

## § 367.61

(b) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(Authority: Sections 752(g) and (h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(g) and (h)(2)(A))

### **§ 367.61 What matching requirements apply?**

Non-Federal contributions required by § 367.31(b) must meet the requirements in 2 CFR 200.306 (Cost sharing or matching).

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

### **§ 367.62 What requirements apply if the State's non-Federal share is in cash?**

(a) Expenditures that meet the non-Federal share requirements of 2 CFR 200.306 may be used to meet the non-Federal share matching requirement. Expenditures used as non-Federal share must also meet the following requirements:

(1) The expenditures are made with funds made available by appropriation directly to the DSA or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the DSA in accordance with State law for expenditure by, and at the sole discretion of, the DSA for activities authorized by § 367.3; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for activities listed in § 367.3;

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

(c) The receipt of a subaward or contract under section 752(g) of the Act from the DSA is not considered a ben-

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efit to the donor of a cash contribution for purposes of paragraph (b) of this section if the subaward or contract was awarded under the State's regular competitive procedures. The State may not exempt the awarding of the subaward or contract from its regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

### **§ 367.63 What requirements apply if the State's non-Federal share is in kind?**

In-kind contributions may be—

(a) Used to meet the matching requirement under section 752(f) of the Act if the in-kind contributions meet the requirements and are allowable under 2 CFR 200.306; and

(b) Made to the program or project by the State or by a third party (*i.e.*, an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a subrecipient or contractor that is receiving or will receive assistance under section 752(g) of the Rehabilitation Act.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

### **§ 367.64 What is the prohibition against a State's condition of an award of a sub-award or contract based on cash or in-kind contributions?**

(a) A State may not condition the making of a subaward or contract under section 752(g) of the Act on the requirement that the applicant for the subaward or contract make a cash or in-kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a subrecipient or contractor of the State, may not condition the award of a subcontract on the requirement that the applicant for the subcontract make a cash or in-kind contribution of any particular amount