

§ 550.104

with eligible entities to further research, extension, or teaching programs in the food and agricultural sciences. Eligible entities are any State agricultural experimental station, State cooperative extension service, any college or university, other research or education institution or organization, Federal or private agency or organization, an individual, or other party, either foreign or domestic.

§ 550.104 Competition.

REE Agencies may enter into non-assistance cooperative agreements, as authorized by this part, without regard to any requirements for competition specified in 2 CFR 200.202 and 200.206. (7 U.S.C. 3318(e)).

§ 550.105 Duration.

REE Agencies may enter into non-assistance cooperative agreements for a period not to exceed five years. (7 U.S.C. 3318(c)).

§ 550.106 Mutuality of interest.

The REE Agency must document all parties' interest in the project. Mutual interest exists when all parties benefit in the same qualitative way from the objectives of the award. If one party to the non-assistance cooperative agreement would independently have an interest in the project, which is shared by the other party, and all parties contribute resources to obtain the end result of the project, mutual interest exists.

§ 550.107 Exceptions.

This part does not apply to:

(a) USDA Federal Financial Assistance agreements subject to 2 CFR parts 400 and 415;

(b) Procurement contracts or other agreements subject to the Federal Acquisition Regulation (FAR) or the Agriculture Acquisition Regulation (AgAR); or

(c) Agreements providing loans or insurance directly to an individual.

§ 550.108 Conflicting policies and deviations.

This part supersedes and takes precedence over any individual REE regulations and directives dealing with executed and administered non-assistance

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cooperative agreements entered into under the delegated authority of 7 U.S.C. 3318(b). This part may only be superseded, in whole or in part, by a specifically worded Federal statute, regulation, or Executive Order. Deviations from specific provisions of part 550 must be authorized by the USDA-REE-Administrative and Financial Management (AFM)-Financial Management and Agreements Division (FMAD), or any successor organization, based on a documented justification. In the interest of maximum uniformity, exceptions from any requirements of this Part will be permitted only in unusual circumstances. Responsibility for developing, interpreting, and updating this Part is assigned to the USDA-REE-AFM-FMAD, or any successor organization.

§ 550.109 Formation of non-assistance cooperative agreements.

In lieu of 2 CFR 200.201 through 200.204, 200.206, and 200.306, this section establishes project development, resource contributions, indirect cost reimbursement, and tuition remission provisions for non-assistance cooperative agreements.

(a) *Project development.* REE Agencies provide partial funding to cooperators to support research projects that contribute to REE program objectives and help carry out the REE mission. The project must consist of a project plan and/or statement of work, and a budget as follows:

(1) *Project plan.* A *project plan* must be jointly developed by the Agency PI and the cooperator, and be compliant with a REE program requirement. The REE Agency may include program-specific requirements, as applicable. These requirements should be aligned with Agency strategic goals, strategic objectives, or performance goals that are relevant to the program.

(2) *Statement of work.* A detailed *statement of work* must be jointly planned, developed, and prepared by the cooperator's PI and the Agency PI to address the objective(s), approach, statement of mutual interest, performance responsibilities (which may include specific performance goals, indicators, milestones, or expected outcomes, such as outputs, or services performed or

public impacts of any of these, with an expected timeline for accomplishment), and any mutual agreements.

(3) *Budget*. The *budget* is a funding plan that must be jointly developed by the Agency PI and the Cooperator PI. The approved budget must identify the cooperator resource contributions, both direct and indirect, by budget line item. The cooperator must provide a budget justification/narrative.

(b) *Resource contributions*. Each party must contribute resources towards the successful completion of the non-assistance cooperative agreement.

(1) *Agency resource contributions*. The *Agency's contribution* is the Federal share as reflected in the award.

(2) *Cooperator resource contributions*. The *Cooperator's contribution* may consist of funds, services, or in-kind contributions, must be no less than 20 percent of the total funding provided by the REE Agency, and cannot fall below 20 percent of the total Federal funding throughout the period of performance. All cooperator contributions must consist of a sufficient amount of itemized direct costs to demonstrate a true stake in the project, as determined by the ADO. All contributions must be documented in the budget and be consistent with the cooperator's institution classification of costs.

(i) Cooperator resource contributions must meet all of the following criteria:

(A) Are verifiable from the Cooperator's records;

(B) Are not included as contributions for any other Federal award;

(C) Are necessary and reasonable for accomplishment of project or program objectives;

(D) Are allowable under 2 CFR part 200, subpart E;

(E) Are not paid by the Federal government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to cooperator resource contributions of other Federal programs;

(F) Conform to other provisions of this Part, as applicable.

(ii) Cooperator's share of contributions to the project may include:

(A) Unrecovered indirect costs, including indirect costs of the coopera-

tor's resource contributions. Unrecovered indirect cost means the difference between the amount charged to the award and the amount which could have been charged to the award under the cooperator's approved negotiated indirect cost rate.

(B) Values for cooperator's contributions of services and property, established in accordance with 2 CFR 200.434. If the REE Agency authorizes the cooperator to donate buildings or land for construction/facilities acquisition projects or long term use, the value of the donated property for cooperator contributions must be the lesser of paragraph (b)(2)(ii)(B)(1) or (2) of this section (refer to paragraph (b)(2)(ii)(H) of this section for more on the value of donated property):

(1) The value of the remaining life of the property recorded in the cooperator's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the REE Agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (b)(2)(ii)(B)(1) of this section at the time of donation.

(C) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor, if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the cooperator. In those instances in which the required skills are not found in the cooperator, rates must be consistent with those paid for similar work in the labor market in which the cooperator competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation. (Refer to paragraph (b)(2)(ii)(H) of this section for more on third-party in-kind contributions.)

(D) Donated employee services furnished by third-party organization. These services must be valued at the employee's regular rate of pay plus an

amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated indirect cost rate, or, a rate in accordance with 2 CFR 200.414(d), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made. (Refer to paragraph (b)(2)(ii)(H) of this section for more on third-party in-kind contributions.)

(E) Donated property from third parties, which may include such items as office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cooperator contributions must not exceed the fair market value of the property at the time of the donation. (Refer to paragraph (b)(2)(ii)(H) in this section for more on third-party in-kind contributions.)

(F) Third-party-donated equipment, buildings and land. The method used for determining cooperator contributions for which title passes to the cooperator may differ according to the purpose of the Award, if paragraph (b)(2)(ii)(F)(1) or (2) of this section apply:

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cooperator resource contributions.

(2) If the purpose of the Award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the REE Agency has approved the charges. See also 2 CFR 200.420.

(G) The value of donated property must be determined in accordance with the usual accounting policies of the cooperator, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the Cooperator as established by an independent appraiser (*e.g.*, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the cooperator as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24.

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(H) For third-party in-kind contributions, the fair market value of these goods and services must be documented and to the extent feasible supported by the same methods used internally by the cooperator.

(c) *Indirect costs and tuition remission*—(1) *Reimbursement of indirect costs.* Reimbursement of indirect costs is either prohibited or limited as further described in paragraphs (c)(1)(i) through (iii) of this section, and the limit is identified on the approved budget, when applicable.

(i) *State cooperative institutions.* Payment of indirect costs to State cooperative institutions in connection with a non-assistance cooperative agreement is prohibited, as described in 7 U.S.C. 3319. This prohibition does not apply to funds for international agricultural programs conducted by a State cooperative institution and administered by the Secretary, or to funds provided by a Federal agency for such cooperative program or project through a fund transfer, advance, or reimbursement.

(ii) *Non-profit organizations.* Payment of indirect costs to non-profit organizations in connection with a non-assistance cooperative agreement is limited to 10 percent of the total direct cost of

the Award. (Annual Appropriations Bill for Agriculture and Related agencies, General Provisions.)

(iii) *All other cooperating entities.* With the exception of paragraphs (c)(1)(i) and (ii) of this section, payment of indirect costs is allowable in connection with a non-assistance cooperative agreement. Reimbursement of indirect costs is limited to the percentage(s) established in the cooperator's approved negotiated indirect cost rate or, if applicable, the de minimis indirect cost rate.

(2) *Tuition remission.* Reimbursement of tuition expenses to State cooperative institutions in connection with non-assistance cooperative agreements is prohibited. (7 U.S.C. 3319)

(d) *Terms and conditions.* The Agency may impose award-specific terms and conditions or require additional assurances when appropriate.

§ 550.110 Certifications and compliance with statutory and national policy requirements; REE conflict of interest policy.

(a) *Federal statutory and national policy requirements.* The Cooperator must adhere to and comply with, all statutory and national policy requirements of the Federal Government. All signed certifications and assurances must be received by the REE Agency prior to execution of the award.

(b) *REE conflict of interest policy.* (1) The Cooperator must disclose in writing any potential conflict of interest to the REE awarding agency, prior to award, and when a potential conflict arises during NACA period of performance.

(2) The Cooperator must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts, and any sub-awards.

§ 550.111 Project supervision and responsibilities.

(a) The Cooperator is responsible and accountable for the performance and conduct of all its employees assigned to the project. REE Agencies do not have authority to supervise cooperator

employees nor engage in the employer/employee relationship.

(b) The Cooperator PI must:

(1) Work jointly with the Agency PI on developing the project statement of work and budget;

(2) Assure that technical project performance and financial status reports are timely submitted in accordance with the terms and conditions of the award;

(3) Advise the Agency PI of any issues that may affect the timely completion of the project (award);

(4) Assure that appropriate acknowledgements of support are included in all publications and audiovisuals, in accordance with § 550.119 of this part;

(5) Assure that inventions are appropriately reported, in accordance with § 550.124 of this part;

(6) Upon request, provide the Agency a project plan for use during external peer reviews; and

(7) When appropriate, work with the Agency PI to prepare findings for peer-reviewed publication in scientific journals, and make presentations/talks to shareholders, etc.

§ 550.112 Administrative supervision.

The Cooperator is responsible for employer/employee relations such as personnel, performance, and time management issues. The Cooperator is solely responsible for the administrative supervision of its employees, even when its employees are working in Agency facilities.

§ 550.113 Rules of the workplace.

Cooperator employees, while engaged in work at REE facilities, will abide by the Agency's standard operating procedures with regard to the maintenance of laboratory notebooks, dissemination of information, equipment operation standards, facility access, hours of work, Federal agency required training, and the Rules and Regulations Governing Conduct on Federal Property (41 CFR part 102-74, subpart C). Cooperator employees will also undergo any background investigations/clearances, and submit to any health monitoring medical surveillance requirements associated with the REE facility where they will work.