

8. MERIT REVIEW, SELECTION, APPROVAL, AND NOTIFICATION PROCEDURES

A. Overview It is the policy of DOC to seek full and open competition for award of discretionary funds. Moreover, DOC financial assistance must be awarded through a merit-based review and selection process whenever possible. This Chapter prescribes the standards and procedures to be used by operating unit officials and grants officers for reviewing, selecting, approving, and notifying applicants of funding decisions. Procedures for review and selection of construction awards will be provided in Chapter 17. In the meantime, review and selection of applications for construction awards will be as stipulated in the *Federal Register* notice and FFO announcing the availability of Federal funds.

B. Review Standards

1. Applications. All applications for financial assistance should receive a fair, equitable, and objective review.

a. The following are minimum general requirements which must be met in order for any application to be processed for funding under DOC financial assistance programs:

- (1) Legislative authority to perform the work with financial assistance;
- (2) Funding availability;
- (3) Complete application package; and
- (4) Scope of work that is consistent with DOC's mission.

b. Applications should undergo an initial screening for conformance with the minimum general requirements and any mandatory technical and administrative requirements stated in the program's regulations, *Federal Register* notices, and FFO. The Program Office must document and maintain a record of reason(s) if any application is determined to be incomplete.

c. Applications which have successfully completed an initial screening are then subject to the objective merit review as provided in B.2 and B.3.

2. Nondiscretionary Funds All awards made with nondiscretionary funds shall be subject to an objective merit review by at least one reviewer who is professionally and technically qualified to conduct the review. This review is limited to technical and/or cost matters.

3. Discretionary Funds

a. Except as provided below, all awards made with discretionary funds shall be subject to an objective merit review by a group of at least three professionally and technically qualified reviewers. This review is limited to technical and/or cost matters and should be separate from any programmatic review of program/policy factors, which may be considered in making a selection/non-selection decision.

b. An objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the program official with responsibility for deciding whether to recommend funding for an award.

(1) The merit review for new competitive awards and competitive amendments for renewal shall be in accordance with stated evaluation criteria set forth in the applicable program regulations, *Federal Register* notice, and FFO. The merit review procedures must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the program must set out, at a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selection. This should cover the procedures to be used when an adverse recommendation has been received through the objective merit review process or when selection for funding recommendations may be made out of rank order or when selection for funding differs from the recommendations resulting from the merit review process. For example, published funding priorities may affect final selection for funding.

(2) The merit review for new noncompetitive awards shall consist of an objective merit review by a group of at least three professionally and technically qualified reviewers.

(3) Amendments for noncompetitive renewals and continuations of noncompetitive awards are not subject to a merit review by three qualified reviewers if there has been no substantial change in the scope of work of the original project.

4. Reviewers of Applications

a. The DOC shall select reviewers on the basis of their professional qualifications and expertise. Reviewers of any particular application may be any mixture of Federal or non-Federal experts, sometimes including individuals from within the cognizant program office. However, the selecting official should not be involved in the review of applications for the purpose of determining whether to recommend the application for approval. If it becomes necessary for a selecting official to review applications for this purpose, the involvement of that selecting official shall be determined after review and comment by FALD at the explicit and prior written consent of the Grants Officer, and the official grant file must contain documentation demonstrating that there is no conflict of interest. In addition, a review panel should have at least one member who is outside the chain of command of the selecting official whenever possible. Reviewers must evaluate and, in some cases score, the technical merits of applications and accompanying proposals.

b. Reviewers must comply with the requirements for the avoidance of conflict of interest which are discussed at Chapter 16, Section D., of this Manual. In addition, each reviewer shall be required to certify in writing that he or she will use the application information only for review and to treat it in confidence except to the extent that the information is available to the general public from any source without restriction as to its use. Further, each reviewer must agree to comply with any notice or restriction placed on the application. Upon completion of the review, the reviewer shall return or destroy all copies of the application and accompanying proposals (or abstracts, if any) to DOC; and unless authorized by DOC, the reviewer shall not contact the applicant concerning any aspect of the application. See Form CD-571 in Appendix A of this Manual.

c. When using experts from the private sector to review grant proposals, program officials should consider whether the Paperwork Reduction Act (PRA) will apply when recruiting reviewers. If potential reviewers are asked to supply information other than a standard resume, it is likely that the information requested will be subject to the PRA. The appropriate information collection office should be contacted so that a determination can be made on the applicability of the PRA.

5. Review Groups/Panels A review group may take the form of the following:

a. **Field Readers/Mail Review.** An objective merit review of applications may be obtained by using field readers to whom applications are sent for review and comment. Field readers may also be used as an adjunct to financial assistance application review committees when, for example, the type of expertise needed or the volume of financial assistance applications to be reviewed requires such auxiliary capacity.

b. **Panels/Ad Hoc Committees.** A panel or ad hoc review committee can be used to obtain consensus advice or independent recommendations on the technical merits of applications. Panels including non-Federal personnel should not use consensus scoring unless they comply with the requirements of the Federal Advisory Committee Act.

c. **Federal Advisory Committees.** These committees are generally only appropriate to review financial assistance applications when required by legislation. They must be established in accordance with the Federal Advisory Committee Act. The OGC can provide advice about the Federal Advisory Committee Act. Program offices should be aware that any of the following may be deemed Federal Advisory Committees within the Act:

- (1) review groups with fixed membership and regular meetings;
- (2) formally structured review groups which elect or appoint their officers; or
- (3) review groups which provide consensus advice, by voting or scoring as a group, rather than by having each member of the group score or vote on each application as an individual reviewer.

C. Evaluation and Selection Requirements for Competition. This Section contains procedures to be followed in conducting a full and open competition for discretionary awards. The selection procedures fall into two categories. One category, Group Competition, is that in which all applications are grouped together to compete with one another and are ranked in order of the independent reviewers' scores. The second category, Individual Qualification, is a review where each single application is judged individually to determine its qualifications based on published criteria (e.g., the notice may stipulate that the first complete applications received that meet the minimum published requirements will be approved until the available funds are exhausted). The minimum requirements for each selection category are listed below.

[**Note:** The Program Office may also implement additional tiers of internal reviews between the independent or technical review and the final selection stage as long as the additional internal reviews are described in the *Federal Register* notice and FFO, along with the evaluation and selection criteria.]

1. Group Competition Based solely on independent reviewers' evaluation and scoring of each complete application which was received in accordance with the requirements of the notice, the Program Office must prepare a rank ordering of the applications. The selecting official must use the evaluation and other selection criteria published in the solicitation as the standard by which applications will be measured when making recommendations to determine successful applicants. The selecting official must prepare a package that demonstrates that the process is in compliance with the procedures published in the *Federal Register*, FFO, or in the program regulations and summarizing the results of the competitive review that consists of the following documentation:

- a. Copy of authorizing legislation and appropriations act (only relevant pages);
- b. Copy of the *Federal Register* notice and FFO, which solicited applications;
- c. Copy of any review instructions and checklists and/or other review documents provided to the independent reviewers;
- d. List of reviewers (may be coded to protect the privacy of the reviewers);
- e. List of all applications/proposals received;
- f. List of all applications/proposals rejected and the reason(s) for rejection;
- g. List by rank order of the results of the merit review of applications/proposals (including the review of pre-proposals, if such a review will result in one or more applicants being prohibited from submitting full proposals and thereby not being able to compete further for an award) by the independent reviewers, to include reviewers' scores and the average score of each application;

- h. Copies of completed reviewer's score or evaluation sheets;
- i. List of applications/proposals selected and recommended for funding by the selecting official and the reason as allowed by the published criteria for selection, including justification for funding application if out of rank order;
- j. A copy of FALD comments, if any, and the Program Officer's response; and
- k. Identification of the selecting official.

2. Individual Qualification Based on the reviewer evaluations of each complete application which was received in accordance with the requirements of the notice, the Program Office must adequately document the selection process. The selecting official will use the reviewer/panel evaluations and other selection criteria published in the solicitation in making recommendations to determine the successful applicants. The selecting official must prepare a package that demonstrates that the process is in compliance with the procedures published in the *Federal Register*, FFO, or in the program regulations and summarizing the results of the review that consists of the following documentation:

- a. Copy of authorizing legislation and appropriations act (only relevant pages);
- b. Copy of the *Federal Register* notice and FFO, which solicited applications;
- c. Copy of any review instructions and checklists and/or other review documents provided to the reviewers;
- d. List of reviewers (may be coded to protect the privacy of the reviewers);
- e. Evaluation of the application and accompanying proposal and basis for selection;
- f. A copy of FALD comments, if any, and the Program Officer's response; and
- g. Identification of the selecting official.

D. Review Process for Applications for Competitive Awards

1. Federal Register Notice and FFO. Applications must be solicited via notice in the *Federal Register* and FFO posted at Grants.gov in accordance with the Guidelines at Chapter 19, "Guidelines for the Preparation of Public Notices Announcing the Availability of Financial Assistance Funds - Funding Opportunities, *Federal Register* Notices" of this Manual.

2. Program Office Review Upon receipt of applications, Program Office staff will review applications for completeness and to ensure that all requirements of the *Federal Register* notice, FFO, and the authorizing statute have been met. The Program Office

will arrange for all complete applications to be reviewed by a group of three or more reviewers in accordance with Section B. of this chapter. In coordination with the Grants Office, the Program Office may conduct negotiations with applicants deemed meritorious by the review panel and determined by the Program Office to stand a reasonable chance of being funded.

3. Grants Office Review. The Grants Office will conduct a final review of all applications recommended for funding by the Selecting Official. The Grants Officer is the DOC official who makes the final decision for the government on whether to fund an application. The Grants Officer's final decision must be consistent with published policies, e.g., the applicant is not delinquent on a Federal debt.

4. OGC Review The OGC will review grant applications and supporting documents for proposed awards where Federal funding exceeds \$100,000. The OGC will advise the Grants Officer on all matters related to law and the legal form and effect of these proposed award actions. The OGC will be available to assist and respond to questions about any individual financial assistance action.

5. OIG Review The OIG will conduct pre-award screening of proposed recipients and advise the Grants Officer whether the applicant should be considered a responsible recipient or whether there are conditions which draw into question the business integrity, honesty, financial stability, or practices of the applicant and/or its key officials.

E. Review Process for Applications for Institutional Awards

1. New Recipients New recipients under institutional award programs must be selected after full and open competition. The procedures in Section D. of this chapter should be followed in the initial selection of a new recipient under a discretionary institutional program.

2. Future Awards Once a recipient has been approved for funding under an institutional award, the procedures used for applications for nondiscretionary funding in Section G. of this chapter will be followed for future applications for subsequent new awards under the program if the incumbent recipient is performing satisfactorily.

3. Periodic Reviews. Reviews of programs that make institutional awards must be conducted at least once every five years to evaluate the effectiveness and continued desirability of the use of institutional awards in accordance with Chapter 16, Section K.2., of this Manual. The results of these reviews must be a consideration by both the Program Officer and the Grants Officer in making a determination to continue providing funding without competition to each recipient of an institutional award.

F. Review Process for Applications for Noncompetitive Awards Made with Discretionary Funds The following procedures will be followed when the Program Office is considering a noncompetitive application for discretionary funding.

1. Program Office Review

a. The Program Office, in consultation with the Grants Office, initiates the process of deciding whether to fund a noncompetitive award with discretionary funds by determining whether the application meets the criteria listed below. The Program Office will arrange for the application to be reviewed in accordance with the review standards in Section B.3 .b.(2) or (3) of this chapter. The purpose of this review is to provide advice to the selecting official as to the technical soundness and merits of the application. If the application does not meet the criteria for consideration as a noncompetitive award, it will be returned by the Program Office to the applicant with an explanation as to why it cannot be considered.

b. If the application warrants review on a noncompetitive basis, an appropriate program official must provide to the Grants Officer for approval a written justification for the noncompetitive award. The justification for award without competition must include one or more of the conditions listed below and must provide sufficient basis for the determination(s):

(1) Only One Source Identified. There may be instances where only one responsible applicant can perform the work of the proposed award. The following are some of the circumstances in which that might occur:

(a) The applicant organization has proprietary information. In the case of the applicant organization having proprietary information, the project officer should be able to describe what the proprietary information is that is offered by the applicant and why it is that no others could possibly possess the information. This should be substantiated by the program officer in the justification; an applicant simply claiming it would not be sufficient. The project officer should state in writing that, based on his or her own expertise or the expertise of others he or she has consulted, the applicant has proprietary information.

(b) The applicant organization has made a substantial investment in the activity. In the case of the applicant organization having made a substantial investment in the activity, the nature and amount of that investment should be described. The applicant's receipt of previous Federal awards for the activity does not constitute substantial investment. The applicant's own resources must be involved.

(c) The applicant organization is proposing a project that involves a unique idea, method, or approach. In the case of the applicant organization proposing a project with a unique idea, method, or approach the nature of the idea, method, or approach and what makes it unique should be described.

(d) The applicant organization is the only organization known to possess the capability to perform the work. In the case of the applicant organization being the only

one known to possess the capability to perform the work, the project officer has to describe how that was determined. The justification could be based on the specific situation involving the project (for example, the recipient needs to be a university that awards doctoral degrees and the identified recipient is the only one in the targeted geographic area which does that) or the project officer's efforts to determine if other organizations can do the work (for example, by contacting other potential recipients to determine if they have the capability or interest in carrying out the proposed project).

(2) Unusual and Compelling Urgency. The work to be conducted is of such an unusual and compelling urgency that the public interest would be seriously injured unless the Program Office is allowed to limit or suspend competition for the proposed award.

(3) International Agreement. Competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization.

(4) National Security. Full and open competition is not required when the Secretary of Commerce determines in writing that public disclosure of the support proposed to be provided under the award would compromise the national security.

(5) Public Interest. Competition is not required when the Head of the Operating Unit determines in writing that it is not in the public interest in a particular case to seek full and open competition for an award. A rationale basis must be set forth in the written determination. An example of a situation that might support a public interest determination is the implementation of a pilot project.

(6) Congressional Direction. Competition is not required when the Operating Unit's Chief Financial Officer and/or Budget Officer or designee has provided notification to the Program Office that Congress has expressed its intent to fund the application by including language in the House Report, the Senate Report, and/or the Conference Report accompanying appropriations acts identifying a project, recipient, or both. Other forms of legislative history (e.g., floor debates, insertions in the Congressional Record, etc.) or Congressional communications (e.g., press releases, letters to agencies, discussions with staff, etc.) independent of report language shall not be considered a basis for justifying issuance of a discretionary award without competition. However, these other forms of legislative history or communications may be used to identify the recipient in those situations where Congress expresses its intent to fund a project but does not identify a specific recipient in the report language accompanying the appropriations act. These other forms of legislative history or communications may also be used to identify the project in those situations where Congress expresses its intent to fund a recipient but does not identify a specific project in the report language accompanying the appropriations act.

c. If the application is determined to be meritorious and appropriate for funding on a noncompetitive basis, the Program Office, in conjunction with the Grants Office, will negotiate the terms and conditions of the award and the level of funding.

2. Grants Office Review The Grants Office will conduct a final review of all proposed noncompetitive applications recommended for funding by the selecting official. The Grants Officer is the DOC official who makes the final decision for the government on the acceptability of the justification for award without competition and whether to fund noncompetitive applications.

3. OGC Review The OGC reviews all noncompetitive applications and supporting documentation proposed for award to advise the Grants Officer as to legal form and effect.

4. OIG Review The OIG will conduct pre-award screening of proposed applicants and advise the Grants Officer whether the applicant should be considered a responsible recipient or whether there are conditions which draw into question the business integrity, honesty, financial stability, or practices of the applicant and/or its key officials.

G. Review Process for Applications for Awards Mandated or Limited by Statute

1. Notice. Only eligible applicants must be notified of the availability of funds for nondiscretionary awards. The notice must be in writing and it may take the form of a *Federal Register* notice, letter to all eligible applicants, or other appropriate form(s) of written notice.

2. Program Office Review The Program Office staff will conduct the initial screening of the application(s) in accordance with Section B of the Chapter, review the application(s) for accuracy and completeness, and will conduct any necessary negotiations with the applicant(s). The Program Office will arrange for the application(s) to be reviewed by at least one merit reviewer. The purpose of this review is to provide advice to the selecting official as to the technical soundness and merits of the application. If deficiencies are identified, the applicant will be contacted by the Program Office staff and asked to revise the proposal and application accordingly.

3. Grants Office Review In coordination with the Program Office, OGC, OIG, and other offices as appropriate, the Grants Office will conduct a final review of all applications for nondiscretionary funds that are recommended for funding by the appropriate program official. The Grants Officer is the DOC official who approves the application for funding. The Grants Officer's final decision must be consistent with published policies, e.g., the applicant is not delinquent on a Federal debt.

4. OGC Review The OGC will review all nondiscretionary applications and supporting documents for proposed awards to advise the Grants Officer on all matters related to law and the legal form and effect of the proposed award actions.

5. OIG Review The OIG will conduct pre-award screening of proposed recipients and advise the Grants Officer whether the applicant should be considered a responsible recipient or whether there are conditions which draw into question the business integrity, honesty, financial stability, or practices of the applicant and/or its key officials.

H. Congressional Notification The OAM is developing a database which will automate the Congressional notifications and Federal Assistance Award Data System (FAADS).

1. Once an award with Federal funding of more than \$100,000 is ready to be approved, the Grants Office shall provide information for the Congressional notification to OLIA. The DOC Office of Legislative and Intergovernmental Affairs (OLIA) will deploy the Grants Notification System (GNS), an automated management and notification tool, in FY 2007. All DOC operating units will be expected to interface with GNS and utilize it in their congressional notification process. Information for awards with Federal funding of \$100,000 or less shall be provided to the appropriate Congressional affairs office within the operating unit. For multi-year awards, the amount to be announced is the initial amount to be obligated, not the total amount of the award; subsequent funding is reported when the additional funding is added to the award. Information for the FAADS will be reported on a quarterly basis to OAM for consolidation and submission to the Bureau of the Census.

2. Once an award with Federal funding is ready to be approved, the Grants Office shall provide electronic information required for the Congressional notification and for the FAADS. For multi-year awards, the amount to be announced is the initial amount to be obligated, not the total amount of the award; subsequent funding is reported when the additional funding is added to the award. OLIA should notify Congress or other appropriate officials within two workdays that the proposed awards are pending and will be made shortly. OLIA may, at its discretion, authorize a different procedure for notifying Congress of pending awards. Three workdays after submission of the electronic information, the Grants Officer may approve the award, unless OLIA has placed a "hold" on the award in the database. For example, an award not being "held" by OLIA could be approved by the Grants Officer on Friday if information was electronically provided to the database on Tuesday.

I. Obligation of Funds The cognizant Grants Officer is the only official authorized to sign awards to obligate funds for the Department for grants and cooperative agreements. The Grants Officer's decision to obligate funds must be an independent decision, made only after he/she is personally satisfied that it is appropriate to make the award. The Grants Officer's signature on the Form CD-450, "Financial Assistance Award," or on the Form CD-451, "Amendment to Financial Assistance Award," constitutes an obligation of Federal funding. Grants Officers must promptly notify Program and Accounting/Finance Offices when funds have been obligated.

J. Notice to Applicants

1. **Successful Applicants** The Grants Officer will notify successful applicants in writing when they have been selected for an award. Prior to official Grants Officer notification, other officials and employees from the operating unit are prohibited from

either formally or informally notifying applicants verbally or in writing that they have been selected for awards.

2. Unsuccessful Applicants

a. After consultation with the Program Officer, the Grants Officer shall determine the best method for notifying unsuccessful applicants. These notifications must be in writing. Notification can take place in either of the following ways:

(1) As soon as the Grants Officer has notified the successful applicants in writing that they have been selected for an award, the Program Office will notify all unsuccessful applicants that they were not selected for funding.

(2) With approval of the Grants Officer, the Program Office may notify all unsuccessful applicants that their applications are not being recommended for funding when the selecting official has decided which applications to recommend to the Grants Officer for further action.

b. Applications, correspondence, and other records relating to unsuccessful (rejected or withdrawn) applications may be destroyed three years after rejection or withdrawal. This policy concerning disposition of unsuccessful applications should be included in the Federal Funding Opportunity announcement.

(1) Unsuccessful applicants may request a debriefing, which will provide constructive feedback that can assist applicants to develop improved proposals in the future. Briefings should take the form of advice to applicants on the strengths and weaknesses of their own proposal in terms of the published evaluation and review criteria.