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APPENDIX A TO PART 145—CLAUSES FOR CONTRACTS AND SMALL PURCHASES AWARDED BY RECIPIENT

AUTHORITY: 22 U.S.C. 2658.1; OMB Circular A-110 (64 FR 54926, October 8, 1999).

SOURCE: 59 FR 18731, Apr. 20, 1994, unless otherwise noted.

Subpart A—General

§ 145.1 Purpose.

This regulation establishes uniform administrative requirements for Department of State grants and cooperative agreements awarded to institutions of higher-education, hospitals, other nonprofit organizations, and commercial organizations, except that § 145.36(d)(1) shall not apply to commercial organizations. Non-profit organizations that implement Federal programs for the States are also subject to State requirements. Copies of the OMB circulars mentioned in this part may be ordered from the Office of Management and Budget Publications Office (202) 395-7000.

[59 FR 18731, Apr. 20, 1994, as amended at 65 FR 14409, Mar. 16, 2000]

§ 145.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from—

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which an awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cooperative agreement*, as defined in 31 U.S.C. 6305, means a legal instrument reflecting a relationship between the United States Government and a recipient 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 law, instead of acquiring property or services for the direct use of the United States Government, and substantial involvement is expected between the awarding agency and the recipient when carrying out the activity contemplated in the agreement.

(j) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(k) *Date of completion* means the date on which all work under an award is

completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(l) *Disallowed costs* means those charges to an award that the awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *Equipment* means tangible non-expendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(n) *Excess property* means property under the control of any awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(o) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(p) *Federal awarding agency or awarding agency* means the Federal agency that provides an award to the recipient.

(q) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(r) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

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(s) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(t) *Grant*, as defined in 31 U.S.C. 6304, means a legal instrument reflecting a relationship between the United States Government and a recipient 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 law, instead of acquiring property or services for the direct use of the United States Government, and substantial involvement is not expected between the awarding agency and the recipient when carrying out the activity contemplated in the agreement.

(u) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(v) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(w) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(x) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(y) *Prior approval* means written approval by an authorized official evidencing prior consent.

(z) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §145.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(aa) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(bb) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(cc) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(dd) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(ee) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program.

(1) The term includes public and private institutions of higher education; public and private hospitals; other quasi-public and private non-profit organizations such as, but not limited to,

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community action agencies, research institutes, educational associations, and health centers; and commercial organizations receiving grants or cooperative agreements from the Department.

(2) The term does not include any of the following which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients:

- (i) Foreign organizations (governmental or non-governmental);
- (ii) International organizations (such as agencies of the United Nations); or
- (iii) Organizations whose assistance agreement is for work to be performed outside the United States.

(3) The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(ff) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(gg) *Small awards* means a grant or cooperative agreement not exceeding \$100,000 or the small purchase limitation fixed at 41 U.S.C. 403(11), whichever is greater.

(hh) *Small purchase limitation*, for procurements transactions awarded by recipients, means \$100,000 or the small purchase limitation fixed at 41 U.S.C. 403(11), whichever is greater.

(ii) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in §145.2(e).

(jj) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the awarding agency.

(kk) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ll) *Suspension* means an action by an awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(mm) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(nn) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting

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and specifically identifiable to the project or program.

(oo) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(pp) *Unobligated balance* means the portion of the funds authorized by the awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(qq) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(rr) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 145.3 Effect on other issuances.

For awards subject to this regulation, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this regulation are superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 145.4.

§ 145.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this regulation when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this regulation shall be permitted only in unusual circumstances. The Department may apply more restrictive requirements to a class of recipients when approved by OMB. The Department may apply less restrictive requirements when issuing small awards, except for those requirements which are statutory. Exceptions

on a case-by-case basis may also be made by the Department. Deviation requests shall be submitted to the Office of the Procurement Executive (A/OPE) for approval or transmittal to OMB.

§ 145.5 Subawards.

Unless sections of this regulation specifically exclude subrecipients from coverage, the provisions of this regulation shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of part 135 of this chapter implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Subpart B—Pre-Award Requirements

§ 145.10 Purpose.

Sections 145.11 through 145.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 145.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts*. In each instance, the awarding agency shall decide on the appropriate award instrument (*i.e.*, grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The Department may not