

§ 1108.410

a stated cost-sharing requirement in the notice of funding opportunity to which the entity's application responds).

(b) *Voluntary committed cost sharing* means voluntary cost sharing that a DoD Component accepts through inclusion in the approved budget for the project or program and as a binding requirement of the terms and conditions of the award made to the entity in response to its application.

(c) *Voluntary uncommitted cost sharing* means voluntary cost sharing that does not meet the criteria in paragraph (b) of this section.

§ 1108.410 Working capital advance.

Working capital advance means a payment method under which funds are advanced to a recipient or subrecipient to cover its estimated disbursement needs for a given initial period, after which the DoD component making the award makes payment to the recipient or subrecipient by way of reimbursement.

APPENDIX A TO PART 1108—BACKGROUND ON ASSISTANCE, ACQUISITION, AND TERMS FOR TYPES OF LEGAL INSTRUMENTS

I. PURPOSE OF THIS APPENDIX

This appendix provides background intended to clarify some terms:

A. That are used in this chapter to describe either types of legal instruments that DoD Components, recipients, and subrecipients issue, or the purposes for which those types of instruments are used; and

B. For which this part provides definitions that vary depending on the context within which the terms are used.

II. WHY DEFINITIONS OF SOME TERMS ARE CONTEXT-DEPENDENT

A. The DoDGARs contain both:

1. Direction to DoD Components concerning their award of grants and cooperative agreements at the prime tier; and

2. Terms and conditions that DoD Components include in their grants and cooperative agreements to specify the Government's and recipients' rights and responsibilities, including post-award requirements with which recipients' actions must comply.

B. In some cases, the same defined term or two closely related terms are used in relation to both DoD Component actions at the prime tier and recipient or subrecipient actions at lower tiers under DoD Components' awards. But a given defined term may have meanings that differ at the two tiers. For ex-

2 CFR Ch. XI (1–1–24 Edition)

ample, in part because the Federal Grant and Cooperative Agreement Act applies to DoD Component actions at the prime tier but not to recipient or subrecipient actions at lower tiers (see sections III and IV of this appendix):

1. The terms “acquire” and “acquisition” do not have precisely the same meaning in conjunction with actions at the prime and lower tiers.

2. The meaning of the term “procurement contract” used to describe DoD Component prime-tier actions is not precisely the same as the meaning of “procurement transaction” or “contract” used to describe recipient or subrecipient actions at lower tiers.

III. BACKGROUND: DISTINGUISHING PRIME-TIER RELATIONSHIPS AND LEGAL INSTRUMENTS

A. The Federal Grant and Cooperative Agreement Act (31 U.S.C. chapter 63) specifies that the type of legal instrument a DoD Component is to use is based on the nature of the relationship between the DoD Component and the recipient.

B. Specifically, except where another statute authorizes DoD to do otherwise, 31 U.S.C. chapter 63 specifies use of:

1. A procurement contract as the legal instrument reflecting a relationship between a DoD Component and a recipient when the principal purpose of the relationship is to acquire property or services for the direct benefit or use of the Federal Government.

2. A grant or cooperative agreement as the legal instrument reflecting a relationship between those two parties when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by Federal statute.

C. The terms “acquisition” and “assistance” are defined in this part to correspond to the principal purposes described in paragraphs III.B.1 and 2 of this section, respectively. Using those terms, paragraphs III.B.1 and B.2 may be restated to say that grants and cooperative agreements are assistance instruments that DoD Components use, as distinct from procurement contracts they use for acquisition.

IV. BACKGROUND: DISTINGUISHING TYPES OF RECIPIENTS' AND SUBRECIPIENTS' INSTRUMENTS

A. While the Federal Grant and Cooperative Agreement Act applies to Federal agencies, it does not govern types of instruments that recipients and subrecipients of any tier use. That statute does not require a recipient or subrecipient to:

1. Consider any instrument it makes at a lower tier under a Federal assistance award to be a grant or cooperative agreement.