Criteria for Discretionary Non-competitive Awards

Department of Commerce Grants and Cooperative Agreements Interim Manual

Chapter 8, Section F. (final draft revision per M McClellan 4-17-07)

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. 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).

What this means: Program offices must initiate an informal search through use of journal solicitations, web announcements, telephone inquiries, or other customary means used to solicit applications and determine the capabilities of potential proposers. Complete documentation of the process including responses (or lack thereof) must be provided along with this option in the non-competitive justification memorandum. Statements that the identified organization is the only one that can carry out this activity or that this organization is the best qualified without consideration of other organizations is not sufficient.

(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.

What this means: This category is typically reserved for disasters or situations that require immediate or emergency action on NOAA behalf without time to conduct a full and open competition. This permits the program to directly solicit proposal(s) from one or more applicants without publication in the Federal Register.

(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.

What this means: Proper documentation that reflects the agreement or treaty must be provided along with the justification memorandum.
(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.

**What this means:** The Secretary of Commerce is the only person authorized to make this determination. In today's climate of potential terrorism, Homeland Security activities may surface as potential grant programs. In any scenario under this option, you must obtain Secretarial approval, which cannot be delegated.

(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.

**What this means:** In order to use this option the Undersecretary of Commerce for Oceans and Atmosphere, as Head of the Operating Unit, must provide in writing a determination addressing why it is not in the public interest to seek full and open competition. This exception may be justified for use in one time pilot projects, or to take advantage of an unusual opportunity advantageous to the government that cannot be obtained through full and open competition. The Grants Manual Chapter 8. F. 1.b (5) requires the Head of the Operating Unit, which under DO0 1-1 is the Undersecretary and therefore may not be delegated. However, a deviation to the manual has been granted by the DOC to permit the NOAA Assistant Administrators to assert this exception to competition. That is, NOAA has obtained a deviation from the manual, authorizing Assistant Administrators to sign the noncompetitive justification under this exception.

(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 a project and specific recipient, when known, by including language in the House Report, the Senate Report, and/or the Conference Report accompanying appropriations acts. Absent specific report language, other forms of legislative history such as floor debates and Congressional press releases independent of report language will not be considered to be persuasive authority to approve funding and cannot be used to invoke this basis for approving a noncompetitive award of discretionary funds. However, these other forms of legislative history may be acceptable for identifying the intended recipient for funding that meets the criteria for Congressional direction.

**What this means:** The Manual identifies the Operating Unit's CFO/Budget Officer (or designee) as the individual person/position responsible for identifying and listing all Congressionally directed awards (soft and hard earmarks). All
projects or recipients should be identified and agreed to by the Line Office and NOAA Budget Office as soon as possible after the final appropriations. A Grants Matrix template will be prepared by the Line Office CFO and distributed by that office to all program managers with a courtesy copy to the NOAA CFO and GMD. Please note that it is expected that all parties coordinate their efforts through the pre-work process by reviewing the President’s Budget, House, Senate, Conference marks, and final appropriations. A coordinated effort throughout the various pre-work stages will make the issuance of the justification memo and table timely and succinct.

**Merit/Technical Review Requirements for Non-competitive Awards**

Under the current Grants Manual, each discretionary noncompetitive application will undergo at least three merit/technical reviews by subject matter experts and an extensive administrative/financial review by the GMD. Statutorily earmarked applications (hard earmarks) are not discretionary as they are mandated by law, and they are required to undergo at least one merit/technical review by a subject matter expert other than the Federal Program Officer. Should negative issues arise during the merit/technical review process, it will be the responsibility of the program office to resolve all issues to the satisfaction of the NOAA Grants Officer. If a recipient is unwilling to modify their application based on sound comments from the reviewers, please contact GMD for further guidance. Any administrative/financial or internal clearance issues will be addressed and, as appropriate, resolved by GMD before an award can be issued.

In the case of noncompetitive renewals, the Grants Manual directs that such awards should not normally be made without competition and therefore provides no explicit review procedures for these types of awards. However, the Grants Manual is currently interpreted to apply the same requirement of at least three Merit/technical reviews and a noncompetitive justification memorandum to accompany noncompetitive renewals for each funding year. In light of this requirement, in order to lessen the administrative burden of the review process, NOAA obtained waivers of the requirements of the Grants Manual for three Merit/technical reviews and a noncompetitive justification memorandum in the case of noncompetitive renewal amendments meeting the five conditions provided below. The amendment application must meet the following minimum criteria: 1) funds are available; 2) performance has been satisfactory; 3) there has been no substantial revision to the original project description; 4) the original merit reviews and the noncompetitive justification memorandum are still relevant; and 5) it is in the Federal Government's best interest to continue funding the activity.

A multi-year application is strongly recommended in the case of noncompetitive awards where it is clear that continued funding of activities beyond the initial year will be necessary, even if future funding is uncertain. There is no obligation to fund the renewals should the funds not be available or if there is poor
performance. The matrix used for the Congressionally directed awards should indicate whether the funding is anticipated for more than one year.