

## APPENDIX A TO PART 34—CONTRACT PROVISIONS

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

SOURCE: 63 FR 12204, Mar. 12, 1998, unless otherwise noted.

**Subpart A—General****§ 34.1 Purpose.**

(a) This part prescribes administrative requirements for awards to for-profit organizations.

(b) Applicability to prime awards and subawards is as follows:

(1) *Prime awards.* DoD Components shall apply the provisions of this part to awards to for-profit organizations. DoD Components shall not impose requirements that are in addition to, or inconsistent with, the requirements provided in this part, except:

(i) In accordance with the deviation procedures or special award conditions in § 34.3 or § 34.4, respectively; or

(ii) As required by Federal statute, Executive order, or Federal regulation implementing a statute or Executive order.

(2) *Subawards.* (i) Any legal entity (including any State, local government, university or other nonprofit organization, as well as any for-profit entity) that receives an award from a DoD Component shall apply the provisions of this part to subawards with for-profit organizations. It should be noted that subawards (see definition in § 34.2) are financial assistance for substantive programmatic performance and do not include recipients' procurement of goods and services.

(ii) For-profit organizations that receive prime awards covered by this part shall apply to each subaward the administrative requirements that are applicable to the particular type of subrecipient (e.g., 32 CFR part 33 specifies requirements for subrecipients that are States or local governments, and 32 CFR part 32 contains requirements for universities or other nonprofit organizations).

**§ 34.2 Definitions.**

The following are definitions of terms as used in this part. Grants officers are cautioned that terms may be defined differently in this part than

they are in other parts of the DoD Grant and Agreement Regulations (DoDGARs).

*Advance.* 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.

*Award.* A grant or cooperative agreement.

*Cash contributions.* The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

*Closeout.* The process by which the grants officer administering an award made by a DoD Component determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DoD Component.

*Contract.* Either:

(1) A procurement contract made by a recipient under a DoD Component's award or by a subrecipient under a subaward; or

(2) A procurement subcontract under a contract awarded by a recipient or subrecipient.

*Cost sharing or matching.* That portion of project or program costs not borne by the Federal Government.

*Disallowed costs.* Those charges to an award that the grants officer administering an award made by a DoD Component determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

*DoD Component.* A Military Department, Defense Agency, DoD Field Activity, or organization within the Office of the Secretary of Defense that provides or administers an award to a recipient.

*Equipment.* Tangible nonexpendable personal 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. That definition applies for the purposes of the Federal administrative requirements in this part. However, the recipient's policy may be to use a lower dollar value for defining "equipment," and

nothing in this part should be construed as requiring the recipient to establish a higher limit for purposes other than the administrative requirements in this part.

*Excess property.* Property under the control of any DoD Component that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

*Expenditures.* See the definition for outlays in this section.

*Federally owned property.* Property in the possession of, or directly acquired by, the Government and subsequently made available to the recipient.

*Funding period.* The period of time when Federal funding is available for obligation by the recipient.

*Intellectual property.* Intangible personal property such as patents and patent applications, trademarks, copyrights, technical data, and software rights.

*Obligations.* 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.

*Outlays or expenditures.* 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.

*Personal property.* Property of any kind except real property. It may be:

(1) Tangible, having physical existence (i.e., equipment and supplies); or

(2) Intangible, having no physical existence, such as patents, copyrights, data and software.

*Prior approval.* Written or electronic approval by an authorized official evidencing prior consent.

*Program income.* Gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. 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 program 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.

*Project costs.* 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.

*Project period.* The period established in the award document during which Federal sponsorship begins and ends.

*Property.* Real property and personal property (equipment, supplies, and intellectual property), unless stated otherwise.

*Real property.* Land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

*Recipient.* A for-profit organization receiving an award directly from a DoD Component to carry out a project or program.

*Research.* Basic, applied, and advanced research activities. *Basic research* is defined as efforts directed toward increasing knowledge or understanding in science and engineering. *Applied research* is defined as efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology, such as new materials, devices, methods,

and processes. "Advanced research," advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way, is most closely analogous to precommercialization or precompetitive technology development in the commercial sector (it does not include development of military systems and hardware where specific requirements have been defined).

*Small award.* An award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently \$100,000).

*Small business concern.* A concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it has applied for an award, and qualified as a small business under the criteria and size standards in 13 CFR part 121. For more details, grants officers should see 48 CFR part 19 in the "Federal Acquisition Regulation."

*Subaward.* Financial assistance in the form of money, or property in lieu of money, provided 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 the term includes neither procurement of goods and services nor any form of assistance which is excluded from the definition of "award" in this section.

*Subrecipient.* The legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

*Supplies.* Tangible expendable personal property that is charged directly to the award and that has a useful life of less than one year or an acquisition cost of less than \$5000 per unit.

*Suspension.* An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a recipient under 32 CFR part 25.

*Termination.* The cancellation of an award, in whole or in part, under an agreement at any time prior to either:

(1) The date on which all work under an award is completed; or

(2) The date on which Federal sponsorship ends, as given on the award document or any supplement or amendment thereto.

*Third party in-kind contributions.* 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.

*Unobligated balance.* The portion of the funds authorized by a DoD Component that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

### §34.3 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award may be approved by DoD Components in accordance with procedures stated in 32 CFR 21.125(a).

(b) *Small awards.* DoD Components may apply less restrictive requirements than the provisions of this part when awarding small awards, except for those requirements which are statutory.

(c) *Other class deviations.* For classes of awards other than small awards, the Director, Defense Research and Engineering, or his or her designee, may grant exceptions from the requirements of this part when exceptions are not prohibited by statute. DoD Components shall request approval for such deviations in accordance with 32 CFR 21.125 (b) and (c).

### §34.4 Special award conditions.

(a) Grants officers may impose additional requirements as needed, over and above those provided in this part, if an applicant or recipient:

- (1) Has a history of poor performance;
- (2) Is not financially stable;
- (3) Has a management system that does not meet the standards prescribed in this part;