

shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

**§ 34.62 Subsequent adjustments and continuing responsibilities.**

(a) The closeout of an award does not affect any of the following:

(1) The right of the Department of Defense to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 34.16.

(4) Property management requirements in §§ 34.21 through 34.25.

(5) Records retention as required in § 34.42.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the grants officer and the recipient, provided the responsibilities of the recipient referred to in § 34.61(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

**§ 34.63 Collection of amounts due.**

Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. Procedures for issuing the demand for payment and pursuing administrative offset and other remedies are described in 32 CFR 22.820.

APPENDIX A TO PART 34—CONTRACT PROVISIONS

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), “Equal Employment Opportunity,” as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by

regulations at 41 CFR chapter 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by 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 shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the responsible DoD Component.

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

4. *Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement*—Contracts, grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

5. *Clean Air Act (42 U.S.C. 7401 et seq.)* and the Federal Water Pollution Control Act (33

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U.S.C. 1251 *et seq.*), as amended—Contracts and subawards 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 (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 responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient.

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.