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## NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

### 2 CFR Part 3185

### 45 CFR Part 1185

RIN 3137-AA18

#### Institute of Museum and Library Services Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

**AGENCY:** National Foundation for the Arts and Humanities; Institute of Museum and Library Services.

**ACTION:** Direct final rule.

**SUMMARY:** The Institute of Museum and Library Services (IMLS) implements Office of Management and Budget (OMB) guidance on nonprocurement suspension and debarment, issued on August 31, 2005 [70 FR 51863], by adopting the guidelines in a new part in title 2 of the CFR, the Government-wide title recently established for OMB guidance on grants and agreements, and removing 45 CFR part 1185, the part containing the IMLS implementation of the government-wide common rule on nonprocurement debarment and suspension. This regulatory action would make no substantive change in IMLS policy or procedures for nonprocurement debarment and suspension.

**DATES:** The effective date for this final rule is September 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Institute of Museum and Library Services, ATTN: Office of the General Counsel, 1800 M Street, NW., 9th Floor, Washington, DC 20036; or Calvin D. Trowbridge III, (202) 653-4675. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the IMLS TTY Phone on (202) 653-4614.

**SUPPLEMENTARY INFORMATION:** This final rule implements the OMB guidance and does not make any changes in current policies and procedures. IMLS is not soliciting public comment on this rule and is instead issuing this rule as a direct final rule. Under 5 U.S.C. 553(b)(3)(A) agencies are not required to undergo notice and comment procedure for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.” Because this rule adopts OMB’s published guidelines, which followed notice and comment procedures, and collocates IMLS’ specific nonprocurement suspension and debarment rules to title 2 of the CFR, we believe that it falls under the exception cited above.

#### Executive Order 12866

This rule is not significant because the replacement of the common rule with OMB guidance and a brief IMLS adopting regulation does not make any changes in current policies and procedures.

#### Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

#### Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

#### Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

## List of Subjects

### 2 CFR Part 3185

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

### 45 CFR Part 1185

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

■ Accordingly, under the authority of 20 U.S.C. 9103(f), IMLS amends Title 2, Subtitle B, and Title 45, Chapter 1185, of the Code of Federal Regulations as follows:

#### Title 2—Grants and Agreements

■ 1. Add Chapter XXXI to Subtitle B to read as follows:

#### Chapter XXXI—Institute of Museum and Library Services

#### PART 3185—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3185.10 What does this part do?

3185.20 Does this part apply to me?

3185.30 What policies and procedures must I follow?

#### Subpart A—General

3185.137 Who in IMLS may grant an exception to let an excluded person participate in a covered transaction?

#### Subpart B—Covered Transactions

3185.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

#### Subpart C—Responsibilities of Participants Regarding Transactions

3185.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

#### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3185.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

#### Subpart E—I—[Reserved]

**Authority:** 20 U.S.C. 9103(f); Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

**§ 3185.10 What does this part do?**

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Institute of Museum and Library Services (IMLS) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for IMLS to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

**§ 3185.20 Does this part apply to me?**

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a "covered transaction" (see Subpart B of 2 CFR part 180 and the definition of "nonprocurement transaction" at 2 CFR 180.970.

(b) Respondent in an IMLS suspension or debarment action.

(c) IMLS debarment or suspension official;

(d) IMLS grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

**§ 3185.30 What policies and procedures must I follow?**

The IMLS policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3185.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, IMLS policies and procedures are those in the OMB guidance.

**Subpart A—General****§ 3185.137 Who in the IMLS may grant an exception to let an excluded person participate in a covered transaction?**

The IMLS Director has the authority to grant an exception to let an excluded person participate in a covered

transaction, as provided in the OMB guidance at 2 CFR 180.135.

**Subpart B—Covered Transactions****§ 3185.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower-tier coverage in the figure in the Appendix to 2 CFR part 180), IMLS does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

**Subpart C—Responsibilities of Participants Regarding Transactions****§ 3185.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions****§ 3185.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by Subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

**Subpart E—I—[Reserved]****Title 45 Public Welfare****Chapter XI—National Foundation for the Arts and the Humanities****PART 1185—[REMOVED]**

■ 2. Under authority Sec. 2455, Public Law 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235) part 1185 is removed.

Calvin D. Trowbridge III,

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[FR Doc. E8-18207 Filed 8-8-08; 8:45 am]

BILLING CODE 7036-01-P

**OFFICE OF PERSONNEL MANAGEMENT****5 CFR Part 351**

RIN 3206-AL64

**Competitive Area**

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing final regulations that provide agencies with the option of establishing a reduction in force (RIF) competitive area that only includes pay band positions. An agency has this option when a RIF competitive area otherwise includes pay band positions and other positions that are not covered by one or more pay bands.

**DATES:** *Effective Date:* These regulations are effective August 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Glennon by telephone on 202-606-0960, by Fax on 202-606-2329, by TDD on 202-418-3134, or by e-mail at [employ@opm.gov](mailto:employ@opm.gov).

**SUPPLEMENTARY INFORMATION:** On April 15, 2008, OPM published proposed reduction in force (RIF) regulations in the *Federal Register* at 73 FR 20180. Interested parties could submit comments to OPM on the regulations through May 15, 2008. OPM received timely comments from three agencies, two unions, and two individuals on these proposed regulations. We considered all of the timely comments in publishing this final regulation. Below is a discussion of the specific comments.

**Discussion of Comments**

All three agencies concurred with the option of establishing a separate competitive area for pay band positions. One agency supported our proposed regulation without any additional comments or suggestions.

Two agencies concurred, but had additional comments. One agency suggested that OPM further revise the RIF regulations to allow agencies the additional option of establishing separate competitive areas for individual pay band systems when a competitive area includes more than one pay band system. OPM did not adopt this suggestion. Because all pay band systems have common characteristics flowing from the consolidation of former graded positions into broad pay bands, we see no need to further allow agencies the additional option of establishing separate competitive areas for individual pay