

**§ 35.4235**

**§ 35.4235 Are there specific provisions my group's contract(s) must contain?**

Your group must include the following provisions in each of its contracts:

- (a) Statement of work;
- (b) Schedule for performance;
- (c) Due dates for deliverables;
- (d) Total cost of the contract;
- (e) Payment provisions;
- (f) The following clauses from 40 CFR part 30, appendix A, which your EPA regional office can provide to you:
  - (1) Equal Employment Opportunity; and
  - (2) Suspension and Debarment;
- (g) The following clauses from 40 CFR 30.48:
  - (1) Remedies for breaches of contract (40 CFR 30.48(a));
  - (2) Termination by the recipient (40 CFR 30.48(b)); and
  - (3) Access to records (40 CFR 30.48(d)); and
- (h) Provisions that require your contractor(s) to keep the following detailed records as § 35.4180 requires for ten years after the end of the contract:
  - (1) Acquisitions;
  - (2) Work progress reports;
  - (3) Expenditures; and
  - (4) Commitments indicating their relationship to established costs and schedules.

REQUIREMENTS FOR TAG CONTRACTORS

**§ 35.4240 What provisions must my group's TAG contractor comply with if it subcontracts?**

A TAG contractor must comply with the following provisions when awarding subcontracts:

- (a) Section 35.4205 (b) pertaining to documentation;
- (b) Section 35.4205 (c) and (f) pertaining to cost;
- (c) Section 35.4195 (c) pertaining to suspension and debarment;
- (d) Section 35.4200 (b) pertaining to responsible contractors;
- (e) Section 35.4205 (g) pertaining to disadvantaged business enterprises;
- (f) Section 35.4200 (a) pertaining to unallowable contracts;
- (g) Section 35.4235 pertaining to contract provisions; and
- (h) Cost principles in 48 CFR part 31, the Federal Acquisition Regulation, if

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the contractor and subcontractors are profit-making organizations.

GRANT DISPUTES, TERMINATION, AND ENFORCEMENT

**§ 35.4245 How does my group resolve a disagreement with EPA regarding our TAG?**

The regulations at 40 CFR 30.63 and 31.70 will govern disputes except that, before you may obtain judicial review of the dispute, you must have requested the Regional Administrator to review the dispute decision official's determination under 40 CFR 31.70(c), and, if you still have a dispute, you must have requested the Assistant Administrator for the Office of Solid Waste and Emergency Response to review the Regional Administrator's decision under 40 CFR 31.70(h).

**§ 35.4250 Under what circumstances would EPA terminate my group's TAG?**

- (a) EPA may terminate your grant if your group materially fails to comply with the terms and conditions of the TAG and the requirements of this subpart.
- (b) EPA may also terminate your grant with your group's consent in which case you and EPA must agree upon the termination conditions, including the effective date as 40 CFR 30.61 describes.

**§ 35.4255 Can my group terminate our TAG?**

Yes, your group may terminate your TAG by sending EPA written notification explaining the reasons for the termination and the effective date.

**§ 35.4260 What other steps might EPA take if my group fails to comply with the terms and conditions of our award?**

- EPA may take one or more of the following actions, under 40 CFR 30.62, depending on the circumstances:
- (a) Temporarily withhold advance payments until you correct the deficiency;
  - (b) Not allow your group to receive reimbursement for all or part of the activity or action not in compliance;
  - (c) Wholly or partly "suspend" your group's award;

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(d) Withhold further awards (meaning, funding) for the project or program;

(e) Take enforcement action;

(f) Place special conditions in your grant agreement; and

(g) Take other remedies that may be legally available.

### CLOSING OUT A TAG

#### § 35.4265 How does my group close out our TAG?

(a) Within 90 calendar days after the end of the approved project period of the TAG, your group must submit all financial, performance and other reports as required by § 35.4180. Upon request from your group, EPA may approve an extension of this time period.

(b) Unless EPA authorizes an extension, your group must pay all your bills related to the TAG by no later than 90 calendar days after the end of the funding period.

(c) Your group must promptly return any unused cash that EPA advanced or paid; OMB Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables, governs unreturned amounts that become delinquent debts.

### OTHER THINGS YOU NEED TO KNOW

#### § 35.4270 Definitions.

The following definitions apply to this subpart:

*Advance payment* means a payment made to a recipient before “outlays” are made by the recipient.

*Affected* means subject to an actual or potential health, economic or environmental threat. Examples of affected parties include people:

(1) Who live in areas near NPL facilities, whose health may be endangered by releases of hazardous substances at the facility; or

(2) Whose economic interests are threatened or harmed.

*Affiliated* means a relationship between persons or groups where one group, directly or indirectly, controls or has the power to control the other, or, a third group controls or has the power to control both. Factors indicating control include, but are not limited to:

(1) Interlocking management or ownership (e.g., centralized decision-making and control);

(2) Shared facilities and equipment; and

(3) Common use of employees.

*Allocable cost* means a cost which is attributable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award;

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

*Allowable cost* means those project costs that are: eligible, reasonable, allocable to the project, and necessary to the operation of the organization or the performance of the award as provided in the appropriate Federal cost principles, in most cases OMB Circular A-122 (see 40 CFR 30.27), and approved by EPA in the assistance agreement.

*Applicant* means any group of people that files an application for a TAG.

*Application* means a completed formal written request for a TAG that you submit to a State or the EPA on EPA form SF-424, Application for Federal Assistance (Non-construction Programs).

*Award document* or grant agreement is the legal document that transfers money or anything of value to your group to accomplish the purpose of the TAG project. It specifies funding and project periods, EPA's and your group's budget share of “eligible costs,” a description of the work to be accomplished, and any additional terms and conditions that may apply to the grant.

*Award Official* means the EPA official who has the authority to sign grant agreements.

*Budget* means the financial plan for spending all Federal funds and your