

## Attachment A



National Endowment for the Arts

# General Terms & Conditions for Grants and Cooperative Agreements to Organizations

For awards issued after October 1, 2014

Updated December 2017

### Grants & Contracts Office

National Endowment for the Arts  
400 7th Street, SW  
Washington, DC 20506  
Telephone (202) 682-5403  
FAX (202) 682-5610  
[grants@arts.gov](mailto:grants@arts.gov)  
[finalreports@arts.gov](mailto:finalreports@arts.gov)  
Resources: [www.arts.gov/manageaward](http://www.arts.gov/manageaward)

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## Important Information Regarding Accepting a National Endowment for the Arts Award

### 1. Applicability

- 1.1 The *General Terms & Conditions for Grants and Cooperative Agreements to Organizations* (General Terms, or GTCs) apply to grants and cooperative agreements (also referred to as awards) that the National Endowment for the Arts (NEA) issues to 501(c)(3) nonprofit organizations, institutions of higher education (IHEs), units of state and local governments, and Federally-recognized Indian Tribal governments.

NOTE: Awards to State Arts Agencies (SAAs) and Regional Arts Organizations (RAOs) under the Partnership program area are subject to the *General Terms & Conditions for Partnership Agreements*.

- 1.2 These GTCs implement Title 2 of the Code of Federal Regulations (2 CFR) *Subtitle A-Office of Management and Budget Guidance for Grants and Agreements Part 200–Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance, or Part 200). The National Endowment for the Arts has adopted the Uniform Guidance through regulation at 2 CFR 3255.1.

- 1.3 The GTCs are also based on the National Endowment for the Arts legislation and established policies, along with other Federal statutes, regulations, and Executive Orders that apply to grants and cooperative agreements. Award recipients must be familiar with and comply with these requirements.

NOTE: Many citations for statutes and regulations are included in these GTCs. In most cases, more expansive information can be found at the citation location.

- 1.4 When applicable, Specific Terms & Conditions may be included with your award. Should there be inconsistency between requirements, the Specific Terms & Conditions supersede the GTCs.

### 2. Your Responsibilities

In accepting a National Endowment for the Arts award, your organization assumes legal, financial, administrative, and programmatic responsibility for administering the award in accordance with any provisions included in the award; the statutes, regulations, and Executive Orders governing Federal financial assistance awards; and these GTCs, all of which are hereby incorporated into your award by reference. While we may provide you with reminders regarding award requirements, the absence of receiving such notice does not relieve you of your responsibilities.

**Submission of a Payment Request constitutes your agreement to comply with all the terms and conditions of the award.**

Failure to comply with these requirements may result in suspension or termination of the award and our recovery of funds. In addition, the United States has the right to seek judicial enforcement of these obligations.

### 3. Acknowledgment of National Endowment for the Arts Support and Disclaimer

Acknowledgment of the National Endowment for the Arts must be prominently displayed in all materials and announcements for your funded project only.

3.1 For print materials, a basic requirement is a phrase acknowledging support from the National Endowment for the Arts using the following language: "This project is supported in part by an award from the National Endowment for the Arts."

3.1.a We encourage you to include "To find out more about how National Endowment for the Arts grants impact individuals and communities, visit [www.arts.gov](http://www.arts.gov)."

3.1.b In addition, we encourage you to use the [National Endowment for the Arts current logo](#) whenever possible.

3.2 For radio or television broadcast, we require the following voice-over language: "This project is supported in part by an award from the National Endowment for the Arts. On the web at arts dot gov." For television broadcast, display of the National Endowment for the Arts logo and web address is required.

3.3 We reserve the right to change the language of the required acknowledgement of National Endowment for the Arts support, as well as the right to disallow the use of our logo and acknowledgement of our support.

### 4. Selected Definitions (2 CFR 200.0-99)

The GTCs use terminology consistent with the Uniform Guidance. Select items are summarized below; see 2 CFR 200.0-99 for additional detail.

Authorizing Official		An authorizing official is a person with the recipient organization who has authority to legally and financially bind the organization. For organizations responsible for an approved independent component/child (e.g., a University and its art museum), the authorizing official must work for the parent organization.
Closeout	§200.16	The process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in §200.343 Closeout.
Cognizant agency for indirect costs	§200.19	The cognizant agency for indirect costs is usually the Federal agency that regularly provides the largest dollar amount of annual funding to the recipient.
Contract	§200.22	A legal instrument by which the recipient purchases goods or services under a Federal award.
Cost share or matching	§200.29	The portion of project costs not paid by Federal funds.
Equipment	§200.33	Tangible property having a useful life of more than one (1) year, and a per-unit cost equal to or greater than \$5,000. Generally, basic computer devices cost less than \$5,000 and are considered supplies for use and disposition purposes.
Unique Entity Identifier	(Reserved)	Currently a Dun & Bradstreet (DUNS) number is used as the unique entity identifier for applying for, and obtaining, Federal funds.

De minimis indirect cost rate	§200.414	An indirect cost rate of 10% that non-Federal entities, which have never had a Federally-negotiated indirect cost rate agreement, can apply to their award project budget. See also “Modified Total Direct Cost Rate.”
Institutions of Higher Education (IHEs)	§200.55	Public, private, and tribal colleges and universities, but excluding for-profit institutions.
Modified Total Direct Cost (MTDC)	§200.68	Used as a base for applying indirect costs through a Federally-negotiated indirect cost rate agreement, or the de minimis rate. Usually, "modified" means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward or contract. It excludes equipment, scholarships, participant support costs, rentals, and the portion of each subcontract in excess of \$25,000.
Non-Federal entity	§200.69	Any entity that is not the Federal government that carries out a Federal award as a recipient or subrecipient.
Participant support costs	§200.75	Stipends, subsistence, travel allowances and registration fees for conferences or training projects paid to or on behalf of participants or trainees. This does not include employees of the award recipient.
Period of performance	§200.77	The start and end date of the award. Only costs and activities incurred during this time period can be charged to the award.
Recipient	§200.86	The non-Federal entity that receives a Federal award directly from the Federal agency.
Source documentation (Financial Management)	§200.302(3)	Documentation that provides evidence that expenditures were incurred during the approved period of performance. Documentation includes receipts, invoices, contracts, as well as copies of cancelled checks, transaction reports, bank statements, charge/debit card statements, and in-kind contribution reports.
Supplies	§200.94	Tangible items costing less than \$5,000. Generally a basic computer device that costs less than \$5,000 is considered a supply for use and disposition purposes, regardless of the length of its useful life.
Third-party in-kind contributions	§200.96	means the value of non-cash contributions (i.e., property or services) that— (a) Benefit a Federally-assisted project or program; and (b) Are contributed by non-Federal third parties (not the award recipient), without charge, to a non-Federal entity under a Federal award.
Unrecovered indirect costs	§200.306(c)	The difference between the amount charged to the Federal award and the amount which could be charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

## 5. Required Registrations (2 CFR 25.200)

Organizations are required to have a unique entity identifier (currently a Dun & Bradstreet number, or DUNS) that reflects the organization's legal name and current, physical address. Organizations must also maintain an active registration—based on the DUNS provided in the application—in the System for Award Management (SAM.gov),

from application submission through award closeout. See the *How to Manage Your NEA Award Handbook* for more information about registering and renewing in SAM.

## 6. Conflicts of Interest (2 CFR 200.112, 200.318) and Criminal Disclosures (200.113)

- 6.1 You must have written conflict of interest policies that ensure that all employees, board members, officers, or agents engaged in the selection, award, and administration of grants or contracts, avoid conflicts as described in §200.318.
- 6.2 You are required to disclose to us any actual or potential conflicts, including but not limited to the following:
  - 6.2.a **National Endowment for the Arts Panelist.** No panelist can review an application from an organization with which he or she is affiliated. In addition, if a panelist later becomes associated with a project that he or she reviewed, then he or she cannot act as an authorizing official for that project. This prohibition is in effect throughout the entire period of performance.
  - 6.2.b **National Council on the Arts member.** Similarly, once an authorizing official for an organization that is an applicant or grantee is nominated to the National Council on the Arts, the authorizing official must recuse him/herself from acting in this capacity for applications and award actions, including payment requests.
- 6.3 You must also notify us of any violations of Federal criminal law involving fraud, bribery, or gratuity violations that potentially affect the Federal award, as noted in §200.113. See 2 CFR 32.3254 for more information.

## 7. Statutory and National Policy Requirements (2 CFR 200.300)

You are responsible for complying with all requirements of the Federal award, including those based on:

- 7.1 **National Endowment for the Arts Enabling Legislation.** You are required to execute your project, (e.g., productions, workshops, programs, etc.) in accordance with the Agency's enabling legislation that requires "artistic excellence and artistic merit."
- 7.2 **National policy requirements.** You are required to adhere to all national policy requirements as outlined in Appendix A, including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination.

## 8. Financial Management (2 CFR 200.302) and Internal Controls

- 8.1 Your financial management systems must meet standards described in §200.302(b)(1) through (b)(7), including:
  - 8.1.a Accurate identification of Federal award data, financial results, and the ability to provide source documentation upon request.
  - 8.1.b Written procedures for determining the allowability of costs and for managing payments.

- 8.2 You must establish and maintain effective internal controls over your award and provide reasonable assurance that you are managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the award. See recommended compliance documentation (§200.303).

## 9. General Procurement Standards (2 CFR 200.318-.326)

- 9.1 You must use your own documented procurement standards, which reflect applicable State and local laws and regulations, when procuring personal property and services under a Federal award. Awards made after October 1, 2017, must use procurement standards consistent with the requirements described in the 2 CFR sections noted above.
- 9.1.a You should have written procedures to ensure that contractors or recipients are not debarred or suspended prior to the payment or award of Federal funds (2 CFR 180 Subpart C).
- 9.1.b In addition, your procurement contracts must contain provisions as described in [Appendix II](#) to Part 200—Contract Provisions for non-Federal Entity Contracts under Federal Awards.
- 9.2 You may be able to take advantage of the flexibilities found by using procedures for micro-purchases (§200.320(a)), which have a current threshold of \$3,500<sup>1</sup> or less, and small purchases (§200.320(b)), which have a current threshold of \$150,000 or less (Simplified Acquisition Threshold).
- 9.3 We may ask to review your procurement policy, plans, and other documents such as requests for proposals and independent cost estimates (§200.324).

## 10. Cash Management Standards (2 CFR 200.305)

- 10.1 You must have written procedures to minimize the time elapsing between the receipt and the disbursement of Federal award funds to avoid having excessive Federal funds on hand. Requests for advance payment are limited to your immediate cash needs and are not to exceed anticipated expenditures for a 30-day period (§200.305(b)(1)).
- 10.2 Payments may be withheld (§200.305(6)) if:
- 10.2.a You have failed to comply with the terms and conditions of the award, including any Federal statutes or regulations,
- 10.2.b You are delinquent in a debt to the United States, or,
- 10.2.c You are withholding payment to contractors to assure satisfactory completion of work on the award.

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<sup>1</sup> The micro-purchase base threshold (FAR 2.101) is increased to \$3,500 as of October 2015.

## 11. Cost Sharing or Matching Requirements (20 USC 954(e) and 2 CFR 200.306)

- 11.1** Unless otherwise stated in your grant award document or cooperative agreement, National Endowment for the Arts funds cannot exceed 50 percent of the total cost of the National Endowment for the Arts-supported project (i.e., funds must be matched one-to-one, or "dollar for dollar"). This required cost share, or match, refers to the portion of project costs not paid by Federal funds, and may include your own funds, donations, non-Federal grants and other revenue.

Costs supported by both the National Endowment for the Arts funds and cost share/matching funds approved in your project budget must conform to all the requirements of the Federal award (§200.306(b)).

- 11.2 Use of Third-Party In-kind Contributions (§200.306(d-j)).** If you include in-kind third-party (i.e., not your own) contributions as part of your cost share or match, they must also be included as direct costs in your project budget so we can determine their allowability, and reflected as such in your accounting records. Volunteer and donated services, goods, property, or space must be documented and their fair market value determined per the Uniform Guidance. Although you may use in-kind contributions to meet the required match, you cannot be reimbursed by the National Endowment for the Arts for goods or services that were provided to you on an in-kind basis.
- 11.3 Use of Unrecovered Indirect Costs for Cost Sharing or Matching (§200.306(c)).** Unrecovered indirect costs may be included as part of the cost share/match for an award if you have a current Indirect Cost Rate (or Facilities & Administrative/F&A) Agreement with a Federal agency.
- 11.4 Use of Program Income (§200.307).**
- 11.4.a** Income earned during the period of performance that results from activities supported through a National Endowment for the Arts award is considered to be program income. These earnings can include, but are not limited to, income from fees for services, admission fees, or the use or rental of property (space, equipment, etc.)
- 11.4.b** Per §200.307(e)(3) and (f), the National Endowment for the Arts allows program income to be used as part of the cost share/match for allowable expenses of the NEA-supported project, or for other eligible projects in the arts conducted by your organization.
- 11.5 Ineligible Matching Resources.** These items are *not* eligible to meet your cost share/matching requirement:
- 11.5.a** Other Federal funds, including other National Endowment for the Arts funds (§200.306(b)(5)). This includes Federal funds that have been subgranted or disbursed to you from your State Arts Agency or another organization. You should consult your award notice from your State Arts Agency or other organization to determine if any portion of their award to you includes funds from a Federal agency.
- 11.5.b** Resources that have been used to match another National Endowment for the Arts award or other Federal program (§200.306(b)(2)).
- 11.5.c** Contributions or gifts provided to your organization that are restricted and cannot be used to support the project.
- 11.5.d** Gifts (bequeathed or otherwise) which are not available to your organization during the award period of performance.



## 12. Cost Principles (2 CFR §200 – Subpart E)

12.1 The allowability of costs for work performed under your National Endowment for the Arts award is determined in accordance with the appropriate NEA guidelines and the Uniform Guidance Subpart E-Cost Principles. All costs included in the approved project budget, whether supported with Federal or matching funds, must be:

12.1.a Necessary and reasonable for the performance of the Federal award.

12.1.b Allocable and in conformance with these cost principles.

12.1.c Consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the non-Federal entity.

12.1.d Accorded consistent treatment as either a direct or indirect cost.

12.1.e Determined in accordance with generally accepted accounting principles (GAAP).

12.1.f Not included as a cost or used to meet cost sharing or matching requirements of any other Federally-financed program.

12.1.g Adequately documented.

Where the determination of cost allowability differs, the National Endowment for the Arts guidelines and GTCs (and any Specific Terms & Conditions, as appropriate) take precedence over the Uniform Guidance.

12.2 Unallowable costs based on National Endowment for the Arts legislation and policy. The following items of cost are unallowable per the NEA's enabling legislation and/or unallowable as a matter of agency policy, as outlined in NEA guidelines:

12.2.a Awards to individuals or organizations to honor or recognize achievement (P.L. 111–88, October 30, 2009, Sec. 438 (2)). However, fees for artists or arts organizations who provide services or goods to you under the Federal award are allowable.

12.2.b Cash reserves and endowments (NEA guidelines).

12.2.c Construction, purchase, or renovation costs of facilities or land (NEA guidelines). However, costs associated with predevelopment, design fees and community planning, as well as preparing exhibit space, setting a piece of public art, etc. may be allowable.

12.2.d Costs to bring a project into compliance with Federal award requirements (NEA guidelines).

12.2.e Compensation to foreign nationals, including traveling to or from foreign countries when those expenditures are not in compliance with regulations issued by the [U.S. Treasury Department Office of Foreign Assets Control](#) (OFAC Sanctions/NEA guidelines).

12.2.h Subgranting or regranteeing (P.L. 111–88, October 30, 2009, Sec. 438 (2)).

12.2.i Visa costs paid to the U.S. Government (P.L. 109-54, Title III General Provisions, Sec. 406); however, the cost of preparing material (legal documentation, etc.) for submission is allowable.

12.3 Updates and Clarifications. Selected items of cost under 2 CFR Part 200 that have been clarified or updated include:

12.3.a Conferences (§200.432). Costs of conferences (including meetings, seminars, workshops or other events whose primary purpose is dissemination of technical information), are still generally allowable, however:

- i. Conference sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed in a manner that minimizes costs to the Federal award.
- ii. Costs associated with activities that generally occur at a closing meal, or a reception at the end of the working day, are unallowable. These activities also often have alcohol associated with them and/or are of a social nature, which are prohibited under Federal awards (see also 13.3.b. Entertainment.)

12.3.b Entertainment (§200.438). Entertainment, including amusement and social activities such as receptions, parties, galas, dinners, etc., and any associated costs including catering, alcoholic beverages, as well as costs for planning, staffing, supplies, etc., are unallowable.

12.3.c Fundraising (§200.442). A percentage of salaries and fringe benefits for development or fundraising staff, or fees to contractors who raise funds to implement the National Endowment for the Arts project during the period of performance may be allowable costs. However:

- i. Salaries or contracts for general fundraising activities or events, including those for donors, or that benefit the organization as a whole, are unallowable.
- ii. Costs associated with activities such as galas or parties are unallowable (see also 13.3.b Entertainment.)

12.3.d Home Office Workspace (§200.465(c)(6)). Rental of any property owned by any individuals or entities affiliated with the non-Federal entity for purposes such as a home office workspace is unallowable.

12.3.e Indirect (Facilities & Administration or F&A) Costs (§200.414). Award recipients may claim indirect costs based on:

- i. A current and appropriate indirect cost rate negotiated with your Federal Cognizant Agency, or;
- ii. A de minimis rate. For awards issued after October 1, 2014, an organization that has never received a Federally-negotiated indirect cost rate agreement may charge a de minimis rate of 10% on modified total direct costs (§200.414 (f)). This must be included on your approved project budget.

**NOTE:**

You cannot claim both direct overhead/administrative costs and a negotiated or de minimis indirect cost rate.

Research rates can only be used on National Endowment for the Arts Office of Research awards.

More information about indirect costs for a National Endowment for the Arts award can be found in the *How to Manage Your NEA Award Handbook*.

- 12.3.f **Goods for resale.** Costs of goods for resale are unallowable. This includes the sale of concessions, promotional merchandise, or items purchased for sales, even if related to your programming. It also includes any associated staffing or facilities costs. However, costs of items that are produced as part of the approved project activity (e.g. publishing books or exhibition catalogs, or making recordings or films) and that are incurred during the period of performance are allowable.

### 13. Travel

Travel costs are expenses for transportation, lodging, subsistence, and related items incurred by those who are on official business attributable to work under an award and in accordance with your entity's written travel reimbursement policies.

- 13.1 Any airfare charged to the award, whether domestic or foreign, may not exceed the value of the basic least expensive unrestricted accommodations class offered by a commercial carrier (§200.474(d)).

#### 13.2 Fly America Act (41 CFR 301-10.131 through .143)

- 13.2.a You are required to follow the provision of the Fly America Act. The regulations regarding the Fly America Act are available at 41 CFR 301-10.131-143. Any air travel paid in whole or in part with National Endowment for the Arts funds must be on a U.S. flag air carrier or a foreign air carrier under an air transport agreement (code share agreement) with the United States when these services are available.
- 13.2.b For travel under an air transport agreement (code share agreement) the ticket, or documentation for an e-ticket, must identify the U.S. flag carrier's designator code and flight number, e.g. American Airlines (AA) 1606 operated by Air France.
- 13.2.c There are some exceptions to the Fly America Act, see 41 CFR 301-10.135-138. If you do use a foreign air carrier you must provide us with a certification, including a justification as to why your travel met one of the exceptions. We may request additional information if necessary.

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

- 13.3 **Foreign Travel.** Foreign travel is defined as any travel outside the United States, its territories and possessions, and Canada and Mexico. The Grants & Contracts Office must provide written approval for all foreign travel not originally approved in your award before travel is undertaken.

While travel requests to Mexico and Canada that are project related, allocable, and allowable do not require prior written approval from the National Endowment for the Arts before being undertaken, the Fly America Act does apply.

## 14. Changes in Your Project: Amendments (2 CFR 200.308)

**14.1** You are required to carry out a project consistent with the application or proposal approved for funding by the National Endowment for the Arts. Amendment requests are considered on a case-by-case basis, and approval is not guaranteed. Until you receive written approval from the Grants & Contracts Office, you may only incur costs consistent with the terms and conditions of the award in effect at the time of your request.

Detailed information about how to request an amendment can be found in the *How to Manage Your NEA Award Handbook*.

**14.1.a** We have the right to request additional information, such as updates on specific project activities, including a revised budget or an itemized list of actual expenditures, as needed.

**14.1.b** If your organization is undergoing an audit by the National Endowment for the Arts Inspector General's office, amendments of the award(s) in question will not be approved independent of the audit resolution process.

**14.2** The following types of amendments require written approval from the Grants & Contracts Office:

**14.2.a** **Period of performance changes.** This may include a new start date (no earlier than the earliest allowable start date per the guidelines), as well as an end date extension.

**14.2.b** **Final report filing extension.** This may include the Final Descriptive Report, Federal Financial Report, Geographic Location of Project Activity Report, and if required, a work product.

**14.2.c** **Project scope changes.** These include changes to the approved project activities, focus of content, significant changes in targeted participants, and changes in the breadth or impact of projects. These also include:

- i. Changes in artists or key partners, if they were specifically identified as confirmed in the application or project budget.
- ii. Changes in an activity's location that may impact historic buildings or sites.
- iii. Changes in the primary partner for Our Town grantees or other National Endowment for the Arts funding opportunities where primary partners are required.
- iv. Changes in the lead researcher for Art Works-Research grantees.

**14.2.d** **Budget Revisions.**

- i. Budget changes due to a change in the scope of the National Endowment for the Arts-supported project.
- ii. Adding permanent equipment.
- iii. Adding foreign travel.
- iv. Adding indirect/F&A costs allowable under a Federally-negotiated rate.

**14.3** The following changes do not require written approval from us:

**14.3.a** **Project activities.**

- i. Changes in organizational management/project administration (unless specified in your award document).

- ii. Changes in artists, participants, or project partners that were not identified specifically in the approved project. (This is common with festivals.)
- iii. Addition or removal of auxiliary programming as long as it does not impact the overall project scope.
- iv. Changes in project venues or touring locations, as long as: all project locations are fully accessible in compliance with Section 504 and the ADA, or specific accommodations will be made appropriately; and, the constituency to be reached is the same as originally approved.

**14.3.b Budget revisions.**

- v. Transfers among direct cost line items.
- vi. Elimination or addition of an allowable project cost that does not affect the scope of the award.
- vii. Replacement of in-kind match with cash match or other changes in match sources, as long as they meet all other cost share requirements.

**14.4 Declining an Award.** You may decide to decline the award after it has been made. Please see the *How to Manage Your NEA Award Handbook* for instructions.

**15. Performance and Financial Reporting (2 CFR 200.327-328)**

More information can be found in the *How to Manage Your NEA Award Handbook*. Report forms and instructions are also on our website.

**15.1. Progress Report (20 USC 954(j)).** A progress report is required once the cumulative amount of National Endowment for the Arts funds requested exceeds two-thirds of the award amount. This information is most often reported on the payment request form submission, and must be approved before we release funds that exceed this amount.

**15.2 Specific Reporting Requirements (§200.207).** We may require you to submit certain information before funds can be released (e.g., verification of compliance with NEPA/NHPA requirements, a signed contract, in-kind documentation, an itemized list of actual expenditures to date, etc.) or at other times during the project. These Specific Terms & Conditions will be included in your award notification when applicable.

**15.3 Final Reports (§200.343).** To close out your award you must submit the following no later than 90 days after the period of performance end date:

**15.3.a** A Final Descriptive Report (FDR) that provides us with information on the performance of your award activities and associated data,

**15.3.b** A Federal Financial Report (FFR),

**15.3.c** Geographic Location of Project Activities report and,

**15.3.d** Any required work product(s) as identified.

**15.4** Failure to submit the required final reports for any award(s) renders you ineligible to receive National Endowment for the Arts funding for five (5) years following the final report due date of the award(s) or until the delinquent final reports are submitted, whichever occurs first. Acceptability of final reports may also affect eligibility for new awards.

- 15.5 For awards issued from October 1, 2014, to September 30, 2017, failure to submit required final reports within 210 days after the period of performance end date will result in the withdrawal of any funds remaining on that award and the award will be closed out (see 19. Closeouts, Adjustments, etc.).

For awards issued after October 1, 2017, the required final reports must be received within 150 days after the period of performance end date. Failure to do so will result in the actions as noted above.

## 16. Property Standards: Use and Disposition

- 16.1 Property may include commissioned, purchased, or fabricated art work(s) approved under the National Endowment for the Arts award. Unless otherwise specified, you will have title to this property, without further obligation to the Federal government, provided that it will be used for similar activities. One example of similar activity is selling the art work to another museum or visual art center with the intention that it will be available to the public. It may not be de-accessioned to a private collector where it would no longer be on view to the public.

- 16.2 Equipment (§200.313) includes tangible, nonexpendable, personal property having a useful life of more than one (1) year that costs \$5,000 or more per unit that you have been approved to purchase under the National Endowment for the Arts award.

You are strongly encouraged to purchase American-made equipment in accordance with the "Buy American Act" (41 USC 8301-8305).

Unless otherwise specified, you will have title to equipment commissioned, purchased, or fabricated under the award, without further obligation to the Federal government, provided that it will be used for activities similar to those approved by us. Items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the National Endowment for the Arts (2 CFR 313(e)(1)).

- 16.3 Supplies (§200.314) include computing devices (§200.453). If there is a residual inventory of unused supplies, including computing devices purchased for \$5,000 or less per unit, you may retain them without further obligation to the Federal government, provided that they will be used for activities similar to those approved by us.

- 16.4 Intangible Property (§200.315).

16.4.a You may copyright any material that is subject to copyright and was developed, or for which ownership was acquired, under the National Endowment for the Arts award during the period of performance. For procedural information, visit the U.S. Copyright Office at [www.copyright.gov](http://www.copyright.gov).

16.4.b We reserve a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use work, as well as data, produced under a Federal award for Federal government purposes. We also have the right to authorize others to do the same (§200.315 (d) and (e)).

16.4.c We strongly recommend that any publication that results from this award be cataloged by the Cataloging in Publication Program of the Library of Congress before final printing. This method of cataloging enables libraries to acquire and process books quickly. Publishers ineligible for this program may be eligible for the Library's Preassigned Control Number Program. Entering these titles

in a national bibliographic database leads to greater dissemination of publications. For procedural information, visit the Library of Congress at <http://www.loc.gov/publish/cip/>.

## 17. Record Retention (2 CFR 200.333) and Access

- 17.1 Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final Federal Financial Report (FFR).

Exceptions include if litigation, claim, or audit is started before the expiration of the three-year period, or if we notify you in writing to extend the retention period.

- 17.2 Standards for Documentation of Personnel Expenses (§200.430(i)(1)). Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. The records must comply with your organization's internal controls and established accounting policies. Records must support these costs for both the Federal funds and cost share/matching requirements. We may require personnel activity reports or equivalent documentation if necessary (§200.430(i)(8)).

- 17.3 Records for equipment must be retained for three (3) years after final disposition (§200.333(c)).

### 17.4 Access to Federal award information.

17.4.a During the period of performance and the subsequent retention period, the National Endowment for the Arts Inspector General, the Comptroller General of the United States, or any of our authorized representatives has the right of access to any documents, papers, or other records which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to your personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but last as long as records are retained (§200.336).

17.4.b Federal award-related information should be collected and stored in open and machine-readable formats whenever practicable (§200.335). In addition, restrictions on public access are generally limited to protected personally identifiable information (PII) and other FOIA and applicable exemptions (§200.337).

## 18. Noncompliance

- 18.1 Remedies (§200.338). If you fail to comply with Federal statutes, regulations, or the terms and conditions of our award, we may impose additional conditions, as described in §200.207. If we determine that noncompliance cannot be remedied by imposing additional conditions, we may take one or more of the following actions, as appropriate in the circumstances:

18.1.a Temporarily withhold cash payments pending correction of the deficiency, or more severe enforcement action.

18.1.b Disallow the use of National Endowment for the Arts funds or your cost share/match for the unallowable costs or activities.

- 18.1.c Wholly or partly suspend or terminate the National Endowment for the Arts award.
  - 18.1.d Initiate suspension or debarment proceedings as authorized under 2 CFR 180 and our regulations at 2 CFR 32.3254.
  - 18.1.e Withhold further National Endowment for the Arts awards.
  - 18.1.f Take other remedies that may be legally available.
- 18.2 **Termination (§200.339).** There are circumstances under which we may determine that it is in the best interest of the government to terminate an award before its end date. Grants and cooperative agreements may be terminated in whole or in part:
- 18.2.a By us, if you fail to comply with the terms and conditions of a Federal award;
  - 18.2.b By us, for cause;
  - 18.2.c By us, with your consent, in which case we will agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
  - 18.2.d By you, upon sending us written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if we determine that the reduced or modified portion of the award will not accomplish the purposes or which it was made, we may terminate the award in its entirety.
- 18.3 We reserve the right to take additional actions such as requiring you to return a portion or all of the award funds, requesting that you remove acknowledgement of National Endowment for the Arts support, recommending government-wide suspension, or taking other legally available remedies. You will be notified of such actions and be given an opportunity to provide information and come into compliance.
- 18.4 Government-wide suspension and debarment will follow a process in conjunction with our Office of Inspector General (§200.341).

**19. Closeout, Adjustments, and Continuing Responsibilities (2 CFR 200.343-344)**

Upon receipt and approval of all final reports, the agency will close out your award. This includes the deobligation of any unused funds as reported on your Federal Financial Report. Closeout will also occur even if reports aren't received (see 16.4 and 16.5).

- 19.1 If you need to return National Endowment for the Arts funds that you are not using, or you are not going to draw down all of the NEA award funds, follow the instructions in the *How to Manage Your NEA Award Handbook*.
- 19.2 The closeout of a Federal award does not affect any of the following:
  - 19.2.a Our right to disallow costs and recover funds on the basis of a later audit or other review within the record retention period.
  - 19.2.b Your obligation to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.



19.2.c Audit requirements if you must have a Single or Program-Specific Audit (see below).

19.2.d Records retention as required in §200.333.

## 20. Single Audit Requirements (2 CFR 200.501)

The threshold for requiring a Single Audit or Program-specific audit is \$750,000 in yearly expenditures of Federal funds. This amount is the aggregate of funds from all Federal sources. If your organization meets or exceeds this threshold, a percentage of Single Audits costs may be included in your award budget. Otherwise, audit costs are unallowable.

If you have questions about a Single Audit, contact the Office of Inspector General at (202) 682-5402 or [oig@arts.gov](mailto:oig@arts.gov).

## Appendix A: National Policy and Other Legal Requirements, Statutes, and Regulations that Govern Your Award

### 1. Nondiscrimination Policies

As a condition of receipt of Federal financial assistance, you acknowledge and agree to execute your project, and require any contractors, successors, transferees, and assignees to comply with applicable provisions of national laws and policies prohibiting discrimination, including but not limited to:

- 1.a Title VI of the Civil Rights Act of 1964, as amended, and implemented by the NEA at 45 USC 1110, provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. Title VI also extends protection to persons with limited English proficiency (42 USC 2000d et seq.)
- 1.b As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. You are encouraged to consider the need for language services for LEP persons in conducting your programs and activities. For assistance and information go to [www.arts.gov/foia/reading-room/nea-limited-english-proficiency-policy-guidance](http://www.arts.gov/foia/reading-room/nea-limited-english-proficiency-policy-guidance).
- 1.c Title IX of the Education Amendments of 1972, as amended, provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance (20 USC 1681 et seq.)
- 1.d The Age Discrimination Act of 1975, as amended, provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (42 USC 6101 et seq.)
- 1.e The Americans with Disabilities Act of 1990 (ADA), as amended, prohibits discrimination on the basis of disability in employment (Title I); State and local government services (Title II); and places of public accommodation and commercial facilities (Title III) (42 USC 12101-12213).
- 1.f Section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of his/her disability, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (29 USC 794).

Access should be integrated into all facets and activities of an organization, from day to day operations to long range goals and objectives. Access accommodations and services should be given a high priority and funds should be available for these services. All organizations are legally required to provide reasonable and necessary accommodations for staff and visitors with disabilities.

#### Section 504 - Self-Evaluation and Additional Resources

- i. A Section 504 self-evaluation *must* be on file at your organization. To help your organization evaluate its programs, activities, and facilities to ensure full compliance with Section 504 accessibility requirements,

the Civil Rights Office has a *Section 504 Self Evaluation Workbook*. The workbook is located at [www.arts.gov/about/504Workbook.html](http://www.arts.gov/about/504Workbook.html).

- ii. You should designate a staff member to serve as a 504 Coordinator. The completed workbook or similar compliance and supporting documentation should be kept on file for a period of three (3) years from the date the Federal Financial Report (FFR) is filed, and made available to the public and the National Endowment for the Arts upon request. The NEA may request the 504 Workbook or your compliance documents for various potential scenarios including an Inspector General audit and/or civil rights investigation.
- iii. *Design for Accessibility: A Cultural Administrator's Handbook* provides guidance on making access an integral part of an organization's staffing, mission, budget, and programs. This Handbook and other resources may be downloaded from the National Endowment for the Arts website at [www.arts.gov/accessibility/accessibility-resources/publications-checklists](http://www.arts.gov/accessibility/accessibility-resources/publications-checklists). If you have questions, contact the Office of Accessibility at [accessibility@arts.gov](mailto:accessibility@arts.gov); (202) 682-5532; FAX (202) 682-5715; or TTY (202) 682-5496.

## 2. Environmental and Preservation Policies

2.a The National Environmental Policy Act of 1969, as amended, applies to any Federal funds that would support an activity that may have environmental implications. We may ask you to respond to specific questions or provide additional information in accordance with the Act. If there are environmental implications, we will determine whether a categorical exclusion may apply; to undertake an environmental assessment; or to issue a "finding of no significant impact," pursuant to applicable regulations and 42 USC Sec. 4332.

2.b The National Historic Preservation Act of 1966, as amended, applies to any Federal funds that support activities that have the potential to impact any structure eligible for or on the National Register of Historic Places, adjacent to a structure that is eligible for or on the National Register of Historic Places, or located in a historic district, in accordance with Section 106. This also applies to planning activities that may affect historic properties or districts. We will conduct a review of your project activities, as appropriate, to determine the impact of your project activities on the structure or any affected properties. Agency review must be completed prior to any agency funds being released. You may be asked to provide additional information on your project to ensure compliance with the Act at any time during your award period (16 USC 470).

### Other National Policies

3. **Debarment and Suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR 180, as adopted by the National Endowment for the Arts in 2 CFR 32.3254.

There are circumstances under which we may receive information concerning your fitness to carry out a project and administer Federal funds, such as:

- i. Conviction of, or a civil judgment for, the commission of fraud, embezzlement, theft, forgery, or making false statements;
- ii. Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

- iii. Any other cause of so serious or compelling a nature that it affects an organization's present responsibility.

In these circumstances, we may need to act quickly to protect the interest of the government by suspending your funding while we undertake an investigation of the specific facts. We may coordinate our suspension actions with other Federal agencies that have an interest in our findings. A suspension may result in your debarment from receiving Federal funding government-wide for up to three (3) years.

**4. The Drug Free Workplace Act** requires you to publish a statement about your drug-free workplace program. You must give a copy of this statement to each employee (including consultants and temporary personnel) who will be involved in award-supported activities at any site where these activities will be carried out.

You must maintain on file the place(s) where work is being performed under this award (i.e., street address, city, state, and zip code). You must notify the National Endowment for the Arts Grants & Contracts Office of any employee convicted of a violation of a criminal drug statute that occurs in the workplace (41 USC 701 et seq. and 45 CFR 1155).

**5. Lobbying.** You may not conduct political lobbying, as defined in the statutes and regulations listed below, within your Federally-supported project. In addition, you may not use Federal funds for lobbying specifically to obtain awards. For definitions and other information on these restrictions, refer to the following:

- 5.1 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 designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities (18 USC 1913).
- 5.2 Lobbying (2 CFR 200.450) describes the cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans as an unallowable project cost. The regulation generally defines lobbying as conduct intended to influence the outcome of elections or to influence elected officials regarding pending legislation, either directly or through specific lobbying appeals to the public.
- 5.3 Certification Regarding Lobbying to Obtain Awards. Section 319 of Public Law 101-121, codified at 31 USC 1352, prohibits the use of Federal funds in lobbying members and employees of Congress, as well as employees of Federal agencies, with respect to the award or amendment of any Federal grant, cooperative agreement, contract, or loan. While non-Federal funds may be used for such activities, they may not be included in your project budget, and their use must be disclosed to the awarding Federal agency. Disclosure of lobbying activities by long-term employees (employed or expected to be employed for more than 130 days) is, however, not required. In addition, the law exempts from definition of lobbying certain professional and technical services by applicants and awardees.

**6. Davis-Bacon and Related Acts (DBRA), as amended,** requires that each contract over \$2,000 to which the United States is a party for the construction, alteration, or repair of public buildings or public works (these activities include, but are not limited to, painting, decorating, altering, remodeling, installing pieces fabricated off-site, and furnishing supplies or equipment for a work-site) must contain a clause setting forth the minimum wages to be paid to laborers and mechanics employed under the contract. Under the provisions of DBRA, contractors or their subcontractors must pay workers who qualify under DBRA no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.

Information about the laborers and projects that fall under DBRA can be found in the Department of Labor's Compliance Guide at [www.dol.gov/compliance/guide/dbra.htm](http://www.dol.gov/compliance/guide/dbra.htm). DBRA wage determinations are to be used in accordance with the provisions of Regulations, [29 CFR Part 1](#), [Part 3](#), and [Part 5](#), and with DOL's Compliance Guide. The provisions of DBRA apply within the 50 states, territories, protectorates, and Native American nations (if the labor is completed by non-tribal laborers).

**7. The Native American Graves Protection and Repatriation Act of 1990** applies to any organization that controls or possesses Native American human remains and associated funerary objects and receives Federal funding, even for a purpose unrelated to the Act (25 USC 3001 et seq.).

**8. U.S. Constitution Education Program.** Educational institutions (including but not limited to "local educational agencies" and "institutions of higher education") receiving Federal funds from any agency are required to provide an educational program on the U.S. Constitution on September 17 (P.L. 108-447, Division J, Sec. 111(b)). For more information on how to implement this requirement and suggested resources, see [www2.ed.gov/policy/fund/guid/constitutionday](http://www2.ed.gov/policy/fund/guid/constitutionday) and <http://thomas.loc.gov/teachers/constitution.html>.

**9. Prohibition on use of funds to ACORN or its subsidiaries.** None of the Federal or matching funds expended for your awarded project may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries (P.L. 111-88 Sec. 427).

**Attachment B****ELECTRONIC CODE OF FEDERAL REGULATIONS****e-CFR data is current as of April 9, 2018**

Title 2 → Subtitle A → Chapter II → Part 200 → Subpart F → Appendix

Title 2: Grants and Agreements

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

FEDERAL AWARDS

Subpart F—Audit Requirements

**APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has 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 or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78808, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

[Need assistance?](#)

## Attachment C

### CONTRACTING WITH SMALL MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The City of Key West encourages the use of small minority businesses, women's business enterprises, and labor surplus area firms. As a Consultant for the City, you are **required** to follow the affirmative steps below to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists.
2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
3. Divide total requirements, when *economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
4. Establish delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses, and women's business enterprises.
5. Use the services and assistance, *as appropriate*, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Require the prime contractor/consultant, if subcontracts are to be let, to take the affirmative steps listed above.



## Attachment D

### CERTIFICATIONS AND ASSURANCES

In performance of this Contract, Consultant provides the following certifications and assurances:

1. **Nondiscrimination Policies**
2. **Environmental and Preservation Policies**
3. **Debarment and Suspension**
4. **The Drug Free Workplace Act**
5. **Lobbying**
6. **Davis-Bacon and Related Acts (DBRA), as amended – CONSTRUCTION ONLY**
7. **Native American Graves Protection and Repatriation Act of 1990**
8. **U.S. Constitution Education Program**
9. **Prohibition on use of funds to ACORN or its subsidiaries**
10. **Conflicts of Interest and Criminal Disclosures**
11. **Unallowable Costs**
12. **Travel**
13. **Record Retention and Access**

#### 1. NONDISCRIMINATION POLICIES

As a condition of this Federally funded project, you acknowledge and agree to perform work on the project as detailed in the Request for Proposals, and require any subcontractors, successors, transferees, and assignees to comply with applicable provisions of national laws and policies prohibiting discrimination, including but not limited to: Title VI of the Civil Rights Act of 1964 (as amended), Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency, Title IX of the Education Amendments of 1972 (as amended), The Age Discrimination Act of 1975 (as amended), The Americans with Disabilities Act of 1990 (ADA, as amended), Section 504 of the Rehabilitation Act of 1973 (as amended).

#### 2. ENVIRONMENTAL AND PRESERVATION POLICIES

The undersigned Consultant acknowledges that the following policies apply to this project:

**2.a The National Environmental Policy Act of 1969, as amended,** applies to any Federal funds that would support an activity that may have environmental implications.

**2.b The National Historic Preservation Act of 1966, as amended,** applies to any Federal funds that support activities that have the potential to impact any structure eligible for or on the National Register of Historic Places, adjacent to a structure that is eligible for or on the National Register of Historic Places, or located in a historic district, in accordance with Section 106. This also applies to planning activities that may affect historic properties or districts.

### **3. DEBARMENT AND SUSPENSION**

The undersigned Consultant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification; and/or
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause of default.

If Consultant is unable to certify to any of the statements in this certification, Consultant shall attach an explanation to this Contract.

### **4. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

Pursuant to the Drug-Free Workplace Act of 1988, the undersigned attests and certifies that the Consultant (if not an individual) will provide a drug-free workplace by the following actions:

1. Publishing a statement notifying employees, including temporary personnel, that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees concerning:
  - a. The dangers of drug abuse in the workplace.
  - b. The policy of maintaining a drug-free workplace.
  - c. Any available drug counseling, rehabilitation and employee assistance programs.
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph 4.1. of this certification.
4. Notifying the employee in the statement required by paragraph 4.1. of this certification that, as a condition of employment under the Contract, the employee will:
  - a. Abide by the terms of the statement.
  - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
5. Notifying the City in writing ten (10) calendar days after receiving notice under subparagraph 4.b. from an employee or otherwise receiving actual notice of such conviction. Provide such notice of convicted employees, including position title, to every Contract Manager on whose contract activity the convicted employee was working. The notice shall include the identification number(s) of each affected Contract or Grant.
6. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph 4.4.b. herein, with respect to any employee who is so convicted:
  - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 as amended.
  - b. Requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local, health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of this entire certification.

If the Consultant is an individual, the Consultant certifies that:

1. As a condition of the Contract, Consultant will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the contract; and,
2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, Consultant will report the conviction, in writing, within 10 calendar days of the conviction, to the City when notice is made to such a central point, it shall include the identification number(s) of each affected contract.

**5. CERTIFICATION REGARDING LOBBYING** - Certification for Contracts, Grants, Loans and Cooperative Agreements.

The undersigned Consultant certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative

agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employees of Congress, or employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the undersigned shall also complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that language of this certification be included in the documents for all subcontracts at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients and consultants shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **6. DAVIS-BACON AND RELATED ACTS (DBRA), AS AMENDED**

Applicable to construction contracts only.

#### **7. THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT OF 1990**

The undersigned Consultant acknowledges the Native American Graves Protection and Repatriation Act applies to any organization that controls or possesses Native American human remains and associated funerary objects and receives Federal funding, even for a purpose unrelated to the Act (25 USC 3001 et seq.).

#### **8. U.S. CONSTITUTION EDUCATION PROGRAM**

The undersigned Consultant acknowledges that Educational institutions (including but not limited to "local educational agencies" and "institutions of higher education") receiving Federal funds from any agency are required to provide an educational program on the U.S. Constitution on September 17 (P.L. 108-447, Division J, Sec. 111(b)). For more information on how to implement this requirement and suggested resources, see [www2.ed.gov/policy/fund/guid/constitutionday](http://www2.ed.gov/policy/fund/guid/constitutionday) and <http://thomas.loc.gov/teachers/constitution.html>.

#### **9. PROHIBITION ON USE OF FUNDS TO ACORN OR ITS SUBSIDIARIES**

The undersigned Consultant certifies that no Federal funds have been distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries (P.L. 111-88 Sec. 427)

#### **10. CONFLICTS OF INTEREST (2 CFR 200.112, 200.318) AND CRIMINAL DISCLOSURES (200.113)**

The undersigned Consultant acknowledges the following apply to the City:

1. Written conflict of interest policies that ensure that all employees, board members, officers, or agents engaged in the selection, award, and administration of grants or contracts, avoid conflicts as described in §200.318.
2. Disclose to grantor any actual or potential conflicts, including but not limited to the following:
  - 2.a National Endowment for the Arts Panelist. No panelist can review an application from an organization with which he or she is affiliated. In addition, if a panelist later becomes associated with a project that he or she reviewed, then he or she cannot act as an authorizing official for that project. This prohibition is in effect throughout the entire period of performance.
  - 2.b National Council on the Arts member. Similarly, once an authorizing official for an organization that is an applicant or grantee is nominated to the National Council on the Arts, the authorizing official must recuse him/herself from acting in this capacity for applications and award actions, including payment requests.
3. Notify the grantor of any violations of Federal criminal law involving fraud, bribery, or gratuity violations that potentially affect the Federal award, as noted in §200.113. See 2 CFR 32.3254 for more information.

## **11. UNALLOWABLE COSTS**

The undersigned Consultant certifies the National Endowment for the Arts' unallowable costs have been reviewed. Refer to National Endowment for the Arts General Terms & Conditions (December 2017 version), Section 12.2, page 7 which can be found in this RFP, Attachment A.

## **12. TRAVEL**

The undersigned Consultant certifies the National Endowment for the Arts' travel information has been reviewed. Refer to National Endowment for the Arts General Terms & Conditions (December 2017 version), Section 13, page 9 which can be found in this RFP, Attachment A.

## **13. RECORD RETENTION AND ACCESS**

The undersigned Consultant acknowledges the record retention period of three (3) years. Financial records, supporting documents, statistical records, and all other records pertinent to this project must be retained for a period of three (3) years from the date of submission of the City's final Federal Financial Report (FFR).

Exceptions include if litigation, claim, or audit is started before the expiration of the three-year period, or if the City provides notification in writing to extend the retention period.

If Consultant is unable to certify to any of the statements in this certification, Consultant shall attach an explanation to this Contract.

By signing below, Consultant certifies the representations outlined in parts 1 through 13 above are true and correct.

*Susan Silberberg*  
(Signature and Title of Authorized Representative)

SUSAN SILBERBERG  
Consultant Name

1 HOLDEN ST # 218  
Consultant Street Address

BROOKLINE, MA 02448  
City, State, ZIP Code