

**§ 3403.11**

be an important consideration. The existence of a follow-on funding commitment for continued development in Phase III will also be an important consideration. The value of any commitment will depend upon the degree of financial commitment made by investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to funding requested from USDA in Phase II.

**§ 3403.11 Availability of information.**

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), the SBIR Policy Directive, and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR part 1.

**Subpart E—Supplementary Information**

**§ 3403.12 Terms and conditions of grant awards.**

Within the limit of funds available for such purposes, the Authorized Departmental Officer shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in the annual program solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of award, the Federal Acquisition Regulations (48 CFR part 31), and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

**§ 3403.13 Notice of grant awards.**

(a) The grant award document may include the following:

(1) Legal name and address of performing organization or institution;

**7 CFR Ch. XXXIV (1–1–14 Edition)**

- (2) Title of project;
- (3) Name and institution of Project Director's chosen to direct and control approved activities;
- (4) Identifying grant number assigned by the Department;
- (5) Project period, specifying the amount of time the Department intends to support the project;
- (6) Total amount of Departmental financial assistance approved for the project period;
- (7) Legal authority(ies) under which the grant is awarded;
- (8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;
- (9) Applicable award terms and conditions;
- (10) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and
- (11) Other information or provisions deemed necessary by NIFA to carry out its respective granting activities or to accomplish the purpose of a particular grant.

(b) [Reserved]

**§ 3403.14 Use of funds; changes.**

(a) *Delegation of fiscal responsibility.* Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Changes in Project Plans.* (1) The permissible changes by the grantee, Project Director, or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the grantee or the Project Director (PD) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The signatory of the award document is the ADO, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader, approved in writing by the ADO prior to effecting such changes. In no event

shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader, approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and, in consultation with the NIFA SBIR National Program Leader, approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(c) *Changes in Project Period.* The project period may be extended by NIFA without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project provided Federal funds remain. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO unless otherwise noted in the award terms and conditions. In such cases the extension will not normally exceed 12 months. The Phase I award will still be limited to the approved award amount, and the submission of a Phase II proposal will normally be delayed by no more than one year. The extension allows the grantee to continue expending the remaining Federal funds for the intended purpose over the extension period. In instances where no Federal funds remain, it is unnecessary to approve an extension since the purpose of the extension is to continue using Federal funds. The grantee may opt to continue the Phase I project after the grant's termination and closeout, however, the grantee would have to do so without additional Federal funds. In the latter case, no communication with USDA is necessary.

(d) *Changes in approved budget.* Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to insti-

tuting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or grant award.

(e) *Use of Change of Name and Novation Agreement.* (1) Occasionally, after an award has been made the name of the Awardee may change. NIFA requires execution of a "Change of Name Agreement" in such instances. The specific circumstances of each situation will determine which kind of agreement should be executed. This decision will be determined by the ADO.

(i) A Change of Name Agreement is a legal instrument executed by the Awardee and the Government that recognizes a change of the legal name of the Awardee without disturbing the original rights and obligations of the parties. If only a change of the Awardee's name is involved and the Government's and Awardee's rights and obligations remain unaffected, the parties should execute an agreement to reflect the name change.

(ii) In order to execute the actual Change of Name Agreement with USDA, the Awardee is required to submit the following information:

(A) The document effecting the name change, authenticated by a proper official of the State having jurisdiction;

(B) The opinion of the Grantee's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;

(C) A list of all affected awards between the Grantee and NIFA.

(iii) When NIFA is notified that a change of name has taken place, the ADO will request the aforementioned information from the Grantee. Upon receipt and review of this information, parties will properly execute a Change of Name Agreement and the appropriate changes will be made to the Agency's records. The following suggested format for an agreement may be adapted for specific cases:

**CHANGE OF NAME AGREEMENT**

THE ABC CORPORATION (Grantee), a corporation duly organized and existing under the laws of \_\_\_\_\_ (insert State), and the NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA (Government) enter into this Agreement as of \_\_\_\_\_ (insert

§ 3403.14

7 CFR Ch. XXXIV (1-1-14 Edition)

date when the change of name became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

1. The Government, represented by the ADO, has entered into certain awards with XYZ CORPORATION, namely \_\_\_\_\_ (insert award number or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference.") The term "the awards," as used in this Agreement, means the above awards and all other awards, including all modifications, made by the Government and the Grantee before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Grantee has any remaining rights, duties, or obligations under these awards.)

2. The XYZ CORPORATION, by an amendment to its certificate of incorporation, dated \_\_\_\_\_, 20\_\_\_\_, has changed its corporate name to ABC CORPORATION.

3. This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Grantee under the awards are unaffected by this change.

4. Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

1. The awards covered by this Agreement are amended by substituting the name "ABC CORPORATION" for the name "XYZ CORPORATION" wherever it appears in the awards; and

2. Each party has executed this Agreement as of the day and year first above written.

NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

ABC CORPORATION

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

CERTIFICATE

I, \_\_\_\_\_, certify that I am the Secretary of ABC CORPORATION, that \_\_\_\_\_, who signed this Agreement for this corporation, was then \_\_\_\_\_ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers.

WITNESS MY HAND, and the seal of this corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY: \_\_\_\_\_

(CORPORATE SEAL)

(2) From time to time the legal entity performing the research under the award may have to be changed. In such instances, USDA will ensure that all parties properly execute a Novation Agreement (Successor in Interest Agreement).

(i) A Novation Agreement is a legal instrument executed by the Grantee (transferor), the successor in interest (transferee), and the Government by which, among other things, the transferor guarantees performance of the award, the transferee assumes all obligations under the award, and the Government recognizes the transfer of the award and related assets. This occurs when the third party's interest in the award arises out of the transfer of all the Grantee's assets or the entire portion of the assets involved in performing the award. Examples include, but are not limited to: the sale of these assets with a provision for assuming liabilities; the transfer of these assets incident to a merger or corporate consolidation; and the incorporation of a proprietorship or partnership, or the formation of a partnership.

(ii) When a Grantee asks the Government to recognize a successor in interest, the responsible ADO shall obtain the following from the Grantee:

(A) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;

(B) A list of all affected awards;

(C) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;

(D) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;

(E) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;

(F) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government award;

(G) Evidence of transferee's capability to perform the award; and

(H) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, certified for accuracy by independent accountants.

(iii) The ADO will review the Agency's financial records concerning the correct cash-on-hand balances held by the transferor to ensure that they are properly accounted for in the transfer process. If recognizing a successor in interest to a Government award is consistent with the Government's interest, the ADO will prepare a Novation Agreement for execution by all three parties. The agreement will provide that:

(A) The transferee assumes all the transferor's obligations under the award(s);

(B) The transferor waives all rights under the award against the Government;

(C) The transferor guarantees performance of the award by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(D) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(E) The following suggested format for an agreement may be adapted for specific cases:

**NOVATION AGREEMENT (SUCCESSOR IN INTEREST AGREEMENT)**

THE ABC CORPORATION (Transferor), a corporation duly organized and existing under the laws of \_\_\_\_\_ (insert state) with its principal office in \_\_\_\_\_ (insert city); the XYZ CORPORATION (Transferee), a corporation duly organized and existing under the laws of \_\_\_\_\_ (insert state) with its principal office in \_\_\_\_\_ (insert city); and the NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA (Government) enter into this Agreement as of \_\_\_\_\_ (insert the date transfer of assets became effective under applicable State law).

**(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:**

1. The Government, represented by the ADO has entered into certain awards with the Transferor, namely: \_\_\_\_\_ (insert award number or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference.") The term "the awards," as

used in this Agreement, means the above awards and all other awards, including all modifications, made between the Government and Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these awards.) Included in the term "award" are also all modifications made under the terms and conditions of these awards between the Government and the Transferor, on or after the effective date of this Agreement.

2. As of \_\_\_\_\_, 20\_\_\_\_, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a \_\_\_\_\_ (insert terms or legal transaction involved) between the Transferor and the Transferee.

3. The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

4. The Transferee has assumed all obligations and liabilities of the Transferor under the awards by virtue of the above transfer.

5. The Transferee is in a position to fully perform all obligations that may exist under the awards.

6. It is consistent with the Government's interest to recognize the Transferee as the successor party to the awards.

7. Evidence of the above transfer has been filed with the Government.

**(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT:**

1. The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the awards.

2. The Transferee agrees to be bound by and to perform each award in accordance with the conditions contained in the awards. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the awards as if the Transferee were the original party to the awards.

3. The Transferee ratifies all previous actions taken by the Transferor with respect to the awards, with the same force and effect as if the action had been taken by the Transferee.

4. The Government recognizes the Transferee as the Transferor's successor in interest in and to the awards. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the awards as if the Transferee were the original party to the awards. Following the effective date of this Agreement, the term Grantee, as used in the awards, shall refer to the Transferee.

5. Except as expressly provided in this Agreement, nothing in it shall be construed

§ 3403.15

as a waiver of any rights of the Government against the Transferor.

6. All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the awards, shall be considered to have discharged those parts of the Government's obligations under the awards. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the awards, to the extent of the amounts paid or reimbursed.

7. The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the awards.

8. The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should these awards be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

9. The awards shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

ABC CORPORATION

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

XYZ CORPORATION

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

CERTIFICATE

I, \_\_\_\_\_, certify that I am the Secretary of ABC CORPORATION, that \_\_\_\_\_, who signed this Agreement for this corporation, was then \_\_\_\_\_ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers. WITNESS MY HAND, and the seal of this corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

BY: \_\_\_\_\_

7 CFR Ch. XXXIV (1-1-14 Edition)

(CORPORATE SEAL)

CERTIFICATE

I, \_\_\_\_\_, certify that I am the Secretary of XYZ CORPORATION, that \_\_\_\_\_, who signed this Agreement for this corporation, was then \_\_\_\_\_ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers. WITNESS MY HAND, and the seal of this corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

BY: \_\_\_\_\_

(CORPORATE SEAL)

§ 3403.15 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR part 3—USDA implementation of the Debt Collection Act.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 331 and 9 CFR part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., OMB Circular Nos. A-21 and A-122) and incorporating provisions of 31 U.S.C. 6301-6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal