

## APPENDIX E-1

### DHS&EM Addendum for Federally Required Contract Provisions

#### “Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” †§\_\_\_\_.36 Procurement (i) Contract Provisions

A grantee’s and subgrantee’s contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.  
*(Contracts more than the simplified acquisition threshold: > \$100,000.)*
2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement.  
*(All contracts in excess of \$10,000.)*
3. Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).  
*Prohibits federal contractors from discriminating in employment on the basis of race, sex, religion, color or national origin. It also requires contractors to take affirmative action so that minorities and women have equal job opportunities and requires federal contracts to include a clause spelling out contractor’s non discrimination and affirmative action obligations. Contractors with contracts of \$50,000 or more and at least 50 employees are required to have written affirmative action compliance programs.*

The Vietnam-Era Veteran’s Readjustment Assistance Act of 1974 (VEVRAA) (41 CFR Part 60-250) is applicable to a federal contract or subcontract for \$10,000 or more.

*Requires contractors and subcontractors provide equal opportunity and affirmative action to hire and promote qualified special disabled veterans and veterans from the Vietnam era. Neither shall they discriminate against any special disabled veteran or Vietnam era veteran employee or applicant for employment.*

4. Compliance with Copeland “Anti-Kickback” Act (19 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). *(All contracts and subgrants for construction or repair.)*

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5. Compliance with the Davis-Bacon Act (40 USC 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).  
*(Contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation.)*
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).  
*(Contracts awarded by grantees and subgrantees in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*
7. Notice of awarding agency requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data. The federal awarding agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal purposes: copyright in any work developed under a grant, subgrant or contract under a subgrant.
10. Access by the grantee, the subgrantee the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
12. Compliance with all applicable standards, orders or requirements issued under:
  - a. Section 306 of the Clean Air Act (42 USC 1857(h))
  - b. Section 508 of the Clean Water Act (33 USC 1368),
  - c. Executive Order 11738
  - d. Environmental Protection Agency regulations (40 CFR Part 15).

*Prohibits entering into agreements or contracts with those convicted of certain statutory violations. Any entity shall be debarred from the receipt of all future federal funding based on a criminal conviction.*

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13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

In addition, the following federal, government-wide requirements apply to all or most federal grantees and subgrantees, regardless of particular program requirements or the type of organization.

1. Title VI of the Civil Rights Act of 1964 (42 USC §2000(d); Pub. L. 88-352). For grantees and subgrantees also covered by Executive Order 11246 (See #3 above), the equal employment opportunity requirements meets the assurance requirement of Title VI. *Prohibits discrimination based on race, color, or national origin. The Department of Justice has issued Title VI regulations (28 CFR §42.1 Subpart C) as has the Federal Emergency Management Agency (44 CFR Part 7).*
2. Section 504 of the Rehabilitation Act (29 USC §794) applies to recipients of federal grants, loans, contracts (other than procurement) or other aid provided by a federal agency such as funds, services of federal personnel, real or personal property, or any interest in or use of property (DOJ 28 CFR §41.3), and specifically to grantees and subgrantees. *Prohibits discrimination in programs or activities, and mandates that all grantees and subgrantees review and modify their programs and activities so that individuals with disabilities are not precluded from participating in, receiving the benefits of, or being discriminated under those programs or activities.*

Americans with Disabilities Act of 1990 applies to grantees with 15 or more employees; states, their subdivisions and agencies regardless of size; and grantees that provide public accommodations of any kind. Extends the non-discrimination requirements of the Rehabilitation Act to programs, activities, and services that do not receive federal funds.

3. Age Discrimination Act of 1975 (42 USC §6101 *et. seq.*) applies to any entity receiving federal financial assistance such as grants, cooperative agreements or loans. Unlike Title VI of the Civil Rights Act, the Age Discrimination Act permits the use of some age distinctions and consideration of reasonable factors other than age that might have the appearance of age discrimination. *Prohibits exclusion of any person on the basis of age from participating in any program or activity, and no person can be denied the benefits of, or be subjected to discrimination under any such federally funded program or activity, on the basis of age.*
4. Freedom of Information Act (FOIA) (5 USC §552 *et. seq.*) provides any person with an enforceable right of access to federal agency records, except those that are protected from disclosure by a statutory exemption or special law enforcement exclusion. The US Supreme Court articulated that agency

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records are documents: (1) created or obtained by a federal agency; and (2) under agency control at the time of the FOIA request (492 US 136 (1989)). FOIA does not usually require the release of records created by or in the possession of federal grantees or subgrantees. However, these records may still be reached when they come under the federal grantor agency's control and thus be subject to release when a request is submitted to this agency.

5. OMB Circular A-87 Cost Principles for State and Local Governments refers to the implementation of the Byrd Amendment (31 USC §1352), which prohibits the use of federally appropriated funds to influence federal agency officials or members and employees of Congress in the awarding, extension, continuation, renewal, amendment, or modification of grants, loans, cooperative agreements and contracts. The common rule contains two appendices that affect grantees' actions.

OMB Circular A-122 Cost Principles for Nonprofit Organizations and OMB Circular A-21 Cost Principles for Educational Institutions specify that costs for certain lobbying activities are unallowable as charges to federal awards. Organizations can do so only with its own unrestricted funds.

*(Applies to organizations receiving grants, subgrants, cooperative agreements, or contracts of more than \$100,000 or loans exceeding \$150,000. Requires certification that federally appropriated funds have not and will not be used for lobbying activities, and disclosure of persons involved in lobbying using non-federally appropriated funds.)*

6. Drug-Free Workplace Act of 1988. Requires assurance of compliance that grantees, subgrantees and recipients of cooperative agreements maintain a drug-free workplace, establish a written policy that informs its employees that the unlawful possession, distribution or manufacturing of a controlled substance in the workplace is prohibited, and establish a drug-free awareness program.

Drug-free workplace requirements for federal contractors are contained in the Federal Acquisition Regulations (FAR).

7. Acknowledge federal funding when issuing statements, requests for proposals, bid solicitations, press releases and other documents describing projects or programs funded in whole or in part with federal grant dollars. Grantees and subgrantees are required to state:
  - a. Grant award number
  - b. Percentage and dollar amounts of the total program or project costs financed with federal funds
  - c. Percentage and dollar amount of the total costs financed by nongovernmental sources.

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8. Disclaimers when issuing statements, published materials, etc. that acknowledge the contents, opinions, findings, conclusions, or recommendations expressed in this material are those of the author and do not necessarily reflect the views of the grantor or the sponsoring federal agency.
9. Federal Acquisition Regulation (FAR) (48 CFR Parts 30 and 31)

State, Tribal and Local Governments must comply with these additional requirements, regardless of which federal agency provides funding.

Hatch Act (5 USC §1501 *et. seq.*) applies only to individuals employed by a state or local agency whose principal employment is in connection with an activity that is financed in whole or in part by loans or grants made by the US or a federal agency., and exercises functions in connection with that activity. An employee covered by the Hatch Act may not use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; directly or indirectly coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a political party or organization for a political purpose; or be a candidate for elective public office in a partisan election. Alaska requires civil service employees to resign from their jobs when they become a candidate for a partisan election, but not for a non-partisan election.