

## Office of the Secretary of Labor

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### APPENDIX A TO PART 95—CONTRACT PROVISIONS

AUTHORITY: 5 U.S.C. 301; OMB Circular A-110, as amended, as codified at 2 CFR part 215.

SOURCE: 59 FR 38271, July 27, 1994, unless otherwise noted.

### Subpart A—General

#### § 95.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, other non-profit organizations, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. DOL shall not impose additional or inconsistent requirements, except as provided in §§ 95.4 and 95.14 or unless specifically required by Federal statute or executive order. Non-profit and commercial organizations that implement Federal programs for the States are also subject to State requirements.

#### § 95.2 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 DOL 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.

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(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 DOL determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DOL.

(h) *Commercial organization* means any business entity organized primarily for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in or outside the United States. The term includes, but is not limited to, an individual, partnership, corporation, joint venture, association, or cooperative.

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

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

(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 DOL sponsorship ends.

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

(m) *DOL* means the U.S. Department of Labor, including its agencies and organizational units.

(n) *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. Equipment includes, but is not limited to, equipment acquired before the publication of these regulations and equipment transferred from prior years.

(o) *Excess property* means property under the control of DOL that, as determined by the Secretary of Labor, is no longer required for its needs or the discharge of its responsibilities.

(p) *Exempt property* means tangible personal property acquired in whole or

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in part with Federal funds, where DOL has statutory authority to vest title in the recipient without further obligation to the Federal Government.

(q) *Federal agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

(r) *Federal awarding grantor agency* means the Federal agency that provides an award to the recipient.

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

(t) *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.

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

(v) *Grant officer* means any person authorized to enter into, modify or terminate any financial assistance awards and make related determinations and findings. DOL grant officers shall be designated by name on a "Certificate of Appointment."

(w) *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.

(x) *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.

(y) *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.

(z) *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.

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

(bb) *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 §95.24(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 Federal 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.

(cc) *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.

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

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

(ff) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment. Real property includes, but is not limited to, real property acquired before publication of these regulations and real property transferred from prior years.

(gg) *Recipient* means an organization receiving financial assistance directly from DOL to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term also includes commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients. 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.

(hh) *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

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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.

(ii) *Small awards* means a grant or cooperative agreement not exceeding the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently \$100,000, subject to adjustment for inflation).

(jj) *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 paragraph (e) of this section.

(kk) *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 includes foreign organizations and international organizations (such as agencies of the United Nations).

(ll) *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.”

(mm) *Suspension* means an action by DOL that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under DOL’s regulations at 29 CFR part 98, implementing E.O.’s 12549 and 12689, “Debarment and Suspension.” See 29 CFR part 98, subpart D.

(nn) *Termination* means the cancellation of Federal sponsorship, in whole or

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in part, under an agreement at any time prior to the date of completion.

(oo) *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 and specifically identifiable to the project or program.

(pp) *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.

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

(rr) *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.

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

[59 FR 38271, July 27, 1994, as amended at 72 FR 37104, July 9, 2007]

#### § 95.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 95.4.

#### § 95.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when

exceptions are not prohibited by statute. However, in the interest of maximum grant-wide uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. DOL may apply more restrictive requirements to a class of recipients when approved by OMB. DOL may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by DOL.

#### § 95.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit organizations, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and codified by DOL at 29 CFR part 97 or its successor.

### Subpart B—Pre-Award Requirements

#### § 95.10 Purpose.

Sections 95.11 through 95.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

#### § 95.11 Pre-award policies.

Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

#### § 95.12 Forms for applying for Federal assistance.

(a) Applicants shall use the SF-424 series or those forms and instructions prescribed by DOL.

(b) The applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from DOL or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

#### § 95.13 Debarment and suspension.

Recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.'s 12549 and 12689, "Debarment and Suspension" codified by DOL at 29 CFR part 98. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

#### § 95.14 Special award conditions.

If an applicant or recipient:

- (a) Has a history of poor performance,
- (b) Is not financially stable,
- (c) Has a management system that does not meet the standards prescribed in this part,
- (d) Has not conformed to the terms and conditions of a previous award, or
- (e) Is not otherwise responsible,

DOL may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

#### § 95.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205), declares that the metric system is the