

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS
As Adopted in March 2008

**Applicable Department of Commerce terms and conditions for the Low-Power Television
and Translator Programs administered by the National Telecommunications and
Information Administration (NTIA)**

PREFACE

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

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

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

B. PROGRAMMATIC REQUIREMENTS

.03 Programmatic Changes

The recipient shall report programmatic changes to the Grants Officer, and shall request prior approvals in accordance with 15 CFR § 14.25 or 15 CFR § 24.30.

.04 Other Federal Awards with Similar Programmatic Activities

The recipient shall immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DoC

award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DoC award. DoC will not pay for costs that are funded by other sources.

.05 Non-Compliance with Award Provisions

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

.06 Prohibition Against Assignment by the Recipient

The recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies or other financing or financial institutions without the express written approval of the Grants Officer.

.07 Disclaimer Provisions

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

C. NON-DISCRIMINATION REQUIREMENTS

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

.01 Statutory Provisions

- a. Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d et seq.) and DoC implementing regulations published at 15 CFR Part 8 which prohibit

discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

- b. Title IX of the Education Amendments of 1972 (20 USC §§ 1681 et seq.) prohibiting discrimination on the basis of sex under federally assisted education programs or activities;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794) and DoC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance;
- d. The Age Discrimination Act of 1975, as amended (42 USC §§ 6101 et seq.) and DoC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- e. The Americans with Disabilities Act of 1990 (42 USC §§ 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f. Any other applicable non-discrimination law(s).

.02 Other Provisions

- a. Parts II and III of EO 11246 (30 FR 12319, 1965), as amended by EO 11375 (32 FR 14303, 1967) and 12086 (43 FR 46501, 1978), require federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO and Department of Labor regulations implementing EO 11246 (41 CFR § 60-1.4(b), 1991).
- b. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," and DoC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting Limited English Proficient (LEP) persons.

.03 Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with

respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

D. AUDITS

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

.02 Audit Resolution Process

- a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due DoC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. In accordance with the Federal Register notice dated January 27, 1989 (54 FR 4053), a recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 1. Unless the Inspector General determines otherwise, the recipient has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
 2. The recipient has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 3. The DOC shall review the documentary evidence submitted by the recipient and shall notify the recipient of the results in an Audit Resolution Determination Letter. The recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There

will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
5. The DOC shall review the recipient's appeal and notify the recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the appeal determination has been rendered, DoC will not accept any further documentary evidence from the recipient, No other administrative appeals are available in DoC.

E. DEBTS

.01 Payment of Debts Owed the Federal Government

Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. In accordance with 15 CFR§ 21.4, a debt will be considered delinquent if it is not paid within 15 clays of the due date, or if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted below. In addition, failure to pay the debt or establish a repayment, agreement by the due date, or if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action, including referral to the Treasury Offset Program, 31 C.F.R. § 285.5, and may result in DoC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions." Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

.02 Late Payment Charges

- a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act (31 U.S.C. 3701 et seq.), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. This rate is published in the Federal Register by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness.

- b. A penalty charge shall be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.
- c. An administrative charge shall be assessed to cover processing and handling the amount due.

.04 Effect of Judgment Lien On Eligibility For Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DoC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant, or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive finds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

G. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The recipient shall comply with the provisions of Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.

H. DRUG-FREE WORKPLACE

The recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Sec. 5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 702) and DoC implementing regulations published at 15 CFR Part 29, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance)" (published in the *Federal Register* on November 26, 2003, 68 FR 66534, which require that the recipient take steps to provide a drug-free workplace.

I. LOBBYING RESTRICTIONS

.01 Statutory Provisions

The recipient shall comply with the provisions of 31 U.S.C. §1352 and DoC implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.

.02 Disclosure of Lobbying Activities

The recipient receiving in excess of \$100,000 in Federal funding shall submit a

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

K. PROPERTY

.01 Standards

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

.02 Real Property

The recipient shall record liens or other appropriate notices of record to indicate that real property has been acquired or improved with Federal funds and that disposition conditions apply to the property. The Recipient shall not dispose of or encumber the property or any interest therein without approval of the Grants Officer.

L. ENVIRONMENTAL REQUIREMENTS

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with an early consideration of potential environmental impacts that projects funded with Federal assistance may have on the environment. The recipient and subrecipients must comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DoC to make an assessment on any impacts that a project may have on the environment.

.01 The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR parts 1500 through 1508) require that an environmental analysis be completed for all

major Federal actions significantly affecting the environment, NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements. Recipients of Federal assistance are required to identify to the awarding agency any impact, an award will have on the quality of the human environment, and assist the agency to comply with the National Environmental Policy Act. Recipients may also be requested to assist NOAA in drafting of an environmental assessment, if the Department determines an assessment is required. If additional information is required during the period of the award, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a project may have on the environment.

.02 Floodplain Management, EO 11988 and, Protection of Wetlands, EO 11990, May 24, 1977

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

.03 Clean Air Act, Clean Water Act, and EO 11738

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§ 1251 et seq.), and EO 11738, and shall not use a facility on EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR §15.5, and shall notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

.04 The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 et seq.)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

.05 The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)

Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the required reviews under the Endangered Species Act, as applicable.

.06 The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)

Funded projects must be consistent with a coastal state's approved management program for the coastal zone.

.07 The Coastal Barriers Resources Act, (16 U.S.C. § 3501 et seq.)

Restrictions are placed on Federal funding for actions within a Coastal Barrier System.

.08 The Wild and Scenic Rivers Act, as amended, (16 U.S.C. §§ 1271 et seq)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

.09 The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f-j)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer *so as* to threaten public health.

.10 The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§ 6901 et seq.)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

.11 The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended, (42 U.S.C. §§ 9601 et seq.)

These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.

.12 Environmental Justice in Minority Populations and Low Income Populations, EO 12898, February 11, 1994.

This order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

M. MISCELLANEOUS REQUIREMENTS

.01 Criminal and Prohibited Activities.

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including money representing grants, loans or other benefits).
- b. False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or presents any false, fictitious, or fraudulent statements, representations, or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. False Claims Act (31 U.S.C. 3729 et seq.), provides that suits under this act can be brought by the government, or a person on behalf of the government, for false claims under Federal assistance programs.
- d. Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

.03 American-Made Equipment and Products.

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

.07 Federal Employee Expenses.

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