



NATIONAL ENDOWMENT FOR THE
Humanities

OFFICE OF **GRANT MANAGEMENT**

**GENERAL GRANT
PROVISIONS FOR
ORGANIZATIONS**

REVISED NOVEMBER 2002

Applies to awards issued prior to March 2005

The *General Grant Provisions for Organizations* are based on the administrative requirements of the *Office of Management and Budget Circular A-110* and the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* and apply to all NEH grants except for challenge grants, general support grants to state humanities councils, and awards issued to individuals. It is therefore important that organizations receiving grants from NEH be familiar with this document and comply with its requirements.

Since recent audits of NEH grantees have made it clear that some organizations either did not have an organizational prior approval system or had a system that was inadequate, we call your attention to Article 3 of these general grant provisions. **Successful applicants that currently do not have a prior approval system in place are required to develop one within 30 days after receiving an NEH award.** To assist organizations in developing an acceptable prior approval system, the NEH Office of Grant Management has produced a sample prior approval form, which is included in the appendix of this publication.

TABLE OF CONTENTS

Glossary of Terms

1. Applicability of General Grant Provisions
2. Grantee Responsibilities
3. Organizational Prior Approval System
4. Uniform Administrative Requirements
5. Allowable Costs
6. Grant Period and Extensions
7. Pre-Award Costs
8. Changes in Project Scope
9. Changes in Key Project Personnel
10. Budget Revisions
11. Cost Sharing and Cost-Sharing Records
12. Payments and Interest
13. Reporting Requirements
14. Financial Management Standards
15. Audit Requirements
16. Record Retention
17. Procurement Standards
18. Equipment
19. Title to Equipment
20. Supplies
21. Travel Costs

22. Foreign Travel
23. Activities Outside the United States
24. Dissemination of Project Results
25. Acknowledgment of Support and Disclaimer
26. Intangible Property
27. Data Collection
28. Program Income
29. Employment of Professional Performers
30. Nondiscrimination
31. Lobbying Activities
32. Drug-Free Workplace Requirements
33. Debarment and Suspension
34. Suspension and Termination
35. Termination Review Procedures
36. Research Misconduct
37. Resolution of Conflicting Conditions

Appendix

1. Procurement Procedures
2. Contract Provisions
3. Federal Guidance
4. Sample Prior Approval Form

Glossary of Terms

Cash Contributions - The grantee's cash outlay for budgeted project activities, including the outlay of money contributed to the grantee by third parties.

Cost Sharing - The portion of the costs of a project not charged to NEH funds. This would include cash contributions (as defined above) as well as the value of third-party in-kind contributions.

Debarment - The ineligibility of a grantee to receive any assistance or benefits from the federal government, either indefinitely or for a specified period of time, based on legal proceedings taken pursuant to agency regulations implementing Executive Order 12549.

Equipment - Tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

Federally Recognized Indian Tribal Government - The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

Grant - A legal instrument that provides financial assistance in the form of money or property to an eligible recipient. The term includes cooperative agreements but it does not apply to technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. The term does not include fellowships or other lump sum awards, for which the recipient is not required to provide a financial accounting.

Grant Period - The period established in the grant award during which NEH activities and expenditures are to occur. Grant periods begin on the first day of the month and end on the last day of the month.

Grantee - The organization to which a grant is awarded and which is accountable for the use of the funds provided.

In-Kind Contributions - The value of noncash contributions provided by **third parties**. In-kind contributions may be in the form of charges for real property and equipment or the value of goods and services directly benefiting and specifically identifiable to the project.

Institutional Grant Administrator - The member of the grantee organization who has the official responsibility for administering the grant e.g., for negotiating budget revisions, overseeing the submission of required reports, ensuring compliance with the terms and conditions of the grant.

Intangible Property - Includes, but is not limited to, trademarks; copyrights; patents and patent applications.

Local Government - A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of government, any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligation - The amounts of orders placed, contracts and grants awarded, goods and services received, and similar transactions during the grant period that will require payment.

Program Officer - The NEH division staff member designated in the section of the grant award entitled "Endowment Administration of the Award."

Program Income - Money that is earned or received by a grantee or a subrecipient from the activities supported by grant funds or from products resulting from grant activities. It includes, but is not limited to, income from fees for services performed and from the sale of items fabricated under a grant; usage or rental fees for equipment or property acquired under a grant; admission fees; broadcast or distribution rights; and royalties on patents and copyrights.

Project Funds - Both the federal and non-federal funds that are used to cover the cost of budgeted project activities.

Simplified Acquisition Threshold - This term replaces "small purchase threshold," and the threshold is currently set at \$100,000 [41 U.S.C. 403 (11)].

State - Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments, institutions of higher education, and hospitals.

Subgrant - An award of financial assistance in the form of money or property, made under a grant by a grantee to an eligible subrecipient or by a subrecipient to a lower-tier subrecipient. The term includes financial assistance which is provided by any legal agreement, even if the agreement is called a contract, but it does not include the procurement of goods and services nor does it include any form of assistance which is excluded from the definition of a "grant."

Subrecipient - The legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies - All personal property excluding equipment and intangible property, as defined in this glossary.

Suspension -

(1) The suspension of a *grant* is the temporary withdrawal of federal sponsorship. This includes the withdrawal of authority to incur expenditures against grant funds, pending corrective action, or a decision to *terminate* the grant.

(2) The suspension of an *individual or organization* causes that party to be temporarily ineligible to receive any assistance and benefits from the federal government pending

completion of investigation and legal proceedings as prescribed under agency regulations implementing Executive Order 12549. Such actions may lead to *debarment* of the grantee.

Termination - Cancellation of federal sponsorship of a project, including the withdrawal of authority to incur expenditures against previously awarded grant funds before that authority would otherwise expire.

1. Applicability of General Grant Provisions

The *General Grant Provisions for Organizations* apply to grants that the National Endowment for the Humanities (NEH) issues to private nonprofit organizations; institutions of higher education; state, local, and federally recognized Indian tribal governments; and groups of individuals who form ad hoc associations to carry out projects. Challenge Grants and general support grants to state humanities councils are not subject to the *General Grant Provisions for Organizations*. These grant provisions also apply to subgrants that are awarded by NEH grantees and subrecipients to the types of organizations listed above.

2. Grantee Responsibilities

The grantee has full responsibility for the conduct of project activities under an NEH award, for adherence to the award conditions, and for informing NEH during the course of the grant of any significant programmatic, administrative, or financial problems that have arisen.

The grantee is responsible for notifying NEH about any allegation of research misconduct if the allegation involves NEH funded research (or an application for NEH funding) and if the grantee institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation in accordance with the *NEH Research Misconduct Policy* (See Article 36).

The requirements of this grant are contained in these *General Grant Provisions for Organizations*, the terms and conditions of the grant award, and the applicable federal uniform administrative requirements (see Article 4). Should there be any inconsistency between the terms and conditions of an award and the *General Grant Provisions for Organizations* or the federal uniform administrative requirements, the terms and conditions will govern.

In accepting a grant, the grantee assumes the legal responsibility of administering the grant in accordance with these requirements and of maintaining documentation, which is subject to audit, of all actions/expenditures affecting the grant. Failure to comply with the requirements of this award could result in suspension or termination of the grant and NEH's recovery of grant funds.

3. Organizational Prior Approval System

Institutional grantees are required to have written procedures in place for reviewing and approving **in advance** proposed administrative changes such as

- the expenditure of project funds for items that, under the applicable cost principles, normally require prior agency approval (Article 5);

- the one-time extension of a grant period (Article 6);
- the incurring of project costs prior to the beginning date of an award (Article 7); and
- budget revisions that involve the transfer of funds among budget categories (Article 10).

The procedures for approving such changes are sometimes referred to as an "organizational prior approval system."

The purpose of such a system is to ensure that

- all grant actions and expenditures are consistent with the terms and conditions of the award, as well as with the policies of NEH and the grantee;
- any changes that may be made do NOT constitute a change in the scope of the project, and,
- any deviation from the budget approved by NEH is necessary and reasonable for the accomplishment of project objectives and is allowable under the applicable federal cost principles.

Although grantees are free to design a prior approval system that suits their particular needs and circumstances, an acceptable system must at a minimum include the following:

- the procedure for review of proposed changes must be **in writing**;
- proposed changes must be reviewed at a level beyond the project director; and,
- whenever changes are approved, the grantee institution has to retain documentation of the approval for three years following the submission of the final financial report.

To assist organizations in developing an acceptable prior approval system, the NEH Office of Grant Management has produced a sample [prior approval form](#) (2-page PDF), which is included in the appendix to this publication.

4. Uniform Administrative Requirements

Grants issued to state, local, and federally recognized Indian tribal governments are subject to the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*. Grants to institutions of higher education, hospitals, and other nonprofit organizations are subject to the uniform administrative requirements of OMB Circular A-110. The standards set forth herein and in NEH Enclosure 1 (Financial Reporting Requirements) and Enclosure 2 (Performance Reporting Requirements) are consistent with these administrative requirements.

5. Allowable Costs

The allowability of costs and cost allocation methods for work performed under an NEH grant shall be determined in accordance with the applicable federal cost principles and the terms and

conditions of the grant award. However, NEH delegates to the grantee the authority to approve costs that the applicable cost principles state are allowable only with the prior approval of the funding agency, unless specifically prohibited by other articles in these general grant provisions, or by the terms and conditions of the grant award. Examples of such costs are foreign travel; equipment purchases; and publication and printing costs. **This delegation does not relieve the grantee of the responsibility to document that such charges are reasonable, necessary, and allocable to the project.**

The following circulars set forth the federal cost principles that apply to the various types of NEH grantees:

- a. OMB Circular A-21--public and private institutions of higher education;
- b. OMB Circular A-122--nonprofit organizations that are not institutions of higher education;
- c. OMB Circular A-87--state, local, and federally recognized Indian tribal governments

The NEH grant award will specify the cost principles that apply to the grant. Copies of the cost principles may be obtained from the NEH website (<http://www.neh.gov>) or by writing to the NEH Office of Grant Management.

6. Grant Period and Extensions

The grant period is the span of time designated in the grant award, or an amendment thereto, during which the grantee has the authority to obligate grant funds and undertake project activities. However, when the grantee determines that it is necessary, project costs may be incurred in the 90-day period prior to the beginning date of the grant period (see Article 7).

Grantees may also authorize a one-time extension of the expiration date established in the initial grant award if additional time is required to complete the original scope of the project with the funds already made available. A single extension that shall not exceed 12 months may be made for this purpose, provided it is made prior to the original expiration date. The institutional grant administrator must inform the NEH Office of Grant Management in writing of the new expiration date at least 10 days before the grant is scheduled to expire and must provide justification for the new extension period. The grantee's authority to extend a grant may not be exercised merely for using the unliquidated balance of project funds.

If a grantee wishes to extend a grant for more than a 12-month period or determines that a second extension is necessary, a written extension request must be submitted to the NEH Office of Grant Management prior to the end of the grant period. The request shall be signed by the institutional grant administrator and shall include a detailed justification for the extension, an estimate of the unexpended grant funds, and a plan of work for the activities that will be undertaken during the requested extension period.

Grantees that have been offered federal matching funds by NEH should note that authority to extend offers of NEH funding is **not** delegated to the grantee institution. Requests for offer extensions must be submitted in writing to the NEH Office of Grant Management.

7. Pre-Award Costs

Grantees may approve project costs incurred within the 90 calendar day period immediately preceding the beginning date of the grant. Requests for pre-award costs for periods exceeding 90 calendar days must be signed by the institutional grant administrator and submitted to the NEH Office of Grant Management. Pre-award expenditures are made at the grantee's risk and the grantee's authority to approve such costs does not impose an obligation on NEH in the event an award is not made or is made for an amount that is less than the grantee anticipated.

8. Changes in Project Scope

Any project that is carried out under a grant must be consistent with the scope of the proposal that is approved for funding by the NEH. The scope of a project encompasses the purpose for which the grant is undertaken, the subject matter, the treatment of the subject matter, the historical time frame of the project, the volume of material that will be studied/treated, and the products that are expected to result from grant activities. **No changes may be made in the scope of a project without written approval from NEH.**

All requests for a change in the scope of a grant shall be signed by the institutional grant administrator and submitted to the appropriate NEH program officer.

9. Changes in Key Project Personnel

The replacement of the project director or the co-director or a substantial reduction in the level of their effort, e.g., their unanticipated absence for more than three months, or a 25 percent reduction in the time devoted to the project, requires prior written approval from NEH. When it is specifically required as a condition of a grant, written approval will also be needed for the replacement or the substantial reduction in the level of effort of other personnel whose work is deemed by NEH to be critical to the project's successful completion.

All requests for approval of changes in key project personnel shall be signed by the institutional grant administrator and submitted to the appropriate NEH program officer. Evidence of the qualifications for replacement personnel (such as a *résumé*) shall be included.

10. Budget Revisions

The project budget is the schedule of anticipated project expenditures that is approved by NEH for carrying out the purposes of the grant. When grantees or third parties support a portion of the project costs, the project budget includes the nonfederal as well as the federal share of project expenses.

The grantee shall obtain prior written approval from NEH whenever a budget revision is necessary because of

a. the transfer to a third party (by subgranting, contracting, or other means) of any work under a grant;

NOTE: NEH approval is not required for third-party transfers that were described in the approved project plan, or for the purchase of supplies, materials, or general support services.

- b. the addition of costs that are specifically disallowed by the terms and conditions of the grant award;
- c. the transfer of funds from stipends or training allowances to other budget categories; or
- d. changes in the scope or objectives of the project (see Article 8).

All requests for budget revisions shall be signed by the institutional grant administrator and submitted to the NEH Office of Grant Management.

Within 30 calendar days from the date of receipt of the request for budget revision, NEH will review the request and notify the grantee whether or not the budget revision has been approved. If the budget revision is still under consideration at the end of 30 calendar days, NEH will inform the grantee in writing of the date by which the grantee may expect a decision.

11. Cost Sharing and Cost-Sharing Records

Grantees are expected to share in project expenses at the level indicated in the approved project budget. They must also maintain auditable records of all project costs whether they are charged to grant funds or supported by cost-sharing contributions.

All cash and in-kind contributions to a project that are provided by the grantee or by a third party are acceptable as the grantee's cost sharing when such contributions meet the following criteria:

- Are verifiable from the grantee's records;
- Are not included as contributions for any other federally-assisted program;
- Are necessary and reasonable for the proper and efficient accomplishment of project objectives;
- Are types of charges that would be allowable under the applicable cost principles;
- Are used to support activities that are included in the approved project workplan; and
- Are incurred during the grant period.

Contributions, such as property, space, or services, that are donated to a project **by the grantee** are to be valued in accordance with the applicable federal cost principles and not on the basis of what would normally be charged for the use of these items or services.

When the grantee's cost sharing includes **third-party in-kind contributions**, the basis for determining the valuation of volunteer services and donated property or space must be documented and must conform to the principles set out below.

- a. Volunteer services that are provided to the grantee by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing if the service is an integral and necessary part of an approved project or program. Volunteer services shall be

valued at rates consistent with those ordinarily paid for similar work within the grantee organization. If the grantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount of fringe benefits may be included in the valuation.

b. When an employer furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that is reasonable), provided these services involve the same skills for which the employee is normally paid.

c. The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation, and the value of loaned equipment shall not exceed its fair rental value.

d. The value of donated space shall not exceed the fair rental value of comparable space, as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

e. The value assigned to donated supplies or other expendable property should be reasonable and should not exceed the fair market value of the property at the time of donation.

12. Payments and Interest

A detailed explanation of payment procedures will be found in Enclosure 1 of the grant award.

Grantees will be paid on an advance basis, unless otherwise specified in the grant award, and payment will be effected through electronic funds transfer. Whenever possible, advances should be consolidated to cover the anticipated cash needs for all NEH awards to the grantee and should be deposited and maintained in insured accounts. Grantees are also encouraged to use women-owned and minority-owned banks (banks that are owned at least 50 percent by women or minority group members).

Requests for advance payment shall be limited to the grantee's immediate cash needs and are not to exceed anticipated expenditures for a 30-day period. Grant funds that have been paid to the grantee but are unspent at the end of the grant period must be returned to NEH.

All grantees, except states (see definition), are required to maintain advances of federal funds in interest-bearing accounts unless the grantee receives less than \$120,000 per year in advances of grant funds or the most reasonably available interest-bearing account would not earn more than \$250 per year on the federal cash balance, or would entail bank services charges in excess of the interest earned.

Interest in excess of \$250 a year that is earned on advanced payments shall be remitted annually to the Department of Health and Human Services. If possible, interest should be remitted through an electronic medium such as the Remittance Express (REX) Deposit system. Grantees that do not have this capability should make payment by check and mail it to the HHS Payment Management System, P.O. Box 6021, Rockville, MD 20852.

13. Reporting Requirements

A final performance report and a final Financial Status Report shall be submitted to the NEH Office of Grant Management within **90** days after the completion date of the grant period. A schedule of due dates for interim and final reports will be found on the last page of the grant award. Grantees that are authorized to be paid on an advance basis are also required to submit a Federal Cash Transactions Report within **30** days of the end of each calendar quarter.

Failure to submit reports on a timely basis may result in delayed payments and the suspension of action on pending applications from the grantee organization.

Detailed information on the financial and performance reporting requirements will be found in Enclosures 1 and 2 of the grant award.

14. Financial Management Standards

The financial management systems of grantee organizations and their subrecipients must meet the following standards:

a. Accounting System. Grantee organizations and their subrecipients must have an accounting system that provides accurate, current, and complete disclosure of all financial transactions related to each federally sponsored project. Accounting records must contain information pertaining to federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income. These records must be maintained on a current basis and balanced at least quarterly.

Cash contributions to the project from third parties must be accounted for in the general ledger with other grant funds. Third party in-kind (non-cash) contributions are not required to be recorded in the general ledger, but must be under accounting control, possibly through the use of a memorandum ledger.

b. Source Documentation. Accounting records must be supported by such source documentation as canceled checks, bank statements, invoices, paid bills, donor letters, time and attendance records, activity reports, travel reports, contractual and consultant agreements, and subaward documentation. All supporting documentation should be clearly identified with the grant and general ledger accounts which are to be charged or credited.

The documentation required for salary charges to grants is prescribed by the cost principles applicable to the grantee organization (see Article 5).

For grantees subject to OMB Circular A-21 (educational institutions), documentation for salary charges shall be based on either a system of monitored workload or a system of personnel activity reports for professional or professorial staff. Nonprofessional employees must keep personnel activity reports.

For grantees subject to OMB Circular A-122 (nonprofit organizations), documentation for all salary charges shall be based on a system of personnel activity reports.

For grantees subject to OMB Circular A-87 (state and local governments), documentation for salary charges shall be based on a system of personnel activity reports unless an employee is working solely on a single federal award. In this case, the charge for salary will be supported by a certification signed by the employee or the supervisor.

Personnel activity reports shall account on an after-the-fact basis for one hundred percent of the employee's actual time, separately indicating the time spent on the NEH grant, other grants or projects, vacation or sick leave, and administrative time, if applicable. The reports must be signed by the employee, approved by the appropriate official, and coincide with a pay period. These time records should be used to record the distribution of salary costs to the appropriate accounts no less frequently than quarterly.

Formal agreements with independent contractors, such as consultants, must include a description of the services to be performed, the period of performance, the fee and method of payment, an itemization of travel and other costs which are chargeable to the agreement, and the signatures of both the contractor and an appropriate official of the grantee organization.

For grants that contain a gifts and matching component, grantees are required to maintain:

(1) documentation that supports the eligibility of the gifts to release federal matching dollars, and

(2) a record that contains the name of the donor, the donor category as defined in the *NEH Federal Matching Fund Guidelines*, the amount of the gift, the designation of the gift as restricted to the project or unrestricted, the date the gift is certified to NEH, and the amount of matching funds awarded by NEH as a result of the certification.

If third party in-kind (non-cash) contributions are used on a project, the valuation of these contributions must be supported with adequate documentation (see Article 11).

c. Internal Control. Effective control and accountability must be maintained for all cash, real and personal property, and other assets. Grantees must adequately safeguard all such property and must provide assurance that it is used solely for authorized purposes. Grantees must also have systems in place that ensure compliance with the terms and conditions of each grant award.

d. Budget Control. Records of expenditures must be maintained for each grant project by the cost categories of the approved budget (including indirect costs that are charged to the project), and actual expenditures are to be compared with budgeted amounts no less frequently than quarterly. NEH approval is required for certain budget revisions (see Article 10)

e. Allowable Costs. The applicable OMB cost principles, the *General Grant Provisions for Organizations*, and the terms and conditions of the grant award shall be followed in determining the reasonableness, allowability, and allocability of costs.

f. Cash Management. Grantees must also have written procedures to minimize the time elapsing between the receipt and the disbursement of grant funds to avoid having excessive

federal funds on hand. Requests for advance payment shall be limited to the grantee's immediate cash needs and are not to exceed anticipated expenditures for a 30-day period.

Grantees must insure that all grant funds are obligated during the grant period and paid no later than 90 days after the end of the grant period.

15. Audit Requirements

Grantees and subrecipients that are subject to these general grant provisions shall have audits performed that meet the requirements of OMB Circular A-133. (Copies of this circular may be obtained from the NEH website (<http://www.neh.gov>) or by writing to the NEH Office of Grant Management.)

16. Record Retention

Financial records, supporting documentation, statistical records, and all other records pertinent to the grant shall be retained by the grantee for three years from the date of submission of the final Financial Status Report. When the conditions of a grant award require the grantee to report program income, records relating to program income shall be retained for three years from the date of submission of the last required income report.

If the three-year retention period is extended because of audits, appeals, litigation, or the settlement of claims arising out of the performance of the project, the records shall be retained until such audits, appeals, litigation, or claims are resolved. Unless court action or audit proceedings have been initiated, the grantee may substitute microfilm copies of original records.

The NEH, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the grantee and its subrecipients to make audits, examinations, excerpts, transcripts, and copies. Further, any contract in excess of the simplified acquisition threshold (currently \$100,000) that is negotiated by the grantee for the purposes of carrying out the grant project shall include a provision to the effect that the grantee, NEH, the Comptroller General, or any of their duly authorized representatives shall have access for similar purposes to any records of the contractor that are directly pertinent to the project.

17. Procurement Standards

NOTE: The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the Endowment, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant or other agreement. Matters concerning the violation of a statute are to be referred to such federal, state, or local authority as may have proper jurisdiction.

When procuring property or services under a grant, the grantee's procurement policies must adhere to the standards set forth below. **Subrecipients of grant funds are subject to the same policies and procedures as the grantee.**

a. The grantee will maintain a system for contract administration that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Grantees shall evaluate contractor performance and document, as appropriate, whether or not contractors have met the terms, conditions, and specifications of the contract.

b. A written standard of conduct for awarding and administering contracts shall be maintained by the grantee. No employee, officer, or agent of the grantee shall participate in the selection, or in the awarding or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for a contract: the employee, officer, or agent; any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the preceding.

The officers, employees, and agents of the grantee will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, the grantee may set standards governing when the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the grantee.

c. All procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to insure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee, price, quality, and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated by the grantee. When it is in the grantee's interest to do so, any bid/offer may be rejected.

d. All grantees shall establish written procurement procedures that meet the requirements set forth in the Appendix to these general grant provisions.

The Appendix also contains the provisions that must be included in procurement contracts when applicable.

18. Equipment

Equipment is defined as tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. The purchase of equipment not included in the approved project budget is allowable only if it is specifically approved beforehand by the grantee institution and there is documentation to support that the purchase is necessary and reasonable to carry out project activities.

Equipment records must be maintained that include the description of the equipment, the serial number or other identification number, the source of equipment, the title holder, the acquisition date, the cost of the equipment, the location, use, and condition of the equipment, and any ultimate disposition data including the date of disposal and the sale price of the equipment. A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years.

19. Title to Equipment

Title to equipment purchased or fabricated with NEH funds shall be vested in the grantee organization with the understanding that the equipment will be used for the project for which it was obtained but without further obligation to the federal government. NEH may reserve the right to request the transfer of title to the federal government or to a third party when the current per unit fair market value of the equipment is \$5,000 or more and the equipment is no longer needed to carry out the purposes of the project or other projects funded by government agencies.

20. Supplies

Title to supplies and other expendable property shall vest in the grantee upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project and the supplies are not needed for any other federally-sponsored project or program, the grantee shall retain the supplies for use on non-federal sponsored activities or sell them, but shall in either case compensate the federal government for its share.

21. Travel Costs

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by those who are on official business attributable to work under a grant.

Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the grantee in its regular operation, as set forth in its written travel policy.

Airfare costs in excess of the lowest available commercial discount or customary standard (coach) airfare are unallowable unless such accommodations are not reasonably available to accomplish the purpose of travel. All air travel that is paid in whole or in part with NEH funds must be undertaken on U.S. air carriers.

22. Foreign Travel

For the purposes of these provisions, foreign travel is defined as any travel outside the United States, its territories and possessions, and Canada. Each separate foreign trip must be itemized in the budget approved by NEH. Foreign travel that is not included in the approved project budget requires specific approval by the grantee institution under its organizational prior

approval system, or, for grantees not on the prior approval system, prior written approval from NEH.

United States Flag Air Carriers

All air transportation of persons or property that is paid in whole or in part with NEH funds must be performed on a U.S. flag air carrier unless any of the circumstances listed below applies:

- a. no U.S. flag air carrier provides service on a particular leg of the route;
- b. a U.S. flag air carrier involuntarily reroutes the traveler on a foreign air carrier;
- c. a foreign air carrier operates under a "code-share" arrangement with a U.S. flag air carrier and the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight numbers;
- d. service on a foreign air carrier would be three hours or less, and use of the U.S. flag air carrier service would at least double the en route travel time;
- e. when flying between the United States and another country
 - (1) the use of nonstop or direct U.S. flag air carrier service would extend a person's travel time, including a delay at origin, by 24 hours or more, or
 - (2) where U.S. nonstop or direct service is not available, the use of a U.S. flag air carrier on every portion of the route where it provides service would, when compared to using a foreign air carrier
 - (a) increase the number of aircraft changes a person would have to make outside the U.S. by 2 or more; or
 - (b) extend travel time by 6 hours or more; or
 - (c) require a connecting time of 4 hours or more at an overseas interchange point.
- f. when flying outside the United States, the use of a U.S. flag air carrier would result in any of the situations described in e.(2) above.

Lower cost, convenience, or traveler preferences are NOT acceptable reasons for using a foreign air carrier.

23. Activities Outside the United States

Prior to undertaking activities outside the United States, grantees shall ensure that all project staff secure the necessary passports, visas or other required documents for entry into foreign countries. Grantees shall also obtain the appropriate licenses, permits, or approvals. The grantee

must notify NEH if a permit is denied or revoked after a grant has been awarded, or if an unforeseen circumstance, such as a natural disaster or political turmoil, threatens or prevents the grantee from carrying out project activities. These situations are considered on a case by case basis to determine whether the grant should be suspended or if a revised plan of work is feasible.

Arrangements for liability and medical insurance for staff and foreign workers engaged on project activities are the responsibility of the grantee.

NEH does not assume responsibility for grantee compliance with the laws and regulations of the country in which work is to be conducted.

Grantees should consult the updated travel advisories and warnings issued by the State Department through the American Citizens Services at (202) 647-5225 or fax service (202) 647-3000 or <http://travel.state.gov/travel>.

24. Dissemination of Project Results

Grantees are expected to publish or otherwise make publicly available the results of work conducted under a grant. Unless otherwise specified in the award documents, two copies of any published material resulting from grant activities should be forwarded to the appropriate NEH program officer as soon as it becomes available. This material should be labeled with the identifying NEH grant number.

All publication and distribution agreements shall include provisions giving the government a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the material for Federal purposes and requiring the acknowledgment of NEH support. The publication shall also include the disclaimer contained in Article 25 of these *General Grant Provisions for Organizations*.

25. Acknowledgment of Support and Disclaimer>

Unless advised to the contrary, all materials publicizing or resulting from grant activities shall contain an acknowledgment of NEH support. The acknowledgment shall also include the following statement: "Any views, findings, conclusions or recommendations expressed in this (publication) (program) (exhibition) (website) do not necessarily represent those of the National Endowment for the Humanities."

26. Intangible Property

a. The grantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under the grant. NEH reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use these materials for Federal purposes and to authorize others to do so (see §__36. Intangible Property, OMB Circular A-110).

"Federal purposes" include the use of grant products in activities or programs undertaken by the Federal Government, in response to a governmental request, or as otherwise required by Federal law. However, the Federal Government's use of copyrighted materials is not intended to interfere with or disadvantage the grantee or assignee in the sale and distribution of the grant product.

NEH may request copies of a grant product for non-profit use by the state humanities councils if the product forms an integral part of a council conducted program. These copies will be provided to the councils at the cost of reproduction and shipping, and no royalties or other fees will be charged.

b. Grantees that are awarded funds for experimental, developmental, or research work are subject to the regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

c. NEH has the right to:

(1) obtain, reproduce, publish or otherwise use the data first produced under a grant; and

(2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

d. In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a grant that were used by the Federal Government in developing an agency action that has the force and effect of law, NEH shall request, and the grantee shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If NEH obtains the research data solely in response to a FOIA request, NEH may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the grantee, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)). For additional information and definition of terms, please see OMB Circular A-110, Section.36.d.

e. Title to intangible property acquired under a grant or subaward vests upon acquisition in the grantee. The grantee shall use that property for the originally authorized purpose and shall not encumber the property without NEH approval. NEH reserves the right to determine the disposition of the intangible property when it is no longer needed for the originally authorized purpose.

27. Data Collection

Data collection activities performed under a grant are the responsibility of the grantee, and NEH support of the project does not constitute approval of the survey design, questionnaire content, or data collection procedures. The grantee shall not represent to respondents that such data are being collected for, or in association with, NEH or any other government agency without the

specific written approval of the data collection plan or device by NEH. However, this requirement is not intended to preclude mention of NEH support of the project in response to an inquiry or acknowledgment of such support in any publication of this data.

The federal government has the right to obtain, reproduce, publish or otherwise use the data first produced under a grant and authorize others to do so for government purposes.

28. Program Income

Program income is money that is earned or received by a grantee or a subrecipient from the activities supported by grant funds or from products resulting from grant activities. It includes, but is not limited to, income from fees for services performed and from the sale of items fabricated under a grant; usage or rental fees for equipment or property acquired under a grant; admission fees; broadcast or distribution rights; and license fees and royalties on patents and copyrights. The federal share of program income is determined by the percentage of total project costs that are supported by NEH.

a. Income Earned During the Grant Period

The federal share of program income earned during the grant period shall be retained by the grantee and, unless the grant award specifies how such income will be used, the grantee must use it in one or more of the following ways:

- (1) It may be added to the existing project funding to cover increased costs of the project or it may be used to support other projects in the humanities;
- (2) It may be used to finance the non-federal share of the project; or
- (3) It may be used to finance the federal share of the project costs, which would result in an equivalent reduction in the amount of the NEH grant.

A report of program income earned during the grant period must be submitted with the final Financial Status Report whenever program income is actually earned during the grant period or when the terms and conditions of the grant award specifically require such a report. The report shall indicate the total amount of program income that was earned and how it was used.

b. Income Earned After the Grant Period

When NEH funding of a project amounts to \$50,000 or more and the total program income earned after the grant period exceeds \$50,000, NEH reserves the right to make a claim to or restrict the use of the federal share of income earned during the seven years following the grant period. Due dates for the submission of program income reports may be listed in the grant

award. However, even if NEH does not specifically require the submission of program income reports after the grant period, it is the grantee's responsibility to submit a report as soon as the cumulative amount of program income earned during the seven years after the grant period exceeds \$50,000.

In reporting program income earned after the grant period, the grantee shall indicate the amount and sources of the gross income it has earned and the percentage of funding provided to the project by NEH. The federal share of program income will be determined by (1) deducting the first \$50,000 in gross income from total gross income, (2) deducting 5 percent of the balance of gross income to cover possible grantee costs, and (3) multiplying the balance of gross income by half the percentage of funding provided to the project by NEH. For example if NEH's award of \$250,000 covered 60 percent of a project's costs and the project earned \$200,000 in program income during the seven-year reporting period, the federal share of that income would be \$42,750 ($\$200,000 \text{ minus } \$50,000 \text{ minus } 5\% \times 30\%$). Once the federal share of income equals the amount of funding provided by NEH, NEH's claim to additional income will be reduced by half.

If income is to be returned to NEH, a check made payable to the National Endowment for the Humanities and identified as program income must be submitted with the report.

29. Employment of Professional Performers

Grantees that employ professional performers and related or supporting professional personnel under a grant (including but not limited to scriptwriters, actors, extras, musicians, stage hands, scenery designers, technicians, electricians, cinematographers) are required to provide written assurance that

- a. these employees will be paid, without subsequent deduction or rebate on any account, not less than the minimum compensation as determined in accordance with 29 CFR 505.3 to be the prevailing minimum compensation for persons employed on similar activities (e.g., union or guild rates), and
- b. no part of any project or production which is financed in whole or in part under a grant will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employee engaged in such project or production.

A copy of the "Assurances as to Labor Standards..." form and the applicable Department of Labor regulations may be obtained from the NEH Office of Grant Management.

30. Nondiscrimination

Grants are subject to the provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (as amended), Section 504 of the Rehabilitation Act of 1973 (as amended), the Age Discrimination Act of 1975 (as amended), and the regulations issued pursuant thereto by NEH (Code of Federal Regulations, Title 45, Chapter XI).

Therefore, no person on grounds of race, color, national origin, disability, or age shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under a program funded by NEH. In addition, if a project involves an educational activity or program, as defined in Title IX of the Education Amendments of 1972, no person on the basis of sex shall be excluded from participation in the project.

Grantees shall at the time of application to NEH certify that their programs operate in compliance with the requirements of the nondiscrimination statutes and their implementing regulations. Grantees are also required to obtain an executed certification of compliance with the nondiscrimination statutes from all organizations that are subrecipients under an NEH grant.

31. Lobbying Activities

The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, prohibits recipients of federal contracts, grants, and loans from using appropriated funds to influence the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement, loan, or any other award covered by §1352. 18 U.S.C. 1913 makes it a crime to use funds appropriated by Congress to influence members of Congress regarding congressional legislation or appropriations. Finally, Attachment B25 of Office of Management and Budget Circular A-122 designates the following as unallowable charges to grant funds or cost sharing: certain electioneering activities, financial support for political parties, attempts to influence federal or state legislation either directly or through grass-roots lobbying, and some legislative liaison activities.

NEH is required by the provisions of its appropriations act to include the text of 18 U.S.C. 1913 in all of its grant and contract documents.

Text of 18 U.S.C. 1913:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designated to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

32. Drug-Free Workplace Requirements

At the time of application to NEH, grantees shall certify that they will provide a drug-free workplace. The Drug-Free Workplace Act of 1988, 41 U.S.C. 701, requires grantees to have an on-going drug-free awareness program; to publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace; to maintain evidence that this statement was given to each employee engaged in the performance of the grant; and to identify in the funding proposal or to keep on file in its office the place(s) where grant activities will be carried out.

33. Debarment and Suspension

At the time of application to NEH, the grantee shall certify that it and its principals are not presently debarred or suspended or otherwise excluded from or ineligible to participate in federal assistance programs. The grantee shall provide immediate written notice to the director of the NEH Office of Grant Management if at any time the grantee learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Grantees shall not make or permit any subgrant or contract to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs in violation of the regulations implementing Executive Order 12549, "Debarment and Suspension."

(NEH regulations are contained at 45 CFR Part 1169--"Nonprocurement Debarment and Suspension.")

34. Suspension and Termination

Grants may be terminated in whole or in part

- a. by the NEH, if a grantee materially fails to comply with the terms and conditions of an award;
- b. by the NEH when the Endowment has other reasonable cause;
- c. by the NEH, when ordered under the [NEH Research Misconduct Policy](#);
- d. by the NEH with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion of the project to be terminated; or
- e. by the grantee upon sending to NEH written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion of the project to be terminated. However, if NEH determines that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety either unilaterally or with the consent of the grantee.

When NEH determines that a grantee has failed to comply with the terms of the grant award, NEH may suspend or terminate the grant for cause. Normally, this action will be taken only after the grantee has been notified of the deficiency and given sufficient time to correct it, but this does not preclude immediate suspension or termination when such action is required to protect the interests of the government.

In the event that a grant is suspended and corrective action is not taken within 90 days of the effective date, NEH may issue a notice of termination. No costs that are incurred during the suspension period or after the effective date of termination will be allowable except those that are specifically authorized by the suspension or termination notice or those that, in the opinion of NEH, could not have been reasonably avoided.

Within 30 days of the termination date, the grantee shall furnish to NEH a summary of progress achieved under the grant, an itemized accounting of charges incurred against grant funds and cost sharing prior to the effective date of the suspension or termination, and a separate accounting and justification for any costs that may have been incurred after this date.

35. Termination Review Procedures

A grantee who has received a notice of termination may request NEH review of the termination action. The request must be postmarked no later than 30 days after the date of the termination notice and should be addressed to the Deputy Chairman, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The request for review must contain a full statement of the grantee's position and the pertinent facts and reasons that support such a position. The Deputy Chairman will promptly acknowledge the request for review and appoint a review committee of at least three staff members. Pending the resolution of the review, the notice of termination will remain in effect.

None of the review committee members may be from the NEH program or the section of the Office of Grant Management that recommended termination or was responsible for monitoring the programmatic or administrative aspects of the grant. The committee will have full access to all relevant NEH background materials. The committee may also request the submission of additional information from the grantee or NEH staff and, at its discretion, may meet with representatives of both groups to discuss the pertinent issues. All review activities will be fully documented by the committee. Based on its review, the committee will present its written recommendation to the Deputy Chairman, who will advise the parties concerned of the final decision.

36. Research Misconduct

The NEH will take appropriate action against individuals or organizations upon a determination that misconduct has occurred in proposing, performing, reviewing research or reporting results from research activities funded by NEH in accordance with the *NEH Research Misconduct Policy*. NEH may also take interim action during an investigation.

Research misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

The grantee institution bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with its own institution.

The NEH Inspector General in most cases will refer an allegation of research misconduct made directly to NEH to the appropriate grantee institution and will rely on the grantee to make the initial response. Circumstances in which NEH may elect not to defer to the grantee institution include, but are not limited to, the following: the agency determines the grantee institution is not prepared to handle the allegation in a manner consistent with this policy; agency involvement is needed to protect the public interest; or the allegation involves an entity of

sufficiently small size that it cannot reasonably conduct the investigation itself. At any time, however, NEH may proceed with its own inquiry or investigation. If the allegation of research misconduct is first made to the grantee institution, the grantee institution will notify NEH if the allegation meets the definition of research misconduct given above, and if the grantee institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation.

At any time during an inquiry or investigation, the grantee will immediately notify the Endowment if NEH resources or interests are threatened; if public health or safety is at risk; if research activities should be suspended; if there is reasonable indication of possible violations of civil or criminal law; if Federal action is required to protect the interests of those involved in the investigation; if the grantee believes the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved; or if the research community or public should be informed.

NEH will make a finding of misconduct or take action on such a finding only after careful inquiry and investigation by a grantee institution, by another Federal agency or by NEH. In the event of a finding of research misconduct, NEH will determine what administrative actions are appropriate.

Administrative actions available include, but are not limited to, appropriate steps to correct the research record; letters of reprimand; the imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of an award; suspension or termination of an active award; or suspension and debarment in accordance with applicable NEH and government-wide rules on suspension and debarment. In the event of suspension or debarment, the information is made publicly available through the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* maintained by the U.S. General Services Administration. If the NEH Inspector General believes that criminal or civil fraud violations may have occurred, the Inspector General shall promptly inform the Department of Justice.

The *NEH Research Misconduct Policy* is available on the [NEH website](#) or in writing upon request from the NEH Office of Grant Management at (202) 606-8494. Possible misconduct in activities funded by NEH should be reported to the NEH Office of the Inspector General, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, (202) 606-8350.

37. Resolution of Conflicting Conditions

Should there be any inconsistency between these general grant provisions and the terms and conditions of a grant, the latter will govern.

Appendix

1. Procurement Procedures

All grantees shall establish written procurement procedures that provide for, at a minimum, the following procedural requirements:

a. Proposed procurements are to be reviewed to avoid the purchase of unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

b. Solicitations for goods and services shall provide the following:

(1) A clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(2) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(3) Whenever practicable, a description of technical requirements in terms of the functions to be performed or the performance required, including the range of acceptable characteristics or minimum acceptable standards.

(4) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(5) Preference, to the extent practical and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

c. The grantee shall make positive efforts to assure that small businesses, minority-owned firms, and women's business enterprises, are used whenever possible. Organizations receiving federal awards shall take all the steps outlined below to further this goal. This shall include

(1) placing qualified small, minority and women's business enterprises on solicitation lists;

(2) assuring that these businesses are solicited whenever they are potential sources;

(3) contracting with consortiums of small, minority-owned, or women's business enterprises, when a contract is too large for one of these firms to handle individually;

(4) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency;
and

(5) considering in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

d. The type of procurement instrument used, e.g., fixed price contracts, cost reimbursable contracts, incentive contracts, purchase orders, will be determined by the grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods shall not be used.

e. Contracts will be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration should be given to such matters as contractor integrity, the record of past performance, financial and technical resources or accessibility to other necessary resources.

f. Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

g. Procurement records and files for purchases in excess of the simplified acquisition threshold (currently \$100,000) shall include the basis for contractor selection, justification for lack of competition when competitive bids or offers are not obtained, and the basis for award cost or price.

2. Contract Provisions

a. Grantee contracts in excess of the simplified acquisition threshold (currently \$100,000) must provide for:

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and such remedial actions as may be appropriate.

(2) Termination for cause and for convenience by the grantee, including the manner by which it will be effected and the basis for settlement. In addition, these contracts shall also contain a description of the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Access by the grantee, NEH, the Comptroller General of the United States, or any other duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

b. All contracts, including small purchases, shall contain the following provisions as applicable:

(1) Equal Employment Opportunity

All contracts awarded by grantees and their contractors and subrecipients having a value of more than \$10,000 must contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).

(2) Copeland "Anti-Kick Back" Act (18 U.S.C. 874)

All contracts and subgrants in excess of \$2,000 for construction or repair awarded by grantees and 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 (29 CFR, Part 3). 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 grantee shall report all suspected or reported violations to the Federal awarding agency.

(3) Davis-Bacon Act (40 U.S.C. 276a to a-7)

All construction contracts awarded by the grantee and subrecipients of more than \$2,000 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). 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 grantee 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 grantee shall report all suspected or reported violations to the Federal sponsoring agency.

(4) Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (Executive Orders 13202 and 13208)

Effective February 18, 2001, grantees and subrecipients awarding new construction contracts shall ensure that neither the bid specifications, project agreements, nor other controlling documents for construction contracts shall:

(a) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or

(b) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

(5) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)

Where applicable, all contracts awarded by grantees in excess of \$100,000 for construction contracts and 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. 327-330) 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 day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek 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 8 hours in any calendar day or 40 hours in the workweek.

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 to his/her health and safety and health standards promulgated by the Secretary of Labor. 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.

(6) Rights to Inventions and Materials Generated Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any implementing regulations issued by the awarding agency.

(7) Clean Air Act of 1970 (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as Amended

Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal sponsoring agency and the Regional Office of the Environmental Protection Agency (EPA).

(8) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors who apply or bid for an award of \$100,000 or more must file a certification with the grantee stating that they will not and have not used 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, cooperative agreement, loan, or any other award covered by 31 U.S.C. 1352. Such contractors must also disclose to the grantee any lobbying that takes place in connection with obtaining any Federal award.

(9) Debarment and Suspension (E.O. 12549 and 12689)

No contracts shall be made to parties listed on the General Services Administration's *Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs* in accordance with Executive Orders 12549 and 12689. These lists contain the names of contractors debarred, suspended, or proposed for debarment by agencies, and contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549.

Grantees are required to obtain a certification regarding debarment and suspension from all subrecipients and from all parties with whom they contract for goods or services when (1) the amount of the contract is \$100,000 or more, or (2) when, regardless of the amount of the contract, the contractor will have a critical influence or substantive control over the covered transaction. Such persons would be project directors and providers of federally-required audit services.

3. Federal Guidance

a. Buy American Act

Consistent with the Buy American Act, 41 U.S.C. 10a-c and Public Law 105-277, grantees and subrecipients who purchase equipment and products with grant funds should purchase only American-made equipment and products.

b. Welfare-to-Work Initiative

To supplement the welfare-to-work initiative, grantees and their subrecipients are encouraged, whenever possible, to hire welfare recipients and to provide additional needed training and/or mentoring.

c. Seat Belt Usage

Executive Order 13043 of April 16, 1997 requires each Federal agency to encourage contractors, subcontractors and grantees to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

4. Sample Prior Approval Form

This form is for use within the grantee organization only - it is NOT to be submitted to NEH. See Article 3 for more information on organizational prior approval systems.

[Prior Approval Form \(2-page PDF\)](#)