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this part, unless exceptions are required by program legislation or program regulations, shall be submitted to the Grants Officer. Exceptions may be approved by the Grants Officer on matters within the scope of his authority, or obtained by said Grants Officer from higher authority within the Department of Transportation or from the Office of Management and Budget when required by law or other applicable Federal requirement.

DEFINITION OF TERMS

**§ 385.20 Scope.**

Only those definitions needed to understand this part will be defined. Generally, terms defined elsewhere in statutes, OMB circulars, and other Federal requirements will not be restated. Special attention is directed to the definitions in the Standard General Provisions of MarAd's grant and cooperative agreements (See § 385.62).

**§ 385.21 Definitions.**

(a) *Assistance* is where the principal purpose of the relationship is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute rather than of acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government.

(b) *Assistance instrument* is a general term which identifies a class of instruments used to award assistance. These instruments include grant and cooperative agreements, as defined in § 385.32 (c) and (d) of this part.

(c) *Act* means the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224).

(d) *MarAd* means the Maritime Administration within the Department of Transportation.

(e) *Secretary* means the Secretary of Transportation.

(f) *Maritime Administrator* means the Maritime Administrator, Department of Transportation to whom the Secretary has delegated authority to administer within MarAd the provisions of the Act.

(g) *Grants Officer* means the primary delegate of the Maritime Administrator responsible for administration of grants and cooperative agreements for research and development within MarAd.

(h) *Awards Officer* means the principal executive subordinate to the Grants Officer responsible for the day-to-day administration of grants and cooperative agreements for research and development.

GENERAL POLICIES

**§ 385.31 Scope.**

Sections 385.31 through 385.62 set forth the regulations applicable to all assistance instruments as defined herein.

**§ 385.32 Selection of award instrument.**

(a) *General.* This section provides guidance on the appropriate use of award instruments consistent with the Act and the supplementary interpretative guidelines required by section 9 of the Act, which were published by the OMB in the FEDERAL REGISTER of August 18, 1978 (41 FR 36860), and are incorporated by reference herein. This section applies to all program and individual transactions where the choice of award instruments is within the administrative discretion of MarAd and is not otherwise prescribed or limited by law. A variety of award instruments is available as the means for defining the terms and conditions and the nature of the relationship between MarAd and eligible recipients. The award instruments are intended to be different in purpose, application, content, and nature. When properly employed, they create different relationships between the parties. Because of these differences, the decision to use a particular instrument must be made deliberately. The determination of whether a program, to be implemented through individual transactions, is principally one of acquisition or assistance will be made by the Grants Officer. MarAd generally will employ the cooperative agreement form of assistance instrument but will employ the grant form where deemed appropriate.

(b) *Procurement contract.* A procurement contract shall be used as the

legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever (1) the principal purpose of the instrument is the acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or (2) whenever MarAd determines in a specific instance that the use of a type of procurement contract is appropriate.

(c) *Grant agreement.* A type of grant agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the state or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between MarAd, acting for the Federal Government, and the state or local government or other recipient during performance of the contemplated activity.

(d) *Cooperative agreement.* A type of cooperative agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the state or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between MarAd, acting for the Federal Government, and the state or local government or other recipient during performance of the contemplated activity.

### § 385.33 Unsolicited applications and proposals for financial assistance awards.

(a) *Policy.* Although it is MarAd policy to solicit applications and proposals for assistance awards where possible, MarAd also values obtaining innovative ideas, methods, and approaches in maritime transportation areas offered by the public through unsolicited applications and proposals. It is the policy of the Government to foster and encourage the submission of unsolicited proposals. This § 385.33 is designed to encourage the submisson of unsolicited proposals relating to MarAd's mission and to eliminate restraints which discourage the generation and acceptance of innovative ideas through unsolicited proposals.

(b) *Scope.* This section applies to unsolicited proposals being considered for support through an assistance instrument. This section does not apply when a procurement contract is the appropriate award instrument in accordance with § 385.32(b).

(c) *Definition of unsolicited proposal.* The term *unsolicited proposal* means a written offer to perform a proposed task or effort, initiated and submitted to MarAd by a prospective recipient (offeror) without solicitation by MarAd, and with the objective of obtaining an award. The term may include both requests for support of a new project and requests for additional support of a previously funded project (renewals).

(d) *Advance consultation.* Organizations or individuals who are interested in submitting an unsolicited proposal are encouraged, before expending extensive effort in preparing a detailed unsolicited proposal or submitting any proprietary information to the Government, to make preliminary inquiries of MarAd program staff as to the general interest in the type of project contemplated. Prior contact with agency technical personnel is permissible and is encouraged, with the limited objectives of conveying to the prospective recipient an understanding of the agency mission and interest relative to the type of project contemplated. The project officer shall not indicate or imply in discussions with the potential proposer that a proposal will result in