

Eagle Research Center LTD – Financial and Program Management Policy

All investigators utilizing the Eagle Research Center LTD (herein known as ERC) as a subrecipient of the United States Department of Health and Human Services grant/award funds must read and agree with their signature below to abide by relevant policies.

Definitions

Investigator and recipient are interchangeable terms and both mean the award/grant recipient who contracts with the ERC for grant subrecipient services.

Section numbers noted within this document refer to sections within form 45 CFR Part 74 - Uniform Administrative Requirements for awards and subawards to institutions of higher education, hospitals, other organizations, and commercial organizations; and certain grants and agreements with states, local governments and Indian tribal governments.

Accrued expenditures mean the charges incurred by the recipient during a given period requiring the provision of funds for:

- Goods and other tangible property received;
- services performed by employees, contractors, subrecipients, and other payees; and,
- other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

- Earnings during a given period from (i) services performed by the recipient, and (ii) goods and other tangible property delivered to purchasers; and
- amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services

instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under Federal procurement laws and regulations.

Cash contributions mean the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which the HHS awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and HHS.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Current accounting period means, with respect to Sec. 74.27(b), the period of time the recipient chooses for purposes of financial statements and audits.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which HHS awarding agency sponsorship ends.

Departmental Appeals Board means the independent office established in the Office of the Secretary with delegated authority from the Secretary to review and decide certain disputes between recipients of HHS funds and HHS awarding agencies under 45 CFR part 16 and to perform other review, adjudication and mediation services as assigned.

Disallowed costs mean those charges to an award that the HHS awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Discretionary award means an award made by an HHS awarding agency in keeping with specific statutory authority which enables the agency to exercise judgment ("discretion") in selecting the applicant/recipient organization through a competitive award process.

Equipment means tangible nonexpendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of any HHS awarding agency that, as determined by the head of the awarding agency or his/her delegate, is no longer required for the agency's needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the HHS awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6306, for property acquired under an award to conduct basic or applied research by a nonprofit institution of higher education or nonprofit organization whose principal purpose is conducting scientific research.

Federal funds authorized mean the total amount of Federal funds obligated by the HHS awarding agency for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by the HHS awarding agency's implementing instructions or authorized by the terms and conditions of the award.

Federal share of real property, equipment, or supplies means that percentage of the property's or supplies' acquisition costs and any improvement expenditures paid with Federal funds. This will be the same percentage as the Federal share of the total costs under the award for the funding period in which the property was acquired (excluding the value of third party in-kind contributions).

Federally recognized Indian Tribal government means the governing body of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Government means a State or local government or a federally recognized Indian tribal government.

HHS means the U.S. Department of Health and Human Services.

HHS awarding agency means any organization component of HHS that is authorized to make and administer awards. For the purpose of this document this also means the ERC.

Intangible property and debt instruments mean, but are not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Local government means a local unit of government, including specifically a county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate entity, or any agency or instrumentality of local government.

Obligations mean the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

OGAM means the Office of Grants and Acquisition Management, which is an organizational component within the Office of the Secretary, HHS, and reports to the Assistant Secretary for Management and Budget. OMB means the U.S. Office of Management and Budget.

Outlays or expenditures mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized HHS official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in Sec. 74.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances

of Federal funds is not program income. Except as otherwise provided in the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them. Furthermore, program income does not include taxes, special assessments, levies, and fines raised by governmental recipients.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles (see Sec. 74.27), incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which HHS awarding agency sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments. Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from an HHS awarding agency to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, commercial organizations, and other quasi- public and private nonprofit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the HHS awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission- oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers. For entitlement programs listed at 45 CFR 92.4(a)(3), (a)(7), and (a)(8) "recipient" means the government to which an HHS awarding agency awards funds and which is accountable for the use of the funds provided. The recipient in this case is the entire legal entity even if only a particular component of the entity is designated in the award document.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, hospitals, other nonprofit institutions, and commercial organizations. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities

involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently \$100,000).

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the HHS awarding agency.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

Suspension means an action by the HHS awarding agency that temporarily withdraws the agency's financial assistance sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award. Suspension of an award is a separate action from suspension under HHS regulations (45 CFR part 76) implementing E.O.s 12549 and 12689, "Debarment and Suspension."

Termination means the cancellation of HHS awarding agency sponsorship, in whole or in part, under an agreement at any time prior to the date of completion. For the entitlement programs listed at 45 CFR 92.4 (a)(3), (a)(7), and (a)(8), "termination" shall have that meaning assigned at 45 CFR 92.3.

Third party in-kind contributions means the value of non-cash 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, mean the amount of obligations incurred by the recipient that has 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 the HHS 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.

Financial Management Systems

The ERC shall provide:

- Accurate, current and complete disclosure of the financial results of each HHS-sponsored project or program in accordance with the reporting requirements set forth in Sec. 74.52. If the HHS awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.
- Records that identify adequately the source and application of funds for HHS-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
- Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data. (Unit cost data are usually not appropriate for awards that support research.)
- Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) and its implementing regulations, "Rules and Procedures for Funds Transfers," (31 CFR part 205) apply, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements, or the CMIA default procedures codified at 31 CFR 205.9(f).
- Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
- Accounting records, including cost accounting records, that are supported by source documentation.

The contracting investigator must abide by the following policies:

Program Income

- The standards set forth in this section shall be used to account for program income related to projects financed in whole or in part with Federal funds.

· Except as provided below in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the following ways:

1. Added to funds committed to the project or program, and used to further eligible project or program objectives;
2. Used to finance the non-Federal share of the project or program; or
3. Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

· When the HHS awarding agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

· In the event that the HHS awarding agency does not specify in the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support performance of research work, paragraph (b)(1) of this section shall apply automatically unless:

1. The HHS awarding agency indicates in the terms and conditions of the award another alternative; or
2. The recipient is subject to special award conditions under Sec. 74.14; or
3. The recipient is a commercial organization (see Sec. 74.82).

· Unless the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

· Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

· Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards. (See Secs. 74.30 through 74.37, below).

· The Patent and Trademark Laws Amendments, 35 U.S.C. section 200-212, apply to inventions made under an award for performance of experimental, developmental, or research work. Unless the terms and conditions for the award provide otherwise, recipients shall have no obligation to HHS with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under an award. However, no scholarship, fellowship, training grant, or other funding agreement made primarily to a recipient for educational purposes will contain any provision giving the Federal agency rights to inventions made by the recipient.

Revision of Budget and Program Plans

· The budget plan is the financial expression of the project or program as approved during the award process. It may include either the sum of the Federal and non-Federal shares, or only the Federal share, depending upon HHS awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

· Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section. Except as provided at Secs. 74.4, 74.14, and this section, HHS awarding agencies may not impose other prior approval requirements for specific items.

· For nonconstruction awards, recipients shall obtain prior approvals from the HHS awarding agency for one or more of the following program or budget related reasons.

1. Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).
2. Change in the project director or principal investigator or other key persons specified in the application or award document.
3. The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.
4. The need for additional Federal funding.

5. The inclusion, unless waived by the HHS awarding agency, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Educational Institutions;" OMB Circular A-122, "Cost Principles for Nonprofit Organizations;" or appendix E of this part, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.
6. The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.
7. Unless described in the application and funded in the approved award, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.
8. The inclusion of research patient care costs in research awards made for the performance of research work.
 - a. The HHS awarding agencies may not permit any budget changes in a recipient's award that would cause any Federal appropriation to be used for purposes other than those consistent with the original purpose of the authorization and appropriation under which the award was funded.
 - b. For construction awards, recipients shall obtain prior written approval promptly from the HHS awarding agency for budget revisions whenever:
 1. The revision results from changes in the scope or the objective of the project or program;
 2. The need arises for additional Federal funds to complete the project; or
 3. A revision is desired which involves specific costs for which prior written approval requirements apply in keeping with the applicable cost principles listed in Sec. 74.27.
 - c. When an HHS awarding agency makes an award that provides support for both construction and nonconstruction work, it may require the recipient to obtain prior approval before making any fund or budget transfers between the two types of work supported. (h) For both construction and nonconstruction awards, recipients shall notify the HHS awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.
 - d. Within 30 calendar days from the date of receipt of the request for budget revisions, HHS awarding agencies shall notify the recipient whether its requested budget revisions have been approved. If the requested revision is still under consideration at the end of 30 calendar days, the HHS awarding agency must inform the recipient in writing of the date when the recipient may expect a decision.
 - e. When requesting approval for budget changes, recipients shall make their requests in writing.

- f. All approvals granted in keeping with the provisions of this section shall not be valid unless they are in writing, and signed by at least one of the following HHS officials:
1. The Head of the HHS Operating or Staff Division that made the award or subordinate official with proper delegated authority from the Head, including the Head of the Regional Office of the HHS Operating or Staff Division that made the award; or
 2. The responsible Grants Officer of the HHS Operating or Staff Division that made the award or an individual duly authorized by the Grants Officer.

Period of Availability of Funds

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the HHS awarding agency pursuant to Sec. 74.25(d)(1).

Real Property

- Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the HHS awarding agency.
- The recipient shall obtain written approval from the HHS awarding agency for the use of real property in other federally- sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the HHS awarding agency.
- When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the HHS awarding agency or its successor. The HHS awarding agency must provide one or more of the following disposition instructions:
 1. The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal share in the project.
 2. The recipient may be directed to sell the property under guidelines provided by the HHS awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal share in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.
 3. The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

Equipment

- Title to equipment acquired by a recipient with HHS funds shall vest in the recipient, subject to the conditions of this section.
 1. · The recipient shall not use equipment acquired with HHS funds to provide services to non-Federal organizations for a fee that is less than private companies charge for equivalent

services, unless specifically authorized by Federal statute, for so long as the Federal Government retains an interest in the equipment.

2. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the HHS awarding agency.

3. User charges shall be treated as program income, in keeping with the provisions of Sec. 74.24.

· The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the HHS awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, if any, in the following order of priority:

1. Programs, projects, or activities sponsored by the HHS awarding agency;

2. Programs, projects, or activities sponsored by other HHS awarding agencies; then

3. Programs, project, or activities sponsored by other Federal agencies.

· During the time that equipment is used on the program, project, or activity for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the program, project, or activity for which the equipment was originally acquired. First preference for such other use shall be given to other programs, projects, or activities sponsored by the HHS awarding agency. Second preference shall be given to programs, projects, or activities sponsored by other HHS awarding agencies. Third preference shall be given to programs, projects, or activities sponsored by other Federal agencies.

· When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the HHS awarding agency.

· The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

1. Equipment records shall be maintained accurately and shall include the following information:

i. A description of the equipment;

ii. Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number;

iii. Source of the equipment, including the award number;

iv. Whether title vests in the recipient or the Federal Government;

v. Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost;

vi. Information from which one can calculate the percentage of HHS's share in the cost of the equipment (not applicable to equipment furnished by the Federal Government);

vii. Location and condition of the equipment and the date the information was reported;

viii. Unit acquisition cost; and

ix. Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the HHS awarding agency for its share.

2. Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

3. The recipient shall take a physical inventory of equipment and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
 4. recipient shall maintain a control system to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the HHS awarding agency.
 5. The recipient shall implement adequate maintenance procedures to keep the equipment in good condition.
 6. Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.
- When the recipient no longer needs the equipment, it may use the equipment for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original HHS awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of HHS's share in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the HHS awarding agency; such instructions must be issued to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:
1. If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the HHS awarding agency an amount computed by applying to the sales proceeds the percentage of HHS share in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the HHS share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.
 2. If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the HHS awarding agency by an amount which is computed by applying the percentage of the recipient's share in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.
 3. If the recipient is instructed to otherwise dispose of the equipment, the recipient will be reimbursed by the HHS awarding agency for such costs incurred in its disposition.
 4. If the recipient's project or program for which or under which the equipment was acquired is still receiving support from the same HHS program, and if the HHS awarding agency approves, the net amount due may be used for allowable costs of that project or program. Otherwise the net amount must be remitted to the HHS awarding agency by check.
- The HHS awarding agency reserves the right to order the transfer of title to the Federal Government or to a third party named by the awarding agency when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards:
1. The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

2. The HHS awarding agency may require submission of a final inventory that lists all equipment acquired with HHS funds and federally-owned equipment.
3. If the HHS awarding agency fails to issue disposition instructions within 120 calendar days after receipt of the inventory, the recipient shall apply the standards of paragraph (g)(1) of this section as appropriate.
4. When the HHS awarding agency exercises its right to order the transfer of title to the Federal Government, the equipment shall be subject to the rules for federally-owned equipment. (See Sec. 74.34(g)).

Supplies

· Title to supplies shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally- sponsored project or program, the recipient shall retain the supplies for use on non-federally sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment. (See Sec. 74.34(g)).

1. · The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.
2. If the supplies are owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the HHS awarding agency.
3. User charges shall be treated as program income, in keeping with the provisions of Sec. 74.24.

Procurement Procedures

The standards contained in this section do not relieve the recipients of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the HHS awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employers, or agents of the recipients.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such

procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

· All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that:

1. Recipients avoid purchasing unnecessary items;
2. Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the recipient and the Federal Government; and
3. Solicitations for goods and services provide for all of the following:
 1. A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 2. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
 3. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 4. The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
 5. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 6. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

· Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of HHS awards shall take all of the following steps to further this goal.

1. Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
2. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
3. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
4. Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

- The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
- Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension." (See 45 CFR part 76.)
- Recipients shall, on request, make available for the HHS awarding agency, pre-award review, procurement documents such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

1. A recipient's procurement procedures or operation fails to comply with the procurement standards in this Part.
2. The procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently \$100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
3. The procurement, which is expected to exceed the simplified acquisition threshold specifies a "brand name" product.
4. The proposed award over the simplified acquisition threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.
5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the simplified acquisition threshold.

Procurement records and files for purchases in excess of the simplified acquisition threshold shall include the following at a minimum:

- a. Basis for contractor selection,
- b. justification for lack of competition when competitive bids or offers are not obtained, and
- c. basis for award cost or price.

Monitoring and Reporting Program Performance

- Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure that subrecipients have met the audit requirements as set forth in Sec. 74.26.
- The HHS awarding agency will prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports will not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the award year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The HHS awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.
- If inappropriate, a final technical or performance report will not be required after completion of the project.
- Performance reports shall generally contain, for each award, brief information on each of the following:

1. A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.
 2. Reasons why established goals were not met, if appropriate.
 3. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- Recipients shall submit the original and two copies of performance reports.
 - Recipients shall immediately notify the HHS awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
 - HHS may make site visits, as needed.
 - The HHS awarding agency complies with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," when requesting performance data from recipients.

Retention and Access Requirements of Records

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 or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

1. If any litigation, claim, financial management review, 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 HHS awarding agency, the 3-year retention requirement is not applicable to the recipient.
4. Indirect cost rate proposals, cost allocations plans, etc., as specified in Sec. 74.53(g).

Investigators are obligated to release these records to the ERC upon request.

Enforcement

- a. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award, the HHS awarding agency may, in addition to imposing any of the special conditions outlined in Sec. 74.14, take one or more of the following actions, as appropriate in the circumstances:
 1. Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the HHS awarding agency.
 2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

3. Wholly or partly suspend or terminate the current award.
 4. Withhold further awards for the project or program.
 5. Take any other remedies that may be legally available.
- b. In taking an enforcement action, the HHS awarding agency will provide the recipient or subrecipient an opportunity for such hearing, appeal, or other administrative proceeding to which the recipient or subrecipient is entitled under any statute or regulation applicable to the action. (See also 45 CFR parts 16 and 95.)
- c. Costs to a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the HHS awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
1. The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and
 2. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- d. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the HHS implementing regulations at Sec. 74.13 of this part and 45 CFR part 76.

Closeout Procedures

- Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The HHS awarding agency may approve extensions when requested by the recipient.
- Unless the HHS awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.
- HHS will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.
- The recipient shall promptly refund any balances of unobligated cash that HHS has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. 45 CFR part 30 governs unreturned amounts that become delinquent debts.
- When authorized by the terms and conditions of the award, HHS will make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
- The recipient shall account for any real and personal property acquired with HHS funds or received from the Federal Government in accordance with Secs. 74.31 through 74.37.
- In the event a final audit has not been performed prior to the closeout of an award, HHS retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

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. If not paid within a reasonable period after the demand for payment, the HHS awarding agency may reduce the debt by paragraph (a) (1), (2), or (3) of this section:

1. Making an administrative offset against other requests for reimbursements.
2. Withholding advance payments otherwise due the recipient.
3. Taking other action permitted by statute.

Conclusion

The ERC reserves the right to evaluate all investigator applicants and determine the most appropriate means of fund disbursement, but all investigators submitting an application will be fully informed of the level of funds accessibility that will be offered them (i.e. advancement of funds, fund disbursement for authorized use, or reimbursement of funds with submission of proper documentation). This policy is necessary to protect the ERC from liability for irresponsible use of funds by investigators.

On this date _____ the undersigned investigator has read the preceding policies and procedures of the ERC and agrees to abide by them.

X _____

Printed Name: _____