points of contact will work with the program manager to prepare an addendum and request approval from the NIJ Director to add those reviewers to the reviewer pool.

The original list, addenda, and record of approval will be retained in a centralized location by the assigned Office of Operations primary point of contact for a period of three years.

V. PEER REVIEWERS' FINAL SCORES AND CONSENSUS REVIEWS

At the conclusion of the consensus call or meeting, reviewers have two business days to update their assessments (scores and narratives) in GMS based on the consensus review discussions. Once each reviewer on a panel has submitted his or her final scores and comments, the program manager will ensure that the final comments reflect the discussion of the peer reviewers. If necessary, at the direction of the program manager, the peer review contractor will follow up with reviewers to resolve any discrepancies.

The peer review contractor will prepare a final scoring matrix within two business days of final reviewer submission (either posting of initial assessments if that concludes the review phase or posting of consensus reviews by lead reviewers). If there is both an initial and final assessment, the final assessment from GMS becomes the summary of the application which is then edited and formatted by the peer review contractor.

OAAM will work with the peer review contractor to ensure that formal concurrence on consensus reviews is obtained from each peer reviewer and maintained in GMS. At the conclusion of the peer review process, the Office of Operations primary points of contact will check GMS to ensure that formal concurrence on consensus reviews are maintained in GMS. If not, the primary points of contact will notify the peer review contractor and COTR.

VI. DENIAL NOTIFICATION

Program Manager Initial Review Process

During the initial review process, all applications received in response to a solicitation announcement will be reviewed and evaluated by the program manager to determine whether or not they are complete and responsive to the scope of the stated objectives outlined in the solicitation document. Once the initial review is completed, the program manager will identify for the National Institute of Justice (NIJ) Director those applications that fail to meet the Basic Minimum Requirements (BMR) of the solicitation, or which are non-responsive to its stated objectives. The NIJ Director will make a final determination regarding whether or not to deny these applications during the initial review process. Applications that are approved during initial review, as being complete and responsive, will continue on to peer review to be scored on their technical merit by the peer reviewer panel. Those applications that fail BMR, or which are non-responsive to the solicitation, will not be submitted for peer review. To ensure that decisions are adequately documented, the responsible program manager will submit for approval to the Office Director and Deputy Director a list of all applications recommended for denial, along with the denial reason for each application. After receiving approval from the NIJ Director, these applications will be denied in Grants Management Service (GMS), and the applicants will be notified, in writing, of the reasons for rejection. Examples of reasons for first stage rejection include, but are not limited to, applications proposing activities other than those called for in the solicitation document and applications from agencies or organizations that do not possess the qualifications specified in the solicitation document. All rejection/denial letters will be maintained in the GMS.

External Peer Review Process

Following the initial review process, the program manager will submit to the peer reviewer panel those applications that have been determined to be responsive for review on their technical merit. After completion of the external peer review process, the program manager will prepare a memorandum to be routed through the Office Director and Deputy Director to the NIJ Director, of the applications recommended for funding. The peer review contractor will prepare and mail or email non-successful applicants for funding, a summary that specifies the strengths and weaknesses of their individual proposal with scores and panelist identification removed. Mailing of non-successful applicant letters must be coordinated with Congressional notification of successful applicants; the goal is for dissemination of letters within 20-30 days of award decision.

VII. NON-COMPETITIVE GRANT AWARDS

NIJ funds research, development, and evaluation activities to meet the challenges of crime and justice primarily through competitive grant solicitations. The focus of the solicitations varies from year to year based on research priorities and available funding.

To a lesser extent, NIJ funds research, development, and evaluation activities through agreements with other Federal agencies. Those agreements may be non-competitive in nature.

Exclusive of its formula grants programs, as of Fiscal Year 2009, less than one percent of the total amount of NIJ's annual awards was non-competitive. NIJ's policy is to make non-competitive awards only under the following circumstances:

- Only one reasonable source—instances where only one responsible applicant can perform the work of the proposed award. Circumstances under which this may occur include when the NIJ Director has determined in writing that:
 - The applicant has proprietary information or proposes a project involving a unique idea, method, or approach toward advancing criminal justice, policy, and practice in the United States.
 - The applicant has made a substantial investment in an activity that would advance criminal justice policy and practice in the United States. The majority of NIJ's non-competitive awards to other Federal agencies fall into this category. These agreements are developed to leverage the investment or infrastructure of these agencies to criminal justice application.
 - The applicant is the only entity known to possess the capability to perform the work.
- Compelling public interest—instances where the NIJ Director has determined in writing that exigent, urgent, or other compelling circumstances exist that make it in the public interest to make an award non-competitively. One example of such an instance might be an unusual and compelling urgency to execute a pilot project within a short window of opportunity to affect a public policy decision.
- Statutory requirements—instances where a funding recipient is specified by an appropriations act or other applicable law.
- Recommendations in Congressional reports, when a non-competitive award would be consistent with applicable law—instances where a House, Senate, or Conference Report accompanying an appropriations act or other law recommends an award to a particular recipient, and an award may be made consistent with applicable law, including any applicable executive orders.

In keeping with Executive Order 12988, nothing in this guideline is intended to create any legal or procedural rights enforceable against the United States.

To ensure that the public is aware of NIJ's policy on making non-competitive awards, Appendix 4 contains an announcement posted on NIJ's website.

VIII. ASSURANCE OF INDEPENDENCE REGARDING RESEARCH

NIJ provides objective, independent, evidence-based knowledge and tools to improve criminal justice policy and practice in the United States. NIJ is committed to ensuring that each applicant provides an assurance of independence regarding the research study proposed. This assurance will be evaluated by peer reviewers and internal reviewers, along with other review criteria for grant award recommendations and decisions.

For the purposes of NIJ's Research, Evaluation, and Development Project Grants Program (CFDA No. 16.560) "research independence and integrity" pertains only to ensuring that the design, conduct, or reporting of research funded by NIJ grants, cooperative agreements, or contracts will not be biased by any financial interest on the part of the investigators responsible for the research or on the part of the applicant.

The program narrative must explain the process and procedures that the applicant has put in place to identify and manage potential financial conflicts of interest on the part of its staff, consultants and/or sub-grantees and sub-contractors.

The program narrative must also identify any potential organizational financial conflicts of interest on the part of the applicant with regard to the proposed research. If the applicant believes that there are no potential organizational financial conflicts of interest, the applicant must provide a brief narrative explanation of why it believes that to be the case.

Where potential organizational financial conflicts of interest exist, the program narrative must identify the safeguards the applicant has put in place to address those conflicts of interest.

A thorough discussion of process and procedures related to identifying and managing potential financial conflicts of interest on the part of researchers can be found at www.grants.nih.gov/grants/policy/coi/. Though this information solely reflects the policies of the National Institutes of Health, the guidance offered may be helpful to NIJ applicants. It is offered purely as an example of best practices.

The Office of Operations will also ensure that all FY 2010 solicitations contain the following language:

Research Independence and Integrity

Regardless of a proposal's rating under the criteria outlined above, in order to receive funds, the applicant's proposal must demonstrate research independence, including appropriate safeguards to ensure research objectivity and integrity.

Considerations in evaluating research independence and integrity will include, but may not be limited to, the adequacy of the applicant's efforts to identify factors that could affect the objectivity/integrity of the proposed staff and/or the organization in carrying out the research, development, or evaluation activity; and the adequacy of the applicant's existing or proposed remedies to control any such factors.

IX. USE OF SPECIFIC SUB-GRANTEES TO PERFORM WORK RELATED TO NIJ GRANTS

All sub-grant determinations will generally be at the discretion of the grantee. Effective immediately, no NIJ staff member may require or infer that a grantee should use a specific sub-grantee to perform work related to a grant without compelling, contemporaneously documented reasons and specific prior approval of the NIJ Director. All such documentation shall be retained in the Grants Management System (GMS).

X. FINAL APPROVED GRANT BUDGETS FOR FORMULA GRANTS

To ensure that the final approved grant budgets for formula grants are maintained in GMS and that the budgets match the amount of funds awarded to the grantees, the procedures outlined below will be followed:

Formula Grants

NFISA - Paul Coverdell Forensic Science Improvement Grants Program (Formula)

The Paul Coverdell Forensic Science Improvement Grants Program (Formula) requires award recipients to submit a revised budget to reflect the total amount of the award once it is made.

Due to the nature of the formula in the Coverdell Program, the solicitation provides an “estimated” amount for each state based on their population. Because of this, 90% of the Coverdell Program award recipients have a Special Condition, which freezes grant funds until the budget is approved. Once the final award amount is determined, the Program Manager will notify the grantees of their award and the grantees will be instructed to submit a revised budget reflecting the total award amount to the program office. The Coverdell Program team then reviews the budgets for accuracy and to determine if the awardees have followed the OJP Financial Guide. Once the budgets have been reviewed, the Coverdell Program Manager creates a Grant Adjustment Notice (GAN) to remove the Special Condition for each individual award.

To review the revised budgets, a search must be conducted in GMS under Search/Process Search/Grant Adjustment. The search may be completed on an individual award or an entire program.

Convicted Offender and/or Arrestee DNA Backlog Reduction Program

Funding requests under the Convicted Offender and/or Arrestee DNA Backlog Reduction Program are made based on a demonstrated and justifiable need (i.e., a backlog of DNA database samples taken from convicted offenders and/or arrestees) and the per cost basis must be provided to justify the total funding amount requested.

Budget documents submitted with applications for funding undergo an initial review by the DNA Backlog Reduction program office staff using a documented checklist that is attached to GMS with the final award. Mandatory checklist questions such as “Did the application include a budget narrative?” and “Does the application include a budget worksheet and summary?” ensure

that budget documents for applications for funding under this program are maintained in GMS. The mandatory checklist question “Does the federal assistance requested match the budget figures in the detail budget worksheet?” ensures that the reviewer confirms that the budget matches the amount of funds requested for award. Additional questions such as “Does the narrative contain a statement of the number of DNA database samples the applicant will analyze in-house using FY 2009 Convicted Offender and/or Arrestee DNA Backlog Reduction Program funds” and “Did the applicant provide their actual cost estimates with which they based their federal assistance request?” ensure that the award amount is consistent with the proposed need. Each time an application is modified or revised by the applicant in GMS, the program office performs another review using the checklist to ensure that all information remains consistent with existing and updated documentation. This checklist process has been used for the review of all applications under this program since fiscal year 2008.

In addition to the program office review, the Office of the Chief Financial Officer (OCFO) began performing budget reviews of awards made under this program in FY 2008, and all awards are issued a final financial clearance memorandum (FCM) prior to the release of award funds. Budgets were reviewed again in FY 2009, and will continue to be reviewed in future years. This OCFO review is in addition to the program office review, and provides additional assurance that the budget matches the amount of funds awarded to grantees. The OCFO will not issue an FCM unless the final approved grant budget for the reviewed award is uploaded to GMS and is consistent with the GMS award amount.

Using these procedures (established in fiscal year 2008), the program office is able to ensure that the final approved grant budgets for formula grants under the Convicted Offender and/or Arrestee DNA Backlog Reduction Program are maintained in GMS and that the budgets match the amount of funds awarded to the grantees.

Forensic DNA Backlog Reduction Program (Formula)

Funding for the Forensic DNA Backlog Reduction Program is distributed using a formula based on Unified Crime Reporting statistics published by the FBI, and the total funding amount requested in each application (not to exceed the formula amount).

Budget documents submitted with applications for funding undergo an initial review by the DNA Backlog Reduction program office staff using a documented checklist that is attached to GMS with the final award. Mandatory checklist questions such as “Did the application include a budget narrative?” and “Does the application include a budget worksheet and summary?” ensure that budget documents for applications for funding under this program are maintained in GMS. The mandatory checklist question “Does the federal assistance requested match the budget figures in the detail budget worksheet?” ensures that the reviewer confirms that the budget matches the amount of funds requested for the award. The question “Does the federal assistance requested match the dollar amount approved in the Solicitation table (Appendix 1, page 19) or in the State funding split if multiple laboratories are applying in this State?” ensures that the award amount is consistent with the amount allowable by the formula distribution. Each time an application is modified or revised by the applicant in GMS, the program office performs another review using the checklist to ensure that all information remains consistent with existing and updated documentation. This checklist process has been used for the review of all applications

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under this program since FY 2008. Using this procedure (established in FY 2008), the program office is able to ensure that the final approved grant budgets for formula grants under the Forensic DNA Backlog Reduction Program are maintained in GMS and that the budgets match the amount of funds awarded to the grantees.

In previous years, residual funds remaining after all applications were received (generally due to funding requests totaling to less than the amount budgeted for the entire program) were granted to applicants by performing another formula distribution and increasing the amounts awarded to each applicant. Once the final award amounts were determined, the program office staff would notify grantees of the revised amounts and instruct them to submit revised budgets reflecting the revised award amounts to the program office. The DNA backlog reduction program office staff would then review the budgets and if acceptable, would create grant adjustment notices to remove the Special Condition withholding award funds. The process of including withholding special conditions with these awards ensured that the final approved grant budgets for formula grants under the Forensic DNA Backlog Reduction Program were uploaded to GMS and that the budgets matched the amount of funds awarded to the grantees prior to initiation of funded projects.

This process for the redistribution of funds has not been used since fiscal year 2006, and new methods for allocation of these funds have been implemented (e.g., in FY 2008, discretionary awards were made to projects proposed under the DNA Unit Efficiency Program using residual funds). Discontinuing the process of awarding amounts higher than application amounts further ensures that the final approved grant budgets for formula grants under the Forensic DNA Backlog Reduction Program match the amount of funds awarded to the grantees; however, if this practice were reinstated in future fiscal years, the checklist and special conditions would continue to be used to ensure that the final approved grant budgets for formula grants under the Forensic DNA Backlog Reduction Program are maintained in GMS and that the budgets match the amount of funds awarded to the grantees.

**National Institute of Justice
Guidance on Conflicts of Interest**

December 10, 2009

Basic Obligation of Public Service

Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in the Standards of Conduct for Executive Branch Employees, 5 C.F.R. Part 2635.

General Principles

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
4. An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.
8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

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10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards. Whether particular circumstances create an appearance that the law or ethical standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

The Standards of Conduct for Executive Branch Employees, 5 C.F.R. 2635.101.

Conflict of Interest

The conflict of interest rules require that you avoid situations where your official actions affect or appear to affect your private interests, whether these interests are financial or non-financial. As an NIJ employee, your official actions must be motivated solely by the interests of the agency. If your personal interests (like family or a stock you own) benefit or appear to benefit from your official actions as a Federal employee, then you have a conflict of interest.

Financial Conflicts of Interests

As a Federal employee, you are prohibited by a Federal criminal statute (18 U.S.C. § 208) from taking action or otherwise participating in agency business that affects your financial interests or the financial interests of your spouse, child, or a business partner. Also, you cannot take action on a matter affecting the financial interests of an organization in which you serve as an officer or employee, or an organization with whom you are discussing future employment.

In brief, you are prohibited from involvement in agency business that will financially benefit yourself, your family, business partners, and an organization in which you are an officer or employee or an organization with which you are discussing possible employment. For purposes of violation of this rule, it is immaterial if your action actually results in an increase in wealth; even a negative impact on financial interest is still a violation of the statute. Furthermore, be aware that you are prohibited from participation in all business related to a grant to an organization where your spouse is employed or serves as a consultant, even if this business does not involve awarding funds to the organization.

Impartiality as an Agency Employee

The second types of conflicts are those situations that reflect adversely on your impartiality as an agency employee. The ethics rules require you to discharge your public duties in an impartial manner. You must not give preferential treatment to any individual or group. The Standards of Ethical Conduct not only prohibit your participation in matters which may affect your financial interests, but these rules also prohibit you from participating in matters that could reflect on your image of impartiality as a public official. Under this Standard of Conduct, you must disqualify yourself from a matter if someone with whom you have a personal or business relationship is a party or could benefit from your actions if the circumstances of your participation in this matter would cause a reasonable person to question whether you are being impartial. This prohibition includes, for example, actions that may affect a member of your household, a person with whom you have a business relationship, a close personal friend or relative, a fiancé or steady date, a former employer where you had worked within the last year, or an organization in which you are active. The test as to whether or not a violation has occurred is whether the circumstances of the situation would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter. It is an “appearance” question. 5 C.F.R. § 2635.202

For grant and contract administrators like yourselves who must always appear impartial in the performance of your duties, this ethics rule requires that you avoid personal relationships with the staff and officials of your grantees or contractors. Do not cross the line from a professional relationship to a personal relationship with your grantees or contractors, which could compromise your appearance of impartiality and could, for example, give a basis to a disgruntled applicant for a grant or contract to protest the award on the grounds that you were biased. If you establish a personal relationship with a grantee or contractor, you should discuss this issue with your supervisor in order that your work assignment can be adjusted appropriately.

If you are confronted with any of these situations, then you should immediately recuse yourself from the matter. Recusal may be achieved by merely explaining to your supervisor that you are unable to be involved in the matter. Written notice to your supervisor is not required, but is recommended.

Conflict of Interest Advice

Gregory Brady, Office of the General Counsel, extension 6-3254
Charlie Moses, Office of the General Counsel, extension 5-2536
Sue Dirham, Office of the General Counsel, extension 6-3232

Appendix 2

MEMORANDUM FOR (Name and Title of Immediate Supervisor, Office, and Division)

FROM: (Name and Title of NIJ Employee, Office and Division)

SUBJECT: Disclosure of Conflict of Interest

DATE:

EMPLOYEE:

I have read the attached OGC Guidance on Conflict of Interest dated December 10, 2009, and have considered whether I may have a conflict of interest with any of the proposals to which I have been assigned to review for the grant solicitation titled:

“ _____.”

- It is my belief that I have no conflict of interest with any of the proposals to which I have been assigned.
- I believe that I have or may have a conflict of interest with one or more proposals. (List application number and applicant name for any and all such proposal(s)).

Nature of the conflict or possible conflict (check all that apply):

- My spouse, child, or other family member is an employee or consultant to the applicant or is seeking employment with the applicant.
- My spouse, child, other family member, or business partner would be employed under the proposal or a subpart.
- I am or will be seeking employment with the applicant or a sub-contractor or sub-grantee under the proposal.
- I am a former employee of the applicant. I left there on <date>.
- I have a pension plan or other financial interest in the applicant.
- I have or have had within the past 12 months a collaborative professional or business relationship with the proposal's author(s), project staff, or the organization submitting the proposal.

Guidelines on the Administration and Management of NIJ Grant Programs

- I am an officer, trustee, board member, or committee member of the applicant.
- I have a close personal relationship with staff of the applicant or the author(s) of the proposal.
- Other: Any circumstances which would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the review of the proposal.

For each item checked, describe below the nature and facts of the potential conflict for agency review. (Please attach additional sheets as necessary, with each additional sheet labeled with your (the employee's) name and the solicitation name.) OGC may review this information and the potential conflict of interest in addition to the immediate supervisor. OGC's guidance or recommendation may be recorded on this Disclosure form if OGC review is deemed necessary. (In the bulk of potential conflict cases, it is likely that OGC review will not be required because the conflict will be clearly a disqualifying conflict or it will be clearly not a disqualifying conflict.)

AGENCY DETERMINATION: (to be completed by NIJ Supervisor)

Decision by NIJ Supervisor after consideration of potential conflict, which included review of the subject employee's Confidential Financial Disclosure Report, OGE Form 450:

Signature: _____ **Date:** _____

Title: _____

**SAMPLE MEMORANDUM
REQUESTING APPROVAL OF PEER REVIEWERS**

MEMORANDUM FOR THE NATIONAL INSTITUTE OF JUSTICE DIRECTOR

THROUGH: Name, NIJ Deputy Director

**Name, Office Director
Name of Office**

**Name, Division Director
Name of Division**

**Name of Office of Operations Primary Point of Contact
Office of Operations**

**FROM: Name of Program Manager
Name of Division**

DATE:

SUBJECT: Peer Reviewers for the Solicitation for (Title of Solicitation) FY 2010

The Solicitation for (Title of Solicitation) FY 2010 seeks proposals for (briefly describe the objectives of the solicitation). This solicitation focuses on .

The attached list is a collection of potential peer-reviewers for this solicitation and other solicitations with similar project areas.

This list is submitted for your consideration and approval.

Approve

Disapprove

**NATIONAL INSTITUTE OF JUSTICE
Guidelines Regarding Non-Competitive Awards**

January 2010

The National Institute of Justice (NIJ's) core mission is to provide objective, independent, evidence-based knowledge and tools to advance criminal justice policy and practice in the United States. NIJ also carries out equipment, training, and technical assistance programs that are intended to enhance the capacity of law enforcement and corrections agencies, public crime laboratories and related agencies, and criminal justice courts agencies.

NIJ's work is conducted primarily through extramural grants, agreements, and contracts. NIJ uses both cooperative agreements, which are a type of grant, and agreements with other Federal agencies.

As of Fiscal Year 2009, grants, including cooperative agreements, represented approximately 69 percent of the total amount of NIJ's annual funding actions. Also as of Fiscal Year 2009, approximately 49 percent of NIJ's annual grant awards were formula grants intended to assist the nation's public crime laboratories and related agencies. NIJ's formula grant programs make non-competitive awards in amounts based on a predetermined formula. NIJ formula grant programs in Fiscal Year 2009 included the Paul Coverdell Forensic Science Improvement Grants Program and the Forensic DNA Backlog Reduction Program.

NIJ funds research, development, and evaluation activities to meet the challenges of crime and justice primarily through competitive grant solicitations. The focus of the solicitations varies from year to year based on research priorities and available funding.

To a lesser extent, NIJ funds research, development, and evaluation activities through agreements with other Federal agencies. Those agreements may be non-competitive in nature.

Exclusive of its formula grants programs, as of Fiscal Year 2009, less than one percent of the total amount of NIJ's annual awards was non-competitive. NIJ's policy is to make non-competitive awards only under the following circumstances:

- Only one reasonable source—instances where only one responsible applicant can perform the work of the proposed award. Circumstances under which this may occur include when the NIJ Director has determined in writing that:
 - The applicant has proprietary information or proposes a project involving a unique idea, method, or approach toward advancing criminal justice, policy, and practice in the United States.
 - The applicant has made a substantial investment in an activity that would advance criminal justice policy and practice in the United States. The majority of NIJ's non-competitive awards to other Federal agencies fall into this category. These

Guidelines on the Administration and Management of NIJ Grant Programs

- The applicant is the only entity known to possess the capability to perform the work.
- Compelling public interest—instances where the NIJ Director has determined in writing that exigent, urgent, or other compelling circumstances exist that make it in the public interest to make an award non-competitively. One example of such an instance might be an unusual and compelling urgency to execute a pilot project within a short window of opportunity to affect a public policy decision.
- Statutory requirements—instances where a funding recipient is specified by an appropriations act or other applicable law.
- Recommendations in Congressional reports, when a non-competitive award would be consistent with applicable law—instances where a House, Senate, or Conference Report accompanying an appropriations act or other law recommends an award to a particular recipient, and an award may be made consistent with applicable law, including any applicable executive orders.

In keeping with Executive Order 12988, nothing in this guideline is intended to create any legal or procedural rights enforceable against the United States.

[Read the full text of Executive Order 12988 — Civil Justice Reform \(pdf, 8 pages\).](#)

The final Guidelines Regarding Non-Competitive Awards may be found at <http://www.ojp.usdoj.gov/nij/funding/non-competitive-awards.htm>

Date Posted: January 28, 2010

QUESTIONS

Questions regarding the guidance noted in this document may be directed to:

OFFICE OF OPERATIONS

Jamissen Freitag, OIFS and OST Primary Point of Contact

Sherran Thomas, ORE and International Center Primary Point of Contact

Portia Graham, Associate Office Director, Office of Operations

Diane T. Hughes, Office Director, Office of Operations

OFFICE OF INVESTIGATIVE AND FORENSIC SCIENCE

Michael Sheppo, Office Director

OFFICE OF SCIENCE AND TECHNOLOGY

George (Chris) Tillery, Acting Office Director

OFFICE OF RESEARCH AND EVALUATION

Angela Moore, Acting Office Director