

§ 34.30

(i) The Executive order states that, as a matter of policy, grants and cooperative agreements should grant to all for-profit organizations, regardless of size, title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government (i.e., it extends the applicability of 35 U.S.C. Chapter 18, to the extent permitted by law, to for-profit organizations other than small business concerns).

(ii) 35 U.S.C. 210(c) states that 35 U.S.C. Chapter 18 is not intended to limit agencies' authority to agree to the disposition of rights in inventions in accordance with the Presidential memorandum codified by the Executive order. It also states that such grants and cooperative agreements shall provide for Government license rights required by 35 U.S.C. 202(c)(4) and march-in rights required by 35 U.S.C. 203.

(b) *Copyright, data and software rights.* Requirements concerning data and software rights are as follows:

(1) The recipient may copyright any work that is subject to copyright and was developed under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Unless waived by the DoD Component making the award, the Federal Government has the right to:

(i) Obtain, reproduce, publish or otherwise use for Federal Government purposes the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

PROCUREMENT STANDARDS

§ 34.30 Purpose of procurement standards.

Section 34.31 sets forth requirements necessary to ensure:

(a) Compliance of recipients' procurements that use Federal funds with applicable Federal statutes and executive orders.

(b) Proper stewardship of Federal funds used in recipients' procurements.

§ 34.31 Requirements.

The following requirements pertain to recipients' procurements funded in whole or in part with Federal funds or with recipients' cost-share or match:

(a) *Reasonable cost.* Recipients procurement procedures shall make maximum practicable use of competition, or shall use other means that ensure reasonable cost for procured goods and services.

(b) *Pre-award review of certain procurements.* Prior to awarding a procurement contract under an award, a recipient may be required to provide the grants officer administering the award with pre-award documents (e.g., requests for proposals, invitations for bids, or independent cost estimates) related to the procurement. Recipients will only be required to provide such documents for the grants officer's pre-award review in exceptional cases where the grants officer judges that there is a compelling need to do so. In such cases, the grants officer must include a provision in the award that states the requirement.

(c) *Contract provisions.* (1) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination for default by the recipient or for termination due to circumstances beyond the control of the contractor.

(3) All negotiated contracts in excess of the simplified acquisition threshold shall include a provision permitting access of the Department of Defense, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, and transcriptions.

(4) All contracts, including those for amounts less than the simplified acquisition threshold, awarded by recipients and their contractors shall contain the

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procurement provisions of Appendix A to this part, as applicable.

REPORTS AND RECORDS

§ 34.40 Purpose of reports and records.

Sections 34.41 and 34.42 prescribe requirements for monitoring and reporting financial and program performance and for records retention.

§ 34.41 Monitoring and reporting program and financial performance.

Grants officers may use the provisions of 32 CFR 32.51 and 32.52 for awards to for-profit organizations, or may include equivalent technical and financial reporting requirements that ensure reasonable oversight of the expenditure of appropriated funds. As a minimum, equivalent requirements must include:

(a) Periodic reports (at least annually, and no more frequently than quarterly) addressing both program status and business status, as follows:

(1) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(2) The business portions of the reports shall provide summarized details on the status of resources (federal funds and non-federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations.

(3) When grants officers previously authorized advance payments, pursuant to § 34.12(a)(2), they should consult with the program official and consider whether program progress reported in the periodic report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

(b) Unless inappropriate, a final performance report that addresses all major accomplishments under the award.

§ 34.42 Retention and access requirements for records.

(a) This section sets forth requirements for records retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoD Component that made the award, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in § 34.42(g).

(c) Copies of original records may be substituted for the original records if authorized by the grants officer.

(d) The grants officer shall request that recipients transfer certain records to DoD Component custody when he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a grants officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DoD Components, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents.