

Nonprofit as applied to any agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

Project means the particular construction activity which is supported by a grant under this part.

Secretary means the Secretary of Health and Human Services and any official to whom the authority involved is delegated.

§ 52b.3 Who is eligible to apply?

In order to be eligible for a construction grant under this part, the applicant must:

- (a) Be a public or private nonprofit agency or institution;
- (b) Be located in a state, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor states of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau); and
- (c) Meet any additional eligibility criteria specified in the applicable provisions of the Act.

§ 52b.4 How to apply.

Applications for construction grants under this part shall be made at the times and in the form and manner as the Secretary may prescribe.

§ 52b.5 How will NIH evaluate applications?

(a) In evaluating and approving applications for construction grants under this part, the Director shall take into account, among other pertinent factors, the following:

- (1) The priority score assigned to the application by an NIH peer review group as described in paragraph (b) of this section;
- (2) The relevance of the project for which construction is proposed to the objectives and priorities of the particular program authorized by the Act;
- (3) The scientific merit of the research activities that will be carried out in the proposed facility;
- (4) The scientific or professional standing or reputation of the applicant

and of its existing or proposed officers and research staff;

(5) The availability, by affiliation or other association, of other scientific or health personnel and facilities to the extent necessary to carry out effectively the program proposed for the facility, including the adequacy of an acceptable biohazard control and containment program when warranted;

(6) The need for the facility and its total effects on similar or related facilities in the locale, and the need for appropriate geographic distribution of similar facilities; and

(7) The financial need of the applicant.

(b) The priority score of the application shall be based, among other pertinent factors, on the following criteria:

- (1) The scientific merit of the total program and its component parts to be carried out in the facility;
- (2) The administrative and leadership capabilities of the applicant's officers and staff;
- (3) The organization of the applicant's research program and its relationship with the applicant's overall research programs;
- (4) The anticipated effect of the project on other relevant research programs and facilities in the geographic area, and nationwide;
- (5) The need for the project or additional space; and
- (6) The project cost and design.

§ 52b.6 What is the rate of federal financial participation?

(a) Unless otherwise specified by statute, the rate of federal financial participation in a construction project supported by a grant under this part shall not be more than 50 percent of the necessary allowable costs of construction as determined by the Director, except that when the Director finds good cause for waiving this limitation, the amount of the construction grant may be more than 50 percent of the necessary allowable costs of construction.

(b) Subject to paragraph (a) of this section, the Director shall set the actual rate of federal financial participation in the necessary allowable costs of construction, taking into consideration

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the most effective use of available federal funds to further the purposes of the applicable provisions of the Act.

§ 52b.7 How is the grantee obligated to use the facility?

(a) The grantee shall use the facility (or that portion of the facility supported by a grant under this part) for its originally authorized purpose so long as needed for that purpose, or other period prescribed by statute, unless the grantee obtains advance approval from the Director, in the form and manner as the Director may prescribe, to use the facility for another purpose. Use for other purposes shall be limited as prescribed in § 52b.9(c)(2).

(b) The Director, in determining whether to approve an alternative use of the facility, shall take into consideration the extent to which:

(1) The facility will be used by the grantee or other owner for a purpose described in § 52b.9(c)(2); or

(2) There are reasonable assurances that alternative facilities not previously used for NIH supported research will be utilized to carry out the original purpose as prescribed in § 52b.9(c)(1).

(c) *Sale or transfer.* In the form and manner as the Director may prescribe, the grantee may request the Director's approval to sell the facility or transfer title to a third party eligible under § 52b.3 for continued use of the facility for an authorized purpose in accordance with paragraphs (a) and (b) of this section. If approval is permissible under the Act or other federal statute and is granted, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in 45 CFR part 74, the regulations of this part, and the other terms and conditions of the grant.

§ 52b.8 How will NIH monitor the use of facilities constructed with federal funds?

NIH may monitor the use of each facility constructed with funds awarded under this part to ensure its continued use for the originally authorized research purpose, by means of reviewing periodic facility use certifications or

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reports, site visits, and other appropriate means.

§ 52b.9 What is the right of the United States to recover Federal funds when facilities are not used for research or are transferred?

(a) If the grantee plans to cease using the facility for the particular biomedical research or training purposes for which it was constructed as required by § 52b.7 (or alternate use authorized under § 52b.7(a) or paragraph (c) of this section), or the grantee decides to sell or transfer title to an entity ineligible for a grant under § 52b.3, the grantee shall request disposition instructions from NIH in the form and manner as the Director may prescribe. Those instructions shall provide for one of the following alternatives:

(1) The facility may be sold and the grantee or transferee shall pay to the United States an amount computed by multiplying the federal share of the facility times the proceeds from the sale (after deducting the actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). The sales procedures must provide for competition to the extent practicable, and be designed to provide the highest possible return;

(2) The grantee may retain title and shall pay to the United States an amount computed by multiplying the current fair market value of the facility by the federal share of the facility; or

(3) The grantee shall transfer the title to either the United States or to an eligible non-federal party approved by the Director. The grantee shall be entitled to be paid an amount computed by multiplying the current fair market value of the facility by the nonfederal share of the facility.

(b) The grantee or transferor of a facility which is sold or transferred, or the owner of a facility the use of which has changed, as described in paragraph (a) of this section, shall report that action in writing to the Director not later than 10 days from the date on which the sale, transfer, or change occurs, in the form and manner as the Director may prescribe.