

§ 21.200

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and DoD Field Activities.

Grant. A legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(1) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(2) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

Grants officer. An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

Nonprocurement instrument. A legal instrument other than a procurement contract. Examples include instruments of financial assistance, such as grants or cooperative agreements, and those of technical assistance, which provide services in lieu of money.

Procurement contract. A legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. See the more detailed definition for contract at 48 CFR 2.101.

Recipient. An organization or other entity receiving a grant or cooperative agreement from a DoD Component.

Subpart B—Authorities and Responsibilities

§ 21.200 Purpose.

This subpart describes the sources and flow of authority to use grants and cooperative agreements, and assigns the broad responsibilities associated with DoD Components' use of such instruments.

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§ 21.205 DoD Components' authorities.

(a) In accordance with 31 U.S.C. 6301 *et seq.*, DoD Components shall use grants and cooperative agreements as legal instruments reflecting assistance relationships between the United States Government and recipients.

(b) Unlike the use of a procurement contract (for which Federal agencies have inherent, Constitutional authority), use of a grant or cooperative agreement to carry out a program requires authorizing legislation, the intent of which supports the use of an assistance instrument (e.g., the intent of the legislation authorizing a program supports a judgment that the principal purpose of the program is assistance, rather than acquisition). DoD Components may award grants and cooperative agreements under a number of statutory authorities that fall into three categories:

(1) *Authorities that statutes provide to the Secretary of Defense.* These authorities generally are delegated by the Secretary of Defense to Heads of DoD Components, usually through DoD directives, instructions, or policy memoranda that are not part of the Defense Grant and Agreement Regulatory System. Examples of statutory authorities in this category are:

(i) Authority under 10 U.S.C. 2391 to make grants or conclude cooperative agreements to assist State and local governments in planning and carrying out community adjustments and economic diversification required by changes in military installations or in DoD contracts or spending that may have a direct and significant adverse consequence on the affected community.

(ii) Authority under 10 U.S.C. 2413 to enter into cooperative agreements with entities that furnish procurement technical assistance to businesses.

(2) *Authorities that statutes may provide directly to Heads of DoD Components.* When a statute authorizes the head of a DoD Component to use a grant or cooperative agreement or to carry out a program with a principal purpose of assistance, use of that authority requires no delegation by the Secretary of Defense. For example, 10 U.S.C. 2358 authorizes the Secretaries

of the Military Departments, in addition to the Secretary of Defense, to perform research and development projects through grants and cooperative agreements. A Military Department's use of the authority of 10 U.S.C. 2358 therefore requires no delegation by the Secretary of Defense.

(3) *Authorities that arise indirectly as the result of statute.* For example, authority to use a grant or cooperative agreement may result from:

(i) A federal statute authorizing a program that is consistent with an assistance relationship (i.e., the support or stimulation of a public purpose, rather than the acquisition of a good or service for the direct benefit of the Department of Defense). In accordance with 31 U.S.C. chapter 63, such a program would appropriately be carried out through the use of grants or cooperative agreements.

(ii) Exemptions requested by the Department of Defense and granted by the Office of Management and Budget under 31 U.S.C. 6307, as described in 32 CFR 22.220.

§ 21.210 Vesting and delegation of authority.

(a) The authority and responsibility for awarding grants and cooperative agreements is vested in the Head of each DoD Component that has such authority.

(b) The Head of each such DoD Component, or his or her designee, may delegate to the heads of contracting activities (HCAs) within that Component, authority to award grants or cooperative agreements, to appoint grants officers (see § 21.220(c)), and to broadly manage the DoD Component's functions related to grants and cooperative agreements. An HCA is the same official (or officials) designated as the head of the contracting activity for procurement contracts, as defined at 48 CFR 2.101—the intent is that overall management responsibilities for a DoD Component's functions related to non-procurement instruments be assigned only to officials that have similar responsibilities for procurement contracts.

§ 21.215 Contracting activities.

When designated by the Head of the DoD Component or his or her designee (see 32 CFR 21.210(b)), the HCA is responsible for the grants and cooperative agreements made by or assigned to that activity. He or she shall supervise and establish internal policies and procedures for that activity's assistance awards.

§ 21.220 Grants officers.

(a) *Authority.* Only grants officers are authorized to sign grants or cooperative agreements, or to administer or terminate such legal instruments on behalf of the Department of Defense. Grants officers may bind the Government only to the extent of the authority delegated to them.

(b) *Responsibilities.* Grants officers should be allowed wide latitude to exercise judgment in performing their responsibilities. Grants officers are responsible for ensuring that:

(1) Individual grants and cooperative agreements are used effectively in the execution of DoD programs, and are awarded and administered in accordance with applicable laws, Executive orders, regulations, and DoD policies.

(2) Sufficient funds are available for obligation.

(3) Recipients of grants and cooperative agreements receive impartial, fair, and equitable treatment.

(c) *Selection, appointment and termination of appointment of grants officers.* Each DoD Component that awards grants or enters into cooperative agreements shall have a formal process (see § 21.210(b)) to select and appoint grants officers and terminate their appointments. DoD Components are not required to maintain a selection process for grants officers separate from the selection process for contracting officers, and written statements of appointment or termination for grants officers may be integrated into the necessary documentation for contracting officers, as appropriate.

(1) *Selection.* In selecting grants officers, appointing officials shall consider the complexity and dollar value of the grants and cooperative agreements to