

## Attachment 2

### Justification for Use of Financial Assistance and Public Purpose

#### (Financial Assistance versus Contract)

The Federal Grant and Cooperative Agreement Act (FGCAA) requires that a cooperative agreement must have a “public purpose of support or stimulation authorized by a law of the United States.” The concept of *public purpose* is the distinguishing factor between financial assistance programs and procurement contracts. This concept of public purpose is a critical element in financial assistance. The primary purpose must be to promote the general welfare, security, public health, safety, education, prosperity, or public convenience as authorized by a Federal Law.

A legal authority, or Federal statute, is required to authorize the project or program as a financial assistance legal instrument. A legal authority will specify the type of financial assistance instrument permitted. For example, our broad legal authority **Federal Land Policy and Management Act of 1976 (FLPMA), 43 USC 1737, PL 94-579, as amended.** Section 1737 (b) Contracts and cooperative agreements. Subject to the provisions of applicable law, the Secretary may enter into contracts and *cooperative agreements* involving the management, protection, development, and sale of *public lands*. This authority only specifies cooperative agreements, not grants, as it relates to only public lands.

Other authorities allow for BLM to enter into cooperative agreements for activities with specific entities or require a cost share match or even both refer to the following legislative authorities:

- **Endangered Species Act, 16 USC 1535, PL 93-205, Section 6 as amended by PL 97-304. Section 1535.** Cooperation with States. (c) Cooperative agreements. (1) In furtherance of the purposes of this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any *State* which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species; **or** (2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement, in accordance with this section with any *State* which established and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. (*When applying refer to Section (d) Allocation of Funds (2) (i) the Federal share of such program costs shall not exceed 75% of the estimated program cost stated in agreement; and (ii) 10% whenever two or more States having a common interest in one or more endangered or threatened species.*)
- The primary authority for Youth cooperative agreements is found under **16 U.S.C. Chapter 37, Subchapter II, Section §1723(c), Public Land Corps.** This authority authorizes the BLM to enter into cooperative agreements with any qualified Youth Conservation Corps to perform appropriate conservation projects. It is important to note, however, that this authority limits eligible participants to individuals between the ages of 16-25. When an agreement involves participants outside of this age range (such

as veterans), GMO/GMS may need to cite other legislative authorities that allow for the financial assistance funding. Other authorities may be used in addition to the Public Land Corps Authority for youth agreements. As you read further section § 1729. **Funding (a) Cost sharing (1) Projects by qualified youth or conservation corps.** The BLM is authorized to pay not more than 75 percent of the costs of any appropriate conservation project carried out pursuant to this subchapter on public lands by a qualified youth or conservation corps. The remaining 25 percent of the costs of such a project may be provided from nonfederal sources in the form of funds, services, facilities, materials, equipment, or any combination of the foregoing. No cost sharing shall be required in the case of any appropriate conservation project carried out on Indian lands or Hawaiian home lands under this subchapter.

The Grants Management Officer (GMO) and Program Officer (PO) should always review the actual text of any authority referenced to ensure there are no additional limitations or qualifications that may affect the ability to use the authority for the intended purpose.

Some examples of public purpose project authorized by statutes applicable to the BLM include, but are not limited to, the following:

- Youth Projects will promote and stimulate public purposes such as education, job training, development of responsible citizenship, productive community involvement, and further the understanding and appreciation of natural and cultural resources through the involvement of youth and young adults in the care and enhancement of public resources. (an incidental benefit to BLM is acceptable however the principal purpose must be a public purpose;
- The public would benefit from a potential partner's participation in the management of wildlife and wildlife habitats on public lands which promotes stewardship and responsibility of natural resources. Completion of this work would minimize or eliminate what could potentially be die-offs as result of lost habit

GMO must document the public purpose within the official award. Some examples of public purpose activities authorized by statutes applicable to BLM include, but are not limited to, the following:

- The project will engage recipients, partners, communities, and/or visitors in shared environmental stewardships.
- The project promotes greater public and private participation in historic preservation programs and activities. The project builds resource stewardship ethics in its participants.
- Activities under this Habitat Restoration Project can potentially create jobs in restoration and increase the associated "green" values of healthy watersheds and upland habitats. A healthy watershed provides clean and increased volumes of water for recreation, supports thriving populations of wildlife valued by the public, and strengthens sensitive wildlife and plant species' ability to survive.
- Other benefits of habitat restoration and improvements promote healthy forests, increase the protection of local communities through reduced threats of wildfire, and result in the

removal of invasive species and redistribution of native seeds. Local communities will also benefit from reduced soil erosion from wind and water, as well as improved water quality and availability.

- The information, products and/or services identified or developed by this project will be shared through a variety of strategies to increase public awareness, knowledge and support for historic preservation and stewardship of the nation's cultural and historical heritage.
- The principal purpose of the project is to support the Government's objective to provide opportunities for youth to learn about the recreation resource management by spending time working on project on public lands. (*The BLM receives the indirect benefit of completing conservation projects*).
- The project motivates its youth participants to become involved in the natural, cultural and/or historical resource projects.
- The scientific community and/or researcher's external to BLM gains by the new knowledge provided through studies and related results dissemination of natural, cultural and/or historical resource information.

A procurement contract is not financial assistance even though it is also a legally binding agreement that transfers items of value. The principal purpose of a procurement contract is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government as opposed to a benefit of public purpose. A product or service is considered to be of direct benefit or use of the Federal Government when it:

- Supports the day to day operations of the agency; or
- Is recognized objective or mission of the agency requiring a deliverable for the direct benefit or use of the agency.

A few examples of projects that would typically not be considered public purpose but rather for direct benefit or use of the Federal Government to support the BLM mission include:

- Training for the benefit of BLM employees;
- "Service" for short and long term care and holding of horses;
- Conferences or seminars for the benefit of BLM employees;
- Construction of a visitor center or other BLM building or structure;
- General BLM maintenance projects; or
- Any project that is required to produce a deliverable that is necessary for the daily function and support of the BLM mission

In addition, financial assistance may not be used for:

- Circumventing procurement contracts;
- Doing projects cheaply;

- “Hiring” Youth Conservation Corps crews/interns to perform work of a vacant FTE position; or
- Dumping funds at the end of the fiscal year.

Substantial involvement is a required component of a cooperative agreement. Substantial involvement is defined as *significant BLM participation prior to and during the performance of a financial assistance agreement*. For grants, substantial involvement is neither expected nor required. Substantial involvement is the defining factor that distinguishes cooperative agreements from grants, but does not, however, distinguish cooperative agreements from other types of legal instruments, such as acquisition and partnership instruments. The BLM substantial involvement for a cooperative agreement or lack of substantial involvement in the case of a grant, must be documented in the official award. The following statements may be used to demonstrate substantial involvement:

- The BLM Program Officer will collaborate with the Recipient to manage all stages of project development, implementation, and evaluation. Responsibility for project management, control, and direction will be shared by the recipient and the BLM, however the BLM will have the right to intervene by modifying the project management plan if the project is not staying on schedule and/or technical issues arise.
- BLM will be involved with the recipient in describing the goals and jointly developing the scope and the activities to be accomplished. This must be combined with other substantial involvement such as providing technical assistance or any of the statements listed below.
- BLM staff will assist the recipient in selecting projects, provide orientation to crew/interns, oversee assignments, teach new skills, distribute tools and equipment and provide technical assistance and safety training.
- BLM staff will work together with recipient to jointly organize and deliver seminars, workshops and types of training programs for the purpose of promoting historic preservation to non-government entities, State, Tribes and local governments and the general public.
- BLM will provide the services of a Program Officer to serve as liaison to (the recipient) for the work under this agreement. This includes consulting and working specifically with the Recipient’s program coordinator and team leaders on recruiting, interviewing and recommending appropriate candidates.
- BLM will provide a work leader and/or BLM professional to mentor and train the youth employed by the Youth Conservation Corps.