



DEPARTMENT OF THE ARMY
US ARMY MEDICAL RESEARCH AND MATERIEL COMMAND
504 SCOTT STREET
FORT DETRICK, MD 21702-5012

MCMR-ZA-J
MEMORANDUM FOR SEE DISTRIBUTION

01 May 2009

SUBJECT: Procurement Advisory Notice (PAN) 09-02

Appropriated funds provided to recipients under procurement contracts and assistance agreements and sent to U.S. Government entities via cooperative research and development agreements (CRADAs)

1. Introduction. The U.S. Army Medical Research Acquisition Activity (USAMRAA) receives proposals wherein appropriated funds provided to Recipients via contracts and assistance agreements would be sent, in part, to U.S. Government labs or medical treatment facilities (MTF) via CRADAs to carry out some or all of the research. This circuitous means of getting funds to Federal government entities should be limited to exceptional circumstances as set forth in paragraph 3, below.

2. Background.

a. The U.S. Army Medical Research and Materiel Command's (USAMRMC) efforts to obtain new technologies combine intramural research, "Acquisition" activities, and Technology Transfer activities.

b. Normally, when USAMRMC wants U.S. Government personnel to perform particular research, USAMRMC sends funds via a Funding Authorization Document (FAD) directly to the relevant government research activity. Further, when USAMRMC wants an extramural party to carry out the particular research, USAMRAA uses a procurement contract or assistance agreement as the legal instrument to authorize support and provide the funding. When the research involves participation by both a government lab and an outside Recipient, the intramural portion should be funded directly and the extramural portion funded via a procurement contract or assistance agreement through USAMRAA. This is the correct solution for funding combined intramural/extramural research projects. There are several reasons for this, for example:

(1) First, nongovernment Recipients are allowed to recover their indirect costs, which can range from 10% to 80% of their own direct costs. In addition, these Recipients may be allowed to recover their indirect costs on funds provided to sub-awardees. Thus if the Recipients are planning to sub-award part of the money to a government lab (via a CRADA) it will cost the government more to do this than it would cost USAMRMC to do the same thing via a FAD.

MCMR-ZA-J

SUBJECT: Procurement Advisory Notice (PAN) 09-02

Appropriated funds provided to recipients under procurement contracts and assistance agreements and sent to U.S. Government entities via cooperative research and development agreements (CRADAs)

(2) Second, for the Recipients to send those same funds to a government lab requires the government to enter into two legal agreements with contradictory legal mandates. There must be either a contract or assistance agreement (under the FAR or DoDGAR) to send the Recipients funds. Then there must be a CRADA between the Recipients and the government lab (under Federal Technology Transfer Act) to send the funds to the lab. (Under a CRADA, government labs are allowed to receive funding or other resources from a non-government collaborator without violating the prohibition against Augmentation of Appropriation.) In almost all situations the use of a single agreement is preferred, because it lessens the chances for confusion or litigation. For example, one agreement makes it clearer which party is accountable for accomplishing the research, and who will own new inventions that might arise from the research.

3. Policy.

a. It is the USAMRAA policy to not accept a Recipient's budget that calls for sending funds to U.S. Government entities unless:

(1) The Recipient can show that such funds will not originate from the USAMRMC award, or

(2) There is separate statutory authority, aside from CRADA authority, that would allow for it, or

(3) The Recipient can show that exceptional or extraordinary circumstances exist that merit a waiver of this policy. Such waiver must receive approval from the USAMRMC Resource Management Office and the Staff Judge Advocate before approval by USAMRAA. As examples of exceptional circumstances that could merit approval would be: i) if the research protocol involved numerous radiological studies, such as CT scans, which needed to be performed and analyzed at a U.S. Government MTF after the normal expiration date of the Appropriation from which the award was made, and which studies would otherwise not be performed as part of the standard of medical care; ii) If the research calls for the purchase and use of chemical or biological materials that cannot legally be purchased and/or used by the Recipient but can legally be purchased by the Government lab or MTF, then a CRADA can be employed for the Recipient to provide those funds to the lab or MTF to make such purchases.

MCMR-ZA-J

SUBJECT: Procurement Advisory Notice (PAN) 09-02

Appropriated funds provided to recipients under procurement contracts and assistance agreements and sent to U.S. Government entities via cooperative research and development agreements (CRADAs)

b. Recipients under a cooperative agreement are allowed to provide non-fund resources to a government lab or MTF, such as supplies, equipment, or personnel. This should be specifically provided for under the assistance document.

4. Point of Contact. Robert L. Charles, Attorney Advisor, Office of the Staff Judge Advocate, U.S. Army Medical Research and Materiel Command.
Robert.Charles@us.army.mil (301) 619-7663.



PAUL G. MICHAELS, eJD
Principal Assistant Responsible
for Contracting

DISTRIBUTION:
DIST A