AMENDMENT OF SOLICITATION FOR COOPERATIVE AGREEMENT APPLICATIONS

Amendment No. 006 of Solicitation Number DLA-20130412

Amendment Issue Date: March 2, 2015

ISSUED BY:

Defense Logistics Agency (DLA)
Office of Small Business Programs (DB)
Procurement Technical Assistance Program
8725 John J. Kingman Road, Suite 1127
Ft. Belvoir, VA 22060

DESCRIPTION OF AMENDMENT:

1. Solicitation number DLA-20130412 is hereby amended to incorporate Office of Management and Budget (OMB) guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," published in the Code of Federal Regulations (CFR) at 2 CFR Part 200 and implemented by the Department of Defense (DoD) at 2 CFR Part 1103.

2. This Amendment updates and includes all terms and conditions of solicitation number DLA-20130412 that are applicable to recipients of awards (i.e., post-award requirements for recipients). Other terms, conditions, provisions and clauses of the solicitation (including those in amendments previous to this one) should only be referred to as the source of requirements applicable to awards if this amendment specifically refers you there. Pre-award matters, such as recipient eligibility requirements and procedures used for evaluating applications, are addressed elsewhere in the solicitation.

3. By signing an award that incorporates Amendment No. 006, you agree to comply with all its provisions.

PREAMBLE

Amendment. Amendment No. 006 amends the general terms and conditions in solicitation number DLA-20130412 for cooperative agreements awarded on or after December 26, 2014. These general terms and conditions are designed to conform to OMB guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," published at 2 CFR Part 200 and implemented by DoD at 2 CFR Part 1103.

Applicability of this Amendment. This Amendment is applicable to cooperative agreement awards under solicitation number DLA-20130412 made on or after December 26, 2014 if the recipient is an institution of higher education, nonprofit organization, State, local government, or Indian tribal government. This Amendment is not applicable if the recipient is a for-profit entity.

Order of precedence. The general terms and conditions in this Amendment will not take precedence over any Federal statute or Federal regulation published in the CFR. The order of precedence of sources of requirements, if applicable to your award, is as follows: Federal statutes; Federal regulations in the CFR; OMB guidance in the CFR, at 2 CFR Part 200; award-specific terms and conditions; the general terms and conditions in this Amendment.

Process for improvement. If a conflict arises between the general terms and conditions in this Amendment and any requirement in Federal statute, Federal regulation in the CFR, or OMB guidance at 2 CFR Part 200, please contact the awarding office so that we may resolve the conflict. As recipients gain operating experience with these general terms and conditions, we may find areas requiring clarification or correction. Your alerting us to potential issues therefore will help us improve both these general terms and conditions and DoD's regulatory implementation of the OMB guidance at 2 CFR Part 200.

Use of plain language. This Amendment uses plain language to communicate requirements, including personal pronouns "you" to denote the recipient and "we" or "us" to denote DLA or another DoD Component.

TABLE OF CONTENTS

PART 1: DEFINITIONS OF TERMS USED IN THIS AMENDMENT 5
PART 2: PROGRAM REQUIREMENTS 20
PART 3: NATIONAL POLICY REQUIREMENTS (NP Articles).....28
I. Nondiscrimination national policy requirements. 28
II. Environmental national policy requirements. 28
III. Other national policy requirements.....29
PART 4: FINANCIAL AND PROGRAM MANAGEMENT (FMS Articles).....34
I. Financial management system standards.....34
II. Payments. 35
III. Allowable costs, period of availability of funds, and fee or profit. 38
IV. Revision of budget and program plans. 39
V. Non-Federal audits.....40
VI. Cost sharing or matching.....41
VII. Program income. 43
PART 5: PROPERTY ADMINISTRATION (PROP Articles).....45
I. Title to property.....45
II. Property management system.....45
III. Use and disposition of real property. 47
IV. Use and disposition of equipment and supplies.....48
V. Intangible property.....50
PART 6: PROCUREMENT PROCEDURES (PROC Articles).....52
I. Procurement standards for States. 52
II. Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes. 52
III. Contract provisions for recipient procurements.....54
PART 7: FINANCIAL, PROGRAMMATIC, AND PROPERTY REPORTING (REP Articles).....58
I. Performance management, monitoring, and reporting. 58
II. Financial reporting. 58
III. Reporting on property.....59
IV. Reporting on subawards and executive compensation. 60
PART 8: OTHER ADMINISTRATIVE REQUIREMENTS (OAR Articles).....62
I. Maintaining recipient information.....62
II. Records retention and access.....62

III. Remedies and termination.....65
IV. Claims, disputes and appeals. 67
V. Collection of amounts due. 69
VI. Closeout. 70
VII. Post-closeout adjustments and continuing responsibilities. 70
PART 9: REQUIREMENTS RELATED TO SUBAWARDS (SUB Articles) 72
I. Distinguishing subawards and procurements. 72
II. Pre-award and time of award responsibilities. 73
III. Informational content of subawards.....74
IV. Financial and program management requirements for subawards. 76
V. Property requirements for subawards. 79
VI. Procurement procedures to include in subawards. 82
VII. Financial, programmatic, and property reporting requirements for subawards. 83
VIII. Other administrative requirements for subawards. 84
IX. National Policy Requirements for Subawards. 87
X. Subrecipient monitoring and related subaward administration.....88
XI. Requirements Concerning Subrecipients' Lower-tier Subawards. 90
XII. Fixed amount subawards. 91

PART 1: DEFINITIONS OF TERMS USED IN THIS AMENDMENT

Section A. Purpose of this part. This part provides definitions of terms used in this Amendment.

Section B. Precedence of definitions of terms in national policy requirements.

Some portions of the general terms and conditions in this Amendment use a term in relation to compliance with a national policy requirement in a statute, Executive order, or other source that defines the term differently than Section D of this part. For purposes of that particular national policy requirement, the definition of a term provided by the source of the requirement and any regulation specifically implementing it takes precedence over the definition in this part. For the purpose of determining eligibility for an award under the Procurement Technical Assistance Cooperative Agreement Program, the definitions in 10 U.S.C. 2411 take precedence over the definitions in this part.

Section C. Definitions of terms used in the Governmentwide cost principles or single audit requirements.

1. The general terms and conditions in this Amendment incorporate by reference the provisions of:

    a. The implementation of the Single Audit Act requirements for audits of recipients and subrecipients that are in Subpart F of OMB guidance in 2 CFR Part 200;

    b. The Governmentwide cost principles for institutions of higher education, nonprofit entities, States, local governments, and Indian tribes that are contained in Subpart E of OMB guidance in 2 CFR Part 200; and

    c. The cost principles for for-profit entities at subpart 31.2 of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at subpart 231.2 of 48 CFR Part 231.

2. This part includes the definition of a term used in any of the issuances listed in paragraph 1 of this Section only if the terms and conditions in this Amendment use that term directly. If the only usage is indirect--i.e., through an issuance incorporated by reference--then this part will not include a definition and you should consult definitions in:

    a. Subpart A of the OMB guidance in 2 CFR Part 200 for terms used in Subparts E and F of that Part; and

    b. FAR Part 2 (48 CFR Part 2) for terms used in the cost principles at 48 CFR Part 31.

Section D. Definitions.

1. Acquire.

Acquire means to:

a. Purchase services; or

b. Obtain property, by purchase, construction, fabrication, development, or otherwise.

2. Acquisition.

Acquisition means the process of acquiring as described in the definition of "acquire".

3. Acquisition cost.

Acquisition cost means the cost of an asset to a recipient or subrecipient, including the cost to ready the asset for its intended use.

a. For example, when used in conjunction with:

i. The purchase of equipment, the term means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired.

ii. Equipment that a recipient or subrecipient constructs or fabricates--or software that it develops--under an award, the term includes, when capitalized in accordance with generally accepted accounting principles (GAAP):

A. The construction and fabrication costs of that equipment; and

B. The development costs of that software.

b. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.

4. Administrative offset.

Administrative offset means an action whereby money payable by the United States Government to, or held by the Government for, a recipient is withheld to satisfy a delinquent debt the recipient owes the Government.

5. Advance payment.

Advance payment means a payment that DoD or a recipient or subrecipient makes by any appropriate payment mechanism, including a predetermined payment schedule, before the recipient or subrecipient disburses the funds for project or program purposes.

6. Approved budget.

   Approved budget means, in conjunction with a DoD Component award to a recipient, the most recent version of the budget the recipient submitted and the DoD Component approved (either at the time of the initial award or subsequently), to summarize planned expenditures for the project or program under the award. It includes all Federal funding made available to the recipient under the award to use for project or program purposes and any cost sharing or matching that the recipient is required to provide under the award.

7. Assistance.

   Assistance means the transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants, cooperative agreements, and technology investment agreements are examples of legal instruments that DoD Components use to provide assistance.

8. Award.

   Award means a grant, cooperative agreement, technology investment agreement, or other nonprocurement instrument.

9. Award administration office.

   Award administration office means a DoD Component office that performs assigned post-award functions related to the administration of grants, cooperative agreements, technology investment agreements, or other nonprocurement instruments.

10. Award-specific terms and conditions.

    Award-specific terms and conditions means requirements that are included in an individual award and pertain to that particular award specifically. Award-specific terms and conditions may be used to modify or supplement general terms and conditions.

11. Capital asset.

    Capital asset means a tangible or intangible asset used in operations having a useful life of more than one year which is capitalized in accordance with GAAP. Capital assets include:

    a. Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

b. Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

12. Claim.

Claim means a written demand or written assertion by one of the parties to an award seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by written notice to the grants officer if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.

13. Cognizant agency for indirect costs.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans and indirect cost proposals on behalf of all Federal agencies. The cognizant agency for indirect costs for a particular entity may be different than the cognizant agency for audit. The cognizant agency for indirect costs:

a. For an institution of higher education, nonprofit organization, State, or local government is assigned as described in the appendices to OMB guidance in 2 CFR Part 200. See 2 CFR 200.19 for specific citations to those appendices.

b. For a for-profit entity, normally will be the agency with the largest dollar amount of pertinent business, as described in the Federal Acquisition Regulation at 48 CFR 42.003.

14. Contract.

Contract means a procurement transaction, as that term is defined in this part. A contract is a transaction into which a recipient or subrecipient enters. It is therefore distinct from the term “procurement contract,” which is a transaction that a DoD Component awards at the prime tier.

15. Contractor.

Contractor means an entity to which a recipient or subrecipient awards a procurement transaction (also known as a contract).

16. Cooperative agreement.

Cooperative agreement means a legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of “grant” in this part), except that substantial involvement is expected between the

Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include "cooperative research and development agreements" as defined in 15 U.S.C. 3710a.

17. Cost allocation plan.

Cost allocation plan means either a:

a. Central service cost allocation plan, as defined at 2 CFR 200.9 and described in Appendix V to OMB guidance in 2 CFR Part 200; or

b. Public assistance cost allocation plan as described in Appendix VI to 2 CFR Part 200.

18. Cost sharing or matching.

Cost sharing or matching means the portion of project costs not borne by the Federal Government, unless a Federal statute authorizes use of any Federal funds for cost sharing or matching.

19. Cost-type contract.

Cost-type contract means a procurement transaction awarded by a recipient or a subrecipient at any tier under a DoD Component's grant or cooperative agreement that provides for the contractor to be paid on the basis of the actual, allowable costs it incurs (plus any fee or profit for which the contract provides).

20. Cost-type subaward

Cost-type subaward means a subaward:

a. That a recipient or subrecipient makes to another entity at the next lower tier; and

b. Provides for payments to the entity that receives the cost-type subaward based on the actual, allowable costs it incurs in carrying out the subaward.

21. Debarment.

Debarment means an action taken by a Federal agency debarring official to exclude a person or entity from participating in covered Federal transactions, in accordance with debarment and suspension policies and procedures for:

a. Nonprocurement instruments, which are in OMB guidance at 2 CFR Part 180, as implemented by the DoD at 2 CFR Part 1125; or

b. Procurement contracts, which are in the Federal Acquisition Regulation at 48 CFR 9.4.

22. Debt.

Debt means any amount of money or any property owed to a Federal agency by any person, organization, or entity except another United States Federal agency. Debts include any amounts due from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, or overpayments, penalties, damages, interest, fines and forfeitures, and all other claims and similar sources.

23. Delinquent debt.

Delinquent debt means a debt:

a. That the debtor fails to pay by the date specified in the initial written notice from the agency owed the debt, normally within 30 calendar days, unless the debtor makes satisfactory payment arrangements with the agency by that date; and

b. With respect to which the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

24. Direct costs.

Direct cost means any cost that is identified specifically with a particular final cost objective, in accordance with the applicable cost principles. Costs identified with a given award are direct costs of that award.

25. DoD Components.

DoD Components means the Office of the Secretary of Defense, the Military Departments, and all Defense Agencies, DoD Field Activities, and other organizational entities within the DoD that are authorized to award or administer grants, cooperative agreements, and other non-procurement instruments.

26. Equipment.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of:

a. $5,000; or

b. The recipient’s or subrecipient’s capitalization threshold for financial statement purposes.

27. Expenditures.

Expenditures means charges made by a recipient or subrecipient to a project or program under an award.

a. The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

b. For reports prepared on a cash basis, expenditures are the sum of:

   i. Cash disbursements for direct charges for property and services;

   ii. The amount of indirect expense charged;

   iii. The value of third-party in-kind contributions applied; and

   iv. The amount of cash advance payments and payments made to subrecipients.

c. For reports prepared on an accrual basis, expenditures are the sum of:

   i. Cash disbursements for direct charges for property and services;

   ii. The amount of indirect expense incurred;

   iii. The value of third-party in-kind contributions applied; and

   iv. The net increase or decrease in the amounts owed by the recipient or subrecipient for:

      A. Goods and other property received;

      B. Services performed by employees, contractors, subrecipients, and other payees; and

      C. Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

28. Federal interest.

Federal interest means, in relation to real property, equipment, or supplies acquired or improved under an award or subaward, the dollar amount that is the product of the:

a. Federal share of total project costs; and

b. Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

29. Federal share.

Federal share means the portion of the project costs under an award that is paid by Federal funds.

30. Fixed amount subaward

Fixed amount subaward means a subaward:

a. That a recipient or subrecipient makes to another entity at the next lower tier; and

b. Under which the total amount to be paid to the other entity is based on performance and results, and not on the actual, allowable costs that entity incurs.

31. General terms and conditions.

General terms and conditions means requirements that apply broadly to a class of awards rather than specifically to a particular award. For example, the requirements in this Amendment are general terms and conditions because they apply, except as modified or supplemented by award-specific terms and conditions, to all applicable awards under solicitation number DLA-20130412.

32. Grant.

Grant means a legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

a. Of which the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the DoD's direct benefit or use.

b. In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

33. Grants officer.

Grants officer means a DoD official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

34. Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C.

450b(e)). See the annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

35. Indirect costs (also known as "Facilities and Administrative," or F&A, costs).

Indirect costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

36. Institution of higher education.

Institution of higher education has the meaning specified in at 20 U.S.C. 1001.

37. Intangible property.

Intangible property means:

a. Property having no physical existence, such as trademarks, copyrights, patents and patent applications; and

b. Property such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether the property is considered tangible or intangible.

38. Local government.

Local government means any unit of government within a State, including a:

a. County;

b. Borough;

c. Municipality;

d. City;

e. Town;

f. Township;

g. Parish;

h. Local public authority, including any public housing agency under the United States Housing Act of 1937;

i. Special district;

j. School district;

k. Intrastate district;

l. Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

m. Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

39. Management decision.

Management decision means a written decision issued to an audited entity by a DoD Component or a recipient or subrecipient from which the audited entity received an award or subaward. The DoD Component, recipient, or subrecipient issues the management decision to specify the corrective actions that are necessary after evaluating the audit findings and the audited entity's corrective action plan.

40. Nonprocurement instrument.

Nonprocurement instrument means a legal instrument other than a procurement contract that a DoD Component may award. Examples include an instrument of financial assistance, such as a grant or cooperative agreement, or an instrument of technical assistance, which provides services in lieu of money.

41. Nonprofit organization.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including an institution of higher education, that:

a. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

b. Is not organized primarily for profit; and

c. Uses net proceeds to maintain, improve, or expand the operations of the organization.

42. Obligation.

Obligation means:

a. When used in conjunction with a DoD Component's action, a legally binding agreement that will result in outlays, either immediately or in the future. Examples of actions through which a DoD Component incurs an obligation include the signature

of a grant, cooperative agreement, or technology investment agreement authorizing the recipient to use funds under the award.

b. When used in conjunction with a recipient's or subrecipient's use of funds under an award or subaward, an order placed for property and services, a contract or subaward made, or a similar transaction during a given period that requires payment during the same or a future period.

43. Office of Management and Budget.

Office of Management and Budget means the Executive Office of the President, United States Office of Management and Budget.

44. Outlays.

Outlays means "expenditures," as defined in this part.

45. Participant support costs.

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

46. Period of performance.

Period of performance means the time during which a recipient or subrecipient may incur new obligations to carry out the work authorized under an award or subaward, respectively.

47. Personal property.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, and securities.

48. Procurement contract.

Procurement contract means a legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. A procurement contract is a prime tier transaction and therefore distinct from a recipient's or subrecipient's "procurement transaction" or "contract" as defined in this part.

49. Procurement transaction.

Procurement transaction means a legal instrument by which a recipient or subrecipient purchases property or services it needs to carry out the project or program under its prime award or subaward, respectively. A procurement transaction is distinct both from "subaward" and "procurement contract," as those terms are defined in this part.

50. Program income.

Program income means gross income earned by a recipient or subrecipient that is directly generated by a supported activity or earned as a result of an award or subaward (during the period of performance unless the award or subaward specifies continuing requirements concerning disposition of program income after the end of that period).

a. Program income includes, but is not limited to, income earned under this award from:

i. Fees for services performed;

ii. The use or rental of real or personal property for which the recipient or subrecipient is accountable under the award or subaward (whether acquired under the award or subaward, or other Federal awards from which accountability for the property was transferred);

iii. The sale of commodities or items fabricated under the award or subaward; and

iv. License fees and royalties on patents and copyrights.

b. Program income does not include:

i. Interest earned on advances of Federal funds;

ii. Proceeds from the sale of real property or equipment under the award; or

iii. Unless otherwise specified in Federal statute or regulation, or the terms and conditions of the award or subaward:

A. Rebates, credits, discounts, and interest earned on any of them; or

B. Governmental revenues, including any taxes, special assessments, levies, fines, and similar revenues raised by the recipient or subrecipient.

51. Project costs.

Project costs means the total of:

a. Allowable costs incurred under an award by the recipient, including costs of any subawards and contracts under the award; and

b. Cost sharing or matching contributions that are required under the award, which includes voluntary committed (but not voluntary uncommitted) contributions and the value of any third-party in-kind contributions.

52. Property.

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

53. Real property.

Real property means land, including land improvements, structures and appurtenances thereto, but excluding moveable machinery and equipment.

54. Recipient.

Recipient means an entity that receives an award directly from a DoD Component. The term does not include subrecipients.

55. Research.

Research means basic, applied, and advanced research.

56. Simplified acquisition threshold.

Simplified acquisition threshold means the dollar amount set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1, in accordance with 41 U.S.C. 1908. The simplified acquisition threshold, which is adjusted periodically for inflation, currently is $150,000.

57. State.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

58. Subaward.

Subaward means a legal instrument by which a recipient or subrecipient at any tier below a DoD Component prime award, transfers--for performance by an entity at the next lower tier--a portion of the substantive program for which the DoD Component's prime award provided financial assistance. A subaward is either a cost-type or a fixed amount subaward.

59. Subrecipient.

Subrecipient means an entity that receives a subaward.

60. Supplies.

Supplies means all tangible personal property, including a computing device, acquired under an award that does not meet the definition of equipment in this part.

61. Suspension.

Suspension means either:

a. When used in the context of a specific award or subaward to an entity, the temporary withdrawal of authority for that entity to obligate funds under the award or subaward, pending its taking corrective action or a decision to terminate the award or subaward.

b. When used in the context of an entity, an action by a DoD Component's suspending official under 2 CFR Part 1125, DoD's regulation implementing OMB guidance on nonprocurement debarment and suspension in 2 CFR Part 180, to immediately exclude the entity from participating in covered Federal Government transactions, pending completion of an investigation and any legal or debarment proceedings that ensue.

62. Technology Investment Agreement.

Technology investment agreement means one of a special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes related to integration of the commercial and defense sectors of the nation's technology and industrial base. Technology investment agreements include one kind of cooperative agreement with provisions tailored for involving commercial firms, as well as one kind of assistance transaction other than a grant or cooperative agreement. Technology investment agreements are subject to, and described more fully in, 32 CFR Part 37.

63. Termination.

Termination means the ending of an award or subaward, in whole or in part, at any time prior to the planned end of period of performance.

64. Third-party in-kind contribution.

Third-party in-kind contribution means the value of a non-cash contribution (i.e., property or services) that:

a. A non-Federal third party contributes, without charge, either to a recipient or subrecipient at any tier under a DoD Component's award; and

b. Is identified in the approved budget of the DoD Component's award as a contribution being used toward meeting the award's cost sharing or matching requirements (which includes voluntary committed, but not voluntary uncommitted, contributions).

65. Unique entity identifier.

Unique entity identifier means the identifier required for System for Award Management registration to uniquely identify entities with which the Federal Government does business (currently the Dun and Bradstreet Data Universal Numbering System, or DUNS, number).

66. Unobligated balance.

Unobligated balance means the amount of funds under an award or subaward that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated obligations and expenditures of funds from the cumulative amount of funds that it was authorized to obligate under the award or subaward.

67. Voluntary (committed or uncommitted) cost sharing.

a. *Voluntary cost sharing* means cost sharing that an entity pledges voluntarily in its application or proposal (i.e., not due to a stated cost sharing requirement in the program announcement to which the entity's application or proposal responds).

b. *Voluntary committed cost sharing* means voluntary cost sharing that a DoD Component accepts through inclusion in the approved budget for the project or program and as a binding requirement of the terms and conditions of the award made to the entity in response to its application or proposal.

c. *Voluntary uncommitted cost sharing* means voluntary cost sharing that does not meet the criteria in paragraph 67.b of this Section.

68. Working capital advance.

Working capital advance means a payment method under which funds are advanced to a recipient or subrecipient to cover its estimated disbursement needs for a given initial period, after which payment is made by way of reimbursement.

PART 2: PROGRAM REQUIREMENTS

Section A. Purpose of this award. You must establish and maintain a Procurement Technical Assistance Center (PTAC) to serve as a resource for businesses to obtain procurement technical assistance. Procurement technical assistance means professional, specialized assistance provided to clients that enables them to identify potential contractual opportunities and obtain or perform under contracts with DoD, other Federal agencies, State and/or local governments, and with Federal, State and/or local government prime contractors. Clients may include any entity pursuing or performing these types of contracts. As used in this part, the terms "State" and "local government" have the meanings provided in 10 U.S.C. 2411. Procurement technical assistance consists of, but is not limited to, the counseling services described in this part.

Section B. Assistance to small business. You must make a concerted effort to seek out and assist small business concerns, small disadvantaged businesses concerns (SDB), women-owned small businesses concerns (WOSB), HUBZone small business concerns, service-disabled veteran-owned small business concerns (SDVOSB), historically black colleges or universities and Minority Institutions (HBCU/MIs). These terms are defined in Part 2 of the Federal Acquisition Regulation (FAR).

Section C. Methods and procedures.

1. Outreach effort. You must have ongoing outreach procedures in place to make the public aware of your PTAC. Information you disseminate through your outreach efforts must include:

    a. The types of assistance you offer to clients;

    b. What is required to become your client; and

    c. Information about events, including workshops, seminars, or other training, that you plan to offer or participate in.

2. Counseling Services. You must provide your clients with counseling and information regarding marketing their products and services to DoD, other Federal agencies, and State and local governments. You must assist, as appropriate, your clients with understanding Federal, State and local government requirements applicable to contracting for services, manufacturing, construction or other markets. The services you must offer include, but are not limited to:

    a. Identifying marketing opportunities for clients consistent with the client's products and services.

    b. Advising and assisting clients in the preparation and proper submission of applications, certifications, registrations, etc. to prepare them for doing business with Federal, State and local government entities.

c. Advising and assisting clients with the preparation and submission of bids and proposals.

d. Advising and assisting clients concerning post-award functions. As a minimum, the assistance should include:

   i. Production;
   ii. Quality Systems;
   iii. Accounting system requirements and contract payments;
   iv. Transportation;
   v. Packaging;
   vi. Subcontracting;
   vii. Property; and
   viii. Invoicing, Receipt, Acceptance and Property Transfer (iRAPT) (formerly known as Wide Area Workflow).

e. You must educate clients in the following areas:

   i. Federal, State and local government contracting laws, policies and procedures. Emphasis should be placed on requirements and procedures used by DoD and other Federal agencies in the acquisition of commercial products and services.
   ii. The DoD Pilot Mentor-Protege Program and similar Government programs.
   iii. Electronic Business (eBusiness). You must provide clients with information and assistance pertaining to the application of eBusiness tools and technologies as they relate to conducting business with the Federal Government. This includes the routine exchange of procurement information (e.g. solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents) exchanged via information and computer technologies between the private sector and the Federal Government.

f. You must advise and assist clients in pursuing and securing subcontracting opportunities from Federal, State and local government prime contractors including those that have subcontracting plan obligations pursuant to FAR clause 52.219-9 or similar clauses.

g. You may provide other procurement technical assistance that may directly assist clients in obtaining or performing on Federal, State and local government contracts and subcontracts.

3. You must maintain regulations and publications, either printed or on electronic media, (or identify sources for obtaining) that govern Federal, State and local government procurement, as applicable. You must assist clients in understanding and using these regulations and publications.

4. You must operate within the scope of this award. Procurement technical assistance does not include:

a. General business training or small business development counseling. For example, you may not offer clients training on topics such as access to loans, ISO 9000, Lean, Six Sigma, or manufacturing, except where the manufacturing assistance specifically relates to compliance with Federal, State and/or local government-specific requirements;

b. Assistance to individuals interested in starting a new business;

c. Marketing on behalf of clients. That is, you may not sell to Federal, State and/or local governments or to other entities on behalf of their clients and you may not represent clients to Federal, State and/or local governments or to other entities. However, PTACs may make introductions to facilitate information exchanges; or

d. Employee development related training (e.g., vocational type training, basic writing skills) for client personnel.

Section D. Resources. You must maintain the resources necessary to carry out the program. As a minimum, these resources must consist of:

1. Personnel.

a. Program Manager. You must have a Program Manager, employed on a full-time basis (i.e., must devote 100% of his/her time to the PTAC). The Program Manager should have knowledge and understanding of Federal, State and local government contracting policies and procedures gained from direct experience and/or formal training. The Program Manager is considered key to the effectiveness of the PTAC in meeting its objectives and must have appropriate management qualifications and a thorough understanding of the requirements of this award.

If it becomes known to you that the Program Manager's position will be vacated, you must provide notice, in writing, to us within two business days. You must fill a vacant Program Manager position promptly. Your proposal for a new candidate to assume the Program Manager position must receive our approval prior to the candidate being offered the position.

b. PTAC Staff. You must employ personnel consisting of individuals who are qualified to counsel and advise business firms/clients on how to seek, obtain and perform on Federal, State and local government prime contracts and subcontracts. These employees must remain current in their knowledge of Federal, State and local government contracting laws, regulations, policies and procedures. You must have appropriate professional development and training programs in place to address this requirement. You must fill any vacant positions included in your approved budget promptly.

You must maintain qualification standards for all positions (filled and vacant) and provide them for our review upon request. With the exception of clerical personnel, you must maintain resumes for all personnel that are charged to the program, including subrecipient personnel.

You must require personnel, including those of subrecipients and consultants, to adhere to a code of generally accepted standards of professional conduct. Personnel must perform their PTAC duties with ethics and integrity and avoid any real or perceived conflict of interest.

2. Facilities. You and any subrecipients, as applicable, must have a facility(s) for providing assistance to clients that is readily identifiable by signage and easily accessible to the public. At a minimum, the PTAC must be open to the public during the normal business hours of the host organization. You must not have extravagant or excessive facilities or facility costs that are beyond the type generally recognized as ordinary and necessary for the operation of a PTAC.

3. Website and email.

   a. You must maintain a website that provides, at minimum:

      i. A description of the services offered by the PTAC;
      ii. Point of contact for potential PTAC clients; and
      iii. The PTAC's service area (e.g., list of counties serviced).

      Your website may be a standalone website, or may consist of a dedicated, PTAC-specific web page that is separate and distinct, but accessible via a link from the host organization's website.

   b. In addition to person specific email addresses, you must establish an email address for the PTAC that is not tied to a specific person. For example, PTAP@dla.mil.

4. Sources of funding and use of logos. You may not use the DoD or DLA logo and you are not required to explain the PTAC's association with DoD and DLA or the sources of its funding.

   If and when you choose to explain the PTAC's association with DoD and/or DLA and the sources of your funding, you must use only the following statement verbatim on PTAC materials or publications including websites, conference or training materials, promotional materials, etc.:

   "(Name of PTAC), which serves as a Procurement Technical Assistance Center (PTAC), is funded in part through a cooperative agreement from the Department of Defense (DoD) through a program that is administered by the Defense Logistics Agency (DLA). The content of any written

materials or verbal communications of the PTAC does not necessarily reflect the official views of or imply endorsement by DoD or DLA."

Section E. Service Area. You must usually limit the clients you assist to those located within the service area specified in the award. Subject to the limitations below, you may provide assistance to clients outside your service area if you coordinate the assistance with the PTAC, if any, that is responsible for that client's area.

1. You may not charge the cost of assisting clients from areas that are not distressed areas to an award when the service area is identified as a distressed area. Similarly, if the award includes both a distressed and non-distressed area budget, you may not charge the cost of assisting clients from areas that are not distressed areas to the budget specified for service to a distressed area.

2. If the award identifies reservations as your service area, you may provide assistance only to reservations, as defined in 10 U.S.C. 2411(2)(B).

Section F. Success stories. You must maintain success stories attesting to the assistance provided to your clients during the period of performance specified in this award and you must make these stories available to us upon our request. A success story is one that demonstrates a direct effort of the PTAC that generated employment and/or helped to improve the economy of a locality by assisting a client(s) in obtaining or performing under a Federal, State, or local government prime contract(s) or subcontract(s). Each success story must have a clear means to verify (such as a letter or email message from your client stating that the story is true) that the success resulted from assistance provided by the PTAC. Each success story should include the following, as applicable:

1. Client name;
2. Client address;
3. Client point of contact;
4. Contracting agency point of contact, telephone, contract number and dollar value of award;
5. Narrative description of the issue(s); and
6. Narrative describing the PTAC's contribution to the success story and the tangible results to include jobs generated and/or retained.

Section G. Client surveys.

1. If this award identifies you as a pilot program participant:

   Applicable requirements for client surveys are in Appendix C (DEC 2014). Appendix C (DEC 2014) is available at: http://www.dla.mil/SmallBusiness/Documents/AppendixC,DEC2014.pdf.

2. If you are not a pilot program participant:

You must survey your active clients annually, at a minimum, to document satisfaction with the assistance you provide under this award. Your survey must ask clients to assess the performance of the PTAC and its personnel in terms of:

a. Timeliness and responsiveness to general and specific client needs;
b. Training offered and received, as appropriate; and
c. Relevant advice and assistance to the client.

Your survey must ask active clients surveyed to rate the PTAC as satisfactory or unsatisfactory. Your files must reflect, in detail, your efforts to overcome any areas of client dissatisfaction.

Section H. Allowability of certain costs and cost sharing contributions. The allowability of certain costs and cost sharing or matching contributions is addressed in this Section. The allowability of costs and cost sharing or matching contributions is addressed more generally in FMS Articles III and VI, respectively.

1. Third-party in-kind contributions. Among other things, contributions must be allowable under the applicable cost principles. With regard to third-party in-kind contributions, this means that contributions are allowable only if they are items that would have been necessary to include in the budget as direct costs had they not been donated.

   Acceptable third-party in-kind contributions are performed by the third party for the direct benefit of the PTAC. Activities performed by third parties in their ordinary course of business, in pursuit of their own organization's mission, are usually not acceptable as in-kind contributions just because those activities coincidentally support the PTAC.

   Anything that is normally available free of charge to the PTAC or clients is not acceptable as a third-party in-kind contribution (e.g., use of a public library). "Discounts" are never acceptable third-party in-kind contributions. You may count a third-party in-kind contribution towards the award's cost sharing or matching requirement only after you receive and use it. You may not count third-party contributions or donations that were made available for you to use, but that you do not actually use.

2. Food and beverages. With the exception of non-local travel for PTAC personnel, any cost related to the providing food and/or beverages for either PTAC personnel or clients is unallowable for either reimbursement or towards your cost sharing or matching, including use as a third-party in-kind contribution. This does not prohibit the charging of reasonable fees to attendees of PTAC events, such as a conference or workshop, to pay for necessary refreshments. These fees constitute program income and must be accounted for as such (refer to FMS Article VII).

3. Memberships. The cost of individual memberships (e.g., personal memberships for PTAC staff) in any business, technical, and professional organization is not allowable.

4. Costs incurred to assist clients in pursuing claims or protests against the Government are not allowable.

5. Indirect costs. Amounts for indirect costs and/or indirect rates (also known as "Facilities and Administrative," or F&A, costs or rates) incorporated into any specific award are subject to downward revision only. Amounts and rates may be adjusted (either upward or downward) for an option period(s).

Section I. Additional guidance on program income. FMS Article VII permits you to earn program income under this award when doing so does not interfere with the program the award supports. Charging clients anything other than no or nominal amounts for the assistance the PTAC provides is inconsistent with this requirement.

Section J. Distressed and non-distressed area budgets. If the award includes both a distressed and non-distressed area budget:

1. The applicable cost principles establish the standards for the allowability of costs, including the requirement that the cost is allocable to the particular cost objective. In the case of an award that includes both a distressed and non-distressed area budget, this means allocable to providing procurement technical assistance in a distressed or a non-distressed area.

2. You must segregate and accumulate costs in each of the two budget areas and you are responsible for ensuring that the costs charged to either budget is allocable in accordance with the principles and methods provided in the applicable cost principles. The award does not imply the approval of a predetermined ratio or apportionment of incurred cost to be charged to the award as "distressed" or "non-distressed".

3. You may submit combined payment requests; however, the request must segregate the amounts charged to each the distressed and non-distressed area budget and show the Federal and non-Federal shares of each amount.

4. FMS Article IV addresses prior approval requirements for the transfer of funds among direct cost categories (i.e., personnel, fringe benefits, travel, etc.) when the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget. In the case of an award that includes a distressed and non-distressed area budget, this requirement applies to each of the two budgets individually.

Section K. Post-award administration of awards. The post-award administration of this award is assigned to the cognizant award administration office, which is either the Office of Naval Research (ONR) or the Defense Contract Management Agency (DCMA). In addition to those functions specifically delineated in the DoD Grant and Agreement Regulations (DoDGARs), the cognizant administration office is responsible for receiving your payment requests and transmitting approved payment authorizations to payment offices. Additional administrative functions may be delegated by DLA to ONR or DCMA. The cognizant

administration office will provide you instructions for submitting payment requests and will serve as your primary point of contact for most administrative matters.

PART 3: NATIONAL POLICY REQUIREMENTS

NP Article I. Nondiscrimination national policy requirements. (Mar 2015)

By signing this award or accepting funds under this award, you assure that you will comply with applicable provisions of the national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.

2. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DoD regulations at 32 CFR Part 196.

3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.

4. On the basis of disability, in the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56.

5. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which Federal funds are used in design, construction, or alteration.

NP Article II. Environmental national policy requirements. (Mar 2015)

You must:

1. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.).

2. Immediately identify to us, as the Federal awarding agency, any potential impact that you find this award may have on:

    a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NEPA.

    b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C.

4001 et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.).

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).

3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR Part 35. The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving Federal assistance.

NP Article III. Other national policy requirements. (Mar 2015)

1. Debarment and suspension. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR Part 180, as adopted by DoD at 2 CFR Part 1125. This includes requirements concerning your principals under this award, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.

2. Drug-free workplace. You must comply with drug-free workplace requirements in Subpart B of 2 CFR Part 26, which is the DoD implementation of 41 U.S.C. chapter 81, "Drug-Free Workplace."

3. Lobbying.

   a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR Part 28, and submit all disclosures required by that statute and regulation.

   b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.

4. Officials not to benefit. You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.

5. Hatch Act. If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508) concerning political activities of certain State and local government employees, as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. Native American graves protection and repatriation. If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR Part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. Fly America Act. You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

8. Use of United States-flag vessels. You must comply with the following award term specified by the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

   a. Pursuant to Pub. L. 83-664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

   b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 8.a of this Article shall be furnished to both our award administrator

(through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).

   a. As a condition for receiving funds available to the DoD under this award, you agree that you are not an institution of higher education (as defined in 32 CFR Part 216) that has a policy or practice that either prohibits, or in effect prevents:

      i. The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps(ROTC)--in accordance with 10 U.S.C. 654 and other applicable Federal laws--at that institution (or any subelement of that institution);

      ii. Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education.

      iii. The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

      iv. Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

   b. If you are determined, using the procedures in 32 CFR Part 216, to be such an institution of higher education during the period of performance of this award, we:

      i. Will cease all payments to you of DoD funds under this award and all other DoD grants and cooperative agreements; and

      ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

10. Historic preservation. You must identify to us any:

   a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C.

470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR Part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1, et seq.).

11. Constitution Day. You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

12. Trafficking in persons. You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.

13. Whistleblower protections. You must comply with 10 U.S.C. 2409, including the:

    a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and

    b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.

14. Internal confidentiality agreements. Section 743 of the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235) prohibits us from providing funds through grants and cooperative agreements to entities with certain internal confidentiality agreements or statements.

    a. By signing this award, you represent that:

        i. You will not require any of your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting those employees, contractors, or subrecipients from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information; and

        ii. You will notify your employees, contractors, or subrecipients that any prohibitions and restrictions of any internal confidentiality agreements inconsistent with this prohibition are no longer in effect.

b. This prohibition does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

c. If we determine that you are not in compliance with this provision, we:

   i. Will prohibit your use of funds under this award; and

   ii. May pursue other remedies available for your material failure to comply with the award terms and conditions.

PART 4: FINANCIAL AND PROGRAM MANAGEMENT

FMS Article I. Financial management system standards. (Mar 2015)

Section A. System standard for States. As a State, you must expend and account for funds under this award in accordance with:

1. Applicable State laws; and

2. To the extent they comply with the requirements of Section B of this Article, your procedures for expending and accounting for your own State funds.

Section B. System standards for all recipients. Your financial management system must provide for:

1. Inclusion, in your accounts, of the following information about each DoD grant or cooperative agreement that you receive:

    a. That you received it from the Department of Defense;

    b. The number and title listed in the Catalog of Federal Domestic Assistance for the DoD program under which the award was made;

    c. The DoD award number;

    d. The year (your fiscal year) in which you received the award;

2. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements. If you are asked at any time under this award to report financial information on an accrual basis, you:

    a. Need not establish an accrual accounting system if you maintain your records on a different basis; and

    b. May develop the accrual data based on an analysis of the data you have on hand.

3. Records that identify adequately the sources of funds for all activities funded by DoD awards, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.

4. Effective control over, and accountability for, all funds, property, and other assets under this award. You must adequately safeguard all assets and assure they are used solely for authorized purposes (see Section C of this Article for additional requirements concerning internal controls).

5. Comparison of expenditures under this award for project or program purposes with amounts in the approved budget for those purposes.

6. Written procedures:

   a. To implement requirements specified in FMS Article II, "Payments;"

   b. For determining the allowability of costs, which for this award are determined in accordance with FMS Article III, "Allowable costs, period of availability of funds, and fee or profit," of these general terms and conditions supplemented by any award-specific terms and conditions of this award that relate to allowability of costs.

Section C. Internal controls. Your system of internal controls must conform to OMB guidance in 2 CFR 200.303. With respect to paragraph (e) of 2 CFR 200.303, your internal control system must include measures to safeguard any information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export controlled information), whether generated under the award or provided to you and identified as being subject to protection.

FMS Article II. Payments. (Mar 2015)

Section A. Awards to States. This award is subject to Subpart B of 31 CFR Part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act). Consistent with Subpart B of 31 CFR Part 205:

1. Payment method, timing, and amounts. You must:

   a. Minimize the time between your receipt of a payment under this award and your disbursement of those funds for program purposes.

   b. Limit the amount of each advance payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the program or project.

   c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for program purposes, so that your receipt of the funds will be as close in time as is administratively feasible to your actual cash outlay for direct program or project costs and the proportionate share of any allowable indirect costs.

2. Interest. Neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under this award and your disbursement of those funds for program purposes.

Section B. Awards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

1. Payment method. Unless the award-specific terms and conditions of this award provide otherwise, you are authorized to request advance payments under this award. That authorization is contingent on your continuing to maintain, or demonstrating the willingness to maintain, written procedures that minimize the time elapsing between your receipt of each payment and your disbursement of the funds for program purposes.

2. Amounts requested. You must:

    a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved program or project, including direct program or project costs and a proportionate share of any allowable indirect costs.

    b. Exclude from any payment request amounts you are withholding from payments to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to assure satisfactory completion of the work.

    c. Exclude from any payment request amounts from any of the following sources that are available to you for program purposes under this award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for program purposes before requesting additional funds from us.

3. Timing of requests. For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual disbursements for program or project purposes.

4. Frequency of requests. You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of this award specify the frequency with which you may submit payment requests.

5. Withholding of payments. We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your material failure to comply with Federal statutes, regulations, or the terms and conditions of this award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article III.

b. You are delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.

c. The award-specific terms and conditions include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should have been notified about the nature of those conditions and the actions needed to remove the additional requirements.

6. Depository requirements.

a. There are no eligibility requirements for depositories you use for funds you receive under this award.

b. You are not required to deposit funds you receive under this award in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under this award.

c. You must deposit any advance payments of funds you receive under this award in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:

i. You receive a total of less than $120,000 per year under Federal grants and cooperative agreements.

ii. You would not expect the best reasonably available interest-bearing account to earn interest in excess of $500 per year on your cash balances of advance payments under Federal grants and cooperative agreements.

iii. The best reasonably available interest-bearing account would require you to maintain an average or minimum balance higher than it would be feasible for you to do within your expected Federal and non-Federal cash balances.

iv. A foreign government or banking system precludes your use of interest-bearing accounts.

d. You may retain for administrative expenses up to $500 per year of interest that you earn on advance payments you receive under this award and other Federal grants and cooperative agreements. You must remit annually the rest of the interest to the Department of Health and Human Services, Payment Management System, using the procedures set forth in 2 CFR 200.305(b)(9).

Section C. Electronic funds transfer and other payment procedural instructions or information.

1. Electronic funds transfer. Unless the award-specific terms and conditions of this award provide otherwise, you will receive payments under this award by electronic funds transfer.

2. Reimbursement method of payment. You are authorized to request payment by reimbursement instead of requesting advance payments. This may reduce the administrative burden necessary to comply with the requirements in this Article that apply when you request payment in advance, for example, timing your requests to coincide with your actual disbursements and remitting interest.

FMS Article III. Allowable costs, period of availability of funds, and fee or profit. (Mar 2015)

Section A. Allowable costs. This Section specifies which Federal cost principles must be used in determining the allowability of costs charged to this award, a subrecipient's costs charged to any cost-type subaward that you make under this award, and a contractor's costs charged to any cost-type procurement contract into which you enter under this award. These cost principles also govern the allowable costs that you or a subrecipient of a subaward at any tier below this award may consider when establishing the amount of any fixed amount subaward or fixed price procurement contract at the next lower tier. The cost principles to be used in each case depends on the type of entity incurring the cost under the award, subaward, or contract.

1. General case. If you, your subrecipient, or your contractor is:

   a. An institution of higher education, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR Part 200 other than 2 CFR 200.400(g), supplemented by Appendix III to that Part.

   b. A nonprofit organization other than a hospital or institution of higher education, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR Part 200 other than 2 CFR 200.400(g), supplemented by Appendices IV and VIII to that Part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization listed in Appendix VIII to 2 CFR Part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.d of this Section.

c. A State, local government, or Indian tribe, the allowability of costs must be determined in accordance with applicable provisions of Subpart E of OMB guidance in 2 CFR Part 200 other than 2 CFR 200.400(g), supplemented by Appendices V through VII to that Part.

d. A for-profit entity (other than a hospital) or a nonprofit organization listed in Appendix VIII to 2 CFR Part 200, the allowability of costs must be determined in accordance with:

i. The cost principles for commercial organizations in the Federal Acquisition Regulation at subpart 31.2 of 48 CFR Part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at subpart 231.2 of 48 CFR Part 231; and

ii. The additional provisions on allowability of audit costs, in 32 CFR 34.16(f).

2. Exception. You may use your own cost principles in determining the allowability of a contractor's costs charged to a cost-type procurement contract under this award--or in pricing for a fixed-price contract based on estimated costs--as long as your cost principles comply with the Federal cost principles that paragraph A.1 of this Section identifies as applicable to the contractor.

Section B. Period of availability of funds. You may charge to this award only allowable costs incurred during the period of performance specified in this award, including any subsequent modifications to it.

Section C. Fee or profit.

1. You may not receive any fee or profit under this award.

2. You may not use funds available to you under this award to pay fee or profit for an entity of any type to which you make a subaward.

3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

FMS Article IV. Revision of budget and program plans. (Mar 2015)

Section A. Revisions requiring prior approval. You must request prior approval from us for any of the following program or budget revisions:

1. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

2. A change in the program manager.

3. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

4. The transfer to other categories of expense of funds included in the approved budget for participant support costs, as defined at 2 CFR 200.75.

5. A subaward to another entity under which it will perform a portion of the substantive project or program under the award, if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the program.

6. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.

7. A transfer of funds among direct cost categories or programs, functions, and activities, if the total anticipated amount of Federal funding of your award exceeds the simplified acquisition threshold and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the approved budget.

8. The need arises for additional Federal funds to complete the project or program.

Section B. Procedures. We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will write or e-mail you to either:

1. Notify you whether your request is approved; or

2. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.

FMS Article V. Non-Federal audits. (Mar 2015)

Section A. Requirements for entities subject to the Single Audit Act. You and each subrecipient under this award that is an institution of higher education, nonprofit organization, State, local government, or Indian tribe must comply with the audit requirements specified in Subpart F of 2 CFR Part 200, which is the OMB implementation of the Single Audit Act, as amended (31 U.S.C. chapter 75).

Section B. Requirements for for-profit entities. Any for-profit entity that receives a subaward from you under this award is subject to the audit requirements specified in 32 CFR 34.16, with the following differences:

1. Rather than having the subrecipient provide the audit reports to a DoD Component, as specified in 32 CFR 34.16(c), your subaward terms and conditions will require the subrecipient to provide the reports to you. If the for-profit entity is unwilling to agree to

provide the auditor's report to you, contact the grants officer for this award to discuss an alternative approach for carrying out audit oversight of the subaward.

2. You--rather than the Defense Contract Management Agency as provided in 32 CFR 34.16(d)(2)(ii)--will be responsible for resolution of audit findings that pertain to your subaward.

FMS Article VI. Cost sharing or matching. (Mar 2015)

Section A. Required cost sharing or matching.

1. Cost sharing or matching required under this award is shown in the award and included in the approved budget. That cost sharing or matching includes all:

   a. Cash and third-party in-kind contributions.

   b. Contributions to the project or program made either by or through (if made by a third party) you and any subrecipients.

2. You must obtain our prior approval if you wish to:

   a. Change the percentage of cost sharing or matching required under this award; or

   b. Use any third-party in-kind contribution that was not included in the most recently approved budget toward cost sharing or matching required under this award.

Section B. Allowability as cost sharing or matching. Each cash or third-party in-kind contribution toward any cost sharing or matching required under this award, whether put forward by you or a subrecipient under a subaward that you make, is allowable as cost sharing or matching if:

1. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.

2. The contribution is not counted as cost sharing or matching for any other Federal award.

3. The contribution is:

   a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions; and

   b. Allocable to the project or program and reasonable.

4. The Government does not pay for the contribution through another Federal award, unless that award is under a program that has a Federal statute authorizing application of that

program's Federal funds to other Federal programs' cost sharing or matching requirements.

5. The value of the contribution is not reimbursed by the Federal share of this award as either a direct or indirect cost.

6. The contribution conforms to the other terms and conditions of this award, including the award-specific terms and conditions.

Section C. Allowability of unrecovered indirect costs as cost sharing or matching. You may use your own or a subrecipient's unrecovered indirect costs as cost sharing or matching under this award. Unrecovered indirect costs means the difference between the amount of indirect costs charged to the award and the amount that you and any subrecipients could have charged in accordance with your respective approved indirect cost rates, whether those rates are negotiated or de minimis (as described in 2 CFR 200.414(f)).

Section D. Valuation of services or property that you or subrecipients contribute or donate. Services or property contributed or donated toward cost sharing or matching by you or subrecipients are distinct from third-party contributions or donations to you or subrecipients, which are addressed in Section E of this Article. Values established for contributions of services or property by you or a subrecipient must be the amounts allowable in accordance with the cost principles applicable to the entity making the contribution (i.e., you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.

Section E. Valuation of third-party in-kind contributions.

1. General. If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under this award, the entity to which the third party furnishes the goods or services (i.e., you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.

2. Valuation of third-party services. You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:

    a. Volunteer services. Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).

    b. Services of third parties' employees. When a third party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).

    c. Additional requirement for donations to nonprofit organizations. For volunteer services or services of third parties' employees furnished to a nonprofit organization:

i. OMB guidance in 200.434(e) also applies and may require the nonprofit organization to allocate a proportionate share of its applicable indirect costs to the donated services.

ii. The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.

3. Valuation of third-party property. You must establish values for third-party property furnished to you or subrecipients as follows:

   a. Supplies donated by third parties. When a third party organization donates supplies (e.g., office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.

   b. Use of space donated by third parties. If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

FMS Article VII. Program income. (Mar 2015)

Section A. Earning program income. You may earn program income under this award when doing so does not interfere with the program the award supports.

Section B. Costs of generating program income. You may deduct costs incidental to the generation of program income from the amount that you use in accordance with Section D of this Article, as long as those costs are not charged to this award (which includes their being counted toward any cost sharing or matching you are required to provide).

Section C. License fees and royalties. You have no obligations to the Federal Government with respect to program income earned under this award from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions developed or produced under the award.

Section D. Use of program income.

1. You must use any program income that you earn during the period of performance under this award to increase the amount of the award (the sum of the Federal share and any cost sharing or matching you are required to provide), thereby increasing the amount budgeted for the project. The program income must be used for the purposes and under the terms and conditions of the award.

2. Your use of the additional funding is subject to the terms and conditions of this award, including:

    a. FMS Article II concerning your use of balances of program income before you request additional funds from us; and

    b. FMS Article III concerning allowability of costs for which the funds may be used.

3. You must report on each Federal Financial Report (SF-425) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF-425.

Section E. Duration of accountability for program income. The requirements concerning disposition of program income in Section D of this Article apply only to program income you earn during the period of performance. There are no requirements under this award applicable to program income you earn after the end of the period of performance.

PART 5: PROPERTY ADMINISTRATION

PROP Article I. Title to property. (Mar 2015)

Section A. Title to property acquired under this award.

1. Title to real property, equipment, and supplies that you acquire (whether by purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under this award vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under this award also vests in you.

2. That title is a conditional title, subject to the terms and conditions in PROP Articles II-IV, Section C of PROP Article V, and REP Article III of this award.

3. There is a Federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this Federal interest until final disposition of the property under PROP Article III (for real property), PROP Article IV (for equipment), or Section C of PROP Article V (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of this award.

Section B. Property trust relationship. Other than intangible property that you develop or produce under the award, you hold any real property, equipment, or intangible property that you acquire or improve under this award in trust for the beneficiaries of the project or program that you are carrying out under the award.

Section C. Federal interest in property improved under the award.

1. The Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you charge the costs of the improvements as direct costs to this award.

2. We thereby acquire an interest in the property if the Government did not previously have one. If the Government already had an interest in the property, the value of that Federal interest in the property increases by the amount of the Federal interest in the improvements.

3. The property is subject to Section B of this Article and the terms and conditions of PROP Articles II-IV and REP Article III that are applicable to real property or equipment acquired under the award.

4. The Federal interest must be addressed at the time of property disposition.

PROP Article II. Property management system. (Mar 2015)

Section A. Insurance coverage for real property and equipment. You must, at a minimum, provide the equivalent insurance coverage for real property and equipment

acquired or improved under this award as you provide for real property and equipment that you own.

Section B. Other management system standards for a State. Your property management system for equipment acquired or improved in whole or in part under this award must be in accordance with your State laws and procedures.

Section C. Other management system standards for an institution of higher education, nonprofit organization, local government, or Indian tribe. Your procedures for managing equipment (including replacement equipment) acquired or improved in whole or in part under this award must, as a minimum, meet the requirements in this Section.

1. Records. You must maintain records that include for each item of equipment:

    a. A description of the item.

    b. The serial or other identification number.

    c. Who holds title (e.g., you or the Government and, if the latter, which Federal agency).

    d. The source of funding for the equipment, including the award number.

    e. The acquisition date and cost of the equipment (or improvement to the equipment).

    f. The location, use, and condition of the equipment.

    g. Information from which one can calculate the amount of the Federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the Federal interest in the item or improvement).

    h. Any data on the ultimate disposition of the item including the date of disposal and sale price.

2. Inventory. You must take a physical inventory of equipment in which there is a Federal interest and reconcile the results with your records at least once every 2 years.

3. Control system**.** You must:

    a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment.

    b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a Federal interest under the award.

4. Maintenance. You must maintain equipment acquired or improved in whole or in part under the award in good condition.

PROP Article III. Use and disposition of real property. (Mar 2015)

Section A. Use of real property.

1. You must use real property acquired or improved under this award for the originally authorized purpose as long as needed for that purpose. During that time, you may not:

    a. Dispose of the property except to acquire replacement property under this award, in which case you may use the proceeds from the disposition as an offset to the cost of the replacement property; or

    b. Encumber the title or other interests in the property without the approval of the award administration office identified in this award.

2. During the time that the real property is used for the originally authorized purpose, you may make the property available for use on other projects or programs, but only if that use will not interfere with the property's use as needed for its originally authorized purpose.

    a. First preference must be given to other projects or programs supported by DoD Components and second preference to those supported by other Federal agencies.

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

3. When the real property is no longer needed for the originally authorized purpose, with the written approval of the award administration office, you may delay final disposition of the property to use it on other federally sponsored projects or programs. A condition for the award administration office's approval is that the other projects or programs have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

Section B. Disposition of real property. When you no longer need real property for the originally authorized purpose, you must obtain disposition instructions from the award administration office except as provided in paragraph A.3 of this Article. Those instructions will provide for one of the following three alternatives, which are that you:

1. Retain title after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of "Federal interest."

2. Sell the property and compensate us for the Federal interest in the property, as described in 2 CFR 200.311(c)(2).

3. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

PROP Article IV. Use and disposition of equipment and supplies. (Mar 2015)

Section A. Property subject to this Article. This Article specifies requirements for use and disposition of equipment and supplies. The types of property to which this Article applies are:

1. Supplies that you acquire either by purchase or by donation as cost sharing or matching under this award; and

2. Equipment for which title is vested conditionally in you, pending resolution of a Federal interest in the equipment. That includes equipment with a conditional title resulting from your having, either under this award or under a previous award from which you transferred accountability for the equipment to this award:

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

    b. Directly charged as project costs improvements to the equipment that meet the criteria given in paragraph C.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, subject to the following condition. For any item of equipment that is no longer needed for the originally authorized purpose and has a current fair market value greater than $5,000, the disposition process must include either your:

    a. Payment of compensation to us in the amount of the Federal interest in the equipment; or

    b. Contacting the award administration office to work out a mutually agreeable alternative that takes into account the Federal and State interests in that item of equipment. Examples of alternatives, subject to the agreement of the award administration office, include:

        i. Deferring final disposition to allow continued use of the equipment on other federally supported projects or programs, as described in 2 CFR 200.313(c)(1);

ii. Agreeing to transfer title to the Federal Government or a third party, with compensation to you for the State interest in the equipment, as described in 2 CFR 200.313(e)(3).

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 and second preference to those supported or previously supported by other Federal agencies.

      ii. 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 authorization 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 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.

1. We may issue disposition instructions that:

    a. Allow you to retain, sell, or otherwise dispose of each item of equipment with a current fair market value of $5,000 or less with no further obligation to the Federal Government; 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.

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 use must 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 authorization 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.

PROP Article V. Intangible property. (Mar 2015)

Section A. Copyrights asserted in works developed or purchased under the award.

1. You may assert copyright in any work that:

    a. You develop or purchase under this award; and

b. Is eligible for copyright protection.

2. With respect to any work in which you assert copyright, as described in paragraph A.1 of this Section, the Department of Defense 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. Data produced under the award. The Federal Government has the right to:

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

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

Section C. Intangible property obtained, but not developed or produced, under the award.

1. Applicability. This Section applies to a patent, patent application, copyright, or other intangible property obtained, 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 6: PROCUREMENT PROCEDURES

PROC Article I. Procurement standards for States. (Mar 2015)

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.

PROC Article II. Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes. (Mar 2015)

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. 200.318(e) concerning intergovernmental or inter-entity agreements;

    e. 200.318(g) concerning value engineering;

    f. 200.318(i) concerning procurement records;

    g. 200.318(j) concerning time and material type contracts; and

    h. 200.318(k) concerning settlement of issues arising out of procurements.

2. You must comply with OMB guidance in paragraph (d) of 2 CFR 200.318 concerning purchases of unnecessary or duplicative items.

3. You are encouraged, as described in paragraph (f) of 2 CFR 200.318, to use Federal excess or surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs, with the following clarification. The encouragement to use Federal excess or surplus property is contingent not only on its being feasible but also on its not reducing the efficiency or effectiveness with which you can achieve the award's purposes. For example, the encouragement does not extend to use of older models of excess or surplus equipment under a research or related training award to an institution of higher education when use of current models would accelerate data acquisition or enable better training of future scientists and engineers in the latest research techniques.

4. 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 using the procedures related to competition that are 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 specified in 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).

PROC Article III. Contract provisions for recipient procurements. (Mar 2015)

Section A. Contract provisions for administrative requirements.

1. Remedies. In any contract under this award for an amount in excess of the simplified acquisition threshold, you must provide for administrative, contractual, or legal remedies, including any appropriate sanctions and penalties, when the contractor violates or breaches the contract terms.

2. Termination. In any contract for an amount in excess of $10,000, you must specify: conditions under which you may terminate the contract for cause or convenience; the procedures for termination; and the basis to be used for settlement.

3. Allowable costs under cost-type contracts. In any cost-type contract with an entity, you must include a clause to permit the entity to charge to the contract only costs that are allowable under the cost principles that FMS Article III identifies as applicable to that type of entity, as supplemented by any other terms and conditions related to allowability of costs that are included in this award to you.

4. Rights in copyright and data. You must include in each contract under this award a provision requiring that the contractor:

    a. Grant the Government a royalty-free, nonexclusive and irrevocable right to:

        i. Reproduce, publish, or otherwise use for Federal purposes any work that is subject to copyright and that the contractor develops, or acquires ownership of, under this award; and

        ii. Authorize others to reproduce, publish, or otherwise use such work for Federal purposes.

    b. Grant the Government the right to:

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

        ii. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

    c. Include in each subcontract it makes the requirements described in:

i. Paragraphs A.4.a.i and ii of this Section, to provide for Government rights in any works subject to copyright that the subcontractor develops, or acquires ownership of, under this award; and

ii. Paragraphs A.4.b.i and ii of this Section, to provide for Government rights in any data that the subcontractor produces under this award.

5. Access to records.

   a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for access to any of the contractor's books, documents, papers, and records that are directly pertinent to that contract, to enable and support audits, examinations, excerpts, and transcriptions. The contract provision must provide access to those records for all of the following and their duly authorized representatives:

      i. You;

      ii. Us as the Federal awarding agency, including our Inspector General; and

      iii. The Comptroller General of the United States.

   b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR Part 200, you must provide for the access to audit documentation described in 2 CFR 200.517(b).

6. Records retention.

   a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for retention of all records that are directly pertinent to that contract for 3 years after you make final payment and all pending matters are closed.

   b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR Part 200, you must provide for the retention of audit documentation described in 2 CFR 200.517(a).

7. Reporting. In any contract awarded under this award, you must include any provision for the contractor's reporting to you that may be needed in order for you to meet your requirements under this award to report to us.

Section B. Contract provisions for national policy requirements.

1. Equal employment opportunity. You must include the clause provided in 41 CFR 60-1.4(b) in any "federally assisted construction contract" (as defined in 41 CFR 60-1.3) under this award unless provisions of 41 CFR Part 60-1 exempt the contract from the

requirement. The clause will require the contractor to comply with equal opportunity requirements in 41 CFR chapter 60.

2. Wage Rate Requirements (Construction), formerly the Davis-Bacon Act. With respect to each construction contract for more than $2,000 to be awarded using funding provided under this award, you must:

    a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;

    b. Condition the decision to award the contract upon the contractor's acceptance of that prevailing wage determination;

    c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations at 29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," to require the contractor's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141-44, 3146, and 3147); and

    d. Report all suspected or reported violations to the award administration office identified in this award.

3. Copeland Act prohibition on kickbacks. In each contract under this award to construct, complete, or repair a building or work, you must:

    a. Include a provision requiring the contractor to comply with the anti-kickback provisions of the Copeland Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulations at 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States."

    b. Report all suspected or reported violations to the award administration office identified in this award.

4. Clean air and water requirements. You must:

    a. In each contract for an amount greater than $150,000 under this award, include a clause requiring the contractor to comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q), Federal Water Pollution Control Act (33 U.S.C. 1251-1387), and standards, orders, or regulations issued under those acts; and

    b. Report any violations of the Acts, standards, orders, or regulations to both the award administration office identified in this award and the appropriate regional office of the Environmental Protection Agency.

5. Nonprocurement suspension and debarment. Unless you have an alternate method for requiring the contractor's compliance, you must include a clause in each contract for an amount equal to or greater than $25,000 and in each contract for federally required audit services to require the contractor to comply with Office of Management and Budget guidance on nonprocurement suspension and debarment in 2 CFR Part 180, Subpart C, as implemented by Department of Defense regulations at 2 CFR Part 1125.

6. Byrd Amendment anti-lobbying requirements. In each contract for an amount exceeding $100,000, you must include a clause requiring the contractor to submit to you the certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 3152, as implemented by the Department of Defense at 32 CFR Part 28.

7. Purchase of recovered materials by States or political subdivisions of States. In each contract under which the contractor may purchase items designated in Environmental Protection Agency (EPA) regulations in 40 CFR Part 247, subpart B, you must include a clause requiring the contractor to comply with applicable requirements in those EPA regulations, which implement Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962).

8. Fly America requirements. In each contract under which funds provided under this award might be used to participate in costs of international air travel or transportation for people or property, you must include a clause to require the contractor to:

    a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the "Fly America" Act), as implemented by the General Services Administration at 41 CFR 301-10.131 through 301-10.143, which provides that U.S Government-financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available; and

    b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

9. Cargo preference for United States flag vessels. In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S. flag commercial vessels, if available.

PART 7: FINANCIAL, PROGRAMMATIC, AND PROPERTY REPORTING

REP Article I. Performance management, monitoring, and reporting. (Mar 2015)

Section A. Required reporting periods, forms, format, data elements, frequency, due dates and procedures for interim and final performance reports.

1. Required reporting periods, forms, format, data elements, frequency, due dates and procedures for interim and final performance reports are in Section III.E and Appendix B of solicitation number DLA-20130412, which is available at www.dla.mil/SmallBusiness/Documents/SCAA2013.pdf; or

2. In Appendix C (DEC 2014), which is available at www.dla.mil/SmallBusiness/Documents/AppendixC,DEC2014.pdf, if this award identifies you as a pilot program participant.

Section B. Extensions of due dates. You may request extensions of the due dates that Section A of this Article specifies for interim and final reports, respectively. You must provide the reasons for your request and we will approve extensions that are adequately justified.

Section C. Reporting significant developments. You must report the following information to us as soon as you become aware of it:

1. Problems, delays, or adverse conditions that will materially impair your ability to meet the objectives of this award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

2. Favorable developments which will enable you to meet schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

Section D. Site visits. We reserve the right to make site visits as warranted to monitor program performance under this award.

REP Article II. Financial reporting. (Mar 2015)

Section A. Required reporting form, format, or data elements for interim and final financial reports. You must use the SF 425 "Federal Financial Report" and complete all lines including lines 10a through 10o and 11a through 11g.

Section B. Interim financial reports: frequency, reporting periods, and due dates. You must submit interim reports for the periods ending on March 31, June 30, September 30, and December 31, except that if the award ends on one of these dates, the report you submit for the period ending on that date will be your final report, as opposed to an interim report. You

must submit interim reports no later than 30 calendar days after the end of each reporting period.

Section C. Final financial report. You must submit the final financial report under this award no later than 120 calendar days after the end date of the period of performance.

Section D. Extensions of due dates. You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will approve extensions that are adequately justified.

Section E. Where and how to submit financial reports. You must submit the SF 425 "Federal Financial Report" via email to the administration agency identified in the award. In addition, you must provide a copy of the report via email to PTAP@dla.mil.

REP Article III. Reporting on property. (Mar 2015)

Section A. Real property. Paragraphs A.1 through A.4 apply to real property for which you are accountable under this award, for as long as there is a Federal interest in the property (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. Periodic status reports. You must submit periodic status reports, as follows:

    a. Frequency and duration of reporting requirement. You must submit periodic status reports quarterly for as long as there is a Federal interest in the property.

    b. Due dates. Reporting period end dates and report due dates are the same as those specified in REP Article II for financial reports.

    c. Other submission instructions. You may provide your periodic status report within the SF 425 "Federal Financial Report", Block 12 "Remarks".

2. Notifications of critical changes. You must notify the award administration office of any critical change in the status of real property as soon as feasible after you become aware of it. A critical change is any event with a significant adverse impact on the condition or value of the property, such as damage due to fire; flood, hurricane, or other severe weather; earthquake; or accident.

3. Requests for disposition instructions. You must comply with applicable requirements in PROP Article III to request disposition instructions, either during the period of performance or at closeout.

4. Closeout accounting. You must account to the award administration office for real property at the time of closeout of the award, as required by Section D of OAR Article VI.

Section B. Equipment and supplies. Paragraphs B.1 through B.4 apply to equipment or supplies for which you are accountable under this award and in which there is a Federal interest (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. Periodic status report. There is no requirement for periodic reporting during the period of performance.

2. Notifications of loss, damage, or theft. You must comply with applicable requirements in PROP Article II governing your property management system to promptly notify the award administration office of any loss, damage, or theft of equipment.

3. Requests for disposition instructions. You must comply with applicable requirements in PROP Article IV to request disposition instructions for equipment, either during the period of performance or at closeout.

4. Closeout accounting.

    a. Equipment. You must account to the award administration office for equipment at the time of closeout of this award, as required by Section D of OAR Article VI.

    b. Supplies. If you have a residual inventory of unused supplies that meets the criteria specified in paragraph E.2 of PROP Article IV, you must as part of your closeout accounting arrange with the award administration office for the compensation that paragraph specifies for the Federal interest in the supplies.

Section C. Intangible property. This Section applies to intangible property for which you are accountable under this award.

1. Copyrights and data. You are not required to submit periodic reports about works developed or purchased under this award in which copyright was asserted, or about data produced under the award. However, because the Federal Government has the rights in the works and data that Sections A and B of PROP Article V specify, you must provide information about the works and data if we request it.

2. Intangible property obtained, but not developed or produced, under the award. You must comply with requirements in Section C of PROP Article V to request disposition instructions for intangible property obtained, but not developed or produced, under the award.

REP Article IV. Reporting on subawards and executive compensation. (Mar 2015)

You must report information about subawards and executive compensation as specified in the award provision in Appendix A to 2 CFR Part 170, "Reporting subaward and executive compensation information," modified as follows:

1. The Web site "http://www.fsrs.gov" cited in paragraphs a.2.i. and a.3 of the award provision is replaced by "http://www.fsrs.gov or successor OMB designated Web site for reporting subaward information";

2. The Web site "https://www.sam.gov" cited in paragraph b.2.i. of the award provision is replaced by "https://www.sam.gov or successor OMB designated Web site for reporting information on total compensation"; and

3. The reference to "Sec. ___.210 of the attachment to OMB Circular A-133, 'Audits of States, Local Governments, and Non-Profit Organizations'" in paragraph e.3.ii of the award provision is replaced by "2 CFR 200.330, as implemented in SUB Article I of this award."

PART 8: OTHER ADMINISTRATIVE REQUIREMENTS

OAR Article I. Maintaining recipient information. (Mar 2015)

1. Unless you are exempted from this requirement based on the criteria provided in OMB guidance in section 25.110 of 2 CFR Part 25, you must maintain the currency of information about yourself in the system the Federal Government specifies as the repository for information about its business partners (currently the System for Award Management).

2. You must maintain the information in that system until you submit the final financial report required under this award or receive the final payment, whichever is later.

3. You must review and update the information at least annually after your initial registration in the system and more frequently if required by changes in your information.

OAR Article II. Records retention and access. (Mar 2015)

Section A. Records retention period. Except as provided in Sections B through D of this Article:

1. You must keep records related to any real property and equipment acquired, in whole or in part, using Federal funds under the award for 3 years after final disposition of the property.

2. You must keep records related to rate proposals for indirect or facilities and administration costs, cost allocation plans, and supporting records such as indirect cost rate computations and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback or composite fringe benefit rates) as follows:

    a. If you are required to submit a proposal, plan, or other computations to your Federal cognizant agency for indirect costs, as the basis for negotiation of a rate, you must keep the submissions and all supporting records for 3 years from the date on which you were required to make the submissions.

    b. If you are not required to submit a proposal, plan, or other computation as the basis for negotiation, you must keep the proposal, plan, other computation, and supporting records for 3 years from the end of the fiscal year or other accounting period covered by the proposal, plan, or other computation.

3. You must keep other financial records, supporting documents, statistical records, and other records pertinent to this award for a period of 3 years from the date you submit your final financial report under the award.

Section B. Extensions of retention period due to litigation, claim, or audit.

1. If any litigation, claim, or audit begins before the end of the 3-year retention period specified in Section A of this Article and the final action related to the litigation, claim, or audit is not taken before the end of that 3-year period, you must retain all records related to this award that may be involved in the litigation, claim, or audit until all findings involving the records have been resolved and final action taken.

2. We may disallow costs and recover funds under this award based on an audit or other review of records you elected to retain beyond the retention period required by this Article, even if the audit or review begins after the end of the 3-year retention period specified in Section A of this Article. Thus, the "retention period," as that term is used in OMB guidance in 2 CFR 200.344(a)(1), is extended as described in 2 CFR 200.333(b) to include the entire period during which we and our authorized representatives continue to have access to those records under paragraph F.2 of this Article.

Section C. Records for program income earned after the end of the performance period. In accordance with Section E of FMS Article VII, there are no requirements under this award applicable to program income you earn after the end of the period of performance and therefore no associated records retention requirements.

Section D. Records for joint or long-term use.

1. Joint use. To avoid duplicate recordkeeping for records that you and we both need to use on a continuous basis, we may ask you to make special arrangements with us, by mutual agreement, to make records available for joint and continuous use.

2. Long-term use. If we determine that some records will be needed longer than the 3-year period specified in Section A of this Article, we may request that you either:

    a. Retain the records for a longer period of time; or

    b. Transfer the records to our custody for long-term retention.

3. Retention requirements for transferred records. For any records transferred to our custody, you are not subject to the records retention requirements in Section A of this Article.

Section E. Methods for collecting, transmitting, and storing information.

1. You should, whenever practicable, collect, transmit, and store information related to this award in open and machine readable formats rather than in closed formats or on paper. However, if you request it, we will:

    a. Provide award related-information to you on paper; and

    b. Accept award related-information from you on paper. In that case, we will not require more than an original and two copies.

2. When your original records are in an electronic form that cannot be altered, you do not need to create and retain paper copies of those records.

3. When your original records are on paper, you may substitute electronic versions produced through duplication or using other forms of electronic media, provided that:

    a. You conduct periodic quality control reviews of the records;

    b. You provide reasonable safeguards against alteration of the records; and

    c. The records remain readable.

Section F. Access to records.

1. Scope of Government access rights.

    a. We as the awarding agency, the Federal Government Inspectors General, the Comptroller General of the United States, and any of our authorized representatives have the right of access to any documents, papers, or other records you have that are pertinent to this award, in order to make audits, examinations, excerpts, and transcripts.

    b. This right also includes timely and reasonable access to your personnel for the purposes of interview and discussion related to the records.

    c. As described in OMB guidance at 2 CFR 200.336(b), the access to records described in this Section will include access to the true name of a victim of a crime only under extraordinary and rare circumstances.

        i. You are required to provide that access only in response to a court order or subpoena pursuant to a bona fide confidential investigation, or in response to a request duly authorized by the head of the DoD Component or his or her designee; and

        ii. You must take appropriate steps to protect this sensitive information.

2. Duration of Government access rights. We have the access rights described in paragraph F.1 of this Section as long as you retain the records.

3. Public access.

    a. You must comply with requirements to protect information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export controlled information), to include both information generated under this award and information provided to you and identified as being subject to protection. Other than those limitations on dissemination of information, we place no restrictions on you that limit public access to your records pertinent to this award.

b. We do not place any requirements on you to permit public access to your records separate from any Federal, State, local, or tribal statute that may require you to do so.

c. The Freedom of Information Act (FOIA, 5 U.S.C. 552) does not apply to records in your possession but records you provide to us generally will be subject to FOIA, with the applicable exemptions.

OAR Article III. Remedies and termination. (Mar 2015)

Section A. Remedies for noncompliance.

1. If you materially fail to comply with a term or condition of this award or an applicable Federal statute or regulation, we may amend this award to impose specific additional conditions as described in OMB guidance in 2 CFR 200.207. If we determine that the imposition of those additional conditions is insufficient to remedy the noncompliance, we may take one or more of the following actions that we deem appropriate to the circumstances:

   a. Temporarily withhold cash payments pending:

      i. Your correction of the deficiency; or

      ii. Our taking more severe enforcement action.

   b. Disallow (that is, deny both use of funds and any applicable cost sharing or matching credit for) all or part of the cost of the activity or action not in compliance;

   c. Suspend or terminate this award, in whole or in part (suspension of an award is a separate and distinct action from suspension of a person under 2 CFR parts 180 and 1125, as noted in paragraph A.3 of this Article);

   d. Withhold further awards to you for the project or program that is not in compliance;

   e. Take any other action legally available to us under the circumstances.

2. You may raise an objection to our taking any remedy we take under paragraph A.1 of this Section and will be given an opportunity to provide information and documentation challenging the action. The procedures are those specified in OAR Article IV for claims and disputes.

3. Our use of any remedy under paragraph A.1 of this Section, including suspension or termination of the award, does not preclude our referring the noncompliance to a suspension and debarment official and asking that official to consider initiating a suspension or debarment action under 2 CFR Part 1125, the DoD implementation of OMB guidance at 2 CFR Part 180.

Section B. Termination.

1. This award may be terminated in whole or in part as follows:

    a. Unilaterally by the Government. We will provide a notice of termination if we unilaterally terminate this award in whole or in part, which we may do for either of the following reasons:

        i. Your material failure to comply with the award terms and conditions. If we terminate the award for that reason, we will report the termination to the Federal Awardee Performance and Integrity Information System (FAPIIS). In accordance with 41 U.S.C. §2313, each Federal awarding official must review and consider the information in FAPIIS with regard to any proposal or offer before awarding a grant or contract.

        ii. The program office does not have funding for an upcoming increment if this award is incrementally funded. In that case, the Government's financial obligation does not exceed the amount currently obligated under the award.

    b. By mutual agreement. With your consent, we may terminate this award, in whole or in part, for any reason. In that case, you and we must agree to:

        i. The termination conditions, including the effective date; and

        ii. In the case of a partial termination, the portion to be terminated.

    c. Unilaterally by the recipient. You may unilaterally terminate this award, in whole or in part, by sending us written notification that states:

        i. The reasons for the termination;

        ii. The effective date; and

        iii. In the case of partial termination, the portion to be terminated. In that case, however, we may terminate the award in its entirety if we determine that the remaining portion of the award will not accomplish the purposes for which we made the award.

2. If this award is terminated in its entirety before the end of the performance period, you must complete the closeout actions for which you are responsible under OAR Article VI. The due date for each action is to be measured relative to the date of termination.

3. If this award is only partially terminated before the end of the performance period, with a reduced or modified portion of the award continuing through the end of the performance period, then closeout actions will occur at the end of the performance period as specified in OAR Article VI.

4. You will continue to have all of the post-closeout responsibilities that OAR Article VII specifies for you if this award is wholly or partially terminated before the end of the performance period.

Section C. Effects of suspension or termination of the award on allowability of costs. If we suspend or terminate this award prior to the end of the period of performance, **c**osts resulting from obligations that you incurred:

1. Before the effective date of the suspension or termination are allowable if:

    a. You properly incurred those obligations;

    b. You did not incur the obligations in anticipation of the suspension or termination;

    c. In the case of termination, the costs resulted from obligations that were non-cancellable after the termination; and

    d. The costs would have been allowable if we had not suspended or terminated the award and it had expired normally at the end of the period of performance.

2. During the suspension or after the termination are not allowable unless we expressly authorize them, either in the notice of suspension or termination or subsequently.

OAR Article IV. Claims, disputes and appeals. (Mar 2015)

Section A. Grant Appeal Authority. The Grant Appeal Authority is General Counsel, Defense Logistics Agency.

Section B. Submission of claims.

1. Your claims. To submit a claim arising out of this award, you must submit it in writing to the grants officer for decision, specify the nature and basis for the relief you are requesting, and include all data that supports your claim.

2. Government claims. You will receive a written grants officer's decision if a DoD claim arises out of this award.

Section C. Alternative dispute resolution.

1. We encourage resolution of all issues related to this award by mutual agreement between you and the grants officer.

2. If you and the grants officer are unable to resolve an issue through unassisted negotiations, we encourage use of Alternative Dispute Resolution (ADR) procedures to try to do so. ADR procedures are any voluntary means, such as mini-trials or mediation, used to resolve issues in controversy. ADR procedures may be used prior to submission

of a claim or at any other time prior to the Grant Appeal Authority's decision on any appeal you submit.

Section D. Grants officer decisions for claims you submit.

1. Within 60 calendar days of receiving your claim, the grants officer will either:

   a. Transmit a written decision that:

      i. Identifies data on which the decision is based; and

      ii. Identifies and provides the mailing address for the Grant Appeal Authority to whom you would submit an appeal of the decision if you elect to do so; or

   b. If more time is required to render a written decision, notify you of a specific date when he or she will render the decision and inform you of the reason for delaying it.

2. The grants officer's decision will be final unless you decide to appeal, in which case we encourage use of ADR procedures as noted in Section C of this Article.

Section E. Formal administrative appeals.

1. Right to appeal. You have the right to appeal a grants officer's decision to the Grant Appeal Authority identified in Section A of this Article.

2. Notice of appeal. You may appeal a grants officer's decision within 90 calendar days of receiving the decision by submitting a written notice of appeal to the Grant Appeal Authority and grants officer. If you elect to use ADR procedures, you are allowed an additional 60 calendar days to submit the written notice of appeal to them.

3. Appeal file. Within 30 calendar days of the grants officer's receipt of your notice of appeal, you should receive the appeal file with copies of all documents relevant to the appeal. You may supplement the file with other documents you deem relevant and with a memorandum in support of your position for the Grant Appeal Authority's consideration. The Grant Appeal Authority may request additional information from you.

4. Decision. Unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal, the appeal will be decided solely on the basis of the written record. Any fact-finding or hearing will be conducted using procedures that the Grant Appeal Authority deems appropriate.

Section F. Representation. You may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding, as long as the representative is not otherwise prohibited by law or regulation from appearing before the DoD Component concerned.

Section G. Non-exclusivity of remedies. Nothing in this Article is intended to limit your right to any remedy under the law.

OAR Article V. Collection of amounts due. (Mar 2015)

Section A. Establishing a debt.

1. Any amount paid to you in excess of the amount to which you are determined to be entitled under the terms and conditions of this award constitutes a debt to the Federal Government.

2. A grants officer will attempt to resolve any claim of your indebtedness arising out of this award by mutual agreement.

3. If the grants officer fails to resolve the claim in that manner, you will receive a written notice of the grants officer's decision formally determining the debt, as described in paragraph B.2 of OAR Article IV. The notice will describe the debt, including the amount, name and address of the official who determined the debt, and a copy of that official's determination.

Section B. Debt delinquency and appeals.

1. Within 30 calendar days of the grants officer's decision, you must either pay the amount owed to the address provided in the written notice or inform the grants officer that you intend to appeal the decision. Appeal procedures are described in OAR Article IV.

2. If you elect not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

3. If you elect to appeal the grants officer's decision, you will have 90 calendar days after receipt of the grants officer's decision to file your appeal unless Alternative Dispute Resolution (ADR) procedures are used, as described in section C of OAR Article IV, in which case you will have 150 calendar days.

Section C. Demand letter, interest, and debt collection.

1. If within 30 calendar days of the grants officer's decision, you neither pay the amount due nor provide notice of your intent to appeal the grants officer's decision, the grants officer will send you a demand letter identifying a payment office that will be responsible for any further debt collection activity.

2. If you do not pay by the due date specified in the written demand letter, the Federal Government may collect part or all of the debt by:

    a. Making an administrative offset against your requests for reimbursements under Federal awards;

b. Withholding advance payments otherwise due to you; and

c. Any other action permitted by Federal statute.

3. The debt will bear interest, and may include penalties and other administrative costs, in accordance with applicable provisions of the DoD Financial Management Regulation (DoD 7000.14-R), which implements the Federal Claims Collection Standards. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

OAR Article VI. Closeout. (Mar 2015)

Section A. Liquidation of obligations. Unless the award administration office authorizes an extension of the due date, you must liquidate all obligations that you incurred under this award not later than 120 calendar days after the end date of the period of performance.

Section B. Refunds of unobligated balances. You must promptly refund to the award administration office any balances of unobligated cash that we have advanced or paid to you.

Section C. Final reports. You must submit the:

1. Final performance report under this award no later than the date specified in Section A of REP Article I, subject to any extensions granted under Section B of that article; and

2. Final financial report under this award no later than the date specified in Section C of REP Article II, subject to any extensions granted under Section D of that article.

3. Other final reports that are required under this award no later than 90 calendar days after the end date of the period of performance, unless you request an extension of the due date and the award administration office approves the request.

Section D. Accounting for property. You must account for any real property, equipment, supplies, and intangible property that you and any subrecipients acquired or improved under the award, in accordance with PROP Articles I through V.

OAR Article VII. Post-closeout adjustments and continuing responsibilities. (Mar 2015)

Section A. Adjustments. The closeout of this award does not affect:

1. Our right to disallow costs and recover funds on the basis of a later audit or other review, as long as we make the determination that the costs are disallowed and notify you about that determination within the extended records retention period specified in paragraph B.2 of OAR Article II of these terms and conditions.

2. Your obligation to return any funds due to the Federal Government as a result of later refunds, corrections, or other transactions (to include any adjustments in final indirect cost rates).

Section B. Continuing responsibilities. After closeout of this award, you must continue to comply with terms and conditions of this award that have applicability beyond closeout, including requirements concerning:

1. Audits, as specified in FMS Article V, that cover periods of time during which you expended funds under this award.

2. Management, use, and disposition of any real property or equipment acquired under this award in which we continue to have a Federal interest after closeout, as specified in PROP Articles I through IV.

3. Retention of, and access to, records related to this award, as specified in OAR Article II.

PART 9: REQUIREMENTS RELATED TO SUBAWARDS

SUB Article I. Distinguishing subawards and procurements. (Mar 2015)

Section A. Required recipient determination. For each transaction into which you enter with another entity at the next tier below this award, you must determine whether the transaction is a subaward or procurement.

Section B. Considerations in making the determination.

1. The primary purpose of the transaction between you and the other entity is the key factor you must use to determine whether the transaction is a subaward or a procurement.

    a. The transaction is a subaward and the other entity therefore a subrecipient if the transaction's primary purpose is for you to transfer--for performance by the other entity--a portion of the substantive program for which we are providing financial assistance to you through this award. You will continue to be accountable to us for performance of the project or program under the award, including portions performed by any subrecipients.

    b. The transaction is a procurement and the other entity therefore your contractor if the transaction's primary purpose is for you to purchase goods or services that you need to perform the substantive program supported by this award. The distinction from a subaward is the contractor is not performing a portion of the substantive program as a result of the transaction.

2. What you call the transaction is not a factor in distinguishing a subaward from a procurement. If the transaction meets the criterion in paragraph B.1.a of this Article, it is a subaward for purposes of the requirements of this award even if you call and consider the transaction a "contract."

Section C. Effect of the determination on the next-tier transaction.

1. Process for awarding the transaction. One important consequence of your determining whether a next-tier transaction is a subaward or procurement is that there are different requirements governing the pre-award and time of award processes that you use to award the transaction.

    a. SUB Article II of this award specifies pre-award and time of award responsibilities for subawards.

    b. PROC Articles I and II of this award govern pre-award and time of award process for awarding procurement transactions.

2. Transaction terms and conditions. A second important consequence of your determining whether a next-tier transaction is a subaward or procurement is that the terms and

conditions you include in a subaward differ from those you include in a procurement transaction.

a. Section C of SUB Article II of this award addresses requirements you must include in subaward terms and conditions. Those requirements are generally either identical with or directly related to requirements in the general terms and conditions of this award with which you must comply. They include national policy requirements as well as administrative requirements in areas such as financial and programmatic management, property administration, procurement, and reporting.

b. PROC Article III of this award lists requirements you must include in a procurement transaction when applicable to the procurement.

SUB Article II. Pre-award and time of award responsibilities. (Mar 2015)

Section A. Requirements for unique entity identifiers.

1. Definition of "entity." For purposes of the unique entity identifier requirements in paragraphs A.2 and 3 of this Section, "entity" has the meaning given in paragraph C.3 of the Appendix to OMB guidance in 2 CFR Part 25.

2. Pre-notification of potential subrecipients. You must notify potential subrecipients that no entity may receive a subaward from you under this award unless it has provided its unique entity identifier to you.

3. Restriction on making subawards.

   a. General. You may not make a subaward to an entity unless the prospective subrecipient:

      i. Is an eligible entity, as defined in 10 U.S.C. 2411; and

      ii. Has provided its unique entity identifier to you.

   b. Exception. You may make a subaward to an entity that has not provided its unique entity identifier to you in rare cases in which you requested and we approved an exemption from the requirement for the entity to provide a unique entity identifier, based on the criteria in paragraph 25.110(d) of OMB guidance in 2 CFR Part 25.

Section B. Pre-award risk assessment.

1. Before making a subaward to an entity, you must perform a risk assessment of the prospective subrecipient, as described in 2 CFR 200.331(b). OMB guidance in 2 CFR 200.205(c) provides examples of factors you may consider in evaluating risk.

2. As part of the risk assessment under paragraph B.1 of this Article, you must:

a. Verify that neither the prospective subrecipient nor its principals under the subaward are excluded or disqualified from participating in the transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR Part 180, as implemented by DoD at 2 CFR Part 1125; and

b. If warranted by risks you identify, determine whether to impose award-specific terms and conditions in the subaward to mitigate the risks.

i. These award-specific terms and conditions may be in addition to, or differ from, the terms and conditions that SUB Articles IV through IX of this award require you to include in subawards.

ii. They may include items such as those listed in OMB guidance in 2 CFR 200.207(a)(1) through (6).

iii. Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.207(b) and (c).

Section C. Subaward content.

1. Cost-type subawards.

a. SUB Article III of this award specifies informational content that you must include in each cost-type subaward.

b. SUB Articles IV through VIII specify administrative requirements that you must include, as applicable, in each cost-type subaward.

c. SUB Article IX of this award specifies national policy requirements that you must include, as applicable, in each cost-type subaward.

2. Fixed amount type subawards. SUB Article XII of this award specifies informational content and administrative and national policy requirements that you must include in any fixed amount subaward that you make.

3. Additional subaward terms and conditions. You may include other requirements in your subawards that you need in order to meet your responsibilities under this award for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

Section D. Subaward and executive compensation reporting. You must report subaward obligating actions and information on subrecipients' executive compensation as required by REP Article IV of this award.

SUB Article III. Informational content of subawards. (Mar 2015)

Section A. Informational content in general. You must include in each subaward (and each subsequent amendment to a subaward that alters the amount of the subaward) the information specified in OMB guidance in 2 CFR 200.331(a)(1), "Federal Award Identification," with the clarifications provided in Sections B through G of this Article.

Section B. Federal award identification number and award date. The "Federal Award Identification Number" and "Federal Award Date" described in 2 CFR 200.331(a)(1)(iii) and (iv), respectively, are the award number and award date for this award to you. You must provide the information in a way that makes it clear that the subaward is under this DoD award.

Section C. Amount of Federal funds obligated.

1. The "Amount of Federal Funds Obligated by this action" that is described in 2 CFR 200.331(a)(1)(vi) is either:

    a. The amount of your obligation to the subrecipient, if the terms and conditions of this award do not require you to provide any cost sharing or matching for the project or program the award supports; or

    b. The amount of the Federal share of your subaward obligation if this award does require cost sharing or matching, which in that case is the product of:

        i. The Federal share of total project costs under this DoD award to you, as a percentage of those total project costs; and

        ii. The total amount of project costs obligated for the subaward action.

2. Note that the total project costs of the award and subaward, as used in paragraphs C.1.b.i and ii of this Section include any cost sharing or matching that you or the subrecipient provides if you are counting it toward the cost sharing or matching required under this award.

Section D. Total amount obligated to the subrecipient. The "Total Amount of Federal Funds Obligated to the Subrecipient," as described in 2 CFR 200.331(a)(1)(vii), is the cumulative amount to date of the amounts described in Section C of this Article.

Section E. Total Amount of the Federal Award. The "Total Amount of the Federal Award," as described in 2 CFR 200.331(a)(1)(viii), is the total amount through the end of the subaward that you and the subrecipient mutually agreed upon, to include: funding obligated to date, any future anticipated funding increments, and any options you may exercise in the future.

Section F. Federal awarding agency, pass-through entity, and awarding official. The "Name of Federal awarding agency" and "pass-through entity," as those terms are used in 2 CFR 200.331(a)(1)(x) are the Department of Defense and the business name associated with your registration in the System for Award Management. In that same paragraph of 2 CFR

Part 200, the "awarding official" is the individual in your organization who made the subaward.

Section G. Indirect cost rate. With respect to the requirement in 2 CFR 200.331(a)(1)(xiii) for the subaward to include the "Indirect cost rate for the Federal award":

1. The rate the subaward must include is the subrecipient's rate, whether it is a rate set by negotiation with a Federal Government agency or you, or is the de minimis rate described in 2 CFR 200.414(f).

2. You are required to include the indirect cost rate only if the subrecipient is willing to share that information with you and assents that information about its rate is not proprietary. If a subrecipient is not willing to share information about its indirect cost rate with you, consult the grants officer for this award to explore alternative ways to assess the reasonableness of costs of the subaward.

SUB Article IV. Financial and program management requirements for subawards. (Mar 2015)

Section A. Purposes of this Article in relation to other Articles.

1. This Article specifies administrative requirements concerning financial and program management that you must include in the terms and conditions of each cost-type subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under FMS Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if we approve you making any fixed-amount subawards under this award.

Section B. Financial management standards. You must include in any subaward you make under this award the requirements of:

1. Sections A through C of FMS Article I of this award if the subrecipient is a state;

2. Sections B and C of FMS Article I if the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe; or

3. 32 CFR 34.11 if the subrecipient is a for-profit entity.

Section C. Payments.

1. Subawards to States. You must include the provisions of Section A of FMS Article II of this award in each subaward you make to a State;

2. Subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes. The following paragraphs specify requirements you must include in subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

   a. Payment method.

      i. If you are authorized to request advance payments under this award, you must authorize a subrecipient to request advance payments unless:

         A. It does not maintain, or demonstrate the willingness to maintain, written procedures that minimize the time elapsing between its receipt of each payment and its disbursement of the funds for project or program purposes;

         B. You impose a requirement for the subrecipient to be paid by reimbursement as a result of your risk evaluation of the subrecipient under SUB Article II of this award.

      ii. If you do not authorize advance payments for one of the reasons given in paragraph C.2.a.i of this Article, you must specify either reimbursement or working capital advances as the payment method in accordance with OMB guidance in 2 CFR 200.305(b)(3) and (4).

   b. Payment timing and amount.

      i. Advances. You must limit advance payments to the minimum amounts needed and time the payments to be in accordance with the subrecipient's actual, immediate cash requirements in carrying out the project or program under the subaward. The timing and amount of your advance payments to the subrecipient must be as close as is administratively feasible to the subrecipient's actual disbursements for direct project costs and the proportionate share of any allowable indirect costs. Your subawards also must include the requirements of paragraphs B.2.b and c of FMS Article II to specify costs subrecipients must exclude from amounts of their advance payment requests.

      ii. Reimbursements or working capital advances. You must follow OMB guidance in 2 CFR 200.305(b)(3) and (4) concerning timing and amount of reimbursements or working capital advances.

   c. Frequency of requests. You must allow the subrecipient to request advance payments or reimbursements, including those associated with the working capital advance payment method, as often as it wishes if you pay using electronic funds transfers and at least monthly otherwise.

   d. Other requirements.

i. You must include the requirements of paragraph B.5 of FMS Article II of this award concerning withholding of payments.

ii. You must include the provisions of paragraph B.6 of FMS Article II concerning depositories in each subaward that authorizes the subrecipient to request advance payments.

3. Subawards to for-profit entities. In each subaward that you make to a for-profit entity, you must include terms and conditions that provide for payment to the subrecipient consistent with 32 CFR 34.12.

Section D. Allowable costs, period of availability of funds, and fee and profit.

1. You must include in each cost-type subaward a requirement that the allowability of costs under the subaward (and any lower-tier subawards or procurement contracts into which the subrecipient enters) must be determined in accordance with the applicable cost principles identified in Section A of FMS Article III of this award.

2. You must specify in each subaward the period of availability of funds for any project or program purpose so that the period neither begins before nor ends after the period during which you may use funds available to you under this award for that same project or program purpose.

3. You must include in each subaward the provisions concerning fee or profit that are in Section C of FMS Article III of this award.

Section E. Revision of budget and program plans. You must include in each subaward provisions requiring the subrecipient to request your approval for any change in the subaward budget or program that would cause a budget or program change under this award for which Section A of FMS Article IV requires you to first obtain our prior approval. You may not approve any budget or program revision that is inconsistent with the purpose or terms and conditions of this award.

Section F. Non-Federal audits. You must include a provision in each subaward that you make under this award to require the subrecipient entity to comply with the audit requirements applicable to that entity, as specified in either Section A or Section B of FMS Article V.

Section G. Cost sharing or matching requirements. If you make a subaward under which the subrecipient may provide contributions or donations of cash or third-party in-kind contributions to be counted toward any cost sharing or matching that is required under this award, you must include provisions in that subaward to specify:

1. The criteria governing the allowability as cost sharing or matching of the types of cash or third-party in-kind contributions that the subrecipient may contribute or donate. Those criteria are specified in:

a. Sections B through C of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

b. Paragraph 32 CFR 34.13(a) if the subaward is to a for-profit entity.

2. The methods for determining and documenting the values of those contributions or donations to be counted as cost sharing or matching. Those methods are specified in:

   a. Sections D and E of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

   b. 32 CFR 34.13(b) if the subaward is to a for-profit entity.

Section H. Program income. You must include requirements concerning program income in subawards, as follows:

1. You must require the subrecipient to account to you when it earns any program income under the subaward or uses it, so that you can prepare reports you are required to submit to us.

2. You must include the provisions of Sections A through C of FMS Article VII of this award.

3. You must specify the deduction or addition alternative, or a combination of these alternatives, for the subrecipient's use of any program income it earns. A subrecipient that you require to use the deduction alternative, as opposed to the addition alternative described in Section D of FMS Article VII of this award, will subtract program income from the total allowable costs under the subaward to determine net allowable costs for purposes of determining the amount of your obligation to the subrecipient and any cost sharing or matching you require of the subrecipient.

   In any case, you must still use the addition alternative described in Section D of FMS Article VII of this award for the total amount of program income earned, which includes amounts earned by you and your subrecipients. That is, while you may require a particular subrecipient to use the deduction alternative for the purpose of the subaward, program income earned under that subaward will still increase the total amount of this award (i.e., the sum of the Federal share and any cost sharing or matching).

SUB Article V. Property requirements for subawards. (Mar 2015)

Section A. Purposes of this Article in relation to other Articles.

1. This Article specifies administrative requirements concerning property that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROP Articles I through V of this award.

Section B. Title to property.

1. Subawards to institutions of higher education, nonprofit organizations, States, local governments, or Indian tribes. You must include terms and conditions in each subaward to flow down to the subrecipient the provisions of:

    a. Section A of PROP Article I concerning vesting of title to property acquired under the subaward.

    b. Sections B and C of PROP Article I that are applicable to types of property that the subrecipient may acquire, improve, or for which it may otherwise be accountable under the subaward.

2. Subawards to for-profit entities.

    a. Real property and equipment. You must obtain the prior approval of the DoD grants officer before permitting any for-profit subrecipient to acquire or improve real property or equipment in whole or in part with Federal funds.

        i. If the grants officer does not grant the approval, you must include a subaward provision that prohibits the firm from using Federal funds provided under the subaward to acquire or improve real property or equipment.

        ii. If the approval is granted, you must include a subaward provision specifying that title vesting and Federal interest are governed by provisions of 32 CFR 34.21(b) and (c).

    b. Supplies. You must include a subaward provision specifying that vesting of title to supplies is governed by provisions of 32 CFR 34.24(a), subject to the use and disposition requirements of 32 CFR 34.24(b).

Section C. Property management system. If you make a subaward under which the subrecipient either may acquire or improve equipment, you must include in the subaward:

1. If the subrecipient is a State, applicable provisions of:

    a. Section A of PROP Article II concerning insurance for real property and equipment.

    b. Section B of PROP Article II concerning other property management system standards.

2. If the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section C of PROP Article II concerning other property management system standards.

3. Applicable provisions of 32 CFR 34.22(a) and 34.23 if the subrecipient is a for-profit entity and you obtained the grants officer's prior approval for the firm's acquisition of equipment under the subaward.

Section D. Use and disposition of real property. If the subrecipient of a subaward you make under this award may acquire or improve real property, then you must include in the subaward:

1. Use. The requirements concerning use of real property:

   a. In Section A of PROP Article III if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, unless the award-specific terms and conditions of this award provide otherwise; and

   b. In 32 CFR 34.21(d) if the subaward is to a for-profit entity and you obtained the grants officer's prior approval for the firm's acquisition of real property under the subaward.

2. Disposition. Provisions to require the subrecipient to request disposition instructions through you when the property is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B of PROP Article III to address the Federal interest in the property.

Section E. Use and disposition of equipment and supplies. If you make a subaward under which the subrecipient may acquire or improve equipment, or acquire supplies, you must include in the subaward, as applicable:

1. If the subaward is to a State:

   a. The requirements in Sections B and E of PROP Article IV concerning use and disposition of equipment and supplies, except that you must require the State to contact you instead of the award administration office when it is ready to arrange disposition of equipment or address the Federal interest in supplies; and

   b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.

2. If the subaward is to an institution of higher education, nonprofit organization, local government, or Indian tribe:

a. The requirements in Sections C and E of PROP Article IV concerning use of equipment and use and disposition of supplies;

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

c. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B or D of PROP Article IV to address the Federal interest in the equipment.

3. If the subaward is to a for-profit entity:

   a. The requirements concerning use and disposition of supplies in 32 CFR 34.24(b);

   b. And you obtained the grants officer's prior approval for the firm's acquisition of equipment under the subaward:

      i. The requirements concerning use of equipment in 32 CFR 34.21(d);

      ii. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

      iii. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B or D of PROP Article IV to address the Federal interest in the equipment.

Section F. Intangible property. You must include in a subaward provisions specifying the requirements of:

1. Sections A through C of PROP Article V if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

2. Section A of PROP Article V as it applies to works developed under the subaward and Section B of PROP Article V if the subaward is to a for-profit entity.

SUB Article VI. Procurement procedures to include in subawards. (Mar 2015)

Section A. Purposes of this Article in relation to other Articles.

1. This Article specifies administrative requirements concerning procurement procedures that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROC Articles I through III of this award.

Section B. Subaward to a State. In any subaward that you make to a State, you must include the requirements of PROC Article I and applicable sections of PROC Article III of this award.

Section C. Subaward to an institution of higher education, nonprofit organization, local government, or Indian tribe. In any subaward that you make to an institution of higher education, nonprofit organization, local government, or Indian tribe:

1. You must include the requirements of Sections A through G of PROC Article II and applicable sections of PROC Article III of this award.

2. You must include the requirement for the subrecipient to make available to you, upon request:

    a. Technical specifications of proposed procurements, under the conditions described in OMB guidance at 2 CFR 200.324(a); and

    b. Other procurement documents for pre-procurement review, under the conditions described in 2 OMB guidance at CFR 200.324(b).

Section D. Subaward to a for-profit entity. In each subaward that you make to a for-profit entity, you must include terms and conditions for the subrecipient's compliance with the requirements in 32 CFR 34.31.

SUB Article VII. Financial, programmatic, and property reporting requirements for subawards. (Mar 2015)

Section A. Purposes of this Article in relation to other Articles.

1. This Article specifies administrative requirements concerning reporting that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under REP Articles I through III of this award.

Section B. Performance reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any performance information you need, by the time you need it, to comply with the performance reporting requirements in REP Article I and other terms and conditions of this award.

2. You may specify a form, format, or data elements the subrecipient uses to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article I specifies for your reporting to us).

Section C. Financial reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any financial information you need, by the time you need it, to comply with the financial reporting requirements in REP Article II and other terms and conditions of this award.

2. You may specify a form, format, or data elements the subrecipient uses to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article II specifies for your reporting to us).

Section D. Reporting on property.

1. Each subaward you make under this award must include provisions concerning property reporting as described in paragraph D.2 of this Section if the subrecipient may, under the subaward:

   a. Acquire or improve real property or equipment; or

   b. Acquire supplies or intangible property.

2. The subaward provisions must require the subrecipient to give you the information you need about the property in order to meet your responsibilities to us under Sections A through C of REP Article III and PROP Articles II through V.

SUB Article VIII. Other administrative requirements for subawards. (Mar 2015)

Section A. Purposes of this Article in relation to other Articles.

1. This Article specifies other administrative requirements that you either must or should include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under OAR Articles I through VII of this award.

Section B. Maintenance of subrecipient information. Your subaward terms and conditions do not need to include any of the requirements of OAR Article I, as those requirements do not flow down to subrecipients.

Section C. Records retention and access. In each subaward you make under this award:

1. If the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe:

   a. You must include the requirements of Section A of OAR Article II with the additional condition that, for any subrecipient under this award that does not have a federally

approved rate for indirect or facilities and administrative costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:

i. Require the subrecipient to keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply; and

ii. Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.

b. You must include the requirements of Sections B, C, and F of OAR Article II.

c. You must include provisions that enable you to comply with the requirements of Section D of OAR Article II concerning records for joint or long-term use.

d. You must include provisions that establish the same rights and responsibilities for the subrecipient under the subaward that Section E of OAR Article II establishes for you under this award.

e. You may not impose any other record retention or access requirements on the subrecipient.

2. If the subaward is to a for-profit entity, the records retention and access provisions of 32 CFR 34.42.

Section D. Remedies and termination. The terms and conditions of each subaward you make under this award should specify your rights and responsibilities and those of the subrecipient if you take a remedial action to address a subrecipient's noncompliance with an applicable Federal statute or regulation or the terms and conditions of your subaward. Each subaward's terms and conditions should:

1. Identify remedial actions you may take to address the subrecipient's noncompliance. Available remedies are described in:

   a. OMB guidance in 2 CFR 200.338 for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

   b. 32 CFR 34.52 for a subaward to a for-profit entity.

2. With respect to termination specifically:

   a. Identify conditions under which you, the subrecipient, or both (by mutual agreement) may terminate the subaward, in whole or in part, as described in:

i. OMB guidance in 2 CFR 200.339(a) for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

ii. 32 CFR 34.51 for a subaward to a for-profit entity.

b. Inform the subrecipient that you will provide it with a notice of termination if you unilaterally terminate the award.

c. Specify that you and the subrecipient remain responsible for applicable requirements addressed in Sections G and H of this Article concerning closeout, post-closeout adjustments, and continuing responsibilities.

3. With respect to either suspension or termination of the subaward, inform the subrecipient about the criteria that you will use to either allow or disallow subaward costs, which are in:

a. Section C of OAR Article III for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

b. 32 CFR 34.52(c) for a subaward to a for-profit entity.

Section E. Disputes, hearings, and appeals. Each subaward's terms and conditions should specify any rights the subrecipient has to a hearing, appeal, or other administrative proceeding if it disputes a decision you render in administering its subaward. You must comply with any statute or regulation that affords the subrecipient an opportunity for a hearing, appeal, or other administrative proceeding and is applicable to the dispute.

Section F. Collection of amounts due. Although your subaward terms and conditions do not need to include any of the requirements of OAR Article V because those requirements do not flow down to subrecipients, you should consider including provisions to specify what you would need from the subrecipient if you owed a debt to the Government under this award that is related to its subaward.

Section G. Closeout.

1. In each subaward that you make to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, you must include provisions to require the subrecipient to:

a. Liquidate all obligations that it incurred under the subaward not later than 90 calendar days after the end date of the period of performance of either the subaward or this award, whichever is earlier, unless you grant an extension.

b. Promptly refund to you any balances of unobligated cash that you advanced or paid to the subrecipient.

c. Submit to you:

i. Any information you need from the subrecipient to meet your responsibilities to us for an accounting of property, under Section D of OAR Article VI; and

ii. Not later than 90 calendar days after the end date of the period of performance of this award, unless you grant the subrecipient an extension, any information you need to meet your responsibilities to us for final reports, under Section C of OAR Article VI.

2. In each subaward that you make to a for-profit entity, you must include the terms and conditions that you deem necessary for you to be able to comply with the requirements in OAR Article VI.

Section H. Post-closeout adjustments and continuing responsibilities.

You must include provisions in each subaward to require the subrecipient to provide what you need in order to comply with the requirements of OAR Article VII.

SUB Article IX. National policy requirements for subawards. (Mar 2015)

Section A. General.

1. You must include provisions in the terms and conditions of each subaward you make to require the subrecipient entity's compliance with each of the national policy requirements in Sections B through D of this Article that you determine is applicable, given the type of entity receiving the subaward and activities it will be carrying out under the subaward.

2. If an entity to which you are about to make a subaward will not accept an award provision requiring its compliance with a national policy requirement that you determine to be applicable, you must alert the award administration office immediately. You may not omit an applicable national policy requirement in order to make the subaward.

3. If at any time during the performance of a subaward, you learn that--or receive a credible allegation that--the subrecipient is not complying with an applicable national policy requirement, you must alert the award administration office immediately.

Section B. Nondiscrimination national policy requirements. You must include provisions in each subaward to require the subrecipient's compliance with the nondiscrimination national policy requirements specified in NP Article I, as applicable.

Section C. Environmental national policy requirements. You must include provisions in each subaward to require that:

1. The subrecipient comply with the Clean Air and Clean Water Acts specified in paragraph 1 of NP Article II, as applicable.

2. Provide any information you need, when you need it, in order to comply with the requirement to immediately notify us of potential environmental impacts specified in paragraph 2 of NP Article II, as applicable, due to activities under the award (which includes subaward activities).

Section D. Other national policy requirements. You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements in the following portions of NP Article III of this award, as applicable:

1. Paragraph 1 on debarment and suspension.

2. Paragraphs 3.a and b on lobbying.

3. Paragraphs 4 through 13 on officials not to benefit, Hatch Act, Native American graves, fly America, United States flag vessels, military recruiters and Reserve Officers Training Corps, historic preservation, Constitution Day, trafficking in persons, and whistleblower protections.

SUB Article X. Subrecipient monitoring and other post-award administration. (Mar 2015)

Section A. General requirement for subrecipient monitoring. You must do the post-award monitoring of the subrecipient's activities under each subaward that is needed in order for you to ensure, to the best of your ability to do so, that:

1. The subrecipient carries out the portion of the substantive project or program under this award that, as described in paragraph B.1.a of SUB Article I:

    a. Your subaward transferred for the subrecipient's performance, which is the subaward's primary purpose; and

    b. For which you are accountable to us.

2. The subrecipient is using project funds under the subaward (including any cost sharing or matching the subrecipient provides that is counted as project funds in the approved budget of this award) for authorized purposes.

3. The subrecipient's performance under the subaward is in compliance with applicable Federal statutes and regulations, and the terms and conditions of your subaward.

Section B. Subrecipient monitoring actions.

1. Required monitoring actions. You must, as part of your post-award monitoring of each subrecipient:

    a. Review the financial and programmatic information that your subaward terms and conditions require the subrecipient to provide, in accordance with Sections B and C of SUB Article VII of this award.

b. Follow up and ensure that the subrecipient takes timely and appropriate action to remedy deficiencies detected through any means, including audits and on-site reviews.

c. With respect to audits of subrecipients that are required under FMS Article V of this award:

i. Verify that the subrecipient is audited in accordance with those requirements, as applicable (note that Section F of SUB Article IV requires you to include those audit requirements for the subrecipient in the subaward's terms and conditions).

ii. Resolve and issue a management decision for audit findings that pertain to your subaward. Doing so is a requirement under either Section A or B of FMS Article V of this award (Section B requires that explicitly and Section A does so by implementing OMB guidance in 2 CFR 200.521, as well as other portions of Subpart F of that Part).

iii. Consider whether you need to adjust your own records related to this award based on results of audits, on-site reviews or other monitoring of the subrecipient and, as applicable, notify the award administration office.

2. Other monitoring actions. OMB guidance in 2 CFR 200.331(e)(1) through (3) describes other actions that may be useful as part of your subrecipient monitoring program, depending on the outcomes of the pre-award risk assessment you conducted in accordance with Section B of SUB Article II.

Section C. Remedies and subaward suspension or termination. With respect to any subaward under this award, you must:

1. Consider whether you need to take any remedial action if you determine that the subrecipient is noncompliant with an applicable Federal statute or regulation or the terms and conditions of your subaward, as described in Section D of SUB Article VIII.

2. Provide a notice of termination to the subrecipient if you terminate its subaward unilaterally for any reason prior to the end of the period of performance.

3. In the case of either suspension or termination of a subaward prior to the end of the period of performance, allow or disallow subaward costs in accordance with Section C of OAR Article III.

Section D. Subaward closeout.

1. You must close out each subaward that you make under this award when you either:

a. Determine that the subrecipient has completed its programmatic performance under the subaward and all applicable administrative actions; or

b. Terminate the subaward, if you do so prior to completion of the subrecipient's programmatic performance.

2. With respect to the closeout of each subaward:

   a. You must pay the subrecipient promptly for allowable and reimbursable costs.

   b. Consistent with the terms and conditions of the subaward, you must make a settlement for any upward or downward adjustments to the Federal share of costs after you receive the information you need from the subrecipient to close out the subaward.

   c. You should complete the closeout of the subaward no later than one year after you receive and accept the final reports and other information from the subrecipient that you need to close out the subaward.

SUB Article XI. Requirements concerning subrecipients' lower-tier subawards. (Mar 2015)

Section A. Purpose. This Article specifies requirements you must include in any cost-type subaward under which you determine that the subrecipient of your subaward may make lower-tier cost-type subawards to other entities.

Section B. Requirements for lower-tier subawards. Your cost-type subaward terms and conditions must require your subrecipient, with respect to each lower-tier cost-type subaward that it makes, to:

1. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

2. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

3. Include in any cost-type subaward it makes at the next tier:

   a. The informational content that SUB Article III specifies;

   b. The administrative requirements that SUB Articles IV through VIII of this award specify;

   c. The national policy requirements that SUB Article IX of this award specifies, as applicable; and

   d. The requirements of this Article if the next-tier subrecipient may make even lower-tier cost-type subawards to other entities.

4. Carry out the subrecipient monitoring and other post-award administration responsibilities specified in SUB Article X of this award.

SUB Article XII. Fixed amount subawards. (Mar 2015)

Section A. Limitations on use.

1. You may not use a fixed amount subaward:

    a. If the total award value over the life of the subaward will exceed the simplified acquisition threshold.

    b. Unless the project or program scope is specific, with definite outcomes, and you are able to establish a reasonable estimate of the actual costs of accomplishing those outcomes.

    c. If you will predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward.

    d. If the subrecipient will be acquiring any real property or equipment under the subaward.

2. For fixed amount subawards not prohibited by paragraph 1 of this Section, you must obtain our prior approval before making a fixed amount type of subaward.

    a. Section A of FMS Article IV requires you to obtain our prior approval before you make any subaward. If you do not identify the subaward as a fixed amount subaward when you obtain that approval, then you must subsequently request separate approval before awarding it as a fixed amount type of subaward.

    b. If a subaward is identified as a fixed amount type of subaward in the budget you submit for our approval, then our approval of the budget is the required prior approval.

Section B. Use of fixed amount subawards. A fixed amount type subaward might be appropriate if you obtain the prior approval required by paragraph A.2 of this Article and:

1. You determine that the portion of the project or program under this award which the subrecipient will be carrying out under the subaward has one or more specific outcomes with the following characteristics:

    a. You can define the outcomes well enough to specify them at the time you make the subaward. Note that outcomes are distinct from inputs needed to achieve the outcomes, such as amounts or percentages of time that subrecipient employees or other participants will spend on the project or program.

b. The accomplishment of each outcome will be observable and verifiable by you when it occurs, so that you will not need to rely solely on the subrecipient's assurance of that accomplishment.

c. The subrecipient associates its projected costs with outcomes in the proposal it submits to you, and you are confident that the costs of accomplishment of the outcomes will equal or exceed the subaward amount. This requires either that you have a high degree of confidence:

i. In your estimate of the costs associated with accomplishing the well-defined and observable outcomes, based on the prospective subrecipient's proposal (and using the applicable cost principles in FMS Article III as a guide); or

ii. That those costs will be within a finite range, rather than a specific amount, so that you may provide an amount of funding under the subaward that does not exceed the lower end of the range, with the provision that the subrecipient agrees to provide any balance above that amount that ultimately is needed to accomplish the outcomes. Your subaward then would include a term or condition to reflect the subrecipient's agreement to provide that balance (which would be in an amount to be post-determined, when the outcomes are accomplished). Note that this is distinct from a situation in which you predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward, a situation in which paragraph A.1.c of this Article prohibits use of a fixed amount subaward.

2. The subaward is based on a fixed rate per unit of outcome (or "unit cost") and you have both the confidence:

a. That is described in paragraph B.1.c of this Article in the estimated costs associated with each unit of outcome; and

b. In the subrecipient's guarantee that it can accomplish at least the number of units of outcome on which your total subaward amount will be based (i.e., the product of the unit cost and the number of units of outcome the subrecipient guarantees to accomplish).

3. Note, however, that not every fixed rate subaward is also a fixed amount subaward. If you have confidence in the unit cost but not also in the subrecipient's ability to guarantee the number of units of outcome that it will accomplish, then you should set a not-to-exceed award amount based on the number of units desired and reduce the subaward amount at the end if the subrecipient accomplishes fewer than that number.

Section C. Informational content of fixed amount subawards. You must include in each fixed amount subaward the informational content, other than the indirect cost rate, that is described in SUB Article III of this award.

Section D. Terms and conditions addressing administrative requirements.

1. General. This Section:

    a. Specifies the minimum set of terms and conditions addressing administrative requirements that you must include in fixed amount subawards, in lieu of the more extensive set specified in SUB Articles IV through X for cost-type subawards.

    b. Does not preclude your including other requirements that you need in order to meet your responsibilities under this award for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

2. Financial and program management requirements.

    a. Financial management system standards. For a subaward to other than a for-profit entity, your subaward must require the subrecipient to include the information specified in paragraph B.1 of FMS Article I in its financial management system, for the purposes of the non-federal audits required by paragraph 2.d of this Section.

    b. Payments. Your payments must be based on accomplishment of the outcomes and associated costs that you used to establish the award amount, rather than on subrecipient expenditures for project or program purposes. Milestone payments before the end of the subaward's period of performance may be appropriate if there are outcomes that the subrecipient will accomplish at different times during that period.

    c. Revision of budget and program plans. You must:

        i. Request our prior approval for any change in principal investigator, project leader, project partner, or scope or objective of the subaward; and

        ii. Therefore include a requirement in the subaward for the subrecipient to request that approval through you.

    d. Non-federal audits. You must include the requirement for non-Federal audits described in Section F of SUB Article IV. The audits are intended to focus on compliance with the performance requirements in the subaward terms and conditions and not to review actual costs as they would for a cost-type subaward.

3. Intangible property. You must include the applicable requirements concerning intangible property, as described in Section F of SUB Article V.

4. Reporting requirements. You must include requirements for reporting that you need in order to meet your responsibilities under this award for reporting to us.

5. Other administrative requirements.

    a. Records retention and access.

        i. You must include the requirements for records retention and access in paragraph A.3 and Sections B and F of OAR Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe. You may not impose any other records retention or access requirements on the subrecipient.

        ii. You must include the corresponding requirements of 32 CFR 34.42 if the subaward is to a for profit entity.

    b. Remedies and termination. You must include:

        i. The requirements concerning remedies and termination that are described in paragraphs D.1 and 2 of SUB Article VIII;

        ii. Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of SUB Article VIII; and

        iii. Terms and conditions addressing adjustment of the amount of the subaward based on review of the actual costs incurred if it is terminated before the subrecipient accomplishes all of the specified outcomes.

    c. Continuing responsibilities. You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in paragraphs B.1 and 3 of OAR Article VII.

    d. Collection of amounts due. You should consider including requirements concerning collection of amounts due, as described in Section F of SUB Article VIII.

6. Required certification. You must:

    a. Include a requirement for the subrecipient to provide to you the certification required by 2 CFR 200.201(b)(5); and

    b. Include terms and conditions addressing adjustment of the amount of the subaward if the required level of activity or effort is not carried out.

Section E. National policy requirements for fixed amount subawards. You must include in the terms and conditions of each fixed amount subaward the national policy requirements that SUB Article IX of this award specifies, as applicable.

Section F. Subrecipient monitoring and other post award administration. You must carry out the subrecipient monitoring and post-award administration actions specified in SUB Article X, as applicable.

Section G. Fixed amount subawards at lower tiers.

1. Authority. If you wish to allow a subrecipient of a cost-type subaward to use fixed amount subawards at the next tier, your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.

2. Subaward requirements. If your subrecipient is authorized to use lower-tier fixed amount subawards, as described in paragraph 1 of this Section, your subaward's terms and conditions must:

   a. Require the subrecipient, before it makes any lower-tier fixed amount subaward, to:

      i. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

      ii. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

   b. Include the requirements specified in Sections A through F of this Article.