

## § 52a.8

the authorizing legislation, the terms and conditions of the award, the applicable cost principles prescribed in subpart Q of 45 CFR part 74 and 45 CFR 92.22, and the regulations of this part.

### § 52a.8 Other HHS regulations that apply.

Several other regulations and policies apply to this part. These include, but are not necessarily limited to:

*42 CFR Part 50, Subpart A*—Responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

*42 CFR Part 50, Subpart D*—Public Health Service grant appeals procedures

*45 CFR Part 16*—Procedures of the Departmental Grant Appeals Board

*45 CFR Part 46*—Protection of human subjects

*45 CFR Part 74*—Administration of grants

*45 CFR Part 75*—Informal grant appeals procedures

*45 CFR Part 76*—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

*45 CFR Part 80*—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

*45 CFR Part 81*—Practice and procedure for hearings under part 80 of this title

*45 CFR Part 84*—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

*45 CFR Part 86*—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

*45 CFR Part 91*—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

*45 CFR Part 92*—Uniform administrative requirements for grants and cooperative agreements to State and local governments

*45 CFR Part 93*—New restrictions on lobbying  
*51 FR 16958 or successor*—NIH Guidelines for Research Involving Recombinant DNA Molecules

Public Health Service Policy on Humane Care and Use of Laboratory Animals.

### § 52a.9 Additional conditions.

NIH may, with respect to any grant award, impose additional conditions prior to or at the time of any award when, in NIH's judgment, the conditions are necessary to assure or protect advancement of the approved program,

## 42 CFR Ch. I (10–1–96 Edition)

the interests of the public health, or the conservation of grant funds.

## PART 52b—NATIONAL CANCER INSTITUTE CONSTRUCTION GRANTS

Sec.

52b.1 Applicability.

52b.2 Definitions.

52b.3 Eligibility.

52b.4 Application.

52b.5 Evaluation.

52b.6 Other HHS regulations that apply.

52b.7 Rate of Federal financial participation.

52b.8 Terms and conditions.

52b.9 Acquisition of facilities.

52b.10 Additional conditions.

52b.11 Minimum standards of construction and equipment.

AUTHORITY: Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 406(b), 92 Stat. 3428 (42 U.S.C. 286a); sec. 404(b)(9), 92 Stat. 3427 (42 U.S.C. 285).

SOURCE: 45 FR 12243, Feb. 25, 1980, unless otherwise noted.

### § 52b.1 Applicability.

The provisions of this part apply to award of grants under section 406(b) of the Public Health Service Act for the construction of centers for clinical research, training and demonstration of advanced diagnostic and treatment methods relating to cancer, and to the award of grants under section 404(b)(9) for construction of basic research laboratory facilities.

### § 52b.2 Definitions.

(a) *Act* means the Public Health Service Act, as amended.

(b) *Director* means the Director of the National Cancer Institute and any officer or employee of the National Cancer Institute to whom the authority involved may be delegated.

(c) *Construction grant* means a grant of funds for construction pursuant to sections 406(b) and 404(b)(9) of the Act, and in accordance with these regulations.

(d) *Construction* includes the construction of new buildings; acquisition of land or existing buildings provided such acquisition occurs after the filing of the application; the expansion, remodeling, and alteration of existing buildings provided the cost of such expansion, remodeling, and alteration is

not less than \$75,000; and the initial equipment of any such buildings; but excludes the cost of off-site improvements.

### § 52b.3 Eligibility.

In order to be eligible for a construction grant under section 406(b) or section 404(b)(9) of the Act, the applicant must be:

- (a) A public or private nonprofit agency or institution; and
- (b) Located in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, American Samoa, the Trust Territory of the Pacific Islands, or Guam.

### § 52b.4 Application.

(a) *Submittal.* Applications for construction grants under section 406(b) or section 404(b)(9) of the Act, including both detailed narrative descriptions and detailed estimates of the cost of the respective projects, shall be made on an authorized form.

(b) *Environmental impact.* Each applicant shall furnish its analysis of the environmental impact of the proposed construction taking into account the consideration set forth in the National Environmental Policy Act, Pub. L. 91-190 ((42 U.S.C. 4321 *et seq.*), 83 Stat. 852).

(c) *Flood hazards.* Each applicant shall furnish its assessment of the project site in light of the considerations set forth in Executive Order 11296, 31 FR 10663 (August 10, 1966) concerning the evaluation of flood hazards in locating Federally supported facilities.

(d) *Review by State and local comprehensive health planning agency.* In the case of a project for the construction of a facility intended, at least in part, for the provision of health services, the applicant shall provide an opportunity for comment and approval with respect to such project to (1) the State agency administering or supervising the administration of the State plan approved under section 314(a) of the Act, and (2) the public or nonprofit private agency or organization responsible for the plan or plans referred to in section 314(b) of the Act and covering the area in which such project is to be located or if there is no such agency, such other public or nonprofit private agency or organization (if any) as per-

forms, as determined in accordance with criteria of the Director, similar functions.

(Sec. 215, Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 406(b), Public Health Service Act, 92 Stat. 3428 (42 U.S.C. 286a); sec. 404(b)(9), Public Health Service Act, 92 Stat. 3427 (42 U.S.C. 285)).

[45 FR 12243, Feb. 25, 1980, as amended at 48 FR 29201, June 24, 1983; 48 FR 45558, Oct. 6, 1983]

### § 52b.5 Evaluation.

In approving applications for construction grants under this part, the Director shall take into account, among other factors, the following:

(a) The relevance of the program for which construction is proposed to the objectives and priorities of the National Cancer Program (42 U.S.C. 286a),

(b) The scientific merits of the program for which construction is proposed,

(c) The scientific or professional standing or reputation of the agency or institution and of its existing or proposed officers and research staff,

(d) The availability, by affiliation or other association, of other scientific or health personnel and facilities to the extent necessary to carry out effectively the contemplated program, including the adequacy of an acceptable biohazard control and containment program where warranted,

(e) The need to accomplish appropriate geographical distribution of facilities, and

(f) The financial need of the applicant.

### § 52b.6 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

- 42 CFR part 50, subpart D—Public Health Service grant appeals procedure
- 45 CFR part 16—Procedures of the Departmental Grant Appeals Board
- 45 CFR part 74—Administration of grants
- 45 CFR part 75—Informal grant appeals procedures
- 45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of title VI of the Civil Rights Act of 1964

## § 52b.7

## 42 CFR Ch. I (10–1–96 Edition)

45 CFR part 81—Practice and procedure for hearings under part 80 of this title

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

[49 FR 38110, Sept. 27, 1984]

### § 52b.7 Rate of Federal financial participation.

(a) The amount of a construction grant may not exceed 75 percent of the necessary allowable cost of construction as determined by the Director, except that in situations where the Director finds good cause for waiving requirements, for example, in order to achieve sufficient geographical distribution of facilities, the amount of the construction grant may exceed 75 percent of the necessary allowable cost 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 cost of construction taking into consideration the most effective use of available Federal funds to further the purposes of section 406(b) or section 404(b)(9).

### § 52b.8 Terms and conditions.

In addition to any other requirement imposed by law or determined by the Director to be reasonably necessary with respect to any particular grant to fulfill the purposes thereof, each construction grant shall be subject to the condition that the applicant provide certain evidences, supported by such documentation as the Director may reasonably require. The Director may for good cause shown approve exceptions to these conditions and evidences where the Director finds that such exceptions are not inconsistent with the Act and the purposes of the program:

(a) *Title.* That the applicant has a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way sufficient to assure for the estimated useful life of the facility, as determined by the Director, undisturbed use and possession for the purpose of the construction and operation of the facility.

(b) *Plans and specifications.* That approval by the Director of the final working drawings and specifications will be obtained before the project is advertised or placed on the market for bidding and that such approval shall include a determination by the Director that the final plans and specifications conform to the minimum standards of construction and equipment as set forth in § 52b.11 of this part.

(c) *Relocation assistance.* That in the case of a public applicant with an approved project which involves the displacement of persons or businesses on or after January 4, 1971, the applicant will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ((42 U.S.C. 4601 *et seq.*), 84 Stat. 1984) and the applicable regulations issued thereunder (45 CFR part 15).

(d) *Approval of changes in estimated cost.* That the applicant will not enter into any construction contract or contracts for the project or a part thereof, the cost of which is in excess of the estimated cost approved in the application for that portion of the work covered by the plans and specifications, without the prior approval of the Director.

(e) *Completion responsibility.* That the applicant will construct the project, or cause it to be constructed, to final completion in accordance with the grant application and approved plans and specifications.

(f) *Construction inspection.* That the applicant will provide and maintain competent and adequate architectural or engineering inspection at the construction site to insure that the completed work conforms with the approved plans and specifications.

(g) *Non-Federal share.* That sufficient funds will be available to meet the non-Federal share of the cost of constructing the facility.

(h) *Funds for operation.* That sufficient funds will be available when construction is completed for effective use of the facility for the purposes for which it is being constructed.

(i) *Inspection.* That the Director and the Director's representatives shall have access at all reasonable times to work wherever it is in preparation or

progress, and the contractor shall provide proper facilities for such access and inspection.

(j) *Accessibility to handicapped.* That, the facility shall be designed to comply with the Federal Accessibility Standard (41 CFR subpart 101-19.6) as modified by other standards prescribed by the Director or the Administrator of General Services. The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(k) *Minimum standards of construction and equipment.* That the plans and specifications for the project will conform to the minimum standards of construction and equipment as set forth in §52b.11 of this part.

[45 FR 12243, Feb. 25, 1980; 45 FR 20096, Mar. 27, 1980]

#### §52b.9 Acquisition of facilities.

In addition to the other requirements of this part, the following provisions are applicable to the acquisition of existing facilities.

(a) *Minimum standards of construction and equipment.* A determination by the Director that the facility conforms (or upon completion of any necessary construction will conform) to the minimum standards of construction and equipment as set forth in §52b.11 of this part, shall be obtained before entering into a final or unconditional contract for such acquisition. Where the Director finds that exceptions to or modification of any such minimum standards of construction and equipment would be consistent with the purposes of section 406(b) or section 404(b)(9) of the Act, the Director may authorize such exceptions or modifications;

(b) *Estimated cost of acquisition and remodeling: Suitability of facility.* Each application for a project involving the acquisition of existing facilities shall include in the detailed estimates of the cost of the project, the cost of acquiring such facilities, and any cost of remodeling, renovating or altering such facilities to serve the purposes for which they are acquired. Such application shall demonstrate to the satisfaction of the Director that the architectural, structural and other pertinent features of the facility, as modified by any proposed expansion, remodeling,

renovation, or alteration, will be clearly suitable for the purposes of section 406(b) or section 404(b)(9) of the Act, and, to the extent of the costs in which Federal participation is requested, are not in excess of what is necessary for the services proposed to be provided in such facilities;

(c) *Bona fide sale.* Federal participation in the acquisition of existing facilities is on condition that such acquisition constitutes a bona fide sale involving an actual cost to the applicant and will result in additional or improved facilities for purposes of section 406(b) or section 404(b)(9) of the Act; and

(d) *Facility which has previously received Federal grant.* No grant for the acquisition of a facility which has previously received a Federal grant for construction, acquisition, or equipment shall serve either to reduce or restrict the liability of the applicant or any other transferor or transferee from any obligation of accountability imposed by the Federal Government by reason of such prior grant.

[45 FR 12243, Feb. 25, 1980; 45 FR 20096, Mar. 27, 1980]

#### §52b.10 Additional conditions.

The Director may with respect to any grant award impose additional conditions consistent with these regulations prior to or at the time of any award when in the Director's judgment such conditions are necessary to assure or protect advancement of the approved project, the interests of the National Cancer Program, or the conservation of grant funds.

#### §52b.11 Minimum standards of construction and equipment.

The standards set forth in this section have been determined by the Director to constitute minimum requirements for construction and equipment, including remodeling, renovation, or alteration of existing buildings, and shall apply to all projects for which Federal assistance is requested under section 406(b) or section 404(b)(9) of the Act. In accordance with 5 U.S.C. 552(a)(1), the publications to which reference is made in this section, unless otherwise indicated, are hereby incorporated by reference and made a part

hereof. These documents are available for inspection at the Department and Regional Offices' Information Centers listed in 45 CFR 5.31 and copies of such documents may be purchased as specified. The Director may for good cause shown approve plans and specifications which contain deviations from the requirements prescribed, if the Director is satisfied that the purposes of such requirements have been fulfilled. In addition to these requirements, it is recognized that each project will have to meet the requirements of State and/or local codes and ordinances relating to construction.

(a) *General.* The structural design, construction, and fire safety provisions of all project facilities shall comply with the standards of the Uniform Building Code (available from International Conference of Building Officials, 5360 South Workman Road, Whittier, CA 90601) or with applicable State or local codes and ordinances, whichever is more restrictive.

(b) *Mechanical.* All installations of fuel burning equipment, steam, heating, air conditioning and ventilation, plumbing and other piping systems, incinerators, and boilers shall comply with the following standards:

(1) Handbook of Fundamentals: American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), United Engineer Center, 345 East 47th Street, New York, NY 10017.

(2) National Standard Plumbing Code: National Association of Plumbing-Heating-Cooling Contractors, 1016 20th Street NW., Washington, DC 20036.

(3) Standard for Non-Flammable Medical Gas Systems, 1973, NFPA Bulletin No. 56F, National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02110.

(4) Standard for Medical-Surgical Vacuum Systems in Hospitals, Pamphlet P-2.1: Compressed Gas Association (CGA), 500 Fifth Avenue, New York, NY 10036.

(c) *Fire and safety.* The fire-resistant design criteria for the facility will be governed by the criteria necessary for that portion of the facility which is subject to the most severe usage. Remodeled structures shall be upgraded, in total, unless it is feasible to isolate the improved portion of the building

with fire walls and fire doors. Fire-resistant design shall be in accordance with the standards of Life Safety Code, NFPA No. 101, 1973, National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02110.

(d) *Emergency electrical service.* Fire alarm systems and other electrical service shall conform to the standards as specified in Life Safety Code, NFPA No. 101, 1973, National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02110.

(e) *Electrical.* All electrical installations and equipment shall be in accordance with State and local codes and applicable sections of National Electric Code, NFPA Bulletin No. 70, 1971, National Fire Protection Association, 470 Atlantic Avenue Boston, MA 02110.

(f) *Radiation protection.* All areas in which X-ray, gamma-ray, beta-ray producing and similar equipment is located shall be protected from radiation in accordance with the standards which are in the Handbook Reports No. 33 and 34: National Council on Radiation Protection (NCRP), P.O. Box 30175, Washington, DC 20008.

(g) *Earthquake.* All facilities shall be designed and constructed in accordance with the standards specified in the Uniform Building Code, 1973, International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601, unless more restrictive State and local codes govern.

(h) *Zoning.* State and local codes shall apply.

[45 FR 12243, Feb. 25, 1980; 45 FR 20096, Mar. 27, 1980]

#### PART 52c—MINORITY BIOMEDICAL RESEARCH SUPPORT PROGRAM

Sec.

52c.1 Applicability.

52c.2 Definitions.

52c.3 Eligibility.

52c.4 Application.

52c.5 Grant awards.

52c.6 Expenditure of grant funds.

52c.7 Other HHS regulations that apply.

52c.8 Additional conditions.

AUTHORITY: 42 U.S.C. 216, 241(a)(3).

SOURCE: 45 FR 12246, Feb. 25, 1980, unless otherwise noted.