

if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall include the information specified in the Notice of Funding Availability (NOFA).

(c) *Application approval.* Applications which meet the requirement of this section may be approved by the Area ONAP without competition in accordance with the applicable requirements of § 1003.304.

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§ 1003.402 Availability of funds.

Of the funds made available by the NOFA for the ICDBG program, an amount to be determined by the Assistant Secretary may be reserved by HUD for grants under this subpart. The amount of funds reserved for imminent threat funding during each funding cycle will be stated in the NOFA. If any of the reserved funds are not used to fund imminent threat grants during a fiscal year, they will be added to the allocation of ICDBG funds for the subsequent fiscal year and will be used as if they were a part of the new allocation.

Subpart F—Grant Administration

§ 1003.500 Responsibility for grant administration.

(a) One or more tribal departments or authorities, including existing tribal public agencies, may be designated by the chief executive officer of the grantee to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The grantee is responsible for ensuring that ICDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the grantee of this responsibility. The grantee is also responsible for determining the adequacy

of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the actions described in § 1003.701.

§ 1003.501 Applicability of uniform administrative requirements and cost principles.

(a) Grantees and subrecipients which are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments", OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR part 44) and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments":

- (1) Section 85.3, "Definitions".
- (2) Section 85.6, "Exceptions".
- (3) Section 85.12, "Special grant or subgrant conditions for 'high-risk' grantees".
- (4) Section 85.20, "Standards for financial management systems," except paragraph (a).
- (5) Section 85.21, "Payment".
- (6) Section 85.22, "Allowable costs".
- (7) Section 85.25, "Program income," except as modified by § 1003.503.
- (8) Section 85.26, "Non-federal audits".
- (9) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income.
- (10) Section 85.33, "Supplies".
- (11) Section 85.34, "Copyrights".
- (12) Section 85.35, "Subawards to debarred and suspended parties".
- (13) Section 85.36, "Procurement," except paragraphs (a) States, (i)(5) Compliance with the Davis Bacon Act (40 U.S.C. 276a to a-7) and (i)(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330). There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the grantee. In such

circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

(14) Section 85.37, "Subgrants".

(15) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f).

(16) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e).

(17) Section 85.42, "Retention and access requirements for records". The retention period referenced in §85.42(b) pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in §1003.506(a) in which the specific activity is reported.

(18) Section 85.43, "Enforcement".

(19) Section 85.44, "Termination for convenience".

(20) Section 85.51 "Later disallowances and adjustments".

(21) Section 85.52, "Collection of amounts due".

(b) Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations," or OMB Circular No. A-21, "Cost Principles for Educational Institutions," as applicable, and OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-profit Institutions" (implemented at 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following provisions of 24 CFR part 84 "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations").

(1) Subpart A—"General".

(2) Subpart B—"Pre-Award Requirements," except for §84.12, "Forms for Applying for Federal Assistance".

(3) Subpart C—"Post-Award Requirements," except for §84.22, "Payment Requirements," grantees shall follow the standards of §§85.20(7) and 85.21 in making payments to subrecipients.

(4) Section 84.23, "Cost Sharing and Matching".

(5) Section 84.24, "Program Income", as modified by §1003.503.

(6) Section 84.25, "Revision of Budget and Program Plans".

(7) Section 84.32, "Real Property." In lieu of §84.32, ICDBG subrecipients shall follow §1003.504 of the ICDBG regulations.

(8) Section 84.34(g) "Equipment," except that in lieu of the disposition provisions of this paragraph:

(i) In all cases in which equipment is sold during the grant period as defined in 24 CFR 85.25, the proceeds shall be program income; and

(ii) Equipment not needed by the subrecipient for ICDBG activities shall be transferred to the grantee for the ICDBG program or shall be retained after compensating the grantee.

(9) Section 84.51, "Monitoring and Reporting Program Performance." Only §84.51(a) applies to ICDBG subrecipients.

(10) Section 84.52, "Financial Reporting".

(11) Section 84.53(b), "Retention and access requirements for records." The retention period referenced in §84.53(b) pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in §1003.506(a), in which the specific activity is reported.

(12) Section 84.61, "Termination." In lieu of the provisions of this section, ICDBG subrecipients shall comply with §1003.502 (b)(7) of the ICDBG regulations.

(13) Subpart D—"After-the-Award Requirements," except for §84.71, "Closeout Procedures".

(c) Cost principles. (1) All items of cost listed in Attachment B of OMB Circulars A-21, A-87, or A-123, as applicable, which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of such circulars and are

otherwise eligible under subpart C of this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the ICDBG program.

(2) No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with ICDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

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§ 1003.502 Agreements with subrecipients.

(a) Before disbursing any ICDBG funds to a subrecipient, the grantee shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over ICDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) *Statement of work.* The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the grantee effectively to monitor performance under the agreement.

(2) *Records and reports.* The grantee shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(3) *Program income.* The agreement shall include the program income requirements set forth in § 85.25 as modified by § 1003.503.

(4) *Uniform administrative requirements.* The agreement shall require the subrecipient to comply with applicable

administrative requirements, as described in § 1003.501.

(5) *Other program requirements.* The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart G of this part, except that the subrecipient does not assume the grantee's environmental responsibilities described at § 1003.605.

(6) *Conditions for religious organizations.* Where applicable, the conditions prescribed by HUD for the use of ICDBG funds by religious organizations shall be included in the agreement.

(7) *Suspension and termination.* The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(8) *Reversion of assets.* The agreement shall specify that upon its expiration the subrecipient shall transfer to the grantee any ICDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of ICDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with ICDBG funds (including ICDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 is either:

(i) Used to meet the primary objective as stated in § 1003.208 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the grantee; or

(ii) Not used in accordance with paragraph (b)(8)(i) of this section, in which event the subrecipient shall pay to the grantee an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-ICDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the grantee if it is received during the grant period. (No payment is required after the period of time