

DEPARTMENT OF COMMERCE  
FINANCIAL ASSISTANCE  
STANDARD TERMS AND CONDITIONS



October 2001



**DEPARTMENT OF COMMERCE  
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS**

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## PREFACE

The recipient and any subrecipients must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, terms and conditions, and approved applications.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the Federal Register, EOs, OMB circulars, Department of Commerce (DoC) Financial Assistance Standard Terms and Conditions, agency standard award conditions (if any), and special award conditions. Special award conditions may take precedence over DoC standard terms and conditions, on a case-by-case basis, when allowed by the DoC standard term and condition.

Some of the DoC terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes, or regulations published in the Federal Register or Code of Federal Regulations (CFR), EOs, OMB circulars or the assurances (Forms SF-424B,424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, EO, or OMB circular.

### A. FINANCIAL REQUIREMENTS

#### .01 Financial Reports

- a. The recipient shall submit a "Financial Status Report" (SF-269) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-269 shall be submitted within 90 days after the expiration date of the award.
- b. Unless otherwise authorized by a special award condition, all financial reports shall be submitted in triplicate (one original and two copies) to the Grants Officer.

#### .02 Award Payments

- a. The advance method of payment shall be authorized unless otherwise specified in a special award condition. The Grants Officer determines the appropriate method of payment. Payments will be made through electronic funds transfers directly to the recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996. The DoC Award Number must be included on all payment-related correspondence, information, and forms.
- b. When the "Request for Advance or Reimbursement" (SF-270) is used to request

payment, the recipient shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. When the SF-270 is used, the recipient must complete the SF-3881, "ACH Vendor Miscellaneous Payment Enrollment Form," and return it to the Grants Officer.

- c. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned to DoC. If a recipient demonstrates an unwillingness or inability to establish procedures which will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.

### **.03 Federal and Non-Federal Sharing**

- a. Awards which include Federal and non-Federal sharing incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal and non-Federal cost share ratio shall be calculated as a percentage of Federal and non-Federal approved amounts. If actual allowable costs are greater than the total approved estimated budget, the Federal share shall not exceed the total Federal dollar amount as reflected in the Financial Assistance Award (CD-450) and Amendment(s) to Financial Assistance Award (CD-451).
- b. The non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over the life of the award.

### **.04 Budget Changes and Transfer of Funds Among Categories**

- a. Requests for budget changes to the approved estimated budget in accordance with the provision noted below must be submitted to the Grants Officer who shall make the final determination on such requests and notify the recipient in writing.
- b. Transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$100,000 or less. For awards in which the Federal share of the project exceeds \$100,000, transfers of funds must be approved in writing by the Grants Officer when the cumulative amount of such transfers exceed 10 percent of the current total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the

transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criteria applies to the cumulative amount of transfer of funds among projects, functions, joint ventures, consortia, activities, and annual costs when budgeted separately within an award. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval.

- c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

#### **.05 Indirect Costs**

- a. Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award. (The term “indirect cost” has been replaced with the term “facilities and administrative costs” under OMB Circular A-21, “Cost Principles for Educational Institutions.”)
- b. Excess indirect costs may not be used to offset unallowable direct costs.
- c. If the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:
  - 1. For those organizations for which DoC is cognizant or has oversight, DoC or its designee either will negotiate a fixed rate for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs. Within 90 days of the award start date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Executive Assistance Management  
Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W., Room H-6022  
Washington, DC 20230
  - 2. When an oversight or cognizant Federal agency other than DoC has responsibility for establishing an indirect cost rate, the recipient shall submit to that oversight or cognizant Federal agency within 90 days of the award start date the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates. The recipient shall provide the Grants Officer with a copy of the transmittal letter to the cognizant Federal agency.

3. If the recipient fails to submit the required documentation to DoC or other oversight or cognizant Federal agency within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DoC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
4. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DoC will reimburse the recipient shall be the lesser of:
  - (a) The line item amount for the Federal share of indirect costs contained in the approved budget of the award; or
  - (b) The Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

#### **.06 Incurring Costs or Obligating Federal Funds Beyond the Expiration Date**

- a. The recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award. The only costs which are authorized for a period of up to 90 days following the award expiration date are those strictly associated with closeout activities. Closeout activities are normally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer.
- b. Unless otherwise authorized in 15 CFR § 14.25(e)(4) or a special award condition, any extension of the award period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the expiration date.
- c. The DoC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DoC.

#### **.07 Tax Refunds**

Refunds of FICA/FUTA taxes received by the recipient during or after the award period must be refunded or credited to DoC where the benefits were financed with Federal funds under the award. The recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The recipient further agrees to refund



portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the award end date.

## **B. PROGRAMMATIC REQUIREMENTS**

### **.01 Performance (Technical) Reports**

- a. The recipient shall submit performance (technical) reports in triplicate (one original and two copies) to the Federal Program Officer in the same frequency as the Financial Status Report (SF-269) unless otherwise authorized by the Grants Officer.
- b. Unless otherwise specified in the award provisions, performance (technical) reports shall contain brief information as prescribed in the applicable uniform administrative requirements incorporated into the award.

### **.02 Unsatisfactory Performance**

Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance rating or equivalent evaluation may result in designation of the recipient as high risk and assignment of special award conditions or other further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions."

### **.03 Programmatic Changes**

- a. The recipient shall not make any programmatic changes to the award without prior written approval by the Grants Officer.
- b. Any requests by the recipient for programmatic changes must be submitted to the Grants Officer who shall make the final determination and notify the recipient in writing.

### **.04 Other Federal Awards with Similar Programmatic Activities**

The recipient shall immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DoC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DoC award. DoC will not pay for costs that are funded by other sources.

**.05 Non-Compliance With Award Provisions**

Failure to comply with any or all of the provisions of the award may have a negative impact on future funding by DoC and may be considered grounds for any or all of the following actions: establishment of an account receivable, withholding payments under any DoC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any DoC active awards, and termination of any DoC active awards.

**.06 Prohibition Against Assignment by the Recipient**

Notwithstanding any other provision of the award, the recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions.

**.07 Disclaimer Provisions**

- a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any subaward or subcontract under this award.
- b. The acceptance of this award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

**C. NON-DISCRIMINATION REQUIREMENTS**

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

**.01 Statutory Provisions**

- a. Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d et seq.) and DoC implementing regulations published at 15 CFR Part 8 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 USC §§ 1681 et seq.) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794) and DoC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefitting from Federal assistance;
- d. The Age Discrimination Act of 1975, as amended (42 USC §§ 6101 et seq.) and DoC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- e. The Americans with Disabilities Act of 1990 (42 USC §§ 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f. Any other applicable non-discrimination law(s).

## **.02 Other Provisions**

Parts II and III of EO11246 (30 FR 12319, 1965) as amended by EO 11375 (32 FR 14303, 1967) and 12086 (43 FR 46501, 1978) require Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO and Department of Labor regulations implementing EO 11246 (41 CFR § 60-1.4(b), 1991).

## **D. AUDITS**

Under the Inspector General Act of 1978, as amended, 5 USC App. 3, § 1 et seq., an audit of the award may be conducted at any time. The Inspector General of the DoC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the OIG requires a program audit on a DoC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DoC, or any other Federal, state or local audit entity.

**.01 Organization-Wide, Program-Specific, and Project Audits**

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.” Recipients that are subject to the provisions of OMB Circular A-133 and that expend \$300,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133.
- b. Pursuant to 15 CFR § 14.26 (c) and (d), DoC requires for-profit recipients of awards that exceed \$100,000 in Federal funding to have a program-specific audit performed. If DoC does not have a program-specific audit guide available for the program, the auditor should follow Generally Accepted Government Auditing Standards and the requirements for a program-specific audit as described in OMB Circular A-133 § .235. A copy of the program-specific audit shall be submitted to the OIG at the following address with a copy of the transmittal letter to the Grants Officer:

Office of Inspector General  
U.S. Department of Commerce  
Atlanta Regional Office of Audits  
401 West Peachtree Street, N.W., Suite 2742  
Atlanta, GA 30308

- c. Recipients expending Federal awards over \$300,000 a year and having audits conducted in accordance with OMB Circular A-133 shall submit a copy of organization-wide or program-specific audits to the Bureau of the Census, which has been designated by OMB as a central clearinghouse. The address is:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 E. 10th Street  
Jeffersonville, IN 47132

**.02 Audit Resolution Process**

- a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due DoC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. In accordance with the Federal Register notice dated January 27, 1989 (54 FR 4053), a recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. Unless the Inspector General determines otherwise, the recipient has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
2. The recipient has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
3. The DoC shall review the documentary evidence submitted by the recipient and shall notify the recipient of the results in an Audit Resolution Determination Letter. The recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination. In addition, an appeal does not preclude the recipient's obligation to pay a debt that may be established, nor does the appeal preclude the accrual of interest on a debt.
4. The DoC shall review the recipient's appeal and notify the recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the appeal determination has been rendered, DoC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DoC.
5. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

## **E. DEBTS**

### **.01 Payment of Debts Owed the Federal Government**

Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. In accordance with 15 CFR § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted below. In addition, failure to pay the debt or establish a repayment agreement by the due date, or if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action and may result in DoC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions." Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

## **.02 Late Payment Charges**

- a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act (31 U.S.C. 3701 et seq.), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. This rate is published in the Federal Register by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. A penalty charge shall be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.
- c. An administrative charge shall be assessed to cover processing and handling the amount due.
- d. State and local governments are not subject to penalty and administrative charges.

## **F. NAME CHECK**

A name check review shall be performed by the OIG on key individuals associated with non-profit and for-profit organizations, unless an exemption has been authorized by the Inspector General, such as the exemption authorized for Economic Development Districts designated by the Economic Development Administration.

### **.01 Results of Name Check**

DoC reserves the right to take any of the actions described in section F.02 if any of the following occurs as a result of the name check review:

- a. A key individual fails to submit the required Form CD-346, "Applicant for Funding Assistance;"
- b. A key individual made an incorrect statement or omitted a material fact on the Form CD-346; or
- c. The name check reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individual.

### **.02 Action(s) Taken as a Result of Name Check Review**

If any situation noted in F.01 occurs, DoC, at its discretion, may take one or more of the following actions:

- a. Consider suspension/termination of the award;
- b. Require the removal of any key individual from association with the management

of and/or implementation of the award; and/or

- c. Make appropriate provisions or revisions with respect to the method of payment and/or financial reporting requirements.

## **G. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

The recipient shall comply with the provisions of EO 12549, "Debarment and Suspension" and DoC's implementing regulations published at 15 CFR Part 26, Subparts A through E, "Governmentwide Debarment and Suspension (Nonprocurement)," which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.

## **H. DRUG-FREE WORKPLACE**

The recipient shall comply with the provisions of Public Law 100-690, Title V, Subtitle D, "Drug-Free Workplace Act of 1988," and DoC implementing regulations published at 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)," which require that the recipient take steps to provide a drug-free workplace.

## **I. LOBBYING RESTRICTIONS**

### **.01 Statutory Provisions**

The recipient shall comply with the provisions of Section 319 of Public Law 101-121, which added Section 1352 to Chapter 13 of Title 31 of the United States Code, and DoC implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.

### **.02 Disclosure of Lobbying Activities**

The recipient receiving in excess of \$100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

## **J. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS**

### **.01 Code of Conduct for Recipients**

Pursuant to the certification in SF-424B, paragraph 3, the recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award.

**.02 Applicability of Award Provisions to Subrecipients**

The recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award including applicable cost principles, administrative, and audit requirements.

**.03 Competition and Codes of Conduct for Subawards**

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.
- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

**.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts**



- a. The recipient shall include the following notice in each request for applications or bids:

Applicants/bidders for a lower tier covered transaction (except for goods and services under the \$100,000 simplified acquisition threshold and where the lower tier recipient will have no critical influence on or substantive control over the award) are subject to 15 CFR Part 26, Subparts A through E, "Governmentwide Debarment and Suspension (Nonprocurement). In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying." Applicants/bidders should familiarize themselves with these provisions, including the certification requirements. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Covered Transactions and Lobbying," completed without modification.

- b. The recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to EO 12549, "Debarment and Suspension" and DoC implementing regulations published at 15 CFR Part 26, Subparts A through E, "Governmentwide Debarment and Suspension (Nonprocurement)."
- c. The recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds, that the subaward, contract, or subcontract is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." The recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

#### **.05 Minority Owned Business Enterprise**

DoC encourages recipients to utilize minority and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist recipients in matching qualified minority owned enterprises with contract opportunities. For further information contact:

U.S. Department of Commerce  
Minority Business Development Agency  
Herbert C. Hoover Building  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

**.06 Subaward and/or Contract to a Federal Agency**

- a. The recipient, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DoC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the recipient in writing of the final determination.

**K. PROPERTY**

**.01 Standards**

The recipient shall comply with the property management standards as stipulated in the applicable uniform administrative requirements.

**.02 Real Property**

The recipient shall record liens or other appropriate notices of record to indicate that real property has been acquired or improved with Federal funds and that disposition conditions apply to the property.

**L. MISCELLANEOUS REQUIREMENTS**

**.01 Criminal and Prohibited Activities.**

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including money representing grants, loans or other benefits).
- b. False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or presents any false, fictitious, or fraudulent statements, representations, or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. False Claims Act (31 U.S.C. 3729 et seq.), provides that suits under this act can be brought by the government, or a person on behalf of the government, for false claims under Federal assistance programs.

- d. Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

**.02 Foreign Travel**

- a. The recipient shall comply with the provisions of the Fly America Act (49 USC § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 USC § 40118(b). DoC is not aware of any bilateral agreements which meet these requirements. Therefore, it is the responsibility of the recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.
- d. If a foreign air carrier is anticipated to be used for any part of foreign travel, the recipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the recipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel, name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

**.03 American-Made Equipment and Products.**

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

**.04 Intellectual Property Rights**

- a. Inventions.

The rights to any invention made by a recipient under a DoC financial assistance award are determined by the Bayh-Dole Act, Pub. L. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 CFR Part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14.

1. Ownership.

- (a) Recipient. The recipient has the right to own any invention it makes (conceived or first reduced to practice) or made by its employees. The recipient may not assign its rights to a third party without the permission of DoC unless it is to a patent management organization (i.e., a university's Research Foundation.) The recipient's ownership rights are subject to the Government's nonexclusive paid-up license.
- (b) Department. If the recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, DoC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive license for the recipient. DoC owns any invention made solely by its employees but may license the recipient in accordance with the procedures in 37 CFR Part 404.
- (c) Inventor/Employee. If neither the recipient nor the Department is interested in owning an invention by a recipient employee, the recipient, with the written concurrence of DoC Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.
- (d) Joint inventions. Inventions made jointly by a recipient and a DoC employee will be owned jointly by the recipient and DoC. However, DoC may transfer its rights to the recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one recipient and DoC employee). The agreement will be prepared by DoC Patent Counsel and may include other provisions, such as a royalty free license to the Government and certain other entities.

2. Responsibilities.

The recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The recipient is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 401.

- (a) Reporting. Within two months of when the recipient reports the invention, the recipient will send the invention disclosure to DoC Patent

Counsel (HCHB Room 4613, Washington, DC 20230, telephone: 202-482-8097) and the appropriate DoC program office.

- (b) Electing. Within two years of reporting the invention to DoC, the recipient will notify DoC Patent Counsel of its decision whether or not it wishes to own the invention.
- (c) Filing. Within one year of notifying DoC that it wishes to own the invention, the recipient will file a patent application (either a provisional or non-provisional) and promptly send a copy of the application to DoC Patent Counsel. Any foreign or international application must usually be filed within 10 months of the first filed application in the United States. The recipient will ensure that any U.S. application contains the required statement of Government support. The recipient will also promptly send the required confirmatory Government license to DoC Patent Counsel who shall record that license in the Patent and Trademark Office. If the recipient decides to discontinue the prosecution of any patent application or not pay a maintenance fee or defend a reexamination, it shall notify DoC Patent Counsel of that fact in sufficient time (but not less than 30 days) for the Government to respond to any outstanding requirement or letter from a patent office. However, if the recipient is filing a continuing application, it needs only to notify DoC Patent Counsel of this and provide a copy of the continuing application with the appropriate confirmatory license. Upon issuance of any application, the recipient will promptly provide a copy of the patent to DoC Patent Counsel.
- (d) The recipient should send any request for an extension of time to DoC Patent Counsel in advance of the expiration of the time period.

b. Patent Notification Procedures.

Pursuant to EO 12889, DoC is required to notify the owner of any valid patent covering technology whenever the DoC or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient must notify the DoC Patent Counsel at the following address, with a copy to the Grants Officer:

Department of Commerce  
Office of Chief Counsel for Technology, Patent Counsel  
14th Street and Constitution Avenue, N.W. Room H-4613  
Washington, D.C. 20230

c. Data, Databases, and Software.

The rights to any work produced or purchased under a DoC Federal financial assistance award are determined by 15 CFR § 24.34 and 15 CFR § 14.36 . Such works may include data, databases or software. The recipient owns any work produced or purchased under a DoC Federal financial assistance award subject to DoC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.

d. Copyright.

The recipient may copyright any work produced under a DoC Federal financial assistance award subject to DoC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DoC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, DoC may ask the recipient to transfer to DoC its copyright in a particular work when DoC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

**.05 Increasing Seat Belt Use in the United States.**

Pursuant to EO 13043, recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.

**.06 Research Involving Human Subjects.**

- a. All proposed research involving human subjects must be conducted in accordance with 15 CFR Part 27, "Protection of Human Subjects." No research involving human subjects is permitted under any DoC financial assistance award unless expressly authorized by the Grants Officer.
- b. No research involving human subjects is permitted under this award unless expressly authorized by Special Award Condition, or otherwise in writing by the Grants Officer.
- c. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

- d. DoC regulations, 15 CFR Part 27, require that recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DoC officials. This documentation may include:
  - 1. Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines, see 15 CFR § 27.103;
  - 2. Documentation to support an exemption for the project under 15 CFR § 27.101(b);
  - 3. Documentation to support deferral for an exemption or IRB review under 15 CFR § 27.118;
  - 4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- e. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

**.07 Federal Employee Expenses.**

Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee unless specifically approved in the terms of the award. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DoC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

**.08 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.**

Pursuant to EO 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," unless the project is exempted under section 5(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not:

- a) include any requirement or prohibition on bidders, offerors, contractors, or

subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction project(s); or b) otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

**.09 Minority Serving Institutions (MSIs) Initiative.**

Pursuant to EOs 12876, 12900, and 13021, DoC is strongly committed to broadening the participation of MSIs in its financial assistance programs. DoC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DoC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.