

NIH Policy Manual

26101-17-3 - Authorization to Use Operating Funds to Construct Temporary Facilities

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Transmittal Notice

1. **Explanation of Material Transmitted:** This policy manual is a new issuance as part of the NIH effort to establish uniform guidelines and procedures to govern the use of Institutes, Centers and Offices' (ICOs) Operating Funds to construct temporary buildings on NIH campuses.
2. **Filing Instructions:**
 - a. **Insert:** NIH Policy Manual, Chapter 26101-17-3 dated 7/21/2020
3. **PLEASE NOTE:** For information on:
 - a. Content of this chapter contact the issuing office listed above.
 - b. NIH Policy Manual, contact the Division of Management Support, OMA at 301-496-4606, or enter this URL: <https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx>.

A. Purpose

The purpose of this chapter is to establish the policy, procedures and guidelines for the use of Operating Funds to construct a temporary facility. These facilities are to be constructed only in response to urgent, compelling, mandated, or emerging health risks that cannot be satisfied in an existing NIH owned or leased facility.

B. Scope

This chapter applies to all NIH ICO's located on but not limited to: Bethesda, Maryland; NIH Animal Center (NIHAC), Poolesville, Maryland; Frederick National Laboratory for Cancer Research, Frederick, Maryland; National Institute of Environmental Health Sciences (NIEHS), Research Triangle Park (RTP), North Carolina; and Rocky Mountain Laboratories (RML) Hamilton, Montana campuses.

C. Background

The [United States Government Accountability Office \(GAO\), Principles of Federal Appropriations Law](#), provides guidance for construction of temporary facilities.

As an Operating Division (OPDIV) of the Department of Health and Human Services (HHS), the NIH must also comply with the Office of Management and Budget (OMB) Capital Planning, Programming and Budgeting guidelines in implementing facility programs to support its mission.

HHS established the Facilities Program Manual (FPM) to provide uniform procedures to plan, design, construct, maintain and operate a robust facilities program to meet departmental requirements. Volume I, Chapter 2 of the HHS FPM provides project planning and approval guidelines for permanent and temporary construction requirements.

Use of a temporary facility is often considered as a mechanism to provide a short-term solution when any of the following conditions exist: facilities are not available; facilities cannot be rapidly modified or renovated; and/or programming for construction of a new building will not meet organizational goals and objectives.

Temporary facilities are generally pre-engineered or modular by nature for ease of erection assembly and disassembly. This type of construction is much quicker than a permanent building. However, they do not permit optimum utilization of land (i.e., typically single-story) and are generally less durable and energy efficient. For these reasons, temporary facilities should only be used under extraordinary circumstances.

Specific guidance on the use of Operating Funds to support temporary construction requirements is provided in Section 2-1: Funding Sources for Facilities Projects of the FPM.

Section 2-1-10. A.2.e stipulates that: “Operating funds may be used for temporary buildings to support urgent, short-term needs. Written approval (through submittal of a Facility Project Approval Agreement (FPAA)) from [the Office of Facilities Management and Policy] must be obtained before using operating funds for any temporary construction exceeding 134 square meters.”

D. Policy

To optimize utilization of NIH resources, requests to use Operating Funds to construct temporary buildings must be endorsed by the NIH Space Recommendation Board (SRB), the NIH Associate Director for Research Facilities (ADRF), the NIH Deputy Director for Management (DDM)¹, the NIH Facilities Working Group (FWG), and the NIH Steering Committee (SC), and approved by the HHS Office of the Secretary/Assistant Secretary for Administration/Program Support Center (OS/ASA/PSC).

E. Responsibilities

1. Institutes, Centers and Offices (ICOs) are responsible for:

a. Submitting [Space Requests](#) to the Office of Research Facilities Development and Operations (ORFDO), Division of Facilities Planning (DFP) to obtain the NIH SRB's review of the requirement for additional space. The request shall include:

1. A space justification;
2. Identification of the research/supporting functions that cannot be performed in existing facilities;
3. The critical nature of the program requirement; and
4. Identification of when a permanent facility is required.

b. Receiving the NIH SRB's approval of the request for new space;

c. Obtaining the NIH FWG and the NIH SC endorsements to use Operating Funds to construct a temporary facility; and for

d. Awaiting HHS approval of the FPAA to use Operating Funds for temporary construction prior to providing funds to ORFDO to proceed with the acquisition process.

2. The NIH SRB is responsible for reviewing and approving ICO space requests and endorsing the use of Operating Funds to construct a temporary facility to support a mission requirement.

3. The NIH FWG is responsible for:

a. Advising NIH SC, NIH ICO's, and the NIH Director on matters pertaining to the planning, acquisition, development and use of land and/or facilities for the pursuit of the NIH mission; and for

b. Endorsing ICO's requests to use Operating Funds to construct a temporary facility.

4. The NIH SC is responsible for:

a. Governance purview for all corporate functions, resources or policies other than setting corporate scientific direction and priorities; and for

b. Endorsing ICO's requests to use Operating Funds to construct a temporary facility.

5. The Office of Research Facilities Development and Operations (ORFDO) is responsible for:

a. Supporting the NIH mission by providing, maintaining and operating safe, healthy and attractive facilities;

- b. Coordinating ICO requests for new space with the NIH SRB;
- c. Siting facilities in coordination with NIH Master Plans;
- d. Submitting ICO requests to construct a temporary facility using Operating Funds to NIH FWG for review and approval;
- e. Designating a Contracting Officer Representation (COR) to handle the design and construction for the temporary facility;
- f. Developing the required HHS Facility Project Approval Agreement (FPAA) documents for HHS review and approval;
- g. Submitting FPAA documentation to HHS OS/ASA/PSC for review and approval consistent with Volume I, Section 2.3: Funding Sources for Facilities Projects of the HHS FPM;
- h. Providing HHS' decision regarding the FPAA to all organizations;
- i. Obtaining approvals from outside organizations, as required;
- j. Developing the scope of work to design and contract the temporary facility based on the approved FPAA;
- k. Conducting technical reviews of the design and construction contract documents consistent with ORFDO's Permitting Process; and for
- l. Managing the acquisition of the temporary facility to support delivery consistent with the FPAA approved by HHS.

6. The Department of Health and Human Services (HHS), OS/ASA/PSC is responsible for approving or disapproving FPAA's submitted to construct a temporary facility using Operation Funds.

F. Procedures

1. To request space to satisfy a requirement for a temporary facility, the ICO submits an online [Space Request](#), signed by the ICO Director or designee, to the DFP.
2. The Space Request is assigned to a DFP Space Coordinator for review, evaluation and submission to the SRB.
3. The SRB reviews the request, renders a decision, and forwards it to the ICO Director, or designee, for concurrence.
4. The ICO submits an online [Construction Request](#) to ORFDO for assignment of a Division of Design and Construction Management (DDCM) Project Officer (PO) based on the SRB's approval.
5. The PO develops the cost estimate for the temporary facility in collaboration with the ICO and subject matter experts, as necessary.
6. Pre-project Project Planning Documents (PPPD) are developed by the PO in coordination with ORFDO's DFP, Division of Environmental Protection (DEP), and DTR, the Office of Research Services (ORS) Division of Physical Security Management (DPSM), and others as necessary.
7. Documents describing the temporary facility requirements are submitted by ORFDO Office of the Director (OD) to the NIH FWG for review and endorsement to proceed with obtaining HHS' approval.
8. The FWG reviews the documentation to support construction of the temporary facility.

9. FWG's decision is forwarded by ORFDO OD to the NIH SC for review and concurrence.
10. The ORFDO Office of Acquisitions (OA) designates the Contracting Officer Representative (COR) for the project.
11. The guidance approved by the NIH SC is used by ORFDO OD and the COR to prepare and submit a FPAA to HHS OS/ASA/PSC for review and approval.
12. The ORFDO OD submits the FPAA to HHS OS/ASA/PSC for review and approval.
13. The FPAA approved by the OS/ASA/PSC forms the basis for the COR to develop the scope of work to design and construct a temporary facility.
14. The ORFDO OA awards the design contract to support construction of the temporary facility; unless otherwise approved.
15. Design documents are reviewed by the ORFDO DTR consistent with [ORFDO's Permit Review Process](#).
16. The ORFDO OA awards the construction contract to support delivery of the temporary facility; unless otherwise approved.
17. The ORFDO COR manages the project consistent with [ORFDO's Project Management Desk Guide](#) to ensure completion within the guidelines of the approved FPAA.

G. References

1. [United States Government Accountability Office \(GAO\), Principles of Appropriation Law](#)
2. [OMB Capital Planning, Programming and Budgeting Guidelines](#)
3. [Health and Human Services Facilities Program Manual, Volume I](#)
4. [Health and Human Services Program Manual, Volume I, Section 2-1 Funding Sources for Facilities Projects](#)
5. [Health and Human Services Program Manual, Volume I, Section 2-3 HHS Facility Project Approval Agreements \(FPAA\)](#)
6. [The Economy Act \(31 U.S.C. 1535\)](#)
7. [Federal Acquisition Regulations \(FAR\) subpart 17.5](#)
8. [NIH Delegation of Authority, Real Property, Number 06 – Engineering and Facility Management Services](#)
9. [NIH Delegation of Authority, Real Property, Number 06A – Construction Management](#)
10. [NIH Manual Chapter 1370 - Fire Protection and Life Safety Building Permit Process](#)
11. [NIH Manual Chapter 1743 – Keeping and Destroying Records](#)
12. [NIH Design Requirements Manual](#)
13. [ORFDO's Construction Request](#)
14. [ORFDO's Permit Review Process](#)
15. [ORFDO's Project Management Desk Guide](#)
16. [ORFDO's Space Requests](#)

Appendix 1 - Definitions

Definitions^{2/}

1. **Contracting Officer (CO):** The individual with authority to execute contracts on behalf of the Government. The individual is the sole authorized agent in dealing with the contract. The Contracting Officer has authority to negotiate and execute contracts on behalf of the Government and make changes, amendments, approve payments, terminate contracts, and close out contracts upon satisfactory completion.
2. **Contracting Officer's Representative (COR):** A federal employee designated, in writing, by a contracting officer to act as the contracting officer's representative in monitoring and administering specified aspects of contractor performance *after* award of a contract or order. The COR has no authority to alter any term or condition in the contract or order.
3. **Delegation of Authority:** The specific, formal deputation, assignment, or commitment of a legal power or right to take certain actions, and to make certain decisions, having legal significance. Such delegations must be stated, in writing, by the official authorized to delegate the authority.
4. **Project Officer:** The individual designated by the ORFDO Division of Design and Construction Management to handle specific project planning and other designated functions. The Project Officer under certain contracts could be designated the Contracting Officer Representative based on the scope, complexity, and nature of the contract action.^{3/}
5. **Temporary Construction:** Construction to provide a building, structure, or facility needed for a limited period to meet an urgent, and compelling, agency need. Such facilities should be of a clearly temporary nature to meet a temporary need. The temporary need is demonstrated by a facility requirement for less than 5 years or the long-term need has been programmed in the OPDIV Facilities Plan but may not have been funded. Generally, structures in this category would have a lower initial cost, higher annual maintenance and utility cost and a shorter usable life than non-temporary structures of the same approximate size. Exterior enhancements, solely to provide the appearance of permanence, should not be included in temporary construction.
6. **Facility Project Approval Agreement (FPAA – HHS Form 300):** A written agreement between designated OPDIV officials (i.e., Project Manager, Project Director and OPDIV Board Member) and the Department, evidencing the OPDIV's commitment to execute a particular project. The FPAA documents the project's scope and description, basis of need, funding source(s) and total cost from all sources. The FPAA identifies project schedule milestones, including completion of design, construction, activation and operational phases.

^{2/} All definitions are consistent with Volume 1 of the HHS Facilities Program Manual except as noted.

^{3/} Specific to NIH requirements.