

# NATIONAL INSTITUTE OF FOOD AND AGRICULTURE U.S. Department of Agriculture

## SPECIAL TERMS AND CONDITIONS - C 1890 Facilities Program, Section 1447

### TABLE OF CONTENTS

1. APPLICABILITY AND ORDER OF PRECEDENCE .....	1	14. BID GUARANTEES AND BONDING .....	13
2. NIFA CONTACT PERSONS .....	1	15. CONTRACTS .....	13
3. DEFINITIONS .....	2	16. EQUAL EMPLOYMENT OPPORTUNITY .....	16
4. ASSURANCE AND CERTIFICATIONS .....	3	17. PERFORMANCE BY FORCE ACCOUNT .....	21
5. PROJECT STANDARDS AND RESPONSIBILITIES .....	5	18. CONSULTANT SERVICES .....	21
6. ADMINISTRATIVE PROVISIONS .....	5	19. PROGRAM INCOME .....	22
7. FEDERAL COST PRINCIPLES .....	6	20. PRIOR APPROVALS .....	22
8. PROJECT COSTS .....	6	21. FACILITY COMPLETION .....	23
9. ENVIRONMENTAL REQUIREMENTS .....	9	22. SITE VISITS AND PROJECT RECORDS .....	24
10. PAYMENTS .....	9	23. SUSPENSION/TERMINATION .....	24
11. FINANCIAL REPORTING .....	10	24. RELEASE OF INFORMATION .....	24
12. PERFORMANCE MONITORING AND REPORTING .....	11	25. MAXIMUM OBLIGATION OF NIFA .....	25
13. REAL PROPERTY .....	12	26. GRANT CLOSEOUT .....	25

### **1. APPLICABILITY AND ORDER OF PRECEDENCE**

**Applicability.** The terms and conditions contained herein apply to all grants awarded by the National Institute of Food and Agriculture (NIFA), U.S. Department of Agriculture (USDA), to carry out approved activities under the 1890 Facilities Program. The statutory authority for this grant award is stated in Block 11 of Form NIFA-2009.

**Order of Precedence.** Where the terms, conditions, or other requirements relating to this grant award conflict with each other, the following order of precedence shall apply:

- a. The statute that authorized this grant award.
- b. The special terms and conditions set forth herein.
- c. The general terms and conditions set forth in 7 CFR 3015.205.

### **2. NIFA CONTACT PERSONS**

Except as otherwise noted, questions relating to programmatic and administrative aspects of this grant award should be referred to the NIFA contact person whose name and telephone number appears in Block 14 of Form NIFA-2009.

Where these terms and conditions direct information to be submitted to the Authorized Departmental Officer (ADO), the address to be used is as follows:

Adriene Woodin  
Authorized Departmental Officer  
Awards Management Branch  
Office of Extramural Programs  
National Institute of Food and Agriculture  
U.S. Department of Agriculture

August 2010

### **3. DEFINITIONS**

As used in these terms and conditions, the following terms have the meanings set forth in this article:

- a. **Acquisition**, and its derivatives, means the obtaining of goods, property, or services by and for the use of a recipient through purchase, lease, barter, or in-kind donation under a grant award.
- b. **Allowable Costs** means those project costs that are reasonable, necessary, and allocable to the project; that are generally permitted under the applicable Federal cost principles and these terms and conditions; and that are approved by NIFA to be charged under a grant award.
- c. **Appraisal**, and its derivatives, means a written statement independently and impartially prepared by a state-certified real estate appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.
- d. **Architectural, Engineering (A/E)** and their derivatives, means the professional services of an architectural or engineering nature, as defined by the laws of the state in which the services are rendered, and which are required to be performed by a person licensed, registered, or certified to provide such services.
- e. **Authorized Departmental Officer (ADO)** means the individual, acting within the scope of delegated authority, who is responsible for awarding and administering grants and other agreements on behalf of USDA.
- f. **Authorized Representative (AR)** means the individual who is authorized to commit the grantee's time and other resources to the project, to commit the grantee to comply with the terms and conditions of this grant award, and to otherwise act for or on behalf of the grantee.
- g. **Award, Grant, and Grant Award** each means a legal instrument by which NIFA financial assistance is awarded to an eligible recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. Each award is based upon an application and budget from an eligible recipient, approved by NIFA. At the time the award is made, no substantial involvement is anticipated between NIFA and the recipient during the period of project performance.
- h. **Awardee, Grantee, and Recipient** each means the institution or organization to which a grant is awarded and which is accountable for the use of all project funds under the award. These terms encompass the entire legal entity even if project activities are performed only by a component of the entity.
- i. **Bond** means a written instrument executed by a bidder (i.e., offeror) or contractor and a second party to assure fulfillment of the bidder or contractor's obligations to a third party. As used herein, the following types of bonds may be required:
  1. **Bid Guarantee**—assures that a bidder will not withdraw a bid within the period specified for acceptance.
  2. **Payment Bond**—assures payments as required by law to all persons supplying labor or materials in the prosecution of work provided for in a contract.
  3. **Performance Bond**—secures performance and fulfillment of a contractor's obligations under a contract.
- j. **Budget** means the grantee's financial expenditure plan approved by NIFA to carry out the purposes of the grant award.
- k. **Building and Facility** are synonymous terms, each meaning a physical structure consisting of foundation and substructure, superstructure, interior construction, and necessary mechanical, electrical, safety, and specialized systems to make the structure functional.
- l. **Construction**, and its derivatives, means the erection, alteration, consolidation, remodeling, conversion, modernization, improvement, rehabilitation, or extension of physical facilities, including necessary paved areas (i.e., sidewalks and vehicle parking areas) that provide direct and immediate access to facilities within the scope of work approved by NIFA under this grant award. This term includes the acquisition and installation of necessary fixed equipment in such facilities.
- m. **Contract** means a procurement contract awarded by the grantee under this grant award. A procurement contract is one which places the parties in a buyer-seller relationship, regardless of the label used by the parties to describe the relationship.
- n. **Contractor** means any party to whom the grantee awards a contract under this grant.
- o. **Effective Date of Award** means the beginning date of the project as specified in the grant award document; also, the date prior to which allowable project costs may not be incurred without prior approval from the ADO.
- p. **Expiration Date of Award** means the ending date of the project as specified in the grant award document; also, the date after which new or additional project costs may not be incurred, regardless of their apparent allowability.
- q. **Fair Market Value** means the most probable price, in cash or its equivalent, that a willing buyer would pay to a willing seller in an arms-length transaction in the open market to acquire real property.
- r. **Fixed Equipment** means any piece of property which, when installed in a facility for continuing use in connection with the facility, is considered a permanent part of the facility and cannot be reasonably removed without affecting the struc-

tural integrity of the facility, including its utility or ventilation systems. To be considered as fixed equipment, the item must be capitalized in the grantee's records as part of the facility to which it is attached. Further, if the facility were to be sold or otherwise disposed of, such equipment would be sold or otherwise disposed of as part of the facility. Examples include, but are not limited to, elevators, boilers, and furnaces; plumbing, electrical, heating-ventilating-air conditioning (HVAC), and refrigeration systems; and specialized items such as cage washers, laboratory casework, some growth chambers, and certain other large, specialized equipment meeting this definition.

s. **Force Account** means the direct performance of facility construction by a grantee's own permanent workforce (consisting of trades and crafts personnel), equipment, materials, and supplies furnished by the grantee and used under the direct control of the grantee.

t. **Maintenance and Operations** means programmatic activities and those activities required to assure the dependable and economical function of a completed facility as follows:

1. **Maintenance**—preservation of the functional integrity and efficiency of the facility and its fixed equipment, including preventive maintenance, corrective maintenance, testing, and replacement of defective components thereof.

2. **Operations**—activities or processes associated with the programs to be housed in a completed facility and those processes which are necessary to run the facility. These include, but are not limited to, research, extension, or teaching programs; acquisition of programmatic machinery or equipment; post-occupancy installation of utilities or wiring; utility usage, repair, or upgrade; services (e.g., trash, snow, hazardous waste removal); administration; recordkeeping; laboratory or process control; and safety or emergency operations.

u. **Movable Equipment** means an article of tangible personal property which is not affixed to the real estate and can be shifted from place to place without requiring a change in utilities or structural characteristics of the space. Examples include, but are not limited to, office equipment, furniture, and scientific instrumentation.

v. **Onset of Construction** means, in general, initiation of physical on-site construction activities which are of a permanent or irreversible nature. Such activities include, but are not limited to, site clearing and removal, excavation, installation of building supports and foundations, and laying of underground piping.

w. **Prior Approval** means written documentation from the ADO evidencing consent prior to the grantee's undertaking specific activities or incurring specific project cost(s) under this grant award.

x. **Program**, and its derivatives, is a contextual term that means a coherent assembly of plans, activities, and supporting resources within an administrative or technical framework whose purpose is to implement the mission or goals of the grantee or NIFA. As it relates to the grantee, this term refers to the research, extension, or teaching activities, or administrative functions related to such activities, to be housed in a completed facility, the construction of which is being assisted with NIFA funds. As it relates to NIFA, this term refers to the 1890 Facilities Program.

y. **Project** means an organized assembly of approved activities or tasks that have been determined by NIFA to lie within the scope of, or have been identified for performance by the recipient or a third party under, this grant.

z. **Project Costs** means total costs encompassing both the allowable Federal and non-Federal costs incurred by the grantee to carry out approved activities under this grant award.

aa. **Project Director (PD)** means the grantee's representative designated in this grant award who is responsible for oversight, management, and direction of day-to-day project activities.

bb. **Project Period** means the total time for which this grant award is approved for support, including any pre-award period and time extensions.

cc. **Real Property** means land, land improvements, structures, and things attached to them (e.g., fixed equipment as defined in Article 3) so as to become a part of them. Movable machinery and other kinds of movable equipment are not real property. If a question comes up about whether certain property should be classified as real property, the laws of the state in which the property is located govern. Land improvements include roads; gas, water, and utility lines; sewers; and the like which are situated on the land. *As used herein, real property does not include mineral rights, timber rights, agricultural crops, and the like.*

dd. **Value Engineering** means an organized effort directed by a person trained in value engineering techniques to analyze the functions of a facility and its fixed equipment for the purpose of achieving their respective essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

#### **4. ASSURANCE AND CERTIFICATIONS**

**Assurance.** As a condition of this grant award, the grantee assures that it is in compliance and will comply in the course of grant performance with all applicable laws, regulations, E.O.s, and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated in this grant award by reference, and such other provisions as are specified herein.

**Certifications.** In accepting this grant award, the grantee specifically certifies that:

a. It will assist NIFA in complying with §106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), E.O. 11593, and the Historic and Archeological Data Preservation Act of 1974 (16 U.S.C. 469a —469c), as implemented in 7 CFR Part 3100 by:

1. Consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects by the construction activity (see 36 CFR 800.8);
2. Notifying the ADO of the existence of any such properties; and
3. Avoiding or mitigating, to the extent possible, adverse effects upon such properties.

b. It will comply with all requirements of §114 of the Clean Air Act of 1970 (42 U.S.C. 1857 *et seq.*), as amended, and §308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended, relating to inspection, monitoring, entry, reports, and information, and with all regulations and guidelines issued thereunder; will not perform any work required by this grant award in a facility listed on the Environmental Protection Agency's (EPA) List of Violating Facilities; will comply to the best of its ability with clean air standards and clean water standards in any facility in which work under this grant award is performed; and will insert the substance of this provision into any contracts and subgrants in which the amount of award exceeds \$100,000.

c. It will have sufficient funds available to meet any non-Federal costs necessary to ensure completion of approved project plans. Sufficient funds also shall be available when the facility is completed to assure effective operation and maintenance of the facility for the purpose for which constructed.

d. It will conduct all procurement actions in a manner that provides, to the maximum extent practicable, free and open competition.

e. It will establish safeguards that prohibit employees from using their positions for any purpose that constitutes or presents the appearance of personal or organizational conflict of interest.

f. It will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site or the facility without permission from the ADO; will record the Federal interest in the title of any real property acquired, constructed, or donated under this grant award; and will include a covenant in the title of real property acquired, constructed, or donated under this grant award to assure nondiscrimination during the useful life of the real property.

g. It will submit to the ADO a copy of an artist's conception of the completed facility and a copy of the final floor plans in which space allocations and planned space use are identified (*but NOT the actual blueprints or specifications*) before the project is advertised or placed on the market for competitive construction bidding; will construct the project or cause it to be constructed to completion in accordance with grantee-approved drawings and specifications; and will submit to the ADO for prior approval any changes that materially alter the approved scope of the grant project.

h. It is not delinquent on any Federal debt, pursuant to OMB Circular No. A-129, "Managing Federal Credit Programs," and requirements contained in OMB Memorandum M-87-32, as implemented by 7 CFR Part 3.

i. It will make a good-faith effort to provide and maintain a drug-free environment by prohibiting illicit drugs in the workplace, providing employees with drug-free policy statements (including penalties for noncompliance), and establishing necessary awareness programs to keep employees informed about the availability of counseling, rehabilitation, and related services (§5151-5610 of the Drug-Free Workplace Act of 1988, as implemented by 7 CFR Part 3021).

j. It has not used and will not use Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award or modification of any contract, grant, cooperative agreement, or loan; will disclose the name, address, payment details, and purpose of any agreements with lobbyists for whom it or its contractors or grantees have paid or will pay with profits or *non-appropriated* funds on or after December 23, 1989, for any award action in excess of \$100,000 (or \$150,000 for loans); will file quarterly updates about the use of lobbyists if material changes occur; and will require its nonexempt contractors or grantees to certify and disclose accordingly [§319, Pub. L. No. 101-121 (31 U.S.C. 1352), as implemented by 7 CFR Part 3018].

k. It and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; have not been convicted or indicted under criminal or civil statutes or had one or more public transactions terminated for cause or default within the past three years; will provide immediate written notice to the ADO if at any time it learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances; and will require recipients of lower-tier covered transactions under this grant award to similarly certify (E.O. 12549, as implemented by 7 CFR Part 3017).

l. It shall clearly state in all requests for proposals, bid solicitations, press releases, statements, and other documents describing this project, (1) the percentage of the total cost of the project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project [§638 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1991 (Pub. L. No. 101-506)].

m. It shall comply with Sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10.a. - 10.c., popularly known as the Buy American Act).

The certifications listed in this article are intended as summaries only and may not contain the exact language required by or stated in the relevant statutes or regulations. The grantee is encouraged to review all laws and regulations applicable

to this grant award.

## **5. PROJECT STANDARDS AND RESPONSIBILITIES**

The grantee shall maintain written standards of conduct that prohibit its officers, employees, agents, or others who occupy positions of trust from using their positions for any purpose that is, or gives the appearance of being, motivated by a desire for private financial gain for themselves or others with whom they have close ties. These standards must include provisions that govern the conduct of the grantee's employees in connection with procurement activities. Such standards should reflect state and local laws and must cover financial interests, gifts, bribes, gratuities, favors, and related areas as appropriate and necessary. In addition, they must identify the conditions under which outside activities or interests are proper or improper, provide for prompt notification of violations to a responsible and objective institutional official, and make provision for disciplinary action against those who violate the standards. A copy of these standards does not have to be submitted to NIFA for approval or recordkeeping purposes; however, they must be made available for review by NIFA or its designated representatives, if requested.

The architectural-engineering (A/E), construction, and inspection work must conform to high professional standards. With the exception of requiring the use of nationally recognized building codes, *NIFA shall not prescribe standards or other criteria relating to engineering, design, or building activities under any grant award.* Thus, responsibility for carrying out all approved project activities and for ensuring that high standards are met rests solely with the grantee. The grantee is fully responsible for project performance, including adherence to these terms and conditions of grant award. Although the grantee is encouraged to communicate with NIFA on special problems that may arise during project performance, such communication does not diminish the grantee's responsibility for making sound judgments and is not intended to imply that responsibility for technical and operating decisions has shifted to NIFA.

The grantee is responsible for obtaining all necessary licenses, permits, easements, approvals, and the like, required for construction activities performed under a grant. In addition, the grantee is required to take all proper, reasonable, and necessary precautions to prevent injury, loss, or damage to the work, employees, workers, the general public, and property during project performance. This includes taking steps to avoid unsafe working or project conditions and ensuring that all work meets applicable safety and health standards and requirements.

The grantee is responsible for complying with all applicable Federal, state, municipal, and other laws and regulations. This includes local zoning laws and laws relating to landscaping, open space, minimum distance of a building from the property line, maximum building height, environmental protection, and historic preservation. Further, all buildings constructed under this grant must be constructed in compliance with the latest edition of one of the nationally recognized building codes and with other applicable nationally recognized codes. Such other codes include, but may not be limited to, electrical, fire and life safety, plumbing, energy conservation, and seismic codes, as well as standards established by the General Services Administration relating to handicapped access. Local building codes may be used as long as they are at least as stringent as nationally recognized codes.

The grantee is responsible for ensuring that competent and adequate supervision and inspection are provided and maintained at the worksite to ensure that completed work conforms to design drawings and specifications approved by the grantee. In addition, the grantee is required to provide appropriate project monitoring, inspection, and testing to assure that all work and systems are of acceptable quality and that time and cost schedules are met. On-site inspections may be performed by the A/E firm that designed the project, by a separate construction management firm, by qualified employees already working for the grantee, or by any other qualified individual or firm, at the grantee's discretion. However, inspection may not be carried out by the same firm that performed the construction work. The grantee is required to permit inspection by agents of state or local government during construction according to the customary schedule of inspections in the locality where the construction takes place.

Costs of A/E or other services necessary to correct errors, omissions, or other defects in facility plans, design drawings, specifications, or other construction documents due to mismanagement, negligence, or oversight on the part of the grantee's employees or of the A/E firm or other party with whom the grantee has contracted to perform such services shall not be borne from project funds. The grantee shall pursue all legal remedies against responsible contractual parties for such errors, omissions, or defects.

The grantee is responsible, without recourse to NIFA or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the grantee and third parties to carry out approved project activities. Matters concerning violation of law should be referred to the Federal, state, or local authority having proper jurisdiction.

## **6. ADMINISTRATIVE PROVISIONS**

This grant, and contracts or other agreements at any tier under this grant, shall be governed to the extent applicable by

the following provisions, as in effect on the effective date of award:

- a. **7 CFR Part 3015**, "Uniform Federal Assistance Regulations."
- b. **7 CFR Part 3016**, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- c. **7 CFR Part 3017**, "Governmentwide Debarment and Suspension (Nonprocurement)."
- d. **7 CFR Part 3018**, "New Restrictions on Lobbying."
- e. **7 CFR Part 3019**, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations."
- f. **7 CFR Part 3021**, "Governmentwide Requirements for Drug-free Workplace (Financial Assistance)."
- g. **7 CFR Part 3052**, "Audits of States, Local Governments, and Non-profit Organizations."

## **7. FEDERAL COST PRINCIPLES**

Allowable project costs shall be determined in accordance with the authorizing statute, the purpose of the grant award, and to the extent applicable, by the following Federal cost principles that are applicable to the type of organization receiving the award, regardless of tier, all as in effect on the effective date of award:

- a. **OMB Circular No. A-21**, "Cost Principles for Institutions of Higher Education."
- b. **OMB Circular No. A-87**, "Cost Principles for State and Local Governments" (including certain Indian tribal governments).
- c. **OMB Circular No. A-122**, "Cost Principles for Non-profit Organizations" other than institutions of higher education (nonprofit organizations excluded from coverage are listed in Attachment C of the circular).
- d. **Federal Acquisition Regulations, 48 CFR 31.2**, Principles for determining costs with profitmaking firms and those nonprofit organizations that are specifically exempted from the provisions of OMB Circular No. A-122.

## **8. PROJECT COSTS**

**Cost Escalation.** Costs incurred in excess of the NIFA share of approved project costs under this grant are the sole responsibility of the grantee. Unless this grant award is terminated for cause, the grantee shall complete the construction project even if it requires additional funds from the grantee or other non-Federal source or results in an increase in the amount or percentage of matching on the grantee's part.

**Allowable Project Costs.** In addition to any other costs which may be allowable under this grant, the following project costs have been determined to be generally allowable, subject to statutory limitations, program requirements, or the applicable Federal cost principles listed in Article 7 above:

- a. Necessary site clearing and removal costs on the construction site where construction cannot reasonably be undertaken without such site clearing and removal;
- b. Reasonable and necessary costs of performing the preconstruction environmental assessment required by these guidelines and costs incurred to mitigate direct, adverse, physical impacts resulting from construction activities, including restoration of the construction site to its original condition;
- c. Charges for A/E services incurred under contract to design the facility (including "as-built" drawings and related documentation) and to perform such necessary additional services as agreed upon in writing between the grantee and the A/E firm;
- d. Charges for construction management services incurred under contract to perform on-site supervision and inspection of construction activities;
- e. Salaries and wages of the following grantee personnel to perform required A/E, construction, and inspection services, provided that these services are not duplicated through contract or other arrangement. Charges for salaries and wages must be consistent with the actual time devoted to the activity and may not exceed the employee's normal salary or rate of pay:
  1. Engineering professional(s) to design the structural, mechanical, electrical, and specialized systems;
  2. An architect to prepare the schematic design documents consisting of three-dimensional drawings, renderings, models, and mock-ups illustrating the scale and relationship of facility components;
  3. An architect to prepare design development documents consisting of drawings depicting the size and character of the project as to architectural, structural, mechanical, electrical, and specialized systems, materials, and related elements;
  4. An architect to prepare construction documents consisting of working drawings and specifications setting forth in detail the requirements for construction of the facility;
  5. A construction manager qualified by education, training, or experience to perform actual on-site supervision and inspection of construction activities to check the quality and quantity of construction work in progress and to ensure that all

work conforms to approved construction documents; and

6. Trades and crafts personnel engaged in constructing the facility.

- f. Fringe benefits for personnel listed in e. above whose salaries and wages are authorized to be charged to the project where it is a normal grantee policy to charge fringe benefits as a direct project cost;
- g. Real property acquisition costs, including deeded access and real estate agency fees associated with such acquisition, as necessary for constructing the facility;
- h. Filing fees incurred for recording the Federal interest in any approved acquisition or construction of real property;
- i. Costs incurred for any real estate appraisal required by these terms and conditions and performed by a state-certified appraiser during the project period;
- j. Costs of bonding, insurance, and permits, where such bonding, insurance, and permits are direct costs to the project and are required by Federal, state, or local laws or regulations, or by these terms and conditions;
- k. Temporary relocation expenses incurred by the grantee for moving employees displaced as a result of approved renovation activities (*but NOT costs incurred for moving employees headquartered elsewhere into a new facility*);
- l. Acquisition and installation of equipment (as defined in Articles 3.r. and u.);
- m. Excavation and grading costs at the site of construction;
- n. Brick-and-mortar costs, including costs incurred for special features that comply with safety standards and codes such as earthquake resistance or accessibility by the physically handicapped;
- o. Costs of pollution control equipment for the facility's boilers, incinerators, wastewater treatment, etc., which are required to meet Federal, state, or local codes or standards;
- p. Sanitary sewer, storm sewer, and potable water connections, provided that such municipal utilities are located in streets, roads, or alleys contiguous to the construction site;
- q. Costs of connecting to existing central utility distribution systems contiguous to the site, such as steam and chilled water that service the campus from centrally located boiler and refrigeration plants, prorated costs for a new boiler and chiller intended to serve the completed facility and other campus facilities; or the costs of a new boiler and chiller dedicated only to the completed facility;
- r. Reasonable costs for sidewalks, vehicle parking areas, and related curbs and gutters that are located on the site and provide direct and immediate access to the completed facility;
- s. Costs incurred for the acquisition of construction-related materials and supplies if the facility is being constructed with force account labor;
- t. Costs incurred for landscaping around the perimeter of the building and along the sidewalks that provide facility ingress and egress;
- u. Construction and safety signs erected at the site of construction that give recognition to the Federal share of project costs and that outline safety precautions, respectively;
- v. Costs incurred for systems testing and balancing;
- w. Contingency costs not to exceed 2% of eligible project costs following the award of a construction contract;
- x. Consulting costs not covered elsewhere and specified as allowable in Article 18; and
- y. Completion of existing "shelled space" if such activity has been outlined in the NIFA-approved project.

**Unallowable Project Costs.** In addition to any other costs that have been determined to be generally unallowable, the following project costs are unallowable under this grant unless specifically permitted by law or approved in writing by the ADO prior to incurring such costs:

- a. Any NIFA share of costs that exceeds the amount of NIFA funds authorized to be obligated or expended by the grantee under this award;
- b. Costs incurred before the effective date of award;
- c. New or additional costs incurred during a period of suspension or after the termination or expiration date of award;
- d. Costs which lie outside the scope of the approved project and any amendments or changes thereto, including all costs associated with the program to be housed in the completed facility (e.g., costs incurred to establish, maintain, expand, or enhance the program, including the acquisition and use of research plot land or grazing land, are deemed to lie outside the scope of the project);
- e. Salaries and wages of grantee personnel engaged in the following activities or services:
  - 1. All activities occurring prior to the schematic design phase, including liaison and coordination, meetings, site analyses, studies, program planning, development of long-range institutional plans, surveys, development of inventories, and the like;
  - 2. Administrative or project oversight, including participation in or supervision of bid, negotiation, or contract administration processes;
  - 3. All services provided by programmatic, administrative, or financial personnel; and
  - 4. Services of a secretarial or clerical nature; .
- f. Contracts or other subtler agreements entered into for the purpose of providing programmatic, administrative or

financial services;

- g. Costs associated with public hearings, arbitration proceedings, or legal actions arising out of project performance;
- h. Costs for travel and training of grantee personnel;
- i. Indirect costs incurred by the grantee, including fringe benefits where it is normal grantee policy or practice to include these charges as an indirect cost to a grant project;
- j. Construction of "shelled space" designed for completion at a later date;
- k. Construction of residences, shop areas, and passenger vehicle storage and service areas;
- l. Costs incurred for day-to-day operating or maintenance expenses associated with the running or upkeep of the facility or surrounding areas;
- m. The amount paid for real property in excess of just compensation;
- n. Bonus or penalty payments to contractors;
- o. Design details requiring expensive building techniques or architectural features that cost more than reasonable alternatives and that neither enhance the functioning or appearance of the facility nor reflect local architectural tradition, unless such design details are required by state law or regulation to preserve the facility's historical, architectural, or similar character;
- p. Costs associated with abandoned designs;
- q. Costs resulting from direct mismanagement, oversight, or negligence, or from vicarious liability for the improper action of others, including costs of A/E or other services necessary to correct defects in facility plans, design drawings, specifications, or other construction-related documents;
- r. Compensation for injuries or death to people or animals or damage to property arising out of project performance;
- s. Prorated costs of *existing* central utility plant and distribution systems that are intended to service the completed facility;
- t. Fines and penalties imposed as a result of a violation of or noncompliance with Federal, state, or local laws or regulations;
- u. Fund-raising expenses;
- v. Sales taxes, Federal excise taxes, and other taxes if the grantee is exempt from such taxes or is entitled to a refund from the state or Federal Government after paying such taxes;
- w. Loss of income by the grantee or a contractor, regardless of reason;
- x. Costs associated with moving grantee personnel into a new facility constructed with project funds (however, the temporary relocation of grantee personnel from an existing facility that is scheduled to be remodeled with project funds is an allowable cost where such relocation is necessary for the safety and health of grantee personnel);
- y. Hypothetical losses such as foregone opportunity costs;
- z. Consulting or other fees prohibited under Article 18;
- aa. Entertainment costs (including expenses incurred for groundbreaking, dedication, or other ceremonies), regardless of their apparent relationship to project objectives;
- bb. Costs for commemorative memorabilia;
- cc. Interest payments on indebtedness instruments; and
- dd. Costs associated with lobbying members of the U.S. Congress, their staffers, or any official of an agency of the Executive Branch of the Federal Government, by whatever name or technique, using Federally appropriated funds or any required non-Federal matching funds contributed under this grant award.

Project costs which are determined to be allowable may be charged to the Federal or the non-Federal share of such costs. Project costs which are determined to be unallowable, whether by statutory, regulatory, or administrative mechanism, may not be charged to the Federal share of costs and may not be used to meet any required non-Federal share of costs. The listings of allowable and unallowable costs found in this article are not exhaustive. Questions relating to the allowability of cost items not covered above should be directed to the administrative contact person.

**Pre-award Costs.** The incurrence of pre-award costs is done at the grantee's own risk and does not confer upon NIFA or USDA any obligation to provide reimbursement for those costs or to authorize their use to meet any non-Federal matching or cost sharing requirement. Project costs incurred prior to the effective date of award are not allowable costs unless the grantee obtains prior approval from the ADO. Where the obligation or expenditure of project funds for allowable pre-award project costs is authorized under this award, an attachment to these terms and conditions will so specify and the grantee shall be permitted to recover such costs from the NIFA share of project costs. If allowable project costs were incurred under this project prior to the effective date of award but approval has not been obtained, the grantee shall notify the ADO in writing within 60 days of the effective date of award and request such approval.

**Post-expiration Costs.** New or additional project costs may not be incurred after the expiration date of award; however, project funds may be expended to liquidate legitimate obligations incurred by the grantee on or before the expiration date of award. Unless specifically required by Federal statute, the expiration date of award shall not be extended by NIFA for the

sole purpose of allowing the grantee to expend unused project funds or to cover expenses or obligations incurred after the expiration date of award, even if such costs are necessary and would have been allowable if they had been incurred during the project period.

## **9. ENVIRONMENTAL REQUIREMENTS**

**National Environmental Policy Act.** The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) established national policies and goals for protecting the quality of the human environment. It is also USDA and NIFA policy that environmental insults be avoided or minimized wherever possible. The grantee therefore is required to assist NIFA in complying with the provisions of NEPA and implementing regulations promulgated by the Council on Environmental Quality (40 CFR Parts 1500-1508), as supplemented by USDA at 7 CFR Part 1b. NIFA regulations to implement the procedural provisions of NEPA are contained in 7 CFR Part 3407.

Actions under a grant that normally require the preparation of a Preconstruction Environmental Assessment (EA) include construction activities as specified in 7 CFR 3407.7(c). An EA is designed to provide detailed information about potential environmental hazards to assist NIFA in determining whether to require an environmental impact statement (EIS) or to issue a finding of no significant impact. An EIS is required for major grant actions where it is determined by NIFA that activities under the grant will significantly affect the quality of the human environment or that substantial controversy on environmental grounds exists [7 CFR 3407.6(b)].

Unless the grantee is notified in writing from the ADO that this grant project is categorically excluded from such requirement in accordance with 7 CFR 3407.6(a)(2)(ii), an EA shall be prepared by a qualified, independent person or entity (e.g., A/E firm) and submitted to the NIFA programmatic contact person prior to the onset of construction. *The EA shall cover the entire project (Federal and non-Federal portions, if applicable).* The EA must be signed and dated by the preparer and countersigned and dated by the Authorized Representative (AR). A suggested format for preparing an EA is contained in the NIFA Environmental Handbook. A copy may be obtained from the Facilities Team, Grants Management Branch, Office of Extramural Programs by calling (202) 401-5050.

The EA shall be evaluated independently by NIFA and/or its representatives, a decision notice shall be issued in accordance with 7 CFR 3407.10(c), and the grantee shall be informed of the decision. *The grantee shall not issue the "Notice to Proceed" with construction work until it has received written notification from the ADO that the EA is acceptable.*

**Flood Disaster Protection.** The "Flood Disaster Protection Act of 1973," Pub. L. No. 93-234 (42 U.S.C. 4001-4128), requires the purchase of flood insurance in nonexempt areas as a condition of receiving Federal financial assistance for projects involving construction or the placing of equipment in areas identified as having special flood hazards where the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the facility and equipment are covered by adequate flood insurance. The following states have been determined by the Administrator of the Federal Emergency Management Agency (FEMA) to be exempt from the requirement to obtain flood insurance on *state-owned structures and their contents* because they have in effect adequate state plans of self insurance: Florida, Georgia, Iowa, Maine, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont. If the grantee's state is listed as exempt in this article, and its exemption certificate is revoked by FEMA subsequent to the date of these terms and conditions, the grantee shall be notified and requested to comply with insurance requirements specified in this article.

**Undeveloped Coastal Barriers.** The "Coastal Barrier Resources Act," Pub. L. No. 97-348 (16 U.S.C. 3501-9), established a Coastal Barrier Resources System consisting of certain undeveloped coastal barriers along the *Atlantic and Gulf Coasts* and along the *shore areas of the Great Lakes* of the United States. It also prohibits Federal financial assistance from being made available for constructing any new roadway leading to, or new facility (including additions to existing facilities) within, any part of the System. If any part of the construction site under this grant is determined to lie within a part of the System, the grantee shall immediately halt the project and notify the ADO. No further action on the project may be undertaken without prior approval from the ADO.

## **10. PAYMENTS**

Payments will be made by electronic funds transfer through the Department of Treasury's Automated Standard Applications for Payment System (ASAP). Requests for payment should be in accordance with ASAP instructions. Drawdown instructions will be sent to you under separate cover. All questions relating to payments should be submitted to:

Financial Operations Branch  
Office of Extramural Programs

National Institute of Food and Agriculture  
U.S. Department of Agriculture  
STOP 2298  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-2298  
Telephone: (202) 401-4527  
Facsimile: (202) 401-3481

**Payments to Contractors.** The method of payment between the grantee and its contractors shall be in accordance with the policies and procedures established by the grantee, except that contractors may not use the ASAP method to request payments. If the grantee makes advance payments to contractors, it shall ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds (usually 30 days). *Payment requests for contractors shall not be sent to NIFA for review or approval.*

## **11. FINANCIAL REPORTING**

All questions relating to financial reports should be submitted to:

Awards Management Branch  
Office of Extramural Programs, NIFA  
U.S. Department of Agriculture  
STOP 2271  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-2271  
Telephone: (202) 401-4986  
Facsimile: (202) 401-1804  
Email: [awards@nifa.usda.gov](mailto:awards@nifa.usda.gov) (preferred method)

A "Federal Financial Report," Form SF-425, is due on a **quarterly basis no later than 30 days following the end of each reporting period. A final "Federal Financial Report," Form SF-425, is due 90 days after the expiration date of this award.** The report must be submitted to the Awards Management Branch (AMB). The preferred method of submission is as a portable document format (PDF) attachment to an email sent to the email address noted above.

- (1) All drawdowns must be made within 90 days after the expiration date of the award and before the final SF-425 is submitted.
- (2) The report shall be completed on a single award basis.
- (3) Both cash management information (lines 10(a) through 10(c)) and financial status information (lines 10(d) through 10(o)) on the form are to be completed.
- (4) The awardee shall report program outlays and program income on the same accounting basis (i.e., cash or accrual) that it uses in its normal accounting system.
- (5) When submitting a financial report, the total matching contribution, if required, should be shown in Item 12., Remarks.
- (6) Final Financial Report - The final SF-425 report must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the SF-425 is due, it shall request an extension of time to submit the report. See Article 2. Further, when a final report is overdue (beyond the 90-day period following the award expiration date and not covered by an approved extension of the due date for submission of the report), the award will be placed on "manual review," which restricts the awardee's ability to draw funds. If any remaining funding is needed by the awardee, the awardee must contact AMB and request a draw providing AMB with justification and documentation to support the draw. Such draw requests will only be approved in extenuating circumstances, as determined by NIFA.

## **12. PERFORMANCE MONITORING AND REPORTING**

**General.** The grantee is responsible for monitoring day-to-day project performance to ensure that project goals and performance schedules are met, for containing costs, and for ensuring that progress is reported to NIFA in a timely manner. Changes in plans that are seen as materially accelerating or delaying established performance schedules or resulting in cost deviations shall be reported immediately to the ADO. **Failure to provide notification of problems that could impact schedules or costs or failure to report performance in a timely manner will be considered performance deficiencies.**

**Benchmarks and Costs.** The benchmark schedule submitted as part of the grantee's approved proposal shall serve as a foundation for NIFA' compliance monitoring. If at any time during project performance the grantee fails to meet an approved benchmark or anticipates that it will fail to meet such a benchmark, the grantee shall immediately provide the ADO with a written assessment of the impact that this failure is expected to have on the completion of all subsequent benchmarks. Where the adjustment reveals that any benchmark will be postponed by 60 days or more, the assessment shall include an explanation for the delay and a revised completion schedule.

The grantee shall provide immediate notification to the ADO whenever events occur that could impact total project costs by five percent (5%) or more. The notification shall include an identification of the condition or situation and the amount and direction of the change in costs (i.e., cost overruns or cost savings). Where cost overruns are expected, the grantee shall provide an explanation of actions taken to reduce these costs.

**Annual Performance Reports.** To satisfy formal reporting requirements, an annual performance report is due in NIFA 90 days after completion of the first 12 months of the initial grant award and annually thereafter during the project period. Each report shall cover work performed during the previous 12-month period, including any funded or unfunded time extensions. If this project is supported in annual funding increments, the performance report required as part of the grantee's annual follow-on grant proposal shall satisfy this reporting requirement through the grantee's final application for funds. Thereafter, these annual performance reports shall be submitted to the ADO. Performance reports should not exceed *two pages* in length, should contain appropriate identifying data (the grantee's name as specified in Block 13 of Form NIFA-2009, the name of the designated PD, the grant number assigned to the project by NIFA, and the title of the project) and shall provide the following information:

- a. A comparison of actual accomplishments with the goals or objectives established for the program during the reporting period, including percentage-of-completion data and a computation of square footage costs for all projects under taken;
- b. The reasons for slippage if approved goals were not met;
- c. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or unexpectedly high unit costs. Identify any issues, favorable or adverse conditions, changes, or situations which are expected to impact the scope, size, cost, or completion schedule for the project, along with a discussion of proposed or actual actions taken by your institution to resolve any problems encountered.
- d. If the proposed represents any change to your approved five-year plan, please provide a description of, and justification for, the change;
- e. A summary of activities to be undertaken during the ensuing 12-month period;
- f. A listing of A/E, and construction contracts entered into **during this reporting period only** for each program component in the following format:

<b>Program Component</b>	<b>Name of Contractor</b>	<b>Proposed Amount</b>	<b>Date Approved by NIFA</b>
a.			
b.			
c.			

- e. A detailed breakdown of all project costs incurred to date (cumulative), in the following format:

Cost Item	Federal Share	Non-Federal Share (if applicable)

The submission of annual performance reports does not relieve the grantee of responsibility for notifying the ADO immediately whenever events occur that could materially impact the attainment of approved project goals or for reporting changes in completion schedules (i.e., benchmarks) or anticipated project costs as they occur. Requirements relating to submission of the final performance report are covered in Article 26.

**NOTE:** Three copies of all available news articles, announcements, press releases, and the like, that discuss or describe this project should be submitted to the ADO for recordkeeping purposes.

### **13. REAL PROPERTY**

**Acquisition.** All acquisitions of real property under this grant award (including lease or rental), shall be approved by the ADO *prior to entering into or making a firm commitment to enter into the transaction.* If such acquisition is authorized under this grant, the approved budget will so state. Where acquisition of real property becomes necessary subsequent to the effective date of grant award, the grantee shall request prior approval in a post-award action as specified in Article 20.

**Title and Use.** Title to real property acquired or constructed under this grant, *regardless of funding source* (Federal, non-Federal, or a combination of these), shall vest in the grantee from date of acquisition or construction and, during the period of Federal financial interest, shall be used for the originally approved purpose as long as it is needed for that purpose. When no longer needed for that purpose, the grantee may request approval from the ADO to use the property in other Federally sponsored projects. Approval to use the property in other projects shall be limited to projects whose purposes are consistent with those contained in the National Agricultural Research, Extension, and Teaching Policies Act of 1977, as amended.

All matching contributions of real property will become part of this grant project. As such, the Federal Government will acquire a continuing financial interest in the contributed property in the same manner as if the property had been acquired or constructed with direct Federal funds.

The grantee shall not use real property acquired or constructed under this grant to provide services for a fee in competition with private firms that provide equivalent services, even if such services align with statutory purposes. The use of real property to compete with the private sector shall not be approved.

**Disposition.** Real property acquired in whole or in part with project funds may not be conveyed, transferred, assigned, mortgaged, leased, or in any other manner encumbered during the period of Federal financial interest in the property without prior written approval from the ADO. When real property acquired at least in part with project funds is of no further use to the grantee, the grantee shall request disposition instructions from the ADO *prior to the grantee's making any irreversible commitment relating to property disposition.* In response to such a request, the ADO shall instruct the grantee to take one of the following actions:

- a. Sell the property and return net proceeds to NIFA in an amount equal to the percentage of the NIFA contribution to the total acquisition or construction cost of the property (after deducting necessary selling and fix-up costs);
- b. Transfer title to an eligible non-Federal third party, along with the Federal financial interest, with the grantee's receiving an amount of the fair market value of the property equal to the grantee's percentage of participation in the acquisition or construction cost of the property (in this case, the Federal financial interest runs with the total property and the transfer of ownership to a non-Federal third party does not extinguish this interest; rather, the new owner assumes the rights and responsibilities of the transferor);
- c. Retain title and return net proceeds to NIFA in a percentage of the fair market value equal to NIFA's participation in the total acquisition or construction cost of the property; or
- d. Transfer title to the Federal Government, with the grantee's receiving a percentage of the fair market value equal to its share of the total acquisition or construction cost of the property.

All financial transactions relating to the acquisition or disposition of real property must acknowledge the fair market value of the property at the time of the transaction. Transactions relating to the disposition of real property must reflect the highest and best use of the property and shall be calculated in a manner that results in the largest possible return on investment. All amounts shall be calculated in accordance with the provisions of 7 CFR 3019.32(c) or 7 CFR 3016.31(c), as applicable.

**Appraisals.** All real property approved for acquisition or sale or which is donated as an in-kind matching contribution under this grant award shall be appraised to determine its current fair market value. Such appraisals shall be performed by an independent appraiser (e.g., state-certified real estate appraiser or General Services Administration) no more than 60 days prior to the grantee's entering into or committing itself to enter into any transaction to acquire or sell such property under this grant award. All appraisals shall be certified by the AR and submitted to the ADO.

**Insurance.** The grantee shall ensure that the construction contractor carries adequate insurance to protect life and property during the construction activity. If flood or property protection insurance is required under this grant, the grantee must maintain the policy for the period of Federal financial interest in the real property.

#### **14. BID GUARANTEES AND BONDING**

The grantee shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds where the bid or contract is for \$100,000 or less. Where the bid or contract is for more than \$100,000, the grantee shall secure:

- a. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price;
- b. A performance bond on the part of the contractor for one hundred percent (100%) of the contract price; and
- c. A payment bond on the part of the contractor for one hundred percent (100%) of the contract price.

The grantee shall require contractors to carry adequate fidelity bond coverage when it is determined by the grantee that such coverage is necessary to protect grantee and Federal interests under this project.

The bonds identified in this article may be obtained from companies holding certificates of authority as acceptable sureties. A listing of these companies is published annually by the U. S. Department of Treasury.

#### **15. CONTRACTS**

**General.** The grantee is authorized to use institutional policies and procedures to procure goods and services under this grant, provided that these policies and procedures are consistently applied, regardless of funding source, and at least comply with the standards set forth in USDA regulations at 7 CFR Part 3019 (however, see the "Prior Approval Requirements" outlined below). Practices that unduly restrict competition (such as giving preferential treatment to local or in-state bidders or imposing unnecessary qualification requirements on bidders or contractors) are prohibited unless mandated by state or local statute. To further eliminate unfair competitive advantage and ensure objective performance, contractors or potential contractors who develop or assist in developing statements of work, bid or solicitation packages, specifications, systems drawings, or other project documents may not compete for that contract.

*The grantee must obtain prior approval from the ADO for equipment purchases or when entering into contractual arrangements for A/E, construction, construction supervision, or other services under this project when using Federal funds or a combined use of Federal and non-Federal funds. This prior approval requirement does not apply when the grantee is using only non-Federal funds. However, the following information concerning contracts issued with non-Federal funds should be submitted to NIFA since the use of non-Federal funds and its related costs incurred by the grantee is pertinent to the approved project activities under this grant award: (1) the name of the contractor, (2) amount of contract, and (3) a description of the work to be performed.*

*See subsections entitled, "Prior Approval Requirements" and "Bid Documents and Contract Clauses."*

**Contracting Methods.** One of the following methods is normally used by grantees to procure A/E, construction, or inspection services:

a. **Formal Advertising.** This method involves the issuance of a public notice inviting bids, the submission and public opening of sealed bids, and the award of a contract to the lowest responsive, responsible bidder. A responsible bidder is one that has the financial and other resources, technical qualifications, and experience to complete the project within the required schedule, or a demonstrated ability to obtain them; a satisfactory record of performance over a sufficient period of time that the grantee is able to make an informed judgment; an adequate recordkeeping system; and a demonstrated compliance or willingness to comply with civil rights, equal employment opportunity, and other public policy requirements.

b. **Competitive Negotiation.** This method involves the issuance of a public notice inviting bids; the technical and financial evaluation of bids; negotiation with the most highly qualified bidders; and the award of a contract to the best bidder or offeror, price, bidder experience and other qualifications, nature of the work to be performed, and other factors considered.

c. **Noncompetitive Negotiation.** This procurement method entails the solicitation of a bid from only one source or the solicitation of bids from a number of sources that results in inadequate response. Noncompetitive negotiation will be

approved **only** if a legitimate emergency exists that precludes the use of competitive procurement or if it can be demonstrated that re-advertising will not produce a satisfactory pool of bidders. The fact that a contractor is already on site and is performing well or that previous experience with a contractor was satisfactory are not in themselves sufficient justification to bypass competitive procedures.

**Public Notice.** All public notices should be placed in newspapers, trade journals, or other media with at least a regional circulation. For projects whose construction costs are expected to exceed \$10 million, the notice should be placed in publications with a nationwide distribution. In addition to a clear and accurate description of all technical requirements to be provided, all public notices must state clearly the time, date, and location for the receipt of bids, and provide information on pre-qualification procedures (if applicable) and contain the required acknowledgment of support (see Article 4., Certifications).

Public notices may request alternates to base bids as long as these alternates are keyed to specific changes aimed at achieving economy, e.g., the incorporation of value engineering techniques in bid documents for construction over \$10 million or the substitution of materials. Alternate bids also may be used when the amount of the low bid is expected to exceed the amount of funds available to award the contract, and the grantee must make downward adjustments in the scope of the project to reduce costs. If all bids exceed the funds available after taking these steps, the grantee may reject all bids and issue a revised public notice containing reduced specifications or may negotiate an acceptable price with the best offeror.

**Pre-qualification of Bidders.** If authorized by state law, the grantee may use a pre-qualified list of contractors provided that the following conditions are met:

- a. The pre-qualified list is routinely updated at least every six months;
- b. Any request from a bidder or potential bidder for inclusion on the list is considered and acted upon if the request is received at least 30 days before bid opening;
- c. Adequate public notice of the pre-qualification procedure is provided; and
- d. The procedure does not unduly restrict competition.

**Prior Approval Requirement.** The grantee must obtain approval from the ADO *prior to using Federal funds to enter into each contractual arrangement*. To obtain prior approval, the grantee must submit the following written information regarding each contract to the ADO as soon as the contractor has been selected:

- a. A description of the process used by the grantee to select its contractors (required on a one-time only basis under this award, not for each contract);
- b. A listing of newspapers, trade journals, or other media in which public notices soliciting bids for contracts on this project appear;
- c. The name of the selected contractor, a description of all work to be performed, and the amount of compensation to be paid;
- d. A bidder's list if the procurement is accomplished using the formal advertising method (e.g., sealed bid or competitive negotiation methods);
- e. A justification if the procurement involves the proposed award of a contract based on noncompetitive negotiation (i.e., sole source selection);
- f. State if contractor chosen is the lowest bidder. If the contractor chosen is not the lowest bidder, the grantee must submit a justification for selecting the contractor chosen at a higher cost. (Exception: This requirement does not pertain to A/E costs).
- g. A breakdown of the amount of Federal (and non-Federal funds if applicable) to be used to pay each contract; and
- h. A certification from the grantee that the provisions outlined in this Article under "Bid Documents and Contract Clauses") are included, as appropriate, in bid documents and any resulting contracts

**NOTE:** Neither the "cost-plus-a-percentage-of-cost" method nor the "percentage-of-construction-cost" method shall be approved for the procurement of goods or services under this grant.

**Bid Documents and Contract Clauses.** In addition to minimum provisions that define a sound and complete bid document or contract (including the nature and scope of work to be undertaken, performance period, total cost, and payment provisions), all solicitations, bids, contracts, and/or other subtier arrangements shall include provisions that are consistent with applicable statutes and Federal regulations, including, but not necessarily limited to, the following:

- a. **Debarment and Suspension.** The following lower-tier transactions (including solicitations for these lower-tier transactions) shall contain a provision that requires lower-tier participants (other than Federal agencies) to include a certification in any proposal submitted to the grantee. Form AD-1048, available on the NIFA web site at [http://nifa.usda.gov/funding/all\\_forms.html](http://nifa.usda.gov/funding/all_forms.html), may be used by the grantee to obtain these certifications. Lower-tier

transactions generally include:

1. Any transaction (other than a procurement contract) for goods and services, regardless of type;
2. Any procurement contract for goods and services, regardless of type, that is expected to equal or exceed the Federal ceiling on small purchases (simplified acquisition threshold currently is \$100,000); and
3. Any procurement contract for goods and services, regardless of amount, under which the participant will have a critical influence on or substantive control over the covered transaction (i.e., principal investigators and providers of Federally-required audit services).

Lower-tier participants shall be required to provide immediate notification to the grantee if at any time the lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

b. **Byrd Anti-Lobbying Amendment.** Any bidder who applies or bids for an award of \$100,000 or more shall file a certification with the grantee stating that it has not used and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. In addition, all contracts and grants in excess of \$100,000 shall require recipients to certify that they have not used and will not use Federal funds to lobby or influence public officials. Provision also shall be made for contractors and grantees to disclose lobbying activities using non-appropriated funds. If conditions change during project performance, contractors and grantees shall be required to update their certifications. Forms that should be used in disclosing lobbying activities included in the annual Request for Proposals may be used for this purpose.

c. **Contractual Remedies.** All contracts in excess of \$10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual, or legal remedies to cover instances in which the grantee or its contractors violate or breach contract terms, and shall provide for such remedial actions as may be appropriate. These provisions shall specifically exclude the United States and its departments, agencies, and employees from being a party to any litigation or appeal resulting from contract performance.

d. **Termination Provisions.** All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions under which the contract may be terminated due to circumstances beyond the control of the contractor.

e. **Equal Employment Opportunity.** All nonexempt contracts awarded by the grantee and its contractors or subgrantees (as well as all nonexempt bid solicitations) having a value of more than \$10,000 shall contain provisions requiring compliance with E.O. 11246 entitled, "Equal Employment Opportunity," as amended by E.O. 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). See Article 16 for text which must be included in bid solicitations and construction contracts.

f. **Copeland "Anti-Kickback" Act.** (18 U.S.C. 874 and 40 U.S.C. 276(c)). All contracts and subgrants in excess of \$2,000 for construction or repair awarded by the grantee and its subrecipients shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874), as supplemented in Department of Labor regulations (24 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which the person is otherwise entitled. The grantee shall notify the ADO of all reported or suspected violations.

g. **Maintenance of and Access to Records.** All negotiated contracts over \$10,000 must include a provision requiring the contractor to maintain books, records, documents, and other evidence pertinent to performance under the contract in accordance with generally accepted accounting principles and practices, consistently applied. In addition, they must provide for access to these records by NIFA, the Comptroller General of the United States, the grantee, or their duly authorized representatives, for the purpose of inspection, audit, and copying during normal business hours. Retention periods for contractor records are the same as those required for the grantee.

h. **Clean Air Act and Federal Water Pollution Control Act.** Contracts and subgrants in excess of \$100,000 shall contain provisions that require compliance with applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 *et seq.*), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended. In addition, such provisions shall state that no part of the work may be carried out in any facility listed on the EPA List of Violating Facilities and shall require that contractors and subrecipients report violations to the grantee. The grantee shall report violations to the ADO and to the appropriate EPA regional office.

i. **Acknowledgment of Support.** All requests for proposals and bid solicitations shall contain an acknowledgment of Federal support that includes the information specified in Article 4. Certifications, of these terms and conditions. In addition, all contracts (except those issued to Federal employees for consulting purposes) shall clearly state that neither the United States nor any of its departments, agencies, or employees is, or will be, a party to the contract.

j. **Contingent Fees.** All bid solicitations and contracts shall contain a provision that no person or selling agency has been retained or employed to solicit or secure the contract for a commission, percentage, brokerage, or contingent fee

except employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. Provision shall be made for the discretionary annulment of the contract or recovery of such fees in the event of breach or violation.

k. **Liability Insurance.** All contracts shall contain a provision requiring the contractor to obtain and maintain sufficient comprehensive liability insurance to protect the parties to the contract from claims for bodily injury, death, or property damage arising from project performance.

l. **Design Responsibilities.** All contracts for A/E services must include provisions affirming the contractor's responsibility for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services to be furnished under the contract. In addition, it shall require the A/E contractor to correct any errors, omissions, or other deficiencies in designs, drawings, specifications, reports, or other services without payment of additional compensation.

m. **Construction Responsibilities.** All contracts for construction shall provide for all work to be performed in accordance with approved designs, drawings, and specifications. They also shall provide for a normal guarantee period (usually one year from the date of substantial completion) and shall set forth action required of the contractor to effect necessary repairs or to correct defects in workmanship.

n. **Value Engineering.** All contracts for A/E services in excess of \$10 million must include value engineering provisions.

This listing is not exhaustive, nor does it provide exact wording that is required in some instances. The grantee is encouraged to review actual copies of legal and regulatory language and to ensure that accurate and sufficient provisions are made a part of its subtier awards. Certifications that are obtained from subtier recipients shall be retained by the grantee and included with other project-related records. The grantee shall not furnish to NIFA or USDA copies of subtier certifications.

## **16. EQUAL EMPLOYMENT OPPORTUNITY**

**Exemptions.** In accordance with the provisions of 41 CFR 60-1.5, the following are exempt from the requirements contained in this article:

a. Contracts and subcontracts which do not and are not expected to have an aggregate value within a 12-month period exceeding \$10,000 other than government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes;

b. Contracts and subcontracts for work performed outside the U.S. with employees not recruited within the U.S.;

c. Agencies, instrumentalities, and subdivisions of state or local government not participating in work under Federal contracts or subcontracts awarded to a state or local government;

d. Certain educational institutions hiring and employing individuals of a particular religion if such educational institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such educational institution is directed toward the propagation of a particular religion;

e. Employment preferences for Indians on contracts or subcontracts on or near an Indian reservation; and

f. Contracts or facilities exempted by the Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor; or by the head of a Federal agency in the interests of national security.

**Applicability.** Unless specifically exempted above, clauses a. through e. below shall be included in all construction contracts awarded by the grantee under this project. In addition, clauses c. and d. shall be furnished to all bidders under this project.

a. **Equal Employment Opportunity.** During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, or national origin.

3. The contractor will send to each labor unit representative of workers with which he has a collective bargaining

agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of E.O. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by E.O. 11246 of September 14, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or Federally assisted procedures authorized in E.O. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in E.O. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

7. The contractor will include in the portion of the sentence immediately preceding paragraph a., "Equal Employment Opportunity," and the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of E.O. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in Federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and Federally assisted construction contracts pursuant to the E.O. and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II Subpart D of the E.O. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**b. Certification of Nonsegregated Facilities.** (Applicable to contracts and subcontracts exceeding \$10,000 which are not exempt from the provisions of paragraph a., "Equal Employment Opportunity," of this form.)

1. By entering into an agreement related to the work described in the contract documents, the contractor or subcontractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit employees to perform their services at any location under its control where segregated facilities are maintained. The contractor or subcontractor further certifies that it will not maintain or provide for employees any segregated facilities at any establishments under its control and that it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The contractor or subcontractor agrees that a breach of this certification is a violation of paragraph a, "Equal Employment Opportunity." As used herein, the term "segregated facilities" means waiting rooms, work areas, and washrooms, restaurants and other eating areas, time clocks, restrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The contractor further agrees that (except where identical certifications are obtained from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of paragraph a, "Equal Employment Opportunity," that it will retain such certifications in its files, and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for

specific time periods):

**"NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATION OF NONSEGREGATED FACILITIES"**

A certification of nonsegregated facilities, as required by the May 9, 1967, order (32 FR 7439, May 19, 1967) on elimination of segregated facilities by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of "Equal Employment Opportunity." The certification may be submitted either for each subcontract or for all subcontracts during a period, i.e., quarterly, semiannually, or annually."

2. The penalty for making false statements in certifications required by paragraph b.1 is prescribed in 18 U.S.C. 1001.

c. **Solicitations.** The following notice shall be included in and shall be part of all solicitations for offers and bids on all Federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in designated geographical areas:

**"NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (Executive Order 11246)"**

"1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein."

"2. The goals and timetables for minority and female participation expressed in percentage terms for the Contractor's aggregate workforce, in each trade on all construction work in the covered area are as follows:

Timetable	Goals for Minority Participation in Each Trade	Goals for Female Participation in Each Trade
-----------	--	--

(Insert Goals for Each Year)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area."

"The Contractor's compliance with the Executive Order (E.O.) and the regulations in 41 CFR 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth herein under paragraph d., and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the EO, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed."

"3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier of construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the contractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed."

"4. As used in this Notice and in the contract resulting from this solicitation, the "covered area" is (State, County, and City)."

d. **Equal Opportunity Clauses.** Standard Federal Equal Employment Opportunity Construction Contract Specifications (E.O. 11246)(Applicable to all Federally assisted contracts in excess of \$10,000 to be performed in designated geographical areas.)

1. As used in these specifications:

(a) "Covered area" means the geographical area described in the solicitation from which this contract resulted.

(b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

(c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

(d) "Minority" includes:

(1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race).

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands).

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of the specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR Part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligation under the Equal Employment Opportunity Clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the goals and timetables set forth in the Plan.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, E.O. 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The

Contractor shall provide notice of these programs to the sources compiled under 7.(b) above.

(f) Disseminate the Contractor's Equal Employment Opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its Equal Employment Opportunity obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company's Equal Employment Opportunity policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's Equal Employment Opportunity policy and affirmative action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items with onsite supervisory personnel such as superintendents, general foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the matter.

(h) Disseminate the Contractor's Equal Employment Opportunity policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's Equal Employment Opportunity policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations; to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the Equal Employment Opportunity policy and the Contractor's obligations under these specifications are being carried out.

(n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's Equal Employment Opportunity policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.(a) through (p)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7.(a) through (p) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the E.O. if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the E.O. if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or any other affirmative action standards to discriminate

against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to E.O. 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Employment Opportunity clause, including the suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to E.O. 11246, as amended, and its implementing regulations, by the Office of Federal Contracts Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and E.O. 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7. of the specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the E.O., the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR Part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company's Equal Employment Opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

e. **Reporting Requirements.** Each contractor and subcontractor shall file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO-1), promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress, or such form as may hereafter be promulgated in its place if such contractor or subcontractor has (i) 50 or more employees; (ii) is a prime contractor or first tier subcontractor; and (iii) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided*, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it is not exempt in accordance with 41 CFR 60-1.5 and it meets the requirements of paragraphs (i) and (iii) of this section.

## **17. PERFORMANCE BY FORCE ACCOUNT**

If performance by the grantee's own permanent work force is authorized (see Article 8.e. 1 - 6) under this grant award, the approved project budget will so indicate. Where approval has been granted for this type of performance, the authorization was based upon clear demonstration that the proposed work can be accomplished more economically and with equal competence by the use of this method compared with the use of competitive procurement, that *bona fide* emergency circumstances dictate its use, and that necessary personnel and/or equipment do not have to be hired or purchased to carry out the work proposed. If circumstances upon which this authorization was based change during project performance so that this approval is rendered invalid, the grantee shall notify the ADO immediately. Such notification must be signed or countersigned by the AR.

**Complete, accurate, and current records must be maintained for all force account work, including receipts for the purchase of materials and certified pay records for the employees involved. These records are subject to audit and, upon reasonable notice, must be made available to NIFA or its representatives for inspection as stated in Article 22.**

## **18. CONSULTANT SERVICES**

The grantee may enter into appropriate arrangements to obtain necessary consultant services provided that **prior approval** is obtained from the ADO and further provided that:

a. The services to be provided are within the scope of this project (e.g., the hiring of an engineer with education, training, or experience in seismology), are not available from the A/E firm or construction contractor, and will not be duplicated elsewhere under this grant award;

b. The grantee does not propose to pay a consulting fee to one of its own employees.

Approval shall not be granted for consulting services that lie outside the scope of this project, such as hiring an individu-

al or firm to consult about issues relating to the program to be housed in the completed building.

Federal employees may provide consulting services to the grantee or to a subrecipient as required to achieve project objectives and may be compensated for their services provided that such services are performed outside of their official duty hours or while they are in leave status and provided also that they receive approval from their respective agencies prior to providing these services. *Under no circumstances may employees of NIFA receive compensation under a NIFA-funded project, regardless of the tier at which services are rendered.*

## **19. PROGRAM INCOME**

**General Income.** General program income refers to gross income earned by the grantee from activities supported under this grant award. It includes, but is not limited to, income from fees for services performed, the use or rental of real property acquired under Federally-funded projects, useage or rental fees, royalties on patents or copyrights, and interest on loans made with program income (interest earned on advances of Federal funds is not program income). General program income earned or accruing to the grantee during the project period, except proceeds from the sale of real property, may be retained and added to total project funds and used to accomplish approved construction-related goals of the grant project. However, this income *may not* be used to incur additional costs, beyond those already approved, or to expand the scope of an approved project.

The grantee shall have no obligation to NIFA or USDA regarding program income earned after the expiration date of award unless otherwise specified in these terms and conditions. Disposition of program income earned by contractors may be determined in accordance with the grantee's own policies, provided that these policies are consistent with the provisions of this paragraph.

Requirements governing proceeds from the sale of real property are contained in Article 13.

**Interest Income.** *Interest income earned on advances of Federal funds is not general program income.* Grantees other than state agencies shall maintain advances of Federal funds in interest-bearing accounts. Interest earned on these advances shall be remitted promptly by check made payable to NIFA.

## **20. PRIOR APPROVALS**

The grantee shall obtain prior approval from the ADO for the following post-award changes to the approved project. All requests must be signed or countersigned by the AR and, unless otherwise noted herein, should be submitted at least 45 days, unless otherwise noted, in advance of the required action date. *Requests that are received without the AR's signature shall be returned to the grantee to obtain the required institutional approval.*

**Budget Changes.** Prior approval must be obtained whenever it becomes apparent that a proposed budget revision will:

- a. Result in a change in the approved project scope or objectives of the project or program;
- b. Involve a cost requiring prior approval that was not approved in the grant award;
- c. Involve a cost that was disapproved or restricted or whose general allowability is questionable under the grant award;
- d. Involve a transfer of funds between contracting activities and force account work; or
- e. Result in the need for additional Federal funds.

**Change in Project Scope or Objectives.** Any change in the scope or objectives (including the Five-Year Plan of Work and Annual Proposals) identified in the approved grant award, requires prior approval.

In general, the final scope and objectives of your project will be determined prior to the award of the initial grant, and any change in the scope or objectives identified in the grant requires prior approval from the ADO.

**Project Leadership.** Any replacement or significant change in responsibilities or level of effort for the approved project director requires notification and prior approval. If the services of the designated PD will no longer be available, the grantee's notification shall include the name and signature of a proposed replacement PD and, if not provided in the approved grant application, brief biographical information for that person (not to exceed two pages, including publications). If changes in responsibility or level of effort are proposed, the notification must include an explanation of expected project impacts if such action is taken. *The project may not continue for more than 30 days without an identified PD.*

**Transfer of Substantive Work.** Transferring to a third party, by contracting or other means, actual performance of A/E, construction, or inspection work as outlined in the approved grant application must receive prior approval. See Article 15 for procedural and related information on this requirement.

**NOTE:** Due to limitations on the period for which bidders will guarantee prices, the 45-day advance notification requirement does not apply to the award of contracts for A/E, construction, or inspection services. However, the grantee is urged to submit these requests as soon as possible to protect prices and avoid start-up delays.

**No-cost Extensions of Time.** The grantee is expected to complete work under this grant within the project period specified in the grant award. However, if the grantee needs additional time to complete activities *within the approved scope of work and within the limit of Federal funds already made available*, NIFA will consider a request to extend the expiration date of award at no additional cost to the Federal Government. The request must contain, at a minimum, the following information:

- a. The length of time for which the extension is being requested and a justification for the extension;
- b. A summary of progress to date as described in Article 12, including information on the type and percentage of work remaining to be completed;
- c. The amount of project funds expected to remain unobligated on the scheduled expiration date of award; and
- d. A projected timetable to complete the portion of the project for which the extension is being requested.

The fact that funds are expected to remain unobligated on the award expiration date is not in itself sufficient justification to receive an extension of time. The decision by the ADO to approve or disapprove a request to extend the expiration date of award shall be based solely upon whether or not additional time is necessary to achieve approved project goals.

**Requests for no-cost extensions of time after expiration date.** NIFA may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be approved only for extenuating circumstances, as determined by NIFA. The awardee's AR must submit the requirements identified in a. through e. of this section as well as an "extenuating circumstance" justification and a description of the actions taken by the awardee to minimize these requests in the future.

**Real Property.** Capital expenditures for the acquisition or lease of real property or the encumbrance or disposition of real property requires approval prior to the grantee's irreversibly committing itself to such a course of action. See Article 13 for additional details relating to this requirement.

**Pre-award Costs.** Prior approval shall be requested by the grantee to incur pre-award costs. Any approval by NIFA is subject to the limitations expressed in Article 8.

**Change Orders.** In general, the grantee is responsible for reviewing requests from its contractors and for granting or denying approval. However, the grantee shall not approve any action which is inconsistent with the purpose of this grant award or its requirements, including these terms and conditions. If a request from a contractor will result in an expansion of project scope; an increase in total project costs by five percent (5%) or more; the acquisition, disposition, or encumbrance of real property; or more than a 60-day delay in the attainment of benchmarks, the grantee shall obtain prior approval from the ADO before approving the contractor's request.

**Extension to Submit a Final Federal Financial Report, Form SF-425.**

**Request submitted PRIOR to the end of the 90-day period following the award expiration date.** The request should include a provisional report (showing unliquidated obligations), justification for not submitting a final by the initial due date, and the anticipated date for submission of a final report. Note that any extension of time is subject to statutory or agency policy limitations. Funds will remain available for drawdown during an approved extension of time.

**Request submitted FOLLOWING the end of the 90-day period following the award expiration date.** Such requests will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report (showing unliquidated obligations) as well as an anticipated submission date for the final report, a justification for the late submission, and a justification for the extenuating circumstances. Note that any extension of time is subject to statutory or agency policy limitations.

## **21. FACILITY COMPLETION**

The grantee is responsible for ensuring that the facility is completed within a reasonable time after project commencement. The facility will be considered substantially complete when, at the final inspection, it is determined that:

- a. All but minor components of the project (e.g., spackling or touch up painting) have been completed in accordance with approved plans and specifications or approved modifications thereto;
- b. All major building systems (e.g., HVAC, water, sewer) have been installed, tested, balanced, certified, and are operating property so that the building is capable of functioning as designed;

c. All major safety systems (e.g., fire alarms, showers, pollution control devices) have been satisfactorily installed, tested, balanced, certified, and are operating properly; and

d. All specialized fixed equipment (e.g., cage washers, laboratory casework and connections, built-in sterilizers) have been satisfactorily installed, tested, balanced, certified, and are functioning properly.

Prior to facility occupancy, the grantee shall forward to the ADO evidence that final building inspection has been completed by responsible officials of the local jurisdiction in which the facility is located or shall provide written evidence that an occupancy permit (or similar document indicating compliance with building permit requirements) has been issued. Form NIFA-860, "Certificate of Facility Completion," included in the annual Request for Proposals may be used for this purpose.

## **22. SITE VISITS AND PROJECT RECORDS**

Work performed under this grant is subject to inspection and evaluation at all times by officials of NIFA, or by any of their duly authorized representatives through such mechanisms as the review of performance reports and site visits. To the extent possible, all site visits will be made at mutually acceptable intervals and will be timed to avoid disruption to the construction work and to grantee programs and personnel.

NIFA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of access to any books, documents, papers, or other project-related records of the grantee and its contractors under this grant for examination and audit purposes and to obtain excerpts and transcripts. Microfilm, microfiche, photographs, etc., may be substituted for original records.

Financial records, supporting documents, statistical records, and other records pertinent to this grant award shall be retained by the grantee and its contractors for a period of three years after submission and acceptance of the final SF-425, "Federal Financial Report." Records relating to audits, appeals, litigation, or the settlement of claims arising out of project performance shall be retained until such audits, appeals, litigation, or claims have been settled. Additional information may be obtained by calling or writing to the administrative contact person identified in Block 14 of Form NIFA-2009 or by referring to 7 CFR Part 3019.53.

## **23. SUSPENSION/TERMINATION**

If it is determined by NIFA that the grantee has not complied with the requirements of the program or the grant award, the ADO shall provide the grantee with written notification of noncompliance, corrective action(s) that must be taken by the grantee to come into compliance, and the date by which such action(s) must be taken or evidence provided that required corrective action has been initiated satisfactorily. Failure of the grantee to achieve compliance or to initiate action to come into compliance may result in suspension of payments, cost allowance(s), withholding of further increments (if applicable), or suspension or termination of the grant award in whole or in part.

Circumstances also may arise in which either the grantee or NIFA wishes to terminate performance under this grant in whole or in part. Where there is agreement between the grantee and NIFA that continuation of the project would not produce results commensurate with the further expenditure of project funds, the project may be terminated by mutual agreement. The inability of the grantee to continue performance under this project (or to continue at the level of effort necessary to accomplish approved project objectives) also is grounds for termination; therefore, the ADO must be notified immediately whenever it becomes known that the grantee will be unable to continue with the project.

Costs incurred during a period of suspension or after the effective date of termination will be considered unallowable, except those otherwise allowable costs which, in the opinion of NIFA, the grantee could not reasonably avoid, or which were specifically authorized in the notice of suspension or termination. In addition, the grantee will be required to cancel as many outstanding financial obligations as possible during a period of suspension or after the effective date of termination. Legitimate obligations incurred prior to the effective date of the suspension or termination will be honored, however, and may be liquidated during or after the period of suspension or termination.

Detailed instructions shall be provided to the grantee if suspension or termination occurs. (See 7 CFR Part 3019.60.)

## **24. RELEASE OF INFORMATION**

**General.** The Freedom of Information Act of 1966 (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552a), as implemented by USDA's regulation at 7 CFR Part 1.1 and supplemented by NIFA regulations at 7 CFR Part 3404, shall govern the release or withholding of information to the public in connection with this award. The release of information under these laws and regulations applies only to records held by NIFA and imposes no requirement on the grantee or on third parties to permit or deny access to their records.

**Policy.** The consideration by NIFA of a request for information concerning any individual, made by a party other than the

subject individual, will take into account both the right of the requester to be given such information (under the Freedom of Information Act) and the right to privacy of the individual to whom the record pertains (under the Privacy Act). In general, however, it is the NIFA policy that records relating to approved grant applications will be made available to members of the general public if requested in writing, while pending or disapproved applications will not be made available. A fee may be attached to the release of any documents.

This policy shall not affect retention period for project-related records or rights of access to such records or documents by NIFA, the Comptroller General, or their authorized representatives as stated in Article 22.

**Address.** Requests for records or inquiries about the release of information relating to this grant should be directed to:

FOIA Coordinator  
Information Staff, ARS  
U.S. Department of Agriculture  
Mail Stop 5128  
5601 Sunnyside Avenue  
Beltsville, Maryland 20705-5128  
Telephone: (301) 504-1640

## **25. MAXIMUM OBLIGATION OF NIFA**

The maximum financial obligation of NIFA under this grant award is the amount of funds *authorized* for the project, including any incrementally funded award (e.g., renewal or follow-on award). This amount is stated on Form NIFA-2009; however, in the event that an erroneous amount is stated on Form NIFA-2009, the approved budget, or any supporting document relating to this grant award, NIFA shall have the unilateral right to make the correction and to make an appropriate adjustment in the NIFA share of the award to align with the Federal amount authorized.

## **26. GRANT CLOSEOUT**

**General.** Grant closeout is the process by which NIFA determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed. This grant and any subawards hereunder, regardless of tier, shall be closed out as soon as possible after the expiration date of award. While the grantee may use its own policies and procedures in closing out awards made to its recipients, the provisions contained in this article shall govern the closeout of this grant award.

**Final Performance Report.** An original and two copies of the final performance report are due 90 days after the award expiration date and shall be forwarded to the ADO. The report should not exceed *four pages* in length and shall contain the following information:

- a. Grantee institution name, grant number, project title, name(s) of PD(s); and signature of the AR;
- b. A summary (or bulleted listing) of all activities performed under the grant, including the date each activity was completed;
- c. Date of project completion, date of actual or projected occupancy, and date of actual or expected facility dedication;
- d. Three 8" x 10" glossy color prints of the completed facility; and
- e. A breakdown of final project costs in the same format as specified for interim performance reports in Article 12.

**Final Financial Status Report.** See Article 11 (6).

**Unused Balance of Funds.** Any unencumbered balance of funds advanced to the grantee, including any interest or investment income earned on fund advances that was not remitted previously, must be refunded to NIFA as soon as possible after the expiration date of award.

**Continuing Responsibilities.** The grantee shall have the following responsibilities after closeout of this grant.

a. **Real Property.** The closeout of this grant shall not affect the grantee's responsibility regarding the use or disposition of real property for which it is accountable during the period of Federal financial interest. It also does not affect the grantee's obligation to ensure recordation of the Federal lien on real property acquired or constructed with project funds.

b. **Records Retention.** The closeout of a grant does not affect the retention period, or the right of NIFA or its representatives to have access to, project records. Records shall be maintained and made available to authorized officials

in accordance with Article 22.

c. **Audit.** A final audit is not required to close out this grant award. Nonetheless, audits may be performed subsequent to closeout in accordance with 7 CFR 3052. NIFA reserves the right to recover funds resulting from disallowances made in any audit, regardless of when performed.