

## CHAPTER 2. POLICY

- 2-1. OBJECTIVE. To establish uniform Departmental policy for the award and administration of discretionary grants and cooperative agreements.
- 2-2. APPLICABILITY. All organizational elements awarding and/or administering discretionary grant and cooperative agreement programs shall comply with the requirements of Chapters 2 and 3 to the extent that they are not inconsistent with other program regulations. Existent regulations which do not conform shall be modified and reissued in order to bring them into compliance with these policies and procedures. In addition, those discretionary grants and cooperative agreements which are awarded and administered by the Office of Procurement and Contracts in Headquarters or Regional Contracting Officers in the Field shall conform to Chapters 4 and 5 of this handbook.
- 2-3. FORM. Organizational elements shall publish discretionary grant and cooperative agreement policies and procedures, if required, in the form of regulations or handbooks. (This would be more likely in instances where Chapters 4 and 5 do not apply to a particular program.)
- 2-4. PROGRAM PURPOSE AND INSTRUMENT SELECTION.
- a. The Department has general authority to procure goods or services for its direct benefit and use. However, it has no general authority to provide assistance and the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224, codified at 31 USC 6301-6308) conveys no such authority. Only when the Department has legislative authority to provide assistance to a non-Federal entity can it use a grant or cooperative agreement, and then only for the recipients and purposes authorized.
  - b. When selecting the appropriate instrument (contract, grant or cooperative agreement) to be used, the organizational element must therefore first look to the specific authorizing legislation for authority to enter into assistance or contractual relationships. Then the organizational element shall select a legal instrument that, according to the criteria established in paragraph 2-4d(1), (2) and (3) of this

Handbook, matches the intended and authorized relationship specified in the authorizing legislation -- regardless of the terminology used in that legislation.

c. In making the selection of the appropriate instrument, the following items may also be considered:

- (1) The statement of programmatic purpose; and,
- (2) The purpose of the individual transaction.

d. Pursuant to OMB guidance which implemented Public Law 95-224:

(1) A grant agreement is to be used as the legal instrument reflecting a relationship between HUD and a State or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute and substantial Federal involvement is not anticipated.

(a) Substantial involvement is not anticipated when the terms of an assistance instrument indicate that the recipient can expect to run the project without agency collaboration, participation, or intervention as long as it is performed in accordance with the terms of the assistance instrument.

(b) Substantial involvement does not include:

1 approval of recipient plans or applications prior to award;

2 normal Federal stewardship during the project such as site visits, performance reporting, financial reporting, and audits to ensure that standards, objectives, terms, and conditions of the project are accomplished;

- 3 general statutory requirements agreed to in advance of award such as civil rights, environmental protection, and provisions for the handicapped;
  - 4 review of performance after completion;
  - 5 general administrative requirements such as those set forth in OMB Circulars A-21, A-87, A-110, A-122, A-133, and 24 CFR Part 85; and,
  - 6 unanticipated HUD involvement to correct deficiencies in project or financial performance from the terms of the assistance instrument.
- (2) A cooperative agreement is to be used as the legal instrument reflecting a relationship between HUD and a State or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services or anything of value to recipients to accomplish a public purpose of support or stimulation authorized by Federal statute and substantial Federal involvement is anticipated. (Substantial involvement is anticipated when the instrument indicates that the recipient can expect agency collaboration or participation, or close agency oversight and control beyond routine Federal stewardship of funding in the management of the project.)
- (a) Each cooperative agreement shall include an explicit statement of the nature, character, and extent of anticipated involvement.
  - (b) Examples of activities generally associated with substantial involvement are:
    - 1 authority to halt activity if specifications or work statements are not met;
    - 2 review and approval of one stage of work before another can begin;

- 3 review and approval of substantive provisions of proposed subgrants or contracts beyond existing Federal policy;
- 4 HUD and recipient collaboration or joint participation;
- 5 monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects;
- 6 highly prescriptive HUD requirements which limit recipient discretion;
- 7 review and approval of key personnel; and,
- 8 substantial, direct HUD operational involvement or participation during the assisted activity.

- (3) A procurement contract is to be used as the legal instrument reflecting a relationship between HUD and a State or local government or other recipient whenever the principal purpose of the instrument is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal government or when it is determined in a specific instance that the use of a procurement contract is appropriate.

Examples of acquisition are:

- (a) Projects which support Departmental administration and management funded from either the Working Capital Fund or the Salaries and Expenses account;
- (b) Construction or rehabilitation under the property disposition program;
- (c) Contracts for consulting services;

- (d) Surveys, studies and analyses which provide specific information desired by the Federal Government for its direct activities;
  - (e) Planning for Federal Government use;
  - (f) The generation of management information or other data for Federal Government use; and,
  - (g) Production of publications or audiovisual materials required primarily for directly conducting the operation of the Federal Government.
- (4) An "intermediary situation" makes selection of the appropriate legal instrument to be used by the Department difficult. These intermediary situations arise when the Department funds an organization which then provides technical assistance to eligible recipients. In these circumstances, the Grant Officer must determine whether to use a procurement contract or an assistance agreement, i.e., a grant or cooperative agreement, to reflect the relationship between HUD and the intermediary organization. A procurement contract should be used where it is the Department's purpose to acquire the services of an intermediary organization which will, in turn, deliver services to an authorized recipient. Where it is the Department's purpose to assist the intermediary organization, and HUD has the statutory authority to provide such assistance to the intermediary organization, then the Grant Officer should use a grant or cooperative agreement.

The distinction between "assisting" an intermediary and "acquiring the services" of an intermediary is not always clear and must be made on a case-by-case basis. Factors that the Grant Officer can look to for guidance include: (1) an examination of the purpose of the proposed activity, i.e., whether it is the Department's principle purpose to acquire services or to stimulate or support those services; (2) whether the program office is using an assistance agreement to avoid the statutory and regulatory requirements for competition; and (3) whether statutory authority exists for the award of an assistance agreement to an intermediary organization.

2-5. **BASIS OF AWARD.** Grant Officers shall make discretionary grant and cooperative agreement awards on the basis of:

- a. Applications submitted in response to an application kit; or,
- b. An unsolicited proposal.

2-6. **COMPETITION REQUIREMENTS.**

- a. Grant Officers shall solicit applications for discretionary grants and cooperative agreements in a manner which provides for the maximum amount of competition feasible, in consonance with program purposes.
- b. If a Grant Officer restricts eligibility in an application kit to less than all otherwise eligible applicants under paragraph c below, an explanation of why the restriction is necessary shall be included in the official file. Any restriction of eligibility shall be supported by a written determination approved by the responsible HAA. An announcement of recipients which receive awards under restricted eligibility procedures shall be published in the Federal Register (see 24 CFR §12.16(a) of HUD's implementation of the HUD Reform Act (HRA)). The HAA shall provide the necessary information to the Office of General Counsel (OGC), Regulations Division, so that OGC may prepare the Federal Register announcement.
- c. The eligibility of recipients and projects for discretionary grants and cooperative agreements shall be determined in accordance with the applicable statute or program regulation and this section.

2-7. **NOTICES OF FUNDING AVAILABILITY AND APPLICATION KITS.**

- a. **Public Notice.** For all competitive programs, an announcement of the availability of funding shall be published in the Federal Register. This Notice of Funding Availability (NOFA) shall, at a minimum, describe the form and procedures for applying for the assistance, provide the criteria by which applicants will be selected, and establish the application due date (or indicate that the specific due date will be stated in the application kit). In all cases, applicants will be given a minimum of

thirty (30) days to prepare their applications. Additional announcements may be made in other publications and media as necessary. (See Chapter 3 for detailed information on NOFA processing requirements).

- b. Form. A request for applications, i.e., an application kit, must be prepared in addition to the NOFA. Whereas the NOFA provides the public with notice of and salient information about a funding program, it is the application kit that provides potential applicants with comprehensive information on how to participate in the program. It shall be in the form of a publicly available document which invites the submission of applications by a common due date or within a prescribed period of time.
- c. Availability of Funds. Generally, the Grant Officer shall ensure that funds are available to support the award of the proposed grant or cooperative agreement prior to the release of the application kit. This is done through the issuance of a Form HUD-718, *Funds Reservation and Contract Authority*, or other approved reservation form, validated by the accounting office. In no event shall an award be executed before it is ascertained that funds are available.
- d. Contents. Each application kit shall state or incorporate by reference all information necessary to allow potential applicants to decide whether to submit an application, understand how applications will be evaluated, and understand their obligations should an award be made. While there will be some overlap in relation to information provided by the NOFA and the application kit, an application kit should generally provide the following:
  - (1) The authorization to solicit applications;
  - (2) A copy of the published NOFA, or a reference to the Federal Register issue, including the page number, in which it was published;\*
  - (3) The types of projects or activities eligible for support;
  - (4) Who is eligible to apply;

- (5) Application due date, time, and time zone (e.g., Eastern Standard), and a statement that late applications will be summarily rejected;\*
- (6) The expected duration of HUD support;
- (7) The type of award instrument anticipated;
- (8) The amount of money available for award, the expected number of awards, and the expected size of individual awards;
- (9) Catalog of Federal Domestic Assistance number for the program;
- (10) Application form or format to be used (including guidance on the expected order of information required in the application), location for application submission, and number of copies required;
- (11) Kinds of technical deficiencies which may be cured after the application deadline date has passed;\*
- (12) Checklist of application submission requirements;\*
- (13) The name, address, and phone number of the responsible HUD official to contact for additional information;
- (14) Evaluation criteria and the weight or relative importance of each;
- (15) A listing of program policy factors, if any, indicating the relative importance of each (see paragraph 2-10f);
- (16) Required pre-submission reviews and clearances, including a statement as to whether review under Executive Order 12372, "Intergovernmental Review of Federal Programs" is required;
- (17) Required certifications, assurances, and disclosures; and

- (18) Dates by which selections and awards are expected to be made and the disposition of unsuccessful applications.

\* See Chapter 3 for more information.

2-8. APPLICATION DEADLINE.

- a. Each application kit shall state a deadline date and time for submission of applications. The established deadline shall also apply to any amendments to an application initiated by the applicant unless otherwise stated in a program regulation.
- b. In establishing a deadline date and time, the Grant Officer should consider the nature of the eligible recipients, the geographic location/spread of eligible recipients, and the time available to make awards. Each application kit shall state that any application physically received at the designated office after the exact date and time specified for receipt will not be considered. There are no exceptions to this policy.

Documentation of receipt is the notation on the application wrapper of the time and date received by the designated office.

Further, each application kit shall state that applications sent telegraphically, i.e., by facsimile machine, will not be accepted. Cure information, however, may be submitted telegraphically if it is followed up in writing.

See paragraph 3-8 for more information on application deadlines and 3-9 for more information on the cure period.

- c. A Grant Officer may extend an established application deadline either by publishing a timely notice of the extension in the same manner as the application kit was publicized or by direct notice to all potential applicants. The extension of time shall apply to all applicants.
- d. Late applications shall be retained, and after the awards have been made, filed with the other unsuccessful applications; except that for

programs involving recurring application deadlines, a late application may be held for the next funding cycle with notification to the applicant to that effect. In no case shall late applications be considered for award as unsolicited proposals.

2-9. APPLICATION CONTENT.

- a. Applications shall be on the form or in the format specified in the application kit. Generally, applicants shall not be required to submit more than the original and two copies of the application.
- b. The application must be signed by an individual who is authorized to act for the applicant and to commit the applicant to comply with the terms and conditions of the instrument, if awarded.
- c. Generally, an application shall consist of:
  - (1) The Standard Form (SF) 424, *Application for Federal Assistance*, as a facesheet;
  - (2) A narrative description of the proposed project, the applicant's qualifications, and the applicant's plan for carrying out the project;
  - (3) The SF-424A, *Budget Information*, (for non-construction programs) or the SF-424C, *Budget Information*, (for construction programs) for budget preparation, with any supporting justification and documentation;
  - (4) The SF-424B, *Assurances*, (for non-construction programs) or the SF-424D, *Assurances*, (for construction programs) for pre-award assurances. Additional assurances may not be added to those on the SF-424B or 424D unless specifically required by statute; and,
  - (5) Any additional certifications, representations, or disclosures required by law or regulation, e.g., Drug-Free Workplace; Restrictions on Lobbying; Other Government Assistance (see Section 102 of the HRA; 24 CFR Part 12). (If the applicant

completed an SF-LLL, *Disclosure of Lobbying Activities*, the Grant Officer shall send the original form(s) to the Headquarters Office of Ethics. A copy shall also be maintained in the official file (see paragraph 2-24)).

2-10. APPLICATION REVIEW AND SELECTION.

- a. Applications shall be evaluated by reviewers appointed by the responsible HUD selection official. These reviewers constitute the Application Review Panel (ARP).
- b. 24 CFR Part 0 prescribes standards of conduct for HUD employees and special Government employees. The Grant Officer shall ensure that each reviewer becomes familiar with the provisions of Subpart A regarding conflicts of interest and of the reviewer's responsibility to inform the Grant Officer in writing if his/her participation in the evaluation process could be construed as a potential or apparent conflict of interest. The Grant Officer shall collect from all reviewers who are HUD employees a Form HUD-844, *Confidential Statement of Employment and Financial Interests*. Reviewers from another Government agency or from outside the Government shall complete Form HUD-844A, *Confidential Statement of Employment and Financial Interests (For Use by Special Government Employees)*. Such persons shall not be chosen as reviewers if they have any interest which conflicts with the subject under review, unless they divest all such interests.

HUD reviewers required to make annual submissions of the Form HUD-844 may provide a copy of their most recent annual submission and note "no change," if applicable. Such forms must be resigned and redated.

The Grant Officer shall forward all original Forms HUD-844 and HUD-844A to the Headquarters Office of Ethics.

- c. Each application will be reviewed initially for completeness and eligibility. The Grant Officer may reject an application which does not include all information and documentation required by the application kit if the Grant Officer considers the omission to be a major deficiency.

HUD may reject an application if the applicant is determined to be ineligible for award based upon the eligibility criteria stated in the application kit.

If the application contains technical deficiencies which are curable, the Grant Officer shall notify the applicant, in writing, of the deficiency and allow the applicant 14 calendar days from the date of HUD's letter to correct the deficiency. (See paragraph 3-9).

- d. Each complete and eligible application shall be evaluated in accordance with the evaluation factors stated in the application kit. At a minimum, the evaluation shall include a full reading of the application, scoring of the application on each evaluation criterion, and a record of the evaluation (narrative, formula, or a combination thereof) which justifies the funding decision.
- e. The Grant Officer shall assure that the evaluation criteria used in evaluating applications are those included in the NOFA and application kit. This responsibility includes assuring that no new criteria are added by the ARP, and that published criteria (program policy factors or evaluation criteria) are not changed after the application deadline date.
- f. Program policy factors are factors which the selection official may use to select a range of projects that would best serve program objectives. The Grant Officer shall describe in the application kit any program policy factor that may be used in making selections, the impact of such factors on the selection process, the justification for its use, and, if appropriate, the relative priority of each such factor. Examples of program policy factors are geographic distribution, diverse types and sizes of applicant entities, and diversity of methods, approaches, or kinds of projects.
- g. The results of the evaluation shall be provided to the responsible HUD selection official. Selection shall be made based on the evaluation, published program policy factors, if any, and comments, if any, under E.O. 12372 (Intergovernmental Review of Federal Programs). Such comments typically reflect the views of State and local officials that would be directly affected by the proposed assistance. For programs

covered by E.O. 12372, the Department must accommodate or explain why State process recommendations were not accepted.

2-11. UNSOLICITED PROPOSALS.

- a. General. The determination of the appropriate instrument for funding an unsolicited proposal should be made in accordance with paragraph 2-4 of this Handbook. However, all unsolicited proposals, whether for contracts or discretionary grants or cooperative agreements, should generally be treated uniformly from receipt through evaluation in accordance with the Federal Acquisition Regulation (FAR), Subparts 15.504, 15.505, 15.506, and the HUD Acquisition Regulation (HUDAR), Subpart 2415.5.
- b. Content of Unsolicited Proposals. In addition to any information required by program regulations, a full unsolicited proposal should contain the following basic information, as stated in FAR 15.505:
  - (1) Offeror's name and address and type of organization, e.g., profit, nonprofit, educational, small business;
  - (2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
  - (3) Identity of proprietary data to be used only for evaluation purposes;
  - (4) Names of other Federal, State, local agencies, or parties receiving the proposal or funding the proposed effort;
  - (5) Date of submission;
  - (6) Signature of a person authorized to represent and contractually commit the offeror;
  - (7) Concise title and abstract of the proposed effort;
  - (8) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to

be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of HUD's mission;

- (9) Names and biographical information on the offeror's key personnel who would be involved, including alternates;
- (10) Type of HUD support needed, e.g., facilities, equipment, materials, or personnel resources;
- (11) Proposed price or total estimated cost for the effort with supporting documentation in sufficient detail for meaningful evaluation;
- (12) Period of time for which the proposal is valid (a six-month minimum is suggested);
- (13) Type of funding instrument preferred, e.g., cost-reimbursement, fixed-price, etc;
- (14) Proposed duration of effort;
- (15) Brief description of the organization, previous experience in the field, and facilities to be used;
- (16) Required statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and
- (17) A discussion of how it meets the factors for rating an unsolicited proposal (See paragraph 2-11e).

Also, any unsolicited proposal for research must contain a commitment to provide cost sharing (see paragraph 2-20).

- c. Contact Points. In accordance with HUDAR 2415.506, unless otherwise specified in a Federal Register announcement, unsolicited proposals or summary proposal letters shall be submitted to the following contact points:

- (1) For research - Department of Housing and Urban Development, Assistant Secretary for Policy Development and Research, Division of Budget, Contracts, and Program Control, 451 7th Street, S.W., Washington, D. C. 20410;
- (2) For funding under the Secretary's Discretionary Fund Program - Department of Housing and Urban Development, Assistant Secretary for Community Planning and Development, Office of Program Policy Development, 451 7th Street, S.W., Washington, D.C. 20410; and,
- (3) For all others - Department of Housing and Urban Development, Director, Office of Procurement and Contracts, 451 7th Street, S.W., Washington, D.C. 20410.

The Office of Procurement and Contracts shall promptly transmit any unsolicited proposals received to the appropriate program offices for review and evaluation.

- d. Preliminary Review. A preliminary review shall be conducted to determine if the unsolicited proposal:
- (1) Contains sufficient technical and cost information;
  - (2) Has been approved by a responsible official or other representative authorized to contractually obligate the offeror; and,
  - (3) Contains the appropriate marking of proprietary data, if applicable (see FAR 15.509(a)).
- e. Evaluation. If the proposal does not meet the requirements of d(1), (2) and (3) above, the offeror shall be notified and provided an opportunity to submit the required data.

If the proposal does meet the requirements, it shall be provided a full, comprehensive evaluation as stated in FAR 15.506-2. Specifically,

evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

- (1) Unique or innovative methods, approaches or ideas originated or assembled by the offeror;
- (2) Overall scientific, technical, or socioeconomic merits of the proposal;
- (3) Potential contribution of the effort to HUD's mission;
- (4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives; and,
- (5) The offeror's capabilities, related experience, facilities, techniques, or unique combination of these which are integral factors for achieving the proposal objectives.

- f. **Final Determination.** If it is determined that an unsolicited proposal meets the criteria for a grant or cooperative agreement as stated in paragraph 2-4 of this Handbook, it is decided that the proposal will be funded, and competition is not determined to be feasible, the HAA shall execute a written determination justifying the restriction of eligibility to one source. In those cases where assistance projects have been approved by the Secretary in accordance with program regulations, the Secretary's decision abstract may serve as the written determination. The unsolicited proposal shall then be used as a basis for negotiation.

If it is determined that such an unsolicited proposal will not be funded, HUD shall return the proposal to the offeror, stating the reason(s) for rejection.

**Note:** Unsolicited proposals which are considered for contract awards must be processed in accordance with FAR 15.507.

2-12. COST/PRICE ANALYSIS.

a. Definitions.

- (1) Cost analysis means the review and evaluation of the cost data and judgmental factors which form the basis of the applicant's budget in order to develop an opinion as to the allowability, allocability, and reasonability of the budget.
- (2) Price analysis means the review and evaluation of a proposed price without evaluating separate cost elements.

b. Some form of cost or price analysis shall be performed by Grant Officers for each award. The type and extent of analysis should be based on:

- (1) The nature of the program;
- (2) The funding arrangement;
- (3) The size and nature of the project; and,
- (4) Previous experience with, or the capacity of, the recipient.

c. Cost/price analysis shall include all project costs, including any cost sharing. The results of the cost or price analysis shall be discussed in the negotiation records.

2-13. FUNDING ARRANGEMENT.

a. Types.

- (1) Cost-reimbursement awards provide for payment of allowable incurred costs to the extent prescribed in the award. Such awards establish an estimate of total HUD cost for the purpose of obligating HUD funds and determining a ceiling that the recipient may not exceed except at its own risk without the approval of the Grant Officer. Cost-reimbursement awards may provide for

advance payments by electronic funds transfer (Automated Clearing House Direct Deposit System) or Line of Credit Control Systems.

- (2) Fixed amount awards provide for payment of a firm fixed amount of HUD funding, regardless of actual cost, as prescribed in the award.
- b. HAAs shall determine and publish the funding arrangement for award programs. Discretion may be provided to Grant Officers to determine the funding arrangement on a transaction basis. In such cases, Grant Officers shall document the basis for selection of the funding arrangement in the negotiation record.
  - c. Given the uncertainties involved in discretionary grant and cooperative agreement programs, cost-reimbursement type awards generally are made. However, appropriate consideration to fixed amount awards shall be made if:
    - (1) The HUD funding amount is definitely less than the total actual cost of the project;
    - (2) The HUD funding amount is less than \$25,000 and it is determined that the HUD amount is less than the costs of administering a cost-reimbursement arrangement; or,
    - (3) The project scope is very specific and adequate cost data is available to establish a fixed amount award with assurance that the recipient will realize no increment above actual cost.

2-14. NEGOTIATION.

- a. After the selection of an application, the Grant Officer is responsible for entering into negotiations with the applicant, as necessary. Such negotiations are not a commitment that HUD will make an award.
- b. The purpose of negotiations is to establish mutual agreement between HUD and the prospective recipient as to project purpose, definition,

timing, HUD's role, and the resources appropriate to support the project. Negotiations may be conducted in person, by telephone, or in writing. Ordinarily, negotiations focus on special terms and conditions, budget items and funding amount, and proposed effort.

- c. Any changes from the original application resulting from negotiations must be explicitly included in the award document. Additionally, a file memorandum should be prepared to summarize negotiations including the participants, dates, positions, and agreements reached.

**2-15. INTEGRITY AND CAPACITY OF THE PROSPECTIVE RECIPIENT.**

- a. Prior to award, the Grant Officer shall examine the performance of a prospective recipient to ensure that they have the ability and capacity to comply with all award requirements.
- b. The Grant Officer shall review the General Services Administration's Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs and, if necessary, obtain previous participation information from the Office of Inspector General in determining whether prospective recipients should receive awards. Applicants which are debarred or suspended may not receive an award.
- c. Generally, the signature of the authorized representative of the applicant on the application shall represent the applicant's pre-award assurance that it is in compliance with or shall comply with:
  - (1) The standards for financial management systems, property, procurement, and other terms and conditions stated in the application kit; and
  - (2) Generally applicable requirements.
- d. HUD shall reserve the right to make a pre-award review of the applicant's ability to manage and account for the award. In accordance with OMB Circular A-129, "Managing Federal Credit Programs," the Grant Officer shall obtain and use credit reports to determine the extent and status of financial dealings between the applicant and the

Government and the private sector if the applicant is a non-governmental entity and HUD has no prior experience in dealing with that applicant. The Grant Officer may obtain a credit report for any applicant if he/she believes that past performance has been substandard or there is evidence of financial irregularities. In addition, annual audit reports, when available, should be reviewed to determine the applicant's financial activities, compliance with applicable laws and regulations, and the adequacy of the applicant's internal accounting and administrative controls over Federal expenditures.

- e. If the applicant is not in compliance or cannot or will not comply with the standards and requirements, the Grant Officer shall so determine in writing and may use special restrictive conditions or disapprove the application.
- f. If the above Grant Officer determination results from a history of poor performance, lack of financial stability, or noncompliance with the standards stated in c(1) above, special restrictive conditions as provided in 24 CFR 85.12 or OMB Circular A-110, paragraph 9, may be imposed on an applicant upon written notification of: the restrictive conditions; the reason(s) for imposing them; the corrective action necessary to remove them; and, the method of requesting reconsideration of the restrictions imposed.

2-16. AWARD.

- a. Each discretionary grant or cooperative agreement award shall be made in writing by a Grant Officer and shall include the following:
  - (1) A unique instrument identification number;
  - (2) The duration of the award;
  - (3) The source and amount of HUD funds obligated;
  - (4) The amount and/or percentage and terms of any required cost sharing;

- (5) The instrument type, whether grant or cooperative agreement. If the instrument is a cooperative agreement, the substantial involvement of HUD shall be stated;
  - (6) The HUD funding arrangement, whether fixed-price or cost-reimbursement;
  - (7) The general terms and conditions of award, including or incorporating by reference the applicable program statute or regulations, OMB Circulars, and uniform administrative requirements in OMB Circular A-110 or 24 CFR 85;
  - (8) The special terms and conditions of award, including those necessary to achieve program objectives or protect HUD's interests;
  - (9) A reference to, or inclusion of, the approved application, as negotiated, or other statement of the purpose and objectives of the approved project (e.g., statement of work); and,
  - (10) Any other provisions necessary to establish the respective rights, duties, obligations, and responsibilities of HUD and the recipient.
- b. Generally, awards are signed by the authorized representative of the recipient and the Grant Officer. Awards may be signed by the Grant Officer without a recipient counter-signature only when an application is accepted in its entirety by HUD without change, and the application was signed by a person with authority to bind the recipient.
  - c. In signing an award or amendment, the Grant Officer is certifying HUD's compliance with all applicable requirements for award or amendment.

## 2-17. NOTIFICATIONS.

- a. Congressional/Intergovernmental - The Grant Officer shall coordinate with the Office of Legislation and Congressional Relations and the

Office of Intergovernmental Relations concerning required notifications of assistance awards.

- b. Public Notice. In accordance with 24 CFR § 12.16, the responsible HAA shall notify the Office of General Counsel, Regulations Division of all selected recipients, including those recipients that are selected without competition. OGC shall prepare and publish a Notice in the Federal Register at least quarterly of all such decisions made by the Department.
- c. Unsuccessful Applicants. The Grant Officer shall promptly notify in writing each applicant whose application has not received an award. The notice shall briefly explain why the application was not selected and shall offer the unsuccessful applicant an opportunity for a more detailed explanation upon request.

2-18 PROHIBITION AGAINST ADVANCE DISCLOSURE OF FUNDING DECISIONS.

- a. General. Section 103 of the HUD Reform Act (HRA) prohibits the disclosure of certain information by HUD employees to persons not authorized to receive that information during the selection process. Section 103 also authorizes HUD to impose civil money penalties on employees who knowingly violate these prohibitions and to impose other sanctions upon applicants for assistance who may benefit from the prohibited disclosure. The objective is to preclude an applicant from receiving or obtaining information from HUD that would give that applicant an unfair advantage over other applicants who are competing for the assistance.
- b. Selection Process. The HRA states that such prohibitions are applicable during the "selection process". In defining when that process begins, HUD has determined, in its implementation at 24 CFR Part 4, that the selection process is initiated when the responsible Assistant Secretary for an assistance program forwards information on the program and a written request to the Office of General Counsel (OGC) to prepare a Notice of Funding Availability (NOFA) for publication in the Federal Register. The Assistant Secretary shall, simultaneously with his/her request to OGC, send a copy of the request to the Headquarters Office

of Ethics, and also, notify in writing all employees who will likely be involved in the selection process of their ethical responsibilities and restrictions. The Headquarters Office of Ethics must also be informed in writing by the Assistant Secretary that the affected employees have been notified of their obligations. The selection process concludes with the announcement of recipients, generally by the Office of Legislation and Congressional Relations.

- c. Covered Selection Information. Covered selection information, which may not be disclosed, is defined as information:
- (1) That is required by statute, regulation, or order to be confidential;
  - (2) That is contained in an application or request for assistance; or
  - (3) That is otherwise used in arriving at the Department's decision to make assistance available, unless the information is generally available to the public.

The following examples, while not all inclusive, are illustrative of the types of covered selection information which may not be disclosed:

- information regarding any applicant's relative standing;
- the amount of assistance requested by any other applicant;
- the identity of any other applicant;
- the number of applicants; and,
- any information contained in another application.

- d. Permissible Disclosures.
- (1) Disclosures by HUD employees. It is recognized that some form of contact must take place between HUD staff and the applicant community (or others) during the selection process. Examples of information a HUD employee may disclose include:

- (a) Information that has been made public;
  - (b) Information about HUD program requirements, including unpublished policy statements, provided such information is disclosed on a uniform basis to any applicant;
  - (c) The dates by which particular decisions in the selection process will be made;
  - (d) Information needed for an official audit or investigation, if the disclosure is made to an auditor or investigator authorized by the Inspector General to conduct the audit or investigation;
  - (e) Information needed for legal activities, including litigation, if the disclosure is made to an attorney who is representing or is otherwise responsible for HUD in connection with such activities; or,
  - (f) Information needed to process an application, e.g., environmental or budget reviews.
- (2) Disclosures by Grant Officers. The following disclosures may be made only by the Grant Officer or his/her designee:
- (a) The failure of an applicant to qualify after a preliminary review for eligibility and completeness (see paragraph 2-10c) with respect to his/her application and the reason(s) for the failure to qualify;
  - (b) Contacting an applicant for the purpose of seeking a clarification of the terms of the application, including a request for additional information as well as notification of correctable technical deficiencies (see paragraph 2-10d); or,
  - (c) The failure of the applicant to be determined to be technically acceptable after a full review.

Examples cannot cover every possible scenario. Ultimately, the judgement of the Grant Officer must be relied upon to decide those circumstances which are not clear.

e. Penalties and Applicant Sanctions.

- (1) Employee Penalties. Should a HUD employee **knowingly and materially** violate any of the above provisions, a civil money penalty, not to exceed \$10,000. for each violation, may be imposed through the Departmental Civil Penalties Panel in accordance with the provisions of 24 CFR Part 30. Employees who act carelessly or negligently, e.g., by leaving documents with selection information accessible to applicants or unauthorized employees, may be subject to other disciplinary action.

Procedures for actions to be taken upon discovery of a violation, investigations by the Office of Inspector General, review of the Inspector General's report by the Office of Ethics, and action by the Office of Ethics are at 24 CFR § 4.115, 4.120, 4.125, and 4.130, respectively.

- (2) Applicant Sanctions. Administrative sanctions may also be taken against applicants who have received covered selection information in accordance with the provisions of 24 CFR § 4.200.

2-19. COST DETERMINATIONS.

- a. General. Costs allowable under cost-reimbursement type discretionary grants and cooperative agreements shall be determined in accordance with the applicable cost principles cited in paragraph b below. Additionally, the applicable cost principles shall be used as guidance in determining the amount of fixed amount (lump sum) grants and cooperative agreements.
- b. Cost Principles. The following cost principles in effect on the date of award shall apply to HUD discretionary grants and cooperative agreements as specified:

- (1) OMB Circular A-21, Cost Principles Applicable to Grants, Contracts and Other Agreements with Institutions of Higher Education.
  - (2) OMB Circular A-87, Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments. These cost principles shall also apply to Indian Tribal Governments.
  - (3) OMB Circular A-122, Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Organizations.
  - (4) FAR Subpart 31.2, Cost Principles for Contracts with Commercial Organizations. These cost principles shall also apply to all other recipients not identified above (e.g., individuals and foreign entities).
- c. Approvals. Costs that by the terms of the cost principles or other terms and conditions of award require the approval of the Grant Officer shall be considered to have been approved if they are included in an approved direct cost budget or an approved final indirect cost rate or amount. If costs requiring prior approval are not included in the approved direct cost budget, specific prior written approval must be obtained from the Grant Officer. No approval may be given which is inconsistent with the purpose of the award or which deviates without authorization from the cost principles.
- d. Indirect Costs.
- (1) HUD shall provide for reimbursement of indirect costs in accordance with either:
    - (a) Applicable approved indirect cost rates established by the recipient's cognizant Federal agency responsible for establishment of such rates; or,

- (b) Negotiated agreement between the Grant Officer and recipient based on applicable cost principles if no cognizant Federal agency exists.
- (2) In no case shall indirect costs create an obligation for HUD to bear any costs in excess of the maximum HUD obligation stated in the award.
- e. Fee or profit. No increment above cost may be paid to a recipient under a HUD discretionary grant or cooperative agreement.

2-20. COST SHARING.

- a. General. Cost sharing refers to the portion of project costs to be contributed by the recipient. Depending on the source and nature of the requirement, terms such as "matching share" or "cost participation" may also be used to denote cost sharing. A requirement for cost sharing may be stated in statute or regulation or may be negotiated. The nature and specific terms of the cost sharing is a matter of negotiation between the Grant Officer and the recipient.
- b. Types. Cost sharing may be expressed in award documents as:
  - (1) A fixed percentage of project costs;
  - (2) Recipient responsibility for specified elements or items of project costs;
  - (3) Recipient responsibility for project costs in excess of the HUD share;
  - (4) Recipient responsibility for some or all costs during a specified period of the project; or,
  - (5) Recipient best efforts to accomplish cost sharing at a specified target.

- c. Composition. Cost sharing may be derived from:
- (1) Project costs incurred by the recipient whether or not they require a cash outlay;
  - (2) Project costs financed with cash contributed to the recipient by non-Federal parties; or,
  - (3) Project costs represented by the value of goods and services donated to the recipient by non-Federal parties.
- d. Allowability. To be allowable as cost sharing, cash expenditures or in-kind contributions must:
- (1) Be verifiable from the recipient's records;
  - (2) Not be included as a cost under any other federally assisted project or program;
  - (3) Meet all requirements of the terms and conditions of award including the tests of allowability of the applicable cost principles;
  - (4) Not be paid by the Federal government under another agreement unless authorized under the other agreement and the laws and regulations to which it is subject; and,
  - (5) Be accountable as project costs on the specific project being funded as described in the project description (e.g., statement of work). Costs on "related" projects not included in the project description are not allowable.

This last point is particularly important. One of the major problems with cost sharing agreements is that either poor project definition, poor documentation, or both, of the recipient's contribution may lead to costs being disallowed and result in the recipient owing money to HUD. Therefore, exactly what the project is becomes very important. The project description should describe what HUD wishes to fund, e.g., one piece of a larger project or the entire larger project itself.

- e. Valuation. The value of in-kind contributions shall be determined in accordance with the standards stated in 24 CFR 85.24 for State, local and Indian tribal governments and OMB Circular A-110, Attachment E for all other recipients.

2-21. GENERALLY APPLICABLE REQUIREMENTS.

- a. Generally applicable requirements are Federal policies and administrative requirements that apply to assistance awards of two or more Federal agencies (e.g., nondiscrimination, environment, etc.). Any individual requirement may or may not apply to any Federal program, award, or recipient. HAAs are responsible for publicizing the applicability of requirements to their programs. Grant Officers shall assure that each award states or incorporates by reference all generally applicable requirements.
- b. Uniform administrative requirements. HAAs shall provide for implementation of 24 CFR Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" and OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," as applicable, in regulations and/or program policy documents.

2-22. DISPUTES.

HAAs shall issue program policy and procedures for resolution of disputes under discretionary grants and cooperative agreements. Generally, these procedures shall provide:

- a. Negotiated efforts between the Grant Officer and recipient to resolve differences;
- b. When such efforts fail, the Grant Officer shall issue a written final decision concerning the dispute with an appeal right to a designated official at least one level above the Grant Officer; and,

- c. Appeal decision by the designated official with no further recourse for the recipient except as provided by Federal statute or regulation.

See paragraph 5-10 for dispute procedures for awards made by OPC and the RCOs.

2-23. AMENDMENTS.

Awards may be modified at any time by written amendment. The Grant Officer and the recipient shall execute amendments which involve the rights or obligations of either party. Administrative amendments, such as changes in appropriation data or HUD administering staff, may be issued unilaterally by the Grant Officer. The recipient shall have no independent authority to unilaterally amend the award, unless otherwise specified in the award.

2-24. OFFICIAL FILES.

Grant Officers shall prepare and assure maintenance of the official file(s) for each award. The official file(s) shall contain:

- a. Pre-award documentation for the award including:
  - (1) Funds reservation and authority;
  - (2) Pre-solicitation clearances;
  - (3) NOFA and application kit;
  - (4) Successful application, including assurances and other representations and disclosures, as required by the solicitation;
  - (5) Evaluation documentation;
  - (6) Selection statement;
  - (7) Negotiation record;
  - (8) Pre-award clearances;

- (9) Award correspondence; and,
- (10) Award.
- b. Pre-award documentation for each amendment, as above, when applicable;
- c. Payment record and copies of all invoices/vouchers submitted;
- d. Performance, financial, property, and other required reports;
- e. Correspondence; and,
- f. Closeout documentation.

In those cases where multiple awards result from one application kit, a master file may be prepared which contains all of the common documentation, i.e., items a(1) through (9) above. The individual grant files need only consist of information relating to a particular grant, i.e., items a(10) and b through f.

- g. Unsuccessful Applications. In accordance with 24 CFR § 12.14, one copy of each **unsuccessful** application must be retained for a minimum period of five years, beginning 30 calendar days from the date on which grant awards are made. The unsuccessful applications need not be maintained at HUD. They may be retired to the Federal Records Center, if desired. However, unsuccessful applications should be held by the Grant Officer if there is a pending protest concerning the award(s) or a debriefing of an unsuccessful applicant has been scheduled but not held.
- h. Retention Requirements. The official files shall be retained as described in the appropriate General Records Schedule. Schedules are set forth within the specific program legislation, and also, in Handbook 2228.2, General Records Schedules.

