

§ 74.73

applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 74.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the HHS awarding agency may reduce the debt by paragraph (a) (1), (2), or (3) of this section:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, HHS awarding agencies will charge interest on an overdue debt in accordance with 4 CFR ch. II, "Federal Claims Collection Standards." (See 45 CFR part 30.)

Subpart E—Special Provisions for Awards to Commercial Organizations

SOURCE: 59 FR 43760, Aug. 25, 1994, unless otherwise noted.

§ 74.80 Scope of subpart.

This subpart contains provisions that apply to awards to commercial organizations. These provisions are in addition to other applicable provisions of this part, or they make exceptions from other provisions of this part for awards to commercial organizations.

§ 74.81 Prohibition against profit.

Except for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs (15 U.S.C. 638), no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11747, Mar. 22, 1996]

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§ 74.82 Program income.

The additional costs alternative described in § 74.24(b)(1) may not be applied to program income earned by a commercial organization except in the SBIR and STTR programs.

§ 74.83 Effect on intangible property.

Data sharing (FOIA) requirements as set forth in § 74.36(d)(1) do not apply to commercial organizations.

[65 FR 14418, Mar. 16, 2000]

Subpart F—Disputes

SOURCE: 59 FR 43760, Aug. 25, 1994, unless otherwise noted.

§ 74.90 Final decisions in disputes.

(a) HHS attempts to promptly issue final decisions in disputes and in other matters affecting the interests of recipients. However, final decisions adverse to the recipient are not issued until it is clear that the matter cannot be resolved through further exchange of information and views.

(b) Under various HHS statutes or regulations, recipients have the right to appeal from, or to have a hearing on, certain final decisions by HHS awarding agencies. (See, for example, subpart D of 42 CFR part 50, and 45 CFR part 16). Paragraphs (c) and (d) of this section set forth the standards HHS expects its member agencies to meet in issuing a final decision covered by any of the statutes or regulations.

(c) The decision may be brief but must contain:

(1) A complete statement of the background and basis of the awarding agency's decision, including reference to the pertinent statutes, regulations, or other governing documents; and

(2) Enough information to enable the recipient to understand the issues and the position of the HHS awarding agency.

(d) The following or similar language (consistent with the terminology of the applicable statutes or regulations) should appear at the end of the decision: "This is the final decision of the (title of grants officer or other official responsible for the decision). It shall be the final decision of the Department unless, within 30 days after receiving

this decision, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to (name and address of appropriate contact, e.g., the office responsible for awarding agency preliminary appeal process or, where none, the Departmental Appeals Board, Department of Health and Human Services, Washington, DC 20201). You shall attach to the notice a copy of this decision, note that you intend an appeal, state the amount in dispute, and briefly state why you think that this decision is wrong. You will be notified of further procedures."

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11747, Mar. 22, 1996; 62 FR 38218, July 17, 1997]

§ 74.91 Alternative dispute resolution.

HHS encourages its awarding agencies and recipients to try to resolve disputes by using alternative dispute resolution (ADR) techniques. ADR often is effective in reducing the cost, delay and contentiousness involved in appeals and other traditional ways of handling disputes. ADR techniques include mediation, neutral evaluation and other consensual methods. Information about ADR is available from the HHS Dispute Resolution Specialist at the Departmental Appeals Board, U.S. Department of Health and Human Services, Washington, DC 20201.

APPENDIX A TO PART 74—CONTRACT PROVISIONS

All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable where the cost of the contract is treated as a direct cost of an award:

1. *Equal Employment Opportunity*— All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*— All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874, as supplemented by De-

partment of Labor regulations, 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States." The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*— When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act, 40 U.S.C. 276a to a-7, and as supplemented by Department of Labor regulations, 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the HHS awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*— Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction contracts and for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-333, as supplemented by Department of Labor regulations, 29 CFR part 5. Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.