

a. Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment;

b. Donated the equipment to the project or program by counting the value of the remaining life of the property recorded in your accounting records or the fair market value toward any cost sharing or matching requirements under the award, rather than charging depreciation (see PROP Article I, Section D); or

c. Directly charged as project costs improvements to the equipment that meet the criteria given in paragraph E.1 of PROP Article I.

Section B. Requirements for a State's use and disposition of equipment. You:

1. Must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.

2. May not encumber the property without the prior written approval of the award administration office.

3. Must use and dispose of the equipment in accordance with your State laws and procedures.

Section C. Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe. You:

1. Must use the equipment for the authorized purposes of the project or program under this award until the equipment is no longer needed for those purposes, whether or not the project or program continues to be supported by this award.

2. May not encumber the equipment without the prior written approval of the award administration office.

3. During the time that the equipment is used for the project or program under this award:

a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment's use as needed for the project or program supported by this award.

i. First preference must be given to other projects or programs supported or previously supported by DoD Components

ii. Second preference to projects or programs supported or previously supported by other Federal agencies.

iii. Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases, if it is at all practicable.

b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.

4. When the equipment is no longer needed for the project or program under this award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give first priority to other projects or programs supported by DoD Components.

5. Notwithstanding the encouragement in FMS Article VII to earn program income, you may not use equipment in which there currently is a Federal interest—whether you acquired it under this award or are otherwise accountable for it under this award—to provide services for a fee that is less than private companies charge for equivalent services.

Section D. Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe. You must request disposition instructions from the award administration office when either original or replacement equipment acquired under this award with a current fair market value that exceeds \$5,000 is no longer needed for the original project or program or for other federally sponsored activities as described in paragraph C.4 of this article. For each item of equipment with a current fair market value of \$5,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.

1. We may issue disposition instructions that:

a. Allow you to retain or sell any item of equipment after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of "Federal interest;" or

b. Require you to transfer title to the equipment to a Federal agency or a third party, in which case you are entitled to compensation from us for the non-Federal interest in the equipment, plus any reasonable shipping or interim storage costs incurred.

2. If we fail to provide disposition instructions for any item of equipment within 120 calendar days of receiving your request, you may retain or sell the equipment, but you must compensate us for the amount of the Federal interest in the equipment.

3. If you sell the equipment:

a. You must use sales procedures designed to ensure the highest possible return; and

b. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

Section E. Use and disposition of supplies acquired under this award.

1. *Use.* As long as we retain a Federal interest in supplies acquired under this award either by purchase or by donation as cost sharing or matching, you may not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services, notwithstanding the encouragement in FMS Article VII to earn program income.

2. *Disposition.* If you have a residual inventory of unused supplies with aggregate value exceeding \$5,000 at the end of the period of performance under this award, and the supplies are not needed for any other Federal award, you must retain the supplies or sell them but must in either case compensate us for the amount of the Federal interest in the supplies. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

APPENDIX E TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE V, “USE AND DISPOSITION OF FEDERALLY OWNED PROPERTY”

Unless a DoD Component reserves the article, as specified in §1130.505, a DoD Component’s general terms and conditions must use the following wording for PROP Article V.

PROP ARTICLE V. USE AND DISPOSITION OF FEDERALLY OWNED PROPERTY. (DECEMBER 2014)

Section A. Use. During the time that federally owned property for which you are accountable under this award is used for the project or program supported by the award, you:

1. Also may make the property available for use on other federally supported projects or programs, but only if that use will not interfere with the property’s use for the project or program supported by this award. You must give first priority to other projects or programs supported by DoD Components.

2. May use the property for purposes other than federally supported projects or programs only with the prior approval of the awarding office or, if you request approval after the award is made, the award administration office.

Section B. Disposition. You must request disposition instructions from the award administration office for any federally owned property under this award, including any property for which a subrecipient is accountable under a subaward you make under this award, either:

1. At any time during the period of performance if the property is no longer needed for the project or program supported by this award; or

2. At the end of the period of performance.

APPENDIX F TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE VI, “INTANGIBLE PROPERTY”

Except for Section B, whose language must be tailored or reserved based on the type of award as specified in §1130.610, and Section D if reserved as provided in §1130.615, a DoD Component’s general terms and conditions must use the following wording for PROP Article VI.

PROP ARTICLE VI. INTANGIBLE PROPERTY. (DECEMBER 2014)

Section A. Assertion of copyright.

1. You may assert copyright in any work that is eligible for copyright protection if you acquire ownership of it under this award, either by developing it or otherwise.

2. With respect to any work, you developed or otherwise acquired under this award, DoD reserves a royalty-free, nonexclusive and irrevocable license to:

- a. Reproduce, publish, or otherwise use the work for Federal Government purposes; and
- b. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

Section B. Inventions developed under the award.

1. *Applicability of Governmentwide clause for research awards.* You must comply with the Governmentwide patent rights award clause published at 37 CFR 401.14, with the modifications described in paragraph B.2 of this section. DoD adopts that Governmentwide clause for the following entities, thereby broadening the applicability beyond types of entities included in the definition of “contractor” in 37 CFR part 401:

a. Any governmental or nonprofit entity (the types of entities subject to these general terms and conditions) receiving a DoD award for the performance of experimental, research, or developmental work;

b. Any governmental, nonprofit, or for-profit entity receiving a subaward to perform experimental, research, or developmental work under an award described in paragraph B.1.a of this section.

2. *Modifications to the wording of the Governmentwide clause.* DoD adopts the Governmentwide clause at 37 CFR 401.14, as described in paragraph B.1 of this section, with the following modifications:

a. *Terminology.* Throughout the Governmentwide clause:

i. Insert the terms “recipient” and “subrecipient (or contractor to the recipient or to a subrecipient)” to replace the terms “contractor” and “subcontractor,” respectively.

ii. Insert the terms “award” and “subaward (or contract under either the award or a subaward)” to replace the terms “contract” and “subcontract,” respectively.

b. *Final report.* Add a new subparagraph (f)(5) to read, “The recipient must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 90 calendar days after the end date of the period of performance unless you request, and we grant, an extension of the due date.”

c. *Broadening applicability to all entities.* Delete paragraphs (g)(2) and (3) of the Governmentwide clause, redesignate paragraph (g)(1) as paragraph (g) and delete the phrase “to be performed by a small business firm or domestic nonprofit organization” from paragraph (g) as redesignated.

Section C. Data produced under the award.

1. *Data in general.* The Federal Government has the right to:

a. Obtain, reproduce, publish, or otherwise use the data produced under this award; and

b. Authorize others to receive, reproduce, publish, or otherwise use the data produced under this award for Federal Government purposes.

2. *Research data requested under the Freedom of Information Act (FOIA).*

a. If we receive a request under the FOIA for “research data” that are related to “published research findings” produced under this award and that were “used by the Federal Government in developing an agency action that has the force and effect of law,” you must provide the data to us within a reasonable time after we request it from you, so that the data can be made available to the public through procedures established under the FOIA.

b. For purposes of the requirement in paragraph C.2.a of this section, 2 CFR 200.315(e) provides definitions of the phrases “published research findings,” “used by the Federal Government in developing an agency action that has the force and effect of law,” and “research data.”

Section D. Use and disposition of intangible property acquired, but not developed or produced, under the award.

1. *Applicability.* This section applies to a patent, patent application, copyright, or other intangible property acquired, but not developed or produced, under this award.

2. *Use.* You:

a. Must use the intangible property for the authorized purpose under this award until the intangible property is no longer needed for that purpose, whether or not that purpose is still being supported by this award.

b. May not encumber the intangible property without the prior written approval of the award administration office.

3. *Disposition.* When the intangible property is no longer needed for the originally authorized purpose, you must contact the award administration office to arrange for disposition in accordance with the procedures specified for disposition of equipment in either section B or D of PROP Article IV, as applicable.

PART 1132—RECIPIENT PROCUREMENT PROCEDURES: GENERAL AWARD TERMS AND CONDITIONS

Sec.

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APPENDIX A TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE I, “PROCUREMENT STANDARDS FOR STATES”

APPENDIX B TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE II, “PROCUREMENT STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION, NONPROFIT ORGANIZATIONS, LOCAL GOVERNMENTS, AND INDIAN TRIBES”

APPENDIX C TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE III, “CONTRACT PROVISIONS FOR RECIPIENT PROCUREMENTS”

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

§ 1132.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning recipients’ purchases of property (supplies, equipment, and real property) and services.

(b) It thereby implements OMB guidance in 2 CFR 200.317 through 200.326,

and appendix II to 2 CFR part 200, as those portions of 2 CFR part 200 apply to general terms and conditions of grants and cooperative agreements. It also partially implements 2 CFR 200.205(d), 200.213, and 200.517.

§ 1132.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

§ 1132.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as follows:

- (a) As described in 2 CFR 1126.3, and
- (b) Based on any language in 2 CFR 200.110(a) regarding the applicability of the procurement standards in 2 CFR part 200.

§ 1132.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Federal Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) Table 1 shows which article of general terms and conditions may be found in each of appendices A through C to this part (with the associated direction to DoD Components in Subparts A through C, respectively):

TABLE 1 TO PARAGRAPH (c)

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within PROC Article . . .
Appendix A	Procurement standards for States	I.
Appendix B	Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.	II.
Appendix C	Contract provisions for recipient procurements	III.

Subpart A—Procurement Standards for States (PROC Article I)

§ 1132.100 Purpose of PROC Article I.

PROC Article I of the general terms and conditions specifies requirements for a State's procurement of property and services under grants or cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.317 and partially implements the guidance in 2 CFR 200.205(d) and 200.213.

§ 1132.105 Content of PROC Article I.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for States' procurement systems.

(b) *Award terms and conditions—(1) General.* Except as provided in paragraph (b)(2) of this section, a DoD Component's general terms and conditions must use the wording appendix A to this part provides for PROC Article I.

(2) *Exception.* A DoD Component's general terms and conditions may instead reserve PROC Article I if the DoD Component determines that it is not possible that any States will receive:

- (i) DoD Component awards using those general terms and conditions; or
- (ii) Subawards from recipients of DoD Component awards using those general terms and conditions.

Subpart B—Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes (PROC Article II)

§ 1132.200 Purpose of PROC Article II.

PROC Article II of the general terms and conditions specifies procurement procedures for a recipient of a grant or cooperative agreement other than a State or for-profit entity. It thereby:

- (a) Implements OMB guidance in 2 CFR 200.318 through 200.323, 200.324(a) and (b), and 200.325;
- (b) Partially implements 2 CFR 200.205(d) and 200.213; and
- (c) Implements, in conjunction with PROC Article III, 2 CFR 200.326.

§ 1132.205 Procurement procedures.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for procurement systems of institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(b) *Award terms and conditions.* In order to implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix B provides for Sections A through F of PROC Article II.

§ 1132.210 Procurement of recovered materials.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for procurement of recovered materials if State agencies or agencies of a political subdivision of a State may receive awards using those terms and conditions or be subrecipients under those awards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must either:

- (1) Use the wording that appendix B provides for Section G of PROC Article II, to specify requirements for a local government or other political subdivision of a State to comply with Resource Conservation and Recovery Act requirements; or
- (2) Reserve Section G if the DoD Component determines that it is not

possible that a political subdivision of a State will receive either:

- (i) An award using those terms and conditions; or
- (ii) A subaward under an award using those terms and conditions.

§ 1132.215 Review of recipient procurement documents.

(a) *Requirements.* A DoD Component's general terms and conditions must:

(1) Include a requirement for recipients to make technical specifications for proposed procurements available upon the DoD Component's request, as described in 2 CFR 200.324(a).

(2) Reserve the DoD Component's right to review a recipient's pre-procurement documents when any of the conditions described in 2 CFR 200.324(b)(1) through (5) apply and the recipient is not exempted from the requirement in accordance with 2 CFR 200.324(c).

(b) *Award terms and conditions.* To implement the requirements described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix B to this part provides for Section H of PROC Article II.

§ 1132.220 Bonding requirements.

(a) *Requirements.* A DoD Component's general terms and conditions must require each recipient to meet minimum bonding requirements if it awards any construction or facility improvement contract with a value in excess of the simplified acquisition threshold. A recipient would instead use its own bonding requirements if the DoD Component determined that the recipient's bonding policy and requirements are adequate to protect Federal interests.

(b) *Award terms and conditions—(1) General.* To implement the requirements in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix B to this part provides for Section I of PROC Article II. The DoD Component may include a provision in the award-specific terms and conditions to override Section I of PROC Article II in each award to a recipient for which it made the determination about

the recipient's bonding policy and requirements, as described in paragraph (a) of this section.

(2) *Exceptions.* A DoD Component's general terms and conditions may reserve Section I if the DoD Component determines that there will be no construction or facility improvement contracts with values in excess of the simplified acquisition threshold under awards using its general terms and conditions.

Subpart C—Contract Provisions for Recipient Procurements (PROC Article III)

§ 1132.300 Purpose of PROC Article III.

PROC Article III of the general terms and conditions specifies provisions that recipients must include in contracts under their awards, as applicable. It thereby:

(a) Implements, in conjunction with PROC Articles I and II, OMB guidance concerning recipients' contract provisions under grants and cooperative agreements in 2 CFR 200.317 and 200.326;

(b) Partially implements the OMB guidance in 2 CFR 200.205(d) and 200.213 concerning suspension and debarment requirements; and

(c) Partially implements the OMB guidance in 2 CFR 200.517 concerning retention and access of auditors' records.

§ 1132.305 Administrative requirements.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include in their contracts standard administrative requirements related to remedies, termination, allowable costs, rights in copyrights and data, records access and retention, and reporting.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix C to this part provides for Section A of PROC Article III.

§ 1132.310 National policy requirements.

(a) *Requirement.* A DoD Component's general terms and conditions must re-

quire recipients to include provisions in their contracts that require the contractors to comply with applicable national policy requirements.

(b) *Award terms and conditions—(1) General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix C to this part provides for Section B of PROC Article III.

(2) *Exceptions.* (i) The Wage Rate Requirements (Construction) statute (40 U.S.C. 3141–44, 3146, and 3147) does not apply to a program carried out through grants or cooperative agreements unless another statute makes it apply to that program. A DoD Component's general terms and conditions therefore may not include the provision that appendix C to this part includes as paragraph B.2 of PROC Article III unless another statute makes the Wage Rate Requirements statute apply to the program using those general terms and conditions.

(ii) If a DoD Component determines that any of the other national policy requirements in Section B will not apply to any of the awards subject to its general terms and conditions, the DoD Component may reserve the paragraphs of Section B addressing those requirements. Should a future need arise to include the requirements in a given award, the DoD Component may include them as award-specific terms and conditions.

APPENDIX A TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE I, "PROCUREMENT STANDARDS FOR STATES"

Unless a DoD Component reserves the article, as specified in § 1132.105, a DoD Component's general terms and conditions must use the following wording for PROC Article I.

PROC ARTICLE I. PROCUREMENT STANDARDS FOR STATES. (DECEMBER 2014)

Section A. Use of State procurement system. Subject only to the conditions in Sections B through D of this article, you must use the same policies and procedures to procure supplies, equipment, real property, and services under this award that you use when you procure those items for State purposes using non-Federal funds.

Section B. Procurement of recovered materials. You must comply with the Resource

Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

Section C. Debarment and suspension. You must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

Section D. Contract provisions. You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements specified in PROC Article III, as applicable.

APPENDIX B TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE II, “PROCUREMENT STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION, NONPROFIT ORGANIZATIONS, LOCAL GOVERNMENTS, AND INDIAN TRIBES”

With the exception of Sections G and I, which may be reserved as specified in §§1132.210 and 1132.220, a DoD Component's general terms and conditions must use the following wording for PROC Article II.

PROC ARTICLE II. PROCUREMENT STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION, NONPROFIT ORGANIZATIONS, LOCAL GOVERNMENTS, AND INDIAN TRIBES. (DECEMBER 2014)

Section A. General procurement standards.

1. For procurement under this award, you must comply with the following paragraphs of OMB guidance in 2 CFR 200.318:

- a. 200.318(a) concerning documented procurement procedures;
- b. 200.318(b) concerning oversight of contractors;
- c. 200.318(c) concerning standards of conduct and conflicts of interest;
- d. 2 CFR 200.318(d) concerning purchases of unnecessary or duplicative items;
- e. 200.318(e) concerning intergovernmental or inter-entity agreements;
- f. 200.318(g) concerning value engineering;
- g. 200.318(i) concerning procurement records;
- h. 200.318(j) concerning time and material type contracts; and
- i. 200.318(k) concerning settlement of issues arising out of procurements.

2. You must do business only with responsible contractors who are able to perform, as described in OMB guidance in 2 CFR 200.318(h). Related to that, you must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

Section B. Competition. You must award procurement transactions under this DoD award in accordance with the competition requirements described in OMB guidance in 2 CFR 200.319.

Section C. Procurement methods. You must award procurement transactions under this award using methods described in OMB guidance in 2 CFR 200.320.

Section D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. You must take the affirmative steps described in OMB guidance in 2 CFR 200.321 when awarding procurement transactions under this award.

Section E. Contract cost and price. When awarding a contract under this award, you must follow the procedures related to costs and price that are described in OMB guidance in 2 CFR 200.323, using the applicable cost principles specified in FMS Article III.

Section F. Contract provisions. You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements of PROC Article III, as applicable.

Section G. Procurement of recovered materials. If you are a political subdivision of a State, you must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

Section H. Review of procurement documents. Upon our request, you must make available:

1. Technical specifications on proposed procurements, as described in 2 CFR 200.324(a).
2. Pre-procurement documents for our review, as described in 2 CFR 200.324(b) unless you are exempt from that requirement under 2 CFR 200.324(c).

Section I. Bonding requirements. If you award a construction or facility improvement contract under this award with a value in excess of the simplified acquisition threshold, you must comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.325(a) through (c), unless a provision in the award-specific terms and conditions of this award exempts you from the requirement based on our determination that your bonding policy and requirements are adequate to protect Federal interests.

APPENDIX C TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE III, “CONTRACT PROVISIONS FOR RECIPIENT PROCUREMENTS”

Unless a DoD Component reserves one or more paragraphs of Section B, as specified in §1132.310, a DoD Component's general terms and conditions must use the following wording for PROC Article III.