

Grants/Contracts Differences

Federal agencies use procurement contracts and various forms of financial assistance (grants, cooperative agreements, and others) to transfer funds to people and organizations to reach the agency’s authorized mission.

In a legal sense, both financial assistance and acquisition awards are types of contracts:

“A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.”
Restatement (Second) of Contracts §1 (1981)

Both vendors and grantees enter into binding relationships with the Government—and they are required to meet the conditions of either the procurement contract or the financial assistance award.

The Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224, 31 USC 6301 et seq.) establishes the basic distinctions between procurement contracts, grants, and cooperative agreements.

Procurement Contract	Grant	Cooperative Agreement
<p>An executive agency shall use a procurement contract as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when— (1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or (2) the agency decides in a specific instance that the use of a procurement contract is appropriate.</p>	<p>An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when— (1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is not expected</p>	<p>An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when— (1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is expected</p>

Procurement Contract	Grant	Cooperative Agreement
	between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.	between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.
31 USC 6303	31 USC 6304	31 USC 6305

The distinction between grants and cooperative agreements revolves around the presence or absence of substantial involvement. In research activities, substantial involvement is likely to be found when a Federal employee is actively assisting, guiding, coordinating, or participating in the project. This substantial involvement most commonly takes the form of either (1) managing the allocation of resources between sub-projects, sites, or institutions or (2) being actively involved in the conduct of the research. Normal oversight and stewardship are not substantial involvement.

There are many differences between procurement contracts and grants. The chart below contains a number of them, and it may help define which instrument you wish to apply for.

Grants	Contracts
Used to advance a public purpose	Used for the direct benefit of the Government
Supports or stimulates an activity	Purchases or acquires goods or services
Partnership between Government and recipient	Government buyer and third-party seller
Awarded after reviewing technical merit	Awarded after evaluation in accordance with the criteria established in the solicitation that includes at a minimum a technical evaluation and a cost/price analysis
No Independent Government Cost Estimate	Independent Government Cost Estimate recommended
Performed in as competitive a manner as possible	Strict adherence to the Competition in Contracting Act unless an exception applies in accordance with FAR Part 6
No formal protest process	Formal protest process (within agency and GAO)
Cannot be used for classified work	Must be used for classified work
May support part of a project's cost	Allows for a variety of price/cost arrangements in accordance with FAR Part 16
Congress determines the activity to be in the public interest	Contracting Officer must secure good value for the Government

Grants	Contracts
Recipient may terminate at any time	Contractors do not have the right to terminate a contract
Multiple awards from one solicitation/FOA	Usually one award from one solicitation
Governed by regulations in Title 2, CFR	Governed by Federal Acquisition Regulation
OMB oversight from Office of Federal Financial Management	OMB oversight from Office of Federal Procurement Policy
Use standardized government-wide forms for applications and reports, not for awards	Standard forms for signatures, awards, amendments and modifications
Opportunities and applications	Solicitations
Public has access to services or knowledge	Government has use of goods or services
Requires best efforts in research	Requires delivery of promised goods or services determined by contract type
Payment based on budget periods	Payment schedule may be negotiated by contract type
Required annual reporting (may be more frequent in rare circumstances)	Reporting may be required whenever negotiated
Non-performance may be default, or it may be reasonable	Non-performance is default
More flexible standard of scope of work	More rigid standard of scope of work
Easy to amend or revise	Modifications must meet strict standards
Research grants are usually renewable	Procurement contracts are usually not renewable
No precise contours of work and timetables	Schedule of milestones and deliverables
Simplicity and economy in execution and administration are in both parties' interests	Both parties have different interests and need to negotiate and formalize how they will be reached
Grants for basic research may last for a very long time	Contracts end when the good or service is delivered and accepted
Costs must be reasonable, allowable, allocable, and consistently treated	Cost/Price is as a result of contract type and as agreed upon at the time of contract award

Grants	Contracts
No regulatory limit on subawarding—but avoidance of “pass-through” entities is prudent	Limitations on subcontracting
Questions and answers about solicitation are between asker and answerer	Questions and answers about solicitation must be made public
Research grants use advance payment (with some exceptions)	Payment is made in accordance with the terms and conditions of the contract and may allow for advance, progress or performance-based payments
Applicant defines the scope of work	Government describes the scope of work
Requirements could convert a grant into a contract	Very difficult to convert procurement contract into a grant
Publications encouraged	Publications may be restricted
Recipient owns intellectual property	Intellectual property may become the Government’s property
Continuation awards to move between budget periods	Modifications to exercise option years
Continuation awards in response to progress reports	Option years exercised in accordance with FAR Subpart 17.2 and after contracting officer determination
Reports may be considered “deliverables”	Inspection and acceptance of deliverables required
Terms of award	Clauses in contract
Payments made to grantee	Assignment of claims allowed in accordance with FAR Subpart 32.8
Key personnel can change effort within limits	Any change to key personnel requires approval
Automatic waiver of prior approval in some circumstances	No automatic waiver of prior approval
No claims against Government	Claims against Government may be filed