

### § 12.903

*Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

*Third party in-kind contributions* means the value of noncash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

*Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

*Unobligated balance* means the portion of the funds authorized by Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

*Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

*Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

#### § 12.903 Effect on other issuances.

For awards subject to this subpart, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this subpart shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in Section 12.904.

#### § 12.904 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this subpart

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when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this subpart shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. All requests for class deviations shall be processed through the Assistant Secretary-Policy, Management, and Budget. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies. Bureau/office application of less restrictive requirements when awarding small awards, except for those requirements which are statutory, as well as exceptions on a case-by-case basis, will be handled by designated officials identified in bureau/office procedures.

#### § 12.905 Subawards.

Unless sections of this subpart specifically exclude subrecipients from coverage, the provisions of this subpart shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 43 CFR part 12.

#### PRE-AWARD REQUIREMENTS

#### § 12.910 Purpose.

Sections 12.011 through 12.917 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

#### § 12.911 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act

(31 U.S.C. 6301-6308) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* Federal awarding agencies shall notify the public of their funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

**§ 12.912 Forms for applying for Federal assistance.**

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. (See also 43 CFR part 9).

(d) Federal awarding agencies that do not use the SF-424 form will indicate whether the application is subject to review by the State under E.O. 12372.

**§ 12.913 Debarment and suspension.**

Federal awarding agencies and recipients shall comply with the non-procurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension," subpart D of 43 CFR part 12. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

**§ 12.914 Special award conditions.**

(a) Federal awarding agencies may impose additional requirements as needed, if an applicant or recipient:

- (1) Has a history of poor performance;
- (2) Is not financially stable;
- (3) Has a management system that does not meet the standards prescribed in this part;
- (4) Has not conformed to the terms and conditions of a previous award; or
- (5) Is not otherwise responsible.

(b) Additional requirements may only be imposed provided that the applicant or recipient is notified in writing as to:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the corrective action needed;
- (4) The time allowed for completing the corrective actions; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

**§ 12.915 Metric system of measurement.**

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires