

Executive Office of the Mayor



**OFFICE OF PARTNERSHIPS AND GRANT SERVICES**

# City-Wide Grants Manual and Sourcebook

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# City-Wide Grants Manual and Sourcebook

## 1.0 INTRODUCTION

This Grants Manual and Sourcebook (“Manual” or “Sourcebook”) is for the use of the District of Columbia and its Offices, Departments, Agencies, Boards and Commissions (hereinafter referred to as “Agencies”). It establishes “best practices” policies and procedures for the application for, acceptance of, and disbursement of private, federal and local grant monies. It supersedes all prior pronouncements on this subject and provides general city-wide guidance to Agencies’ grant staff regarding the administration and management of their grantmaking activities.

The Sourcebook also delineates an overview of the minimum requirements for the programmatic and financial operations of grants and subgrants awarded by the District and any of its covered Agencies. It is intended as *the* resource for grant program managers as they administer and manage their respective grant and subgrant programs. In addition to containing applicable policies and procedures, the Sourcebook includes an Appendix containing relevant law, rules, and regulations as well as sample forms and certifications. It should be used as the first reference for specific requirements and directives for all covered entities. However, Agencies may supplement this Sourcebook with Agency-specific requirements where required by any District or Federal statute or regulation.

## 2.0 BACKGROUND

The District of Columbia government depends on grant funds to provide support for a wide range of programs and services for its citizens. Indeed, grant funds comprise approximately one-fourth of the District’s annual budget and, as such, contribute significantly to government’s ability to meet the needs of its most vulnerable citizens.

While such funds offer tremendous opportunity, they also represent potential pitfalls. For example, Federal grants are awarded in a variety of forms including block grants, formula grants, and competitive grants, among others. The District of Columbia also receives a significant number of private grants such as corporation and foundation grants. Most grant funds, no matter the source, are made available to assist the District in meeting specific public goals and objectives within set time periods. In order to maximize the amount of grant funds available to promote public objectives, it is essential that Agencies pursue all relevant funding opportunities and assure that all grant funds are used according to the applicable statutes and regulations.

Failure to adhere to the pertinent guidelines could result, in the best case, in loss of future funding and, in the worst case, an obligation to repay grant dollars already expended. Consequently, the Mayor of the District of Columbia and the Director of the Office of Partnerships and Grant Services expect that adherence to the guidelines in this

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Sourcebook (and any applicable District or Federal statute or regulation), and forms contained in its Appendices, will promote effective, efficient and consistent use of available grant funds.

This Sourcebook provides important guidelines to assist the District of Columbia's grant-making entities in understanding the requirements applicable to them in their grantmaking functions, regardless of the source of the grant funds. It is intended to serve as a guide to them in making and monitoring grants using Federal, District, or private funds to ensure that grant funds are being used as intended. It identifies important policies and procedures that District Agencies, serving both as grantors and "pass-through entities" (PTEs), should adopt and monitor to ensure that recipients remain in compliance with all applicable statutes and regulations.

Where Federal grant funds are involved, District PTEs must comply with specific statutory and/or regulatory requirements that in turn apply to the pass-through recipients. For example, the Federal Office of Management and Budget (OMB) Circular A-133 requires PTEs to, among other things, monitor the activities of sub-recipients as necessary to ensure that program goals are met and federal awards are used appropriately. This document provides guidance to Agencies in meeting these requirements.

Local grants are typically governed by the appropriations statute or enabling legislation that authorized or created them. Subgrants, on the other hand, must be obligated and expended by District grantmaking Agencies in accordance with Title 1 DCMR, Chapter 50. Any entity meeting the subgrant recipient criteria will be subject to monitoring by the awarding Agency. In response to Federal and District law, the OPGS is publishing this Sourcebook to facilitate a coordinated approach to grant administration and monitoring by District Agencies that make subgrants subject to Title 1 DCMR, Chapter 50, and that make other grants using locally appropriated dollars. A coordinated, consistent approach should help to target scarce resources to areas of greatest need, obtain better information from the grant-making and monitoring process and reduce required audit costs.

## 3.0 SCOPE

### 3.1 Scope of Covered Entities and Grants

The policies and procedures set forth herein apply only to those Departments, Offices, Agencies, Boards and Commissions that are subordinate to the Mayor of the District of Columbia.

An Agency shall comply with the Sourcebook's policies and procedures when performing grantmaking activities as they apply for, receive, and administer any competitive grant or sub-grant funded by federal, local, or private funds. Block or

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formula grants or sub-grants are not subject to the Sourcebook's policies and procedures. Additionally, the Sourcebook's policies and procedures are examples of best practices which should be adopted by Agencies performing non-covered grantmaking activities.

Agency grant managers should never consult this Sourcebook alone. They must be familiar with and follow all statutes and regulations that govern a specific grant as well as written guidance from the funding source regarding administration of the grant. A grant manager is responsible for knowing whether any of those authorities conflict with the terms of this manual. Grant managers are encouraged to consult with their General Counsel's office or the Office of the Attorney General if they have any questions about what authority applies to a specific grant.

## 3.2 Waiver Applications

Where an Agency believes its covered grantmaking activities are governed: 1) in whole or part by a superseding federal statute or regulation; 2) some contradictory local law or regulation; or 3) there is some other legitimate reason not to follow all or part of the procedures set out by this Manual, it may submit a request for a waiver from that section of the Sourcebook that it reasonably believes conflicts with the grantmaking activity. Waiver requests shall be submitted to and decided by the Grant-Making Procedure Waiver Committee composed of representatives appointed by the Attorney General, City Administrator, and OPGS.

## 4.0 DISTINCTION BETWEEN A PROCUREMENT, GRANT & SUBGRANT

**Procurement** means obtaining by contract property, supplies, or services (including construction) by or for the District through purchase or lease, whether the supplier or services are already in existence or must be created, developed, demonstrated, or evaluated, and includes the establishment of Agency needs, solicitation of sources, award of contracts, contract financing, contract performance, contract administration and those technical and management functions related to the process of fulfilling Agency needs pursuant to contract.

A **grant** is the award of financial assistance to a recipient to support or stimulate the accomplishment of a public purpose as defined by the Federal or District law that authorizes the grant. For purposes of this Sourcebook, a **subgrant** is the award of grant funds received by the District to a sub-recipient to accomplish the same public purpose.

In determining whether a procurement or a grant or subgrant is the proper mechanism for a District Agency to award funds to a private organization, Agencies shall apply the following criteria:

- (a) Is there a statute that authorizes the District Agency to support or stimulate the

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activity of the recipient and authorizes the grant/subgrant?

- (b) Is the principal purpose of the relationship the transfer of money, property, services, or anything of value to the subgrantee to accomplish a public purpose of support and stimulation authorized by statute, rather than an acquisition of goods or services for the direct benefit of the District government?
- (c) Does the applicant, not the District, define the specific services, the service levels, and the program approach for carrying out the subgrant?

If the answers to (a), (b) *and* (c) are “yes,” a grant or subgrant is appropriate. In all other cases, the “award” shall be deemed a procurement subject to all the requirements applicable thereto.

## 5.0 THE GRANTMAKING AGENCY

### 5.1 Grantmaking Authority

Where a Federal or District statute, rule or regulation has conferred grantmaking authority on an Agency, it may apply for a grant or subgrant and make a grant or subgrant to a recipient where the principal purpose of the relationship is the transfer of money, property, services, or anything of value in order to accomplish a public purpose. Only those Agencies with grantmaking authority, provided in a specific, identifiable statutory provision, may award grants. Without such authority, an Agency should assume that it does not have grantmaking authority. Agencies that desire such authority must seek and obtain it from the Council of the District of Columbia.

Where an Agency applies for a grant from a Federal instrumentality, it shall include in its application a request for the maximum indirect cost recovery (administrative fee) associated with administering the grant.

### 5.2 Point of Contact and Training

Every Agency with grant-making authority shall appoint a Grant Officer, Coordinator or Supervisor as the point of contact for that Agency’s grant-making activities and forward the name of that person to OPGS. That Officer or Administrator shall already possess at least the minimum training and qualifications necessary to administer the Agency’s program or the Agency shall commit the resources necessary to obtain such knowledge and/experience for its point of contact prior to placing that person in charge of its grant-making activities. At a minimum, that person shall be conversant with: (1) the uniform administrative requirements for grants<sup>1</sup>; (2) the local provisions governing subgrants<sup>2</sup> and

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<sup>1</sup> See, OMB Circular A-102 and 2 CFR 215 et. seq.

<sup>2</sup> See, 1 DCMR 50 et. seq. at Appendix No. 3.

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(3) the **Subrecipient Monitoring Manual** (“SMM”)<sup>3</sup> prepared by the Office of the Chief Financial Officer for information on post-award monitoring requirements.

## 5.3 Agency Procedures

Each Agency shall have written policies establishing procedures for administering and monitoring grants and subgrants. In those circumstances where an Agency policy or procedure must be established by formal rulemaking pursuant to the District of Columbia Administrative Procedures Act (DCAPA),<sup>4</sup> the Agency shall do so through the DCAPA’s notice and comment procedure. All written procedures shall be in place before any awards are made by the Agency and shall be available for inspection and review. These procedures shall ensure that all solicitations:

- Incorporate a clear and accurate description of the service to be funded. Such description shall not, in competitive awards, contain features that unduly restrict competition in accordance with Section 8.2 of this Manual.
- Identify all requirements that the grantee must fulfill and all other factors to be used in evaluating proposals.

Prior to the award of any grant or subgrant every grantee shall:

- Submit an affidavit indicating whether the entity has complied with the filing requirements of District of Columbia tax laws, and whether the entity has paid taxes due to the District of Columbia, or is in compliance with any payment agreement with the Office of Tax and Revenue (OTR). The affidavit shall be in a form approved by the Director of the OTR and shall acknowledge the penalty provided by law for making false statements;
- Obtain certification from OTR that the entity has complied with the filing requirements of District of Columbia tax laws, and that the entity has paid taxes due to the District of Columbia, or is in compliance with any payment agreement with OTR;
- Submit an affidavit indicating that they are current on all taxes, including Unemployment Insurance and Workers’ Compensation premiums and;
- Not be debarred from procurements by the federal government, the Government of the District of Columbia or any governmental entity.

If the Agency becomes aware of circumstances casting doubt on an entity's ability to perform a grant or subgrant successfully, it shall immediately inform the entity and furnish the relevant information in writing to that entity.

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<sup>3</sup> See, Appendix No. 12.

<sup>4</sup> D.C. Official Code 2-501 *et seq.* (2006 Rpl.)

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## 5.4 Appearance of a Conflict of Interest

The Agency shall ensure that no individual in a decision-making capacity shall engage in any activity, including participation in the selection of a grantee, the administration of an award, or an activity supported by award funds, if the *appearance of a conflict of interest* would be involved. An appearance of a conflict of interest would arise when the individual, any member of the individual's immediate family, the individual's partner; or an organization that employs, or is about to employ, any of the aforementioned, has a financial or personal interest in the firm or organization selected for grants or subgrants. The officers, employees, or agents of the Agency and Review Panel members making the awards will neither solicit on behalf of themselves, their immediate family members, their partners, or any organization that employs or is about to employ any of these people, nor accept gratuities, favors, employment, or anything of monetary value from grantees, potential grantees or applicants.

The grantmaking officer shall analyze each planned grant or subgrant process in order to identify and evaluate potential conflicts of interest as early in the grantmaking process as possible and avoid, neutralize, or mitigate significant potential conflicts in advance of the solicitation. The grantmaking officer shall seek to prevent the existence of conflicting roles that might bias a grantor's judgment and shall seek to prevent unfair competitive advantage. The grantmaking officer shall seek counsel from the District's Ethics Officer and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing and implementing any precautionary measures for inclusion in the grant agreement approved by the Agency's Director.

## 5.5 Records and Disputes

The Agency shall maintain records sufficient to detail the significant history of each award. Where applicable, these records shall include, but are not limited to, the following: solicitations, evaluation criteria and materials, rationale for the method of the award, selection of agreement type, grantee selection or rejection, and the basis for the award amount. The Agency shall keep such records for a period that is the greater of; 1) three (3) years, or 2) the time required by the applicable law, regulation or agreement governing the funding of such grant.

Where applicable, the Agency shall have published grievance procedures (i.e., either available on its website or preferably in its Request for Applications ("RFA")) to receive, administer and resolve disputes relating to their award(s) and that all applicants and potential recipients are made aware of those procedures.

## 6.0 THE PRE-AWARD PROCESS

Pursuant to OMB Circular A-102, Section 36(c), all relevant local provisions, and this Sourcebook, all local or federal grants and subgrants to grantees shall be made on a

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competitive basis except as set forth below. Grant funds awarded as the result of a grant competition must be competed each successive grant term unless the following occur:

- (a) The funds are awarded as part of an extension of the original grant;
- (b) The Agency has unobligated funds from the original grant that it wishes to give to the original grantee(s);
- (c) The terms of the grant allow the Agency to add or modify grant awards; or
- (d) The original award document specifically allows otherwise.

The exceptions to making competitive awards are as follows:

- (a) **Sole Source**--An Agency may make an award on a sole source basis in appropriate circumstances. These circumstances include, but are not limited to, situations where: (1) the authorization for the award designates the grantee, (2) the applicable law defines eligibility in such a way that there is only one eligible applicant, (3) there is a recognized coalition of service providers through which the broadest community participation may be obtained in serving the targeted clientele, or (4) when the services required by the Agency are available from only one source and no other type of services will satisfy Agency requirements.
- (b) **Earmark**--An earmark is a sole-source award intended by the law that created it to go to a particular entity. An Agency may make an award as an earmark if the same is clearly contemplated by the legislation or Agreement that provides the grant funds.
- (c) **Unsolicited Proposal**--An Agency may make an award in response to an unsolicited proposal if: (1) the Agency has unobligated funds remaining from the grant due to unusual and unanticipated factors, (2) the applicant has a program or project that clearly furthers the purpose of the grant, (3) the proposal reflects proprietary skills or technology that are limited in availability, and (4) the applicant brings to the total grant program matching resources (cash or in-kind) equivalent to the match assistance required, if any.

If an Agency determines, for good cause shown, to make an excepted award pursuant to this section, it shall do so in a manner consistent with Section 8.6 of this Sourcebook. Moreover, excepted awards remain subject to all other Sourcebook provisions, particularly those regarding award documentation requirements, as well as financial and programmatic reporting and monitoring.

Services may be considered to be available from only one source if the source has submitted an unsolicited proposal that:

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- Demonstrates a unique and innovative concept or capability to provide the particular service(s) proposed;
- Offers a concept or service(s) not otherwise available to the District; and
- Does not resemble the substance of a pending competitive acquisition.

In addition, services may be deemed to be available only from a single source: 1) in the case of a grant or subgrant for the continued development or production of a major system or highly specialized equipment, including major components thereof, 2) when it is likely that an award to any other source would result in substantial duplication of cost to the District Government that is not expected to be recovered through competition, or 3) where the awarding Agency determines that unacceptable delays would result in fulfilling the Agency's requirements. However, consistent with section 8.2 herein, no awarding Agency may require or impose conditions that encourage or result in the creation of artificial barriers or overly restrictive requirements that result in a limited number of grant or subgrant applicants.

When an Agency decides to award a grant or subgrant to a grantee, it shall follow the steps described in this Manual. Competition is required generally even if other District Agencies are among the pool of applicants.

### 7.0 NOFA AND THE APPLICATION PROCESS

#### 7.1 NOFA and RFA

Before making a grant or subgrant, the Agency shall prepare and disseminate a **Notice of Funding Availability** (NOFA)<sup>5</sup> as follows:

- (a) The NOFA shall include a brief description of the purpose for which funds are available, criteria for eligible applicants, and the time and location at which the **Request for Application** (RFA)<sup>6</sup> may be obtained and submitted.
- (b) The NOFA shall be forwarded to Office of the Secretary (Office of Documents and Administrative Issuance) for publication in the D.C. Register no later than 14 days prior to the release of the RFA. An Agency may submit the NOFA for publication less than 14 days prior to release where it determines there is good cause to do so. Also, District Agencies are required to provide their NOFAs and RFAs to the Office of Partnerships and Grant Services (OPGS) for inclusion in its Grants Information Data System (GIDS), publication in the weekly *Funding Alert* and posting on the District's Grants Clearinghouse of the OPGS website no later than three (3) business days prior to publication on the following Monday. In addition, an Agency may choose to disseminate a NOFA by publishing it in local

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<sup>5</sup> For a NOFA example, see Appendix No. 7.

<sup>6</sup> For an RFA example, see Appendix No. 8.

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newspapers and community newsletters, direct mailing to all prospective applicants or any other reasonable form of distribution.

The Agency then shall prepare the RFA which shall include:

- (a) The specific provisions set forth in Section 7.2.
- (b) A description of the purpose of the program, including a definition of the type and range of services or activities that a grantee or subgrantee shall carry out under a grant or subgrant. The RFA shall require the applicant to propose measurable goals, objectives and timeframes, target recipients, and provide a plan of formal evaluation for each specific service proposed by the applicant. The RFA shall include a "Purpose of Program" section which specifies the time period for which all services will be funded and any special requirements emanating from the authorizing statute, federal grant agreement or regulations.
- (c) Where applicable, the criteria for scoring applications including, but not necessarily limited to: justification of the need for grant funds, if desirable; soundness of proposed service delivery plan; adequacy and reasonableness of proposed resources; and, required and demonstrated capability for managing the proposed project.
- (d) A reasonable deadline for submitting applications. Thirty (30) days is considered reasonable unless circumstances warrant a shorter period of time. Pursuant to an Agency rule or policy, Agency Directors may shorten or extend the time in the RFA within which applicants may submit a response to the RFA.

To the extent possible, NOFAs and RFAs should be made available online for easier public access and cost savings. OPGS is hereby designated the clearinghouse for the Government of the District of Columbia's grant programs. NOFAs and RFAs can be submitted to OPGS to be posted on its website at <http://opgs.dc.gov>.

## 7.2 Specific RFA Provisions

The RFA shall include the following terms and conditions:

- Funding for this award is contingent on continued funding from the grantor. The RFA does not commit the Agency to make an award.
- The Agency reserves the right to accept or deny any or all applications if the Agency determines it is in the best interest of the Agency to do so. The Agency shall notify the applicant if it rejects that applicant's proposal. The Agency may suspend or terminate an outstanding RFA pursuant to its own grantmaking rule(s) or any applicable federal regulation or requirement.

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- The Agency reserves the right to issue addenda and/or amendments subsequent to the issuance of the RFA, or to rescind the RFA.
- The Agency shall not be liable for any costs incurred in the preparation of applications in response to the RFA. Applicant agrees that all costs incurred in developing the application are the applicant's sole responsibility.
- The Agency may conduct pre-award on-site visits to verify information submitted in the application and to determine if the applicant's facilities are appropriate for the services intended.
- The Agency may enter into negotiations with an applicant and adopt a firm funding amount or other revision of the applicant's proposal that may result from negotiations.
- The Agency shall provide the citations to the statute and implementing regulations that authorize the grant or subgrant; all applicable federal and District regulations, such as OMB Circulars A-102, A-133, 2 CFR 180, 2 CFR 225, 2 CFR 220, and 2 CFR 215; payment provisions identifying how the grantee will be paid for performing under the award; reporting requirements, including programmatic, financial and any special reports required by the granting Agency; and compliance conditions that must be met by the grantee.
- If there are any conflicts between the terms and conditions of the RFA and any applicable federal or local law or regulation, or any ambiguity related thereto, then the provisions of the applicable law or regulation shall control and it shall be the responsibility of the applicant to ensure compliance.

The RFA shall require the applicant to disclose in a written statement, the truth of which is sworn or attested to by the applicant, whether the applicant, or where applicable, any of its officers, partners, principals, members, associates or key employees, within the last three (3) years prior to the date of the application, has:

- been indicted or had charges brought against them (if still pending) and/or been convicted of (a) any crime or offense arising directly or indirectly from the conduct of the applicant's organization or (b) any crime or offense involving financial misconduct or fraud, or
- been the subject of legal proceedings arising directly from the provision of services by the organization. If the response is in the affirmative, the applicant shall fully describe any such indictments, charges, convictions, or legal proceedings (and the status and disposition thereof) and surrounding circumstances in writing and provide documentation of the circumstances.

As part of the application packet, the applicant shall also submit a **Statement of Certification**, signed by an individual grant recipient or, if an organization, by the duly

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authorized officer of the applicant organization, the truth of which is sworn or attested to by the applicant, which states:

- The individuals, by name, title, address, and phone number who are authorized to negotiate with the Agency on behalf of the organization;
- That the applicant is able to maintain adequate files and records and can and will meet all reporting requirements;
- That all fiscal records are kept in accordance with Generally Accepted Accounting Principles (GAAP) and account for all funds, tangible assets, revenue, and expenditures whatsoever; that all fiscal records are accurate, complete and current at all times; and that these records will be made available for audit and inspection as required;
- That the applicant is current on payment of all federal and District taxes, including Unemployment Insurance taxes and Workers' Compensation premiums. This statement of certification shall be accompanied by a certificate from the District of Columbia OTR stating that the entity has complied with the filing requirements of District of Columbia tax laws and has paid taxes due to the District of Columbia, or is in compliance with any payment agreement with OTR;
- That the applicant has the demonstrated administrative and financial capability to provide and manage the proposed services and ensure an adequate administrative, performance and audit trail;
- That, if required by the grantmaking Agency, the applicant is able to secure a bond, in an amount not less than the total amount of the funds awarded, against losses of money and other property caused by fraudulent or dishonest act committed by any employee, board member, officer, partner, shareholder, or trainee;
- That the applicant is not proposed for debarment or presently debarred, suspended, or declared ineligible, as required by Executive Order 12549, "Debarment and Suspension," and implemented by 2 CFR 180, for prospective participants in primary covered transactions and is not proposed for debarment or presently debarred as a result of any actions by the District of Columbia Contract Appeals Board, the Office of Contracting and Procurement, or any other District contract regulating Agency;
- That the applicant has the financial resources and technical expertise necessary for the production, construction, equipment and facilities adequate to perform the grant or subgrant, or the ability to obtain them;
- That the applicant has the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing and reasonably expected commercial and governmental business commitments;

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- That the applicant has a satisfactory record performing similar activities as detailed in the award or, if the grant award is intended to encourage the development and support of organizations without significant previous experience, that the applicant has otherwise established that it has the skills and resources necessary to perform the grant. In this connection, Agencies may report their experience with an applicant's performance to OPGS which shall collect such reports and make the same available on its intranet website.
- That the applicant has a satisfactory record of integrity and business ethics;
- That the applicant has the necessary organization, experience, accounting and operational controls, and technical skills to implement the grant, or the ability to obtain them;
- That the applicant is in compliance with the applicable District licensing and tax laws and regulations;
- That the applicant complies with provisions of the Drug-Free Workplace Act; and
- That the applicant meets all other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.
- The grantee agrees to indemnify, defend and hold harmless the Government of the District of Columbia and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this grant or subgrant from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the District on account of any claim therefore, except where such indemnification is prohibited by law.

The OPGS, from time to time, may establish additional required certifications for Agencies and grantees.

The grantee shall provide in writing the name of all of its insurance carriers and the type of insurance provided (*e.g.*, its general liability insurance carrier and automobile insurance carrier, workers' compensation insurance carrier, fidelity bond holder (if applicable)), and, before execution of the award, a copy of the binder or cover sheet of their current policy for any policy that covers activities that might be undertaken in connection with performance of the grant, showing the limits of coverage and endorsements. All policies, except the Workers' Compensation, Errors and Omissions, and Professional Liability policies, that cover activities that might be undertaken in connection with the performance of the grant, shall contain additional endorsements naming the Government of the District of Columbia, and its officers, employees, agents and volunteers as additional named insured with respect to liability abilities arising out of the performance of services under the award. The grantee shall require their insurance

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carrier of the required coverage to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors and subcontractors.

The applicant shall provide a copy of its most recent and complete set of audited or unaudited financial statements available for their organization. If audited financial statements have never been prepared due to the size or newness of an organization, the applicant must provide, at a minimum, an Organizational Budget, an Income Statement (or Profit and Loss Statement), and a Balance Sheet certified by an authorized representative of the organization, and any letters, filings, etc. submitted to the IRS within the three (3) years before the date of the grant application. The applicant shall also submit evidence of being a legally-authorized entity (*e.g.* 501(c)(3) determination letter) and a current business license, if relevant for the applicant's business status and any correspondence or other communication received from the IRS within the three (3) years before submission of the grant application that relates to the applicant's tax status.

## 8.0 THE REVIEW AND AWARD PROCESS

### 8.1 Review Panels and Panelists

To the extent not inconsistent with local laws, rules or regulations, the Agency shall establish a review panel to review applications and make recommendations for award(s) as follows:

- (a) After the NOFA has been published and the RFA released, the Agency shall appoint a review panel. The panel shall be comprised of a minimum of three individuals with knowledge and expertise in the objectives of the grant and RFA, as well as in the administrative requirements mandated by the source of funds. Agencies shall avoid even the appearance of a conflict of interest in appointing people to their review panels. The external review panel shall score the applications and make recommendations on which applications should be funded. Final decisions on awards and amounts shall be made by the head of the Agency or, as appropriate, the Agency's governing board or commission.
- (b) Panelists shall sign affidavits certifying that they have no personal or vested interest in the organizations that submitted applications in response to the RFA. Affidavit forms may be obtained from appropriate Agency personnel. Agencies are encouraged to develop a registry to use for recruiting review panelists in a manner consistent with this section.
- (c) Panelists who are not employees of the District government may be compensated for time served on a panel in accordance with subsection (d). Panelists who are employees of the District government may not be compensated and may only serve if they have written authorization from their supervisors to serve on a panel.

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- (d) The administering Agency may compensate review panelists, provided that funds have been authorized and appropriated for such purpose, at a rate that obtains the best qualified panelists at one of the following rates: (1) the maximum rate allowable by the federal grantor Agency for its own review panelists, (2) the amount available in the administrative budget of the grant or subgrant, or (3) the maximum daily rate of a current DS-15 pay scale for the Agency.
- (e) The Agency shall ensure that the review panelists have the information needed to serve on a panel. The Agency shall convene a meeting of the panelists prior to the review activities and instruct them on the goals and objectives of the grant and the RFA, the scoring criteria and instruments, and the timeframe for completion of the panel's work.
- (f) After a review panel has completed its work, the Agency shall evaluate each panelist's performance and keep evaluations on file for a period of three years after the close-out of the grant or sub-grant awarded by that panel. All materials received by the Agency or a panel member from any applicant shall be protected, treated as confidential, and used only for purposes of evaluating the applicant's proposal.

### **8.2 Competition Preferred**

The Agency shall conduct the grantmaking award processes in a manner that provides full and open competition. To achieve this, agencies should avoid actions and practices that limit competition including, but not limited to:

- Placing unreasonable requirements on firms or organizations in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations;
- Noncompetitive awards to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a "brand name" product instead of allowing "an equal product" to be offered;
- Overly restrictive specifications; and
- Any arbitrary action in the grantmaking process.

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## 8.3 Performance Standards

With the exception of earmarks and grants exempted by a decision of the waiver committee, the Agency shall establish standards for grantees in making determinations of demonstrated performance prior to the award of all grants and subgrants. The standards shall require that determinations of demonstrated ability to perform be in writing and completed prior to the award of a grant or subgrant.

Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed grant or subgrant. When comparable, fundable proposals have been received from two applicants for a grant or subgrant and one applicant has been designated “high-risk” by an Agency, the award should be made to the applicant that has demonstrated the ability to perform but has the lowest risk assessment, unless other factors identified in the RFA permit a contrary result.

Determinations of demonstrated performance shall be in writing and take into consideration such matters as whether the organization has:

- Adequate financial resources or the ability to obtain them;
- The ability to meet the program design specifications at a reasonable and competitive cost, as well as the ability to meet performance goals;
- A satisfactory record of past performance in the grant or subgrant subject area, including demonstrated quality of service delivery;
- Documentation that the grantee has the legal status (i.e. business license, non-profit incorporation, etc.) to conduct business within the District of Columbia;
- A satisfactory record of integrity, business ethics, and fiscal accountability;
- The necessary organization, experience, accounting and operational controls; and
- The technical skills to perform the work.

## 8.4 Consideration of High-Risk Applicants

A grantee shall be considered “high-risk” if the Agency determines that the grantee or recipient is otherwise responsible but:

- Has been designated “high risk” by the Federal or other entity providing the grant;
- Has a history of unsatisfactory performance;
- Is not financially stable;
- Has a management system which does not meet the management standards set forth in this part; or
- Has not conformed to terms and conditions of a previous award.

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If, after the RFA process is complete, the Agency determines that an award will be made to a high-risk grantee or recipient, because it is the applicant that can deliver services in a particular area, then special funding restrictions that address the high-risk status may be included in the award. Funding restrictions may include, but are not necessarily limited to:

- Payment on a reimbursement basis and or the required advance posting of a security bond;
- Requiring additional and/or more detailed financial or performance reports;
- Additional monitoring;
- Requiring the grantee or recipient to obtain specific technical or management assistance; and
- Establishing additional prior approvals.

If the Agency decides to impose such funding restrictions, the Agency will notify the grantee as early as possible, in writing, of:

- The nature of the funding restrictions;
- The reason(s) for imposing them;
- The corrective actions which must be taken before the restrictions will be removed and the time allowed for completing the corrective actions; and
- The method of requesting reconsideration of the restrictions imposed.

### **8.5 Excepted Awards**

If the Agency awards an earmark, sole source or unsolicited proposal, the Agency need not use a review panel.

The Agency shall internally evaluate and score any sole source or unsolicited proposal using the same criteria that would have been applied to a competitive solicitation. The Agency shall prepare a written “sole source justification” memorandum signed by the Director of the Agency explaining the circumstances that justified the absence of competition and maintain in the Agency’s file for the time period listed in section 5.5.

### **8.6 Selection and Approval Procedure**

The Agency shall decide who shall be awarded a grant or subgrant in accordance with the following:

- (a) After the grant or subgrant officer has received the evaluations and records of the review panel, the head of the Agency or his/her designee shall make decisions on award and amount of each grant or subgrant, subject to the advice of any advisory body required by law or regulation for the funding grant.

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- (b) If the Agency director or his/her designee decides not to follow the review panel's recommendation, the Director or his/her designee shall provide a written justification in the grant records. Such justification shall include a strong rationale supported by documentation for the decision to not follow the review panel's recommendation.

### **8.7 Perfecting the Award: Certification and Documentation**

Before an award can be given final approval and deemed formally awarded, a Certification must be obtained for all proposed awards within a fiscal year. This Certification will be issued by the Grant Officer for the Agency making the award indicating that grant amount has been appropriated and budgeted for the fiscal year, and shall be approved by the Office of the Chief Financial Officer. This process is set forth as follows:

- (a) **Review by Agency Grant Officer.** The Agency's Grant Officer ("AGO") or his/her designee, working with the AFO, shall prepare a written memorandum that indicates the Agency has budgeted the grant funds for the award in the current fiscal year and identifies the fund detail, program/activity, where such funds are budgeted in the Agency and attests that such funds are available in the amount of the proposed grant or subgrant and that award of the grant or subgrant as proposed will not place the Agency in violation of the District's Anti-Deficiency Act.
- (b) **Review by Agency Director.** After a proposed grant or subgrant award is finalized by an Agency Grant Officer, it shall be submitted to the Director for that Agency and, once signed by him/her, forwarded to the Agency's Fiscal Officer ("AFO"). The Agency Director or his designee shall review the award documentation to verify that the proposed award is in fact eligible for the subgrant.
- (c) **Review by AFO.** The AFO or his/her designee shall review the information to be submitted by the Agency to ensure that all required documentation is included and is properly signed and dated. The AFO shall also review the AGO memorandum to verify that, at the time of submission of the proposed award, the Agency has proper, current, adequate and unencumbered budget authority to pay the grant or subgrant in the full amount of the proposed award. If the AFO does not approve the proposed grant or subgrant, the award documentation shall be returned to the Agency Grant Office along with a written explanation.

### **8.8 Agency Post-Award Responsibilities**

Before the Agency issues the award documents to successful applicants, it shall notify in writing each applicant whose application was not selected for award. This notification

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may include copies of the reviewers' evaluation and comments, but without identification of the reviewer. The Agency Director has the discretion to review any claims against the process; however, he or she shall have the final decision on any change to the original funding decision. Any changes in funding must be communicated to the Agency's financial officer and the amount recertified by OCFO as available.

The Agency shall establish the official records of awarded grants or subgrants. The Agency shall incorporate into the award files and retain the records of all awarded applications and subsequent reports for a period that is the greater of; 1) three (3) years, or 2) the time required by the applicable law, regulation or agreement governing the funding for such grant. The active retention period for funds awarded under federal grants is governed by applicable federal regulations.<sup>7</sup> Agencies may require a retention period longer than three (3) years.

### 9.0 THE GRANTEE AND SUBGRANTEE

Grantees and subgrantees are to be responsible organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed award. Each grantee may charge to the agreement only those costs that are consistent with the allowable cost provisions of the respective grant or subgrant, including the guidelines issued by the Agency.

The grantee shall grant reasonable access to the District, the Agency, any applicable federal department, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the grantee that are directly pertinent to charges to the program, in order to conduct audits and examinations and to make excerpts, transcripts, and photocopies; this right of access also includes timely and reasonable access to grantees' personnel for the purpose of interviews and discussions related to such documents.

The grantee shall comply with all the applicable District and Federal statutes and regulations as may be amended from time to time including, but not necessarily limited to:

- The Americans with Disabilities Act of 1990, Pub. L. 101-336, July 26, 1990, 104 Stat. 327 (42 U.S.C. 12101 et seq.)
- Rehabilitation Act of 1973, Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355 (29 U.S.C. 701 et seq.)
- The Hatch Act, Chap. 314, 24 Stat. 440 (7 U.S.C. 361a et seq.)

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<sup>7</sup> The active retention period is usually three (3) years from the date when the final programmatic and financial reports are submitted to the federal grantor or, if an audit is conducted within that three-year period, the date when the audit report is officially closed. However, Agencies should check the appropriate section(s) of the **Code of Federal Regulations** that govern their award and subgrant recipient.

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- The Fair Labor Standards Act, Chap. 676, 52 Stat. 1060 (29 U.S.C.201 et seq.)
- The Clean Air Act (Subgrants over \$100,000) Pub. L. 108–201, February 24, 2004, 42 USC cha. 85et.seq.
- The Occupational Safety and Health Act of 1970, Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590 (26 U.S.C. 651 et.seq.)
- The Hobbs Act (Anti-Corruption), Chap 537, 60 Stat. 420 (see 18 U.S.C. § 1951)
- Equal Pay Act of 1963, Pub. L. 88-38, June 10, 1963, 77 Stat.56 (29 U.S.C. 201)
- Age Discrimination Act of 1975, Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728 (42 U.S.C. 6101 et. seq.)
- Age Discrimination in Employment Act, Pub. L. 90-202, Dec. 15, 1967, 81 Stat. 602 (29 U.S.C. 621 et. seq.)
- Title IX of the Education Amendments of 1972, Pub. L. 92-318, June 23, 1972, 86 Stat. 235, (20 U.S.C. 1001)
- Immigration Reform and Control Act of 1986, Pub. L. 99-603, Nov 6, 1986, 100 Stat. 3359, (8 U.S.C. 1101)
- Executive Order 12459 (Debarment, Suspension and Exclusion)
- Medical Leave Act of 1993, Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6 (5 U.S.C. 6381 et seq.)
- Lobbying Disclosure Act, Pub. L. 104-65, Dec. 19, 1995, 109 Stat. 693 (31 U.S.C. 1352)
- Drug Free Workplace Act of 1988, Pub. L. 100-690, 102 Stat. 4304 (41 U.S.C. 701 et seq.)
- Assurance of Nondiscrimination and Equal Opportunity as found in 29 CFR 34.20
- District of Columbia Human Rights Act of 1977, D.C. Official Code § 2-1401.01
- Title VI of the Civil Rights Act of 1964
- District of Columbia Language Access Act of 2004, DC Law 15 – 414, D.C. Official Code § 2-1931 et seq.)

### 10.0 AWARD DOCUMENTATION REQUIREMENTS

#### 10.1 Notice of Grant Agreement (“NOGA”)

The Agency shall prepare and issue the award documents to the grantee or subgrantee. The documents shall include: a transmittal letter and a NOGA that contains the terms and conditions that apply to the award, any special conditions and performance standards that

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may apply, any available forms for reporting programmatic and financial activities and to request funds and any conditions for amendment and/or termination of the grant or subgrant.

The Agency shall ensure that the NOGA also contains, but may not necessarily be limited to, the following information:

- Name, address, telephone number and email address of the granting Agency's point of contact;
- Grant or subgrant number assigned by the granting Agency;
- Catalogue of Federal Domestic Assistance (CFDA) number (if funding is from a federal grant);
- Beginning and ending dates of the award;
- Name, title, address and telephone number of the official point of contact for the grantee;
- Grantee's Tax ID or EIN number;
- Amount of the funds awarded and the amount of any financial or in-kind matching resources, if any, that the grantee must contribute;
- Signature lines for the authorized representatives from the Agency and grantee; and
- Language incorporating the application by reference.

If the award amount and/or project period are different from those in the application or if the Agency requires further clarification of proposed performance standards in the application, the applicant shall be required to submit and obtain approval of the requisite modifications. This may be accomplished either prior to the final award to the awardee or afterwards. If afterwards, the award shall contain a special condition that prohibits expenditure of funds by the grantee until submission and approval of the required modifications or clarification.

The terms and conditions stated in the award document shall specify the administrative requirements to which the awardee must adhere. The terms and conditions shall contain, but not be limited to, the following items:

- A statement that the award is being made from federal grant funds awarded to the Agency, if applicable;
- Citations to the statute and implementing regulations that authorize the award;
- The grant's CFDA number, if applicable; and
- All applicable federal and District regulations, such as OMB Circulars A-21, A-102, A-110, A121 and A-133 and/or 1 DCMR 50;

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- Payment provisions identifying how the grantee will be paid for performing under the award;<sup>8</sup>
- Reporting requirements, including programmatic, financial and any special reports required by the Agency; and
- Compliance issues and conditions that must be met by the grantee.
- Deliverables, deliverable dates, reporting requirements, and the basis for payment.
- A statement that the District reserves all rights to use any remedy available in law or regulation for the non-compliance with the grant agreement.

The Agency shall establish the official records of awarded grants or subgrants. The Agency shall incorporate into its award files and retain the records of all awarded applications and subsequent reports for the period required by federal and District guidelines for grant records.

## 11.0 POST-AWARD REQUIREMENTS

### 11.1 Management

The grantmaking Agency, in accordance with the minimum requirements established herein, shall prescribe and implement grant or subgranting procedures by written policy or, where applicable, formal rulemaking, to ensure fiscal accountability and prevent waste, fraud, and abuse in programs administered pursuant to this Order. The Agency shall conduct and document oversight to ensure compliance with the District's or the original Grantor's award requirements. It shall maintain an administrative and monitoring system that ensures that all grantees perform in accordance with the terms, conditions, and specifications of their grants or subgrants. The system should include a minimum of two monitoring activities per year to check for fiscal and programmatic compliance. Agencies should refer to the District's **SMM** for additional information on post-award monitoring requirements (included as an appendix to this Sourcebook).

OMB Circular A-133 assigns certain responsibilities to primary recipients of federal awards that, in turn, subgrant funds to other organizations. Such primary recipients are generally referred to as "pass-through entities ("PTE")" and those organizations that ultimately receive the funds are typically referred to as "sub-recipients". All subrecipients shall be subject to monitoring including private non-profits, for-profits, public non-profits and state and local government entities. Among other things, A-133 requires such PTEs to monitor the activities of sub-recipients "as necessary" to ensure that federal awards are used as intended. Pass-through entities are also required to ensure that sub-recipients meet any federal audit responsibilities.

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<sup>8</sup> Note that subgrants are not covered by the District's Quick Pay Act, D.C. Official Code 2-221 et. seq.

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Similarly, the Government of the District of Columbia has an interest in ensuring that local funds provided to grant recipients are used appropriately and that performance goals are met. Accordingly, Agencies must have or develop management tools to assist them in ensuring that recipients and sub-recipients meet their program responsibilities. In this regard, there are a variety of methods Agencies can use to oversee the compliance and performance of their sub-recipients. Many of these tools are already part of the grant award and management process, while others constitute common actions that can be taken to effectively monitor sub-awards. Agencies will need to determine what works best for them, their mission, grantees and subgrantees. What works best for one particular Agency or organization may not be the best tool for each and every sub-award or recipient.

PTEs should refer to the federal grants management and audit policies as a starting point for choosing or developing monitoring tools. For example, the OMB has published several circulars that are instructive for federal grants such as its A-133 Compliance Supplement. District Agencies should also comply with the procedural requirements of this Sourcebook, including the SMM (included as an appendix). The Office of Integrity and Oversight (“OIO”) within the Office of the Chief Financial Officer (“OCFO”) has been designated to coordinate the District’s Single Audit pursuant to OMB Circular A-133 and follow-up on outstanding findings that are part of the Single Audit.

## 11.2 Monitoring

Monitoring may involve observation, interviews, collecting and reviewing reports, documents, and data, and any other appropriate activity. Monitoring efforts should be designed to determine generally the grantee’s level of compliance with Federal and/or District requirements and identify specifically whether the grantee’s operational, financial and management systems and practices are adequate to account for program funds in accordance with Federal and/or District requirements.

Monitoring personnel should have duties that are separate from program and fiscal management, technical assistance or any other function related directly to grant administration. This separation of duties allows for the independence and objectivity of the monitoring staff. District grant-making Agencies are required to develop a plan to address their monitoring needs. That plan should: (1) identify the priority of all grantees to be monitored; (2) determine the relative depth of review and frequency for each grantee; and, (3) describe the process and criteria used to select and prioritize the sub-recipients for monitoring purposes.

Every grantee must be appropriately monitored. The Agency may employ one or more risk-assessment tool(s) to assist in determining the priority of grantees to be reviewed, the level of monitoring to be performed and the frequency thereof. Such tools should be able to evaluate, at a minimum, factors like program effectiveness, personnel, operating systems, internal

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controls, Board involvement, operational changes and contract experience with the Federal and/or District government to name a few.

Agencies may make use of other information in determining how frequently and extensively to monitor a particular grantee. For example, Agencies may use historical or anecdotal information in assessing a grantee's risk level and, thereby, the required frequency and extent of any monitoring. Based on the results of the risk assessment, an Agency will classify each grantee as "low-risk", "medium-risk" or "high-risk". Such classification shall then determine how extensively a grantee is monitored, how often and which financial reporting requirement shall apply to that grant award as set forth below. See the SMM attached hereto as Appendix No. 12 for a fuller discussion of the minimum monitoring requirements attributable to each level of risk assessment.

As part of the follow-up responsibility, the OIO will monitor the subrecipient review process that is on-going within the Agencies.

## **11.3 Disallowed Costs**

"Disallowed costs" are costs charged to a grant or subgrant that are later disallowed by the original grantor for not complying with terms of the award agreement. The disallowed costs might be discovered by the District or by the original (federal or private) grantor. If the Government of the District of Columbia, through the District Agency, notifies the grantee that any disbursements made under a grant or subgrant are disallowed costs, the grantee shall be given the opportunity to justify the questioned costs prior to the District's final determination of disallowed costs. If the District ultimately determines the costs are disallowed, reimbursement in full to the District of said amounts must be made by the grantee within forty-five (45) calendar days after final official notification from the District. If the reimbursement is not received in full after forty-five calendar days the grantee shall receive no further grant or subgrant funds from the District until such time as the reimbursement is made in full.

Any Agency intending to make a grant or subgrant must first contact the Office of the Chief Financial Officer, Office of Finance and Treasury (OCFO) to familiarize itself with the then-current procedures for encumbering and drawing down grant funds.

## **11.4 Reports**

The monitoring staff shall prepare written reports to communicate its findings and concerns to the Director or his/her designee regarding the grant awards that it reviews. Such reports shall be maintained in the files and made available for audit purposes, upon request. The SMM sets out several specific reporting requirements that must be addressed in such reports. Generally monitoring staff must document its observations in the areas of internal controls and financial reporting. The SMM contains several checklists in those areas of internal controls like personnel, payroll and procurement. With respect to financial reporting, the

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SMM also contains checklists for review of functions related to budgeting, accounting and cash management.

When the monitoring report is complete, it should:

- Identify Subrecipient information and the award(s) monitored;
- Describe program activities and eligible client population;
- State the date(s) of the review;
- Note the reviewer(s);
- Describe the monitoring activities and test procedures (if any) used to collect information;
- Clearly set forth the findings together with associated references to applicable Federal and/or District regulations and requirements;
- Identify corrective action recommendations, when the corrective action plan is due and to whom it should be submitted; and,
- Note staff's observations (strengths and weaknesses) in the areas of internal controls and financial reporting, at a minimum.

## 11.5 Auditing

All entities that receive a grant or subgrant should expect to be audited in connection with the close-out of that grant. The awarding Agency's monitoring report, which contains its risk assessment of that entity, will determine what kind of financial statement will be required of that grantee or sub-grantee. If the awarding Agency assigns a "high-risk" designation to that entity, or the sub-recipient expends \$500,000 or more of grant funds during the grant year, an independent and in-depth financial statement and audit of the type required by OMB Circular A133's "single audit" for any entity that expends \$500,000 or more of grant funds during the grant year is required.

Grantees or sub-grantees that are assigned a "medium-risk" assessment by their awarding Agency, or those that expend between \$499,999 and \$250,000, shall be required to prepare and file at close-out a less-extensive financial statement report prepared by an independent accountant containing: 1) an income statement, 2) a balance sheet, 3) a reconciliation of cash balances, 4) a reconciliation of stockholder equity (if the grantee is a for-profit entity), and 5) an independent review of management's internal controls.

Grantees or sub-grantees receiving and expending between \$25,000 and \$249,999 during the grant year shall be required to file a financial statement that contains: 1) an income statement, 2) a balance sheet, 3) a reconciliation of cash balances, and 4) a review of management's internal controls.

Finally, grantees or sub-grantees assigned a "low-risk" designation, and any other grantee or sub-grantee that receives and spends up to \$24,999, shall file a simple financial report containing: 1) an income statement and 2) a balance sheet.