

Consejo de **Desarrollo Ocupacional** y Recursos Humanos

Xavier González Calderón
Director Ejecutivo

MEMORIAL ADMINISTRATIVO NÚMERO WIA – 01 - 2002

FECHA : 19 de Marzo de 2002

A : Presidentes de las Juntas Locales, Presidentes de las Juntas de Alcaldes y Directores Ejecutivos de Áreas Locales bajo WIA

ASUNTO : Procedimiento de Adquisición de Bienes y Servicios Contratados bajo WIA

REFERENCIAS :
1) Orden Ejecutiva de la Hon. Sila María Calderón, Gobernadora del Estado Libre Asociado de Puerto Rico del 24 de enero de 2002, Boletín
2) Carta Circular Número: 2002-1 del 25 de enero de 2002 de la Junta Estatal de Inversión en la Fuerza Trabajadora
3) OMB 97.36(b)(4)(B)(8)
4) Sección 184(a) de WIA
5) Ley Núm. 84 del 29 de julio de 2001

JURISDICCIÓN : Esta directriz aplica a todos los procesos de adquisición de bienes y servicios financiados con fondos WIA.

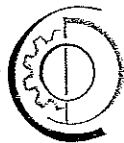
RESICIONES : Ninguna

JUSTIFICACIÓN : En fiel cumplimiento con la política pública anticorrupción establecida por la Hon. Sila María Calderón, Gobernadora del Estado Libre Asociado en Puerto Rico, mediante Orden Ejecutiva del 24 de enero de 2002 y con la Carta Circular 2002-01 – Implantación de la Política Pública Anticorrupción – de la Junta Estatal de Inversión, consideramos imprescindible establecer mecanismos que eviten y eliminen el germen de corrupción y el abuso y mal uso de fondos WIA en Puerto Rico.

MEMORIAL

ADMINISTRATIVO

NUMERO WIA NUM. 01-2002



ACCIÓN REQUERIDA: Todas las Áreas Locales deberán revisar los procedimientos de adquisición de bienes y servicios con fondos WIA y asegurarse de que entre los criterios de selección de propuestas se encuentra la integridad ética del proponente y su historial relacionado con la responsabilidad demostrada con fondos estatales y/o federales en ejecuciones pasadas.

La redacción del criterio deberá leer como sigue:

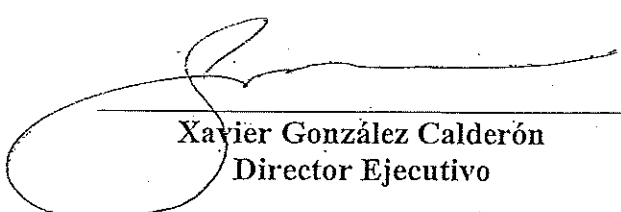
“El proponente ha demostrado integridad ética en el manejo de fondos públicos estatales y/o federales, por lo que no ha sido convicto por ningún delito contra el erario, la fé y función pública o que envuelva propiedad o fondos públicos ya sean estatales o federales. En aquellos casos de proponentes acusados no convictos se deberá analizar la totalidad de las circunstancias que resultaron en la no convicción.”

El cumplimiento con este criterio de integridad ética es de cumplimiento estricto para la selección y contratación con proponentes.

EFFECTIVIDAD : Esta directriz tiene efectividad inmediata.

INFORMACIÓN ADICIONAL:

Para información adicional, favor de comunicarse con la Oficina de Asesoramiento Legal al teléfono: (787) 754-5504.


Xavier González Calderón
Director Ejecutivo

ESTADO LIBRE ASOCIADO DE PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO

Boletín Administrativo Núm. OE-2002-06

ORDEN EJECUTIVA DE LA GOBERNADORA DEL ESTADO LIBRE ASOCIADO DE PUERTO RICO PARA INSTRUIR A LOS SECRETARIOS, JEFES DE AGENCIAS Y DIRECTORES EJECUTIVOS DE CORPORACIONES PUBLICAS A QUE RECHACEN GESTIONES DE PERSONAS QUE HAYAN PARTICIPADO ACTIVAMENTE EN CAMPAÑAS Y PROCESOS POLÍTICOS CONDUCENTES A OBTENER LA CONCESIÓN INDEBIDA DE VENTAJAS, PRIVILEGIOS O FAVORES PARA BENEFICIO PROPIO O DE TERCEROS.

POR CUANTO: El Pueblo de Puerto Rico depositó su confianza en una nueva administración pública en reclamo de un Gobierno limpio, justo, sensible, transparente, abierto a las necesidades de nuestros ciudadanos y con voluntad total para erradicar la corrupción.

POR CUANTO: La política pública de la presente administración constituye una agenda de cambio cuyo propósito es la pureza en el manejo de asuntos públicos y tiene la responsabilidad de preservar la moral pública y propiciar una sana administración dentro de los parámetros éticos y legales, por lo que no tolera actos de corrupción ni permite la mera apariencia de ilegalidad, violación a la ética o conflicto de interés.

POR CUANTO: Los valores y la integridad moral son principios que el Pueblo de Puerto Rico exige a los funcionarios y a las instituciones del Gobierno. Cuando se violan estos principios se viola la confianza de la sociedad puertorriqueña.

POR CUANTO: La corrupción gubernamental que azotó a Puerto Rico durante los ocho años de la pasada administración debilitó los cimientos de la confianza en la administración pública, provocando un descalabro económico y propiciando que personas naturales y jurídicas utilizaran a empleados y funcionarios públicos para obtener, mediante influencias indebidas, ventajas, privilegios y favores para beneficio propio o de terceros.

POR CUANTO: Independientemente de la probidad o buena reputación de las personas relacionadas a campañas o procesos políticos, pasados o presentes, y sin poner en duda la corrección de sus actuaciones, es necesario establecer una política pública clara que represente los principios de esta Administración.

POR TANTO: Yo, SILA MARÍA CALDERÓN, Gobernadora del Estado Libre Asociado de Puerto Rico, en virtud de la autoridad que me confiere la Constitución del Estado Libre Asociado, por la presente dispongo lo siguiente:

PRIMERO: La presente Administración representa un cambio real en las actitudes sobre la atención de los asuntos públicos. Por lo cual, ordeno a los Secretarios, Jefes de Agencias y Directores Ejecutivos de Corporaciones Públicas que, en atención a principios fundamentales éticos y de rigor en la administración gubernamental, tomen la siguiente medida:

Rechazar categóricamente cualquier gestión de personas que activamente hayan participado en campañas políticas conducentes a la concesión indebida de ventajas, privilegios o favores para beneficio de éstos, o de cualquier otra persona, natural o jurídica, representada por éstos.

SEGUNDO:

Esta prohibición requiere el mayor rigor de los Secretarios y Jefes de Agencias y Directores Ejecutivos de Corporaciones Públicas de forma que se rechace el intento o apariencia de influencias, indebidas, cumpliendo así con las leyes, reglamentos y normas aplicables, independientemente de su manifestación, sean éstos llamadas telefónicas, cartas, mensajes o meros actos de cortesía.

TERCERO:

Esta Orden Ejecutiva tendrá vigencia inmediatamente después de su aprobación.

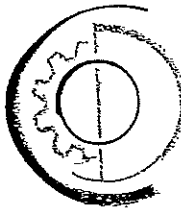


EN TESTIMONIO DE LO CUAL, expido la presente bajo mi firma y hago estampar en ella el Gran Sello del Estado Libre Asociado de Puerto Rico, en la Ciudad de San Juan, hoy día 24 de enero de 2002.

SILA M. CALDERÓN
GOBERNADORA

Promulgado de acuerdo con la ley, hoy día 24 de enero de 2002.

FERDINAND MERCADO RAMOS
SECRETARIO DE ESTADO



Consejo de Desarrollo Ocupacional y Recursos Humanos

25 de enero de 2002

CARTA CIRCULAR NÚM. 2002 - 1

PRESIDENTES DE LAS JUNTAS DE ALCÁLDEN, PRESIDENTES JUNTAS LOCALES, DIRECTORES EJECUTIVOS Y SOCIOS MANDATORIOS


ALFONSO L. DÁVILA SILVA
PRESIDENTE
JUNTA ESTATAL DE INVERSIÓN

IMPLANTACIÓN DE LA POLÍTICA PÚBLICA ANTICORRUPCIÓN ESTABLECIDA POR LA HON. SILA MARÍA CALDERÓN

La Hon. Sila María Calderón, Gobernadora del Estado Libre Asociado de Puerto Rico firmó el jueves 24 de enero de 2002 la Orden Ejecutiva Anticorrupción, a través del Boletín Administrativo Núm. OE - 2002 - 06. Su propósito es lograr la "pureza en el manejo de asuntos públicos y propiciar una sana administración dentro de los parámetros éticos y legales por lo que no tolera actos de corrupción ni permite la mera apariencia de ilegal, violación a la ética o conflictos de interés".

Dentro del contexto claro y explícito de la política pública establecida y en consonancia con la responsabilidad asignada a Principales Funcionarios Electos (Alcaldes) bajo la Ley de Inversión para el Desarrollo en la Fuerza Trabajadora (WIA) de asegurar el buen uso de estos fondos federales, recomendamos enérgicamente se tomen las siguientes acciones afirmativas:



Carta Circular 2002 - 1
Página 2
25 de enero de 2002

1. Rechazar el intento o apariencia de influencias indebidas, cumpliendo con las leyes, reglamentos y normas aplicables, independientes de su manifestación, sean éstos llamadas telefónicas, cartas, mensajes o meros actos de cortesía.
2. Efectivo de inmediato deberán iniciar el examen minucioso de todos los procesos adquisición de bienes y servicios financiados con fondos WIA, la revisión de los contratos con proveedores de servicios de adiestramiento e intensivos, así como con cualquier otro proveedor de bienes y servicios financiados con fondos WIA.
3. Determinar el fiel cumplimiento con los procesos de adquisición y el cumplimiento específico con los términos establecidos en los contratos e identificar aquellas situaciones donde se detecten desviaciones en los mismos que tengan la apariencia de un acto ilegal, antiético o que implique conflictos de interés.

De detectarse cualquier acción ilegal, antiético o que implique conflictos de interés en este examen y análisis deberán referir la misma al Consejo de Desarrollo Ocupacional y Recursos Humanos, a la Oficina del Contralor de Puerto Rico, a la Oficina de Ética Gubernamental, a el Departamento de Justicia del ELA de Puerto Rico o a la Oficina del Inspector General del Departamento del Trabajo Federal, según aplique. Dependiendo de cada caso en particular, se deberá examinar si procede la cancelación de contrato(s).

Esperamos que con la efectiva implantación de esta carta circular se asegure la integridad y el buen uso de los fondos públicos, especialmente, los fondos WIA de Puerto Rico.

c. Hon. Víctor Rivera Hernández, Secretario
Sr. Xavier González Calderón, Director Ejecutivo
Sr. Ralph Muñiz, Representante Federal
Miembros de la Junta Estatal

**Part 97 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND
COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

Subpart A-General

- 97.1 Purpose and scope of this part.
- 97.2 Scope of subpart.
- 97.3 Definitions.
- 97.4 Applicability.
- 97.5 Effect on other issuances.
- 97.6 Additions and exceptions.

Subpart B-Pre-Award Requirements

- 97.10 Forms for applying for grants.
- 97.11 State plans.
- 97.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C-Post-Award Requirements

Financial Administration

- 97.20 Standards for financial management systems.
- 97.21 Payment.
- 97.22 Allowable costs.
- 97.23 Period of availability of funds.
- 97.24 Matching or cost sharing.
- 97.25 Program income.
- 97.26 Non-Federal audit.

Changes, Property, and Subawards

- 97.30 Changes.
- 97.31 Real property.
- 97.32 Equipment.
- 97.33 Supplies.
- 97.34 Copyrights.
- 97.35 Subawards to debarred and suspended parties. ✓
- 97.36 Procurement.
- 97.37 Subgrants.

Reports, Records Retention, and Enforcement

- 97.40 Monitoring and reporting program performance.
- 97.41 Financial reporting.
- 97.42 Retention and access requirements for records.
- 97.43 Enforcement.
- 97.44 Termination for convenience.

management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means:

- (1) With respect to a grant, the Federal agency, and
- (2) With respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means:

- (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report);
- (2) For construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency 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, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

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

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the

accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than *equipment* as defined in this part.

Suspension means depending on the context, either (1) Temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) An action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. *Termination* does not include:

- (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;
- (2) Withdrawal of the unobligated balance as of the expiration of a grant;
- (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or
- (4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

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

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

§97.4 - Applicability.

(a) *General.* Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §97.6, or:

- (1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.
- (2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, Section 583-the Secretary's discretionary grant program) and titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (section 1921), Alcohol and Drug

Subpart B - Pre-Award Requirements

§97.10 - Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 face sheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§97.11 - State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§97.12 - Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a

grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§97.21 - Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash

For the costs of a ---	Use the principles in ---
Educational Institutions	OMB Circular A-21
For-profit organization other than a hospital or an organization named in OMB Circular A-122 as not subject to that circular	48 CFR Part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§97.23 - Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§97.24 - Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions* (1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in §97.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in §97.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward

approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in §97.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§97.25 - Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. *During the grant period* is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §97.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §97.31 and §97.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see §97.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §97.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §97.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property; percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §97.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§97.33 - Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any

purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §97.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.*

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(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 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).

(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). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part 5).

(Construction contracts in excess of \$2,000 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 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 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.

(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

assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§97.41 - Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

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

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee 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 grantee or subgrantee 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) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §97.35).

§97.44 - Termination for convenience.

Except as provided in §97.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §97.43 or paragraph (a) of this section.

Subpart D - After-The-Grant Requirements

§97.50 - Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with §97.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of

report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement* (1) *Advance payments*. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements*. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in §97.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs*. (1) Grants that support construction activities paid by reimbursement method:

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in §97.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in §97.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by §97.41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in §97.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in §97.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis*. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by §97.41(b)(2).

§97.42 - Retention and access requirements for records.

(a) *Applicability*. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or
(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see §97.36(i)(10).

(b) *Length of retention period*. (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(b) PUBLICATION IN FEDERAL REGISTER RELATING TO FORMULA FUNDS.—Whenever the Secretary allots funds required to be allotted under this title, the Secretary shall publish in a timely fashion in the Federal Register the proposed amount to be distributed to each recipient of the funds.

Deadline.

(c) REQUIREMENT FOR FUNDS DISTRIBUTED BY FORMULA.—All funds required to be allotted under section 127 or 132 shall be allotted within 45 days after the date of enactment of the Act appropriating the funds, except that, if such funds are appropriated in advance as authorized by section 189(g), such funds shall be allotted or allocated not later than the March 31 preceding the program year for which such funds are to be available for obligation.

Deadline.

(d) PUBLICATION IN FEDERAL REGISTER RELATING TO DISCRETIONARY FUNDS.—Whenever the Secretary utilizes a formula to allot or allocate funds made available for distribution at the Secretary's discretion under this title, the Secretary shall, not later than 30 days prior to such allotment or allocation, publish such formula in the Federal Register for comments along with the rationale for the formula and the proposed amounts to be distributed to each State and local area. After consideration of any comments received, the Secretary shall publish final allotments and allocations in the Federal Register.

Deadline.

(e) AVAILABILITY OF FUNDS.—Funds shall be made available under sections 128 and 133 for a local area not later than 30 days after the date the funds are made available to the Governor involved, under section 127 or 132 (as the case may be), or 7 days after the date the local plan for the area is approved, whichever is later.

29 USC 2933.

SEC. 183. MONITORING.

(a) IN GENERAL.—The Secretary is authorized to monitor all recipients of financial assistance under this title to determine whether the recipients are complying with the provisions of this title, including the regulations issued under this title.

(b) INVESTIGATIONS.—The Secretary may investigate any matter the Secretary determines to be necessary to determine the compliance of the recipients with this title, including the regulations issued under this title. The investigations authorized by this subsection may include examining records (including making certified copies of the records), questioning employees, and entering any premises or onto any site in which any part of a program or activity of such a recipient is conducted or in which any of the records of the recipient are kept.

(c) ADDITIONAL REQUIREMENT.—For the purpose of any investigation or hearing conducted under this title by the Secretary, the provisions of section 9 of the Federal Trade Commission Act (15 U.S.C. 49) (relating to the attendance of witnesses and the production of documents) apply to the Secretary, in the same manner and to the same extent as the provisions apply to the Federal Trade Commission.

29 USC 2934.

SEC. 184. FISCAL CONTROLS; SANCTIONS.

(a) ESTABLISHMENT OF FISCAL CONTROLS BY STATES.—

(1) IN GENERAL.—Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, Federal funds allocated to local areas under subtitle B. Such procedures shall ensure that all financial transactions carried out under

subtitle B are conducted and records maintained in accordance with generally accepted accounting principles applicable in each State.

(2) COST PRINCIPLES.—

(A) IN GENERAL.—Each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this title shall comply with the applicable uniform cost principles included in the appropriate circulars of the Office of Management and Budget for the type of entity receiving the funds.

(B) EXCEPTION.—The funds made available to a State for administration of statewide workforce investment activities in accordance with section 134(a)(3)(B) shall be allocable to the overall administration of workforce investment activities, but need not be specifically allocable to—

- (i) the administration of adult employment and training activities;
- (ii) the administration of dislocated worker employment and training activities; or
- (iii) the administration of youth activities.

(3) UNIFORM ADMINISTRATIVE REQUIREMENTS.—

(A) IN GENERAL.—Each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this title shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget.

(B) ADDITIONAL REQUIREMENT.—Procurement transactions under this title between local boards and units of State or local governments shall be conducted only on a cost-reimbursable basis.

(4) MONITORING.—Each Governor of a State shall conduct on an annual basis onsite monitoring of each local area within the State to ensure compliance with the uniform administrative requirements referred to in paragraph (3).

(5) ACTION BY GOVERNOR.—If the Governor determines that a local area is not in compliance with the uniform administrative requirements referred to in paragraph (3), the Governor shall—

(A) require corrective action to secure prompt compliance; and

(B) impose the sanctions provided under subsection (b) in the event of failure to take the required corrective action.

(6) CERTIFICATION.—The Governor shall, every 2 years, certify to the Secretary that—

(A) the State has implemented the uniform administrative requirements referred to in paragraph (3);

(B) the State has monitored local areas to ensure compliance with the uniform administrative requirements as required under paragraph (4); and

(C) the State has taken appropriate action to secure compliance pursuant to paragraph (5).

(7) ACTION BY THE SECRETARY.—If the Secretary determines that the Governor has not fulfilled the requirements of this subsection, the Secretary shall—

(A) require corrective action to secure prompt compliance; and

(B) impose the sanctions provided under subsection (e) in the event of failure of the Governor to take the required appropriate action to secure compliance.

(b) SUBSTANTIAL VIOLATION.—

(1) ACTION BY GOVERNOR.—If, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this title, and corrective action has not been taken, the Governor shall—

(A) issue a notice of intent to revoke approval of all or part of the local plan affected; or

(B) impose a reorganization plan, which may include—

(i) decertifying the local board involved;

(ii) prohibiting the use of eligible providers;

(iii) selecting an alternative entity to administer the program for the local area involved;

(iv) merging the local area into one or more other local areas; or

(v) making other such changes as the Secretary or Governor determines necessary to secure compliance.

(2) APPEAL.—

(A) IN GENERAL.—The actions taken by the Governor pursuant to subparagraphs (A) and (B) of paragraph (1) may be appealed to the Secretary and shall not become effective until—

(i) the time for appeal has expired; or

(ii) the Secretary has issued a decision.

Deadline.

(B) ADDITIONAL REQUIREMENT.—The Secretary shall make a final decision under subparagraph (A) not later than 45 days after the receipt of the appeal.

(3) ACTION BY THE SECRETARY.—If the Governor fails to promptly take the actions required under paragraph (1), the Secretary shall take such actions.

(c) REPAYMENT OF CERTAIN AMOUNTS TO THE UNITED STATES.—

(1) IN GENERAL.—Every recipient of funds under this title shall repay to the United States amounts found not to have been expended in accordance with this title.

(2) OFFSET OF REPAYMENT.—If the Secretary determines that a State has expended funds made available under this title in a manner contrary to the requirements of this title, the Secretary may offset repayment of such expenditures against any other amount to which the State is or may be entitled, except as provided under subsection (d)(1).

(3) REPAYMENT FROM DEDUCTION BY STATE.—If the Secretary requires a State to repay funds as a result of a determination that a local area of the State has expended funds contrary to the requirements of this title, the Governor of the State may use an amount deducted under paragraph (4) to repay the funds, except as provided under subsection (e)(1).

(4) DEDUCTION BY STATE.—The Governor may deduct an amount equal to the misexpenditure described in paragraph

(3) from subsequent program year allocations to the local area from funds reserved for the administrative costs of the local programs involved, as appropriate.

(5) LIMITATIONS.—A deduction made by a State as described in paragraph (4) shall not be made until such time as the Governor has taken appropriate corrective action to ensure full compliance within such local area with regard to appropriate expenditures of funds under this title.

(d) REPAYMENT OF AMOUNTS.—

(1) IN GENERAL.—Each recipient of funds under this title shall be liable to repay the amounts described in subsection (c)(1), from funds other than funds received under this title, upon a determination by the Secretary that the misexpenditure of funds was due to willful disregard of the requirements of this title, gross negligence, failure to observe accepted standards of administration, or a pattern of misexpenditure as described in paragraphs (2) and (3) of subsection (c). No such determination shall be made under this subsection or subsection (c) until notice and opportunity for a fair hearing has been given to the recipient.

(2) FACTORS IN IMPOSING SANCTIONS.—In determining whether to impose any sanction authorized by this section against a recipient for violations by a subgrantee or contractor of such recipient under this title (including the regulations issued under this title), the Secretary shall first determine whether such recipient has adequately demonstrated that the recipient has—

(A) established and adhered to an appropriate system for the award and monitoring of grants and contracts with subgrantees and contractors that contains acceptable standards for ensuring accountability;

(B) entered into a written grant agreement or contract with such subgrantee or contractor that established clear goals and obligations in unambiguous terms;

(C) acted with due diligence to monitor the implementation of the grant agreement or contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and

(D) taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of this title, including regulations issued under this title, by such subgrantee or contractor.

(3) WAIVER.—If the Secretary determines that the recipient has demonstrated substantial compliance with the requirements of paragraph (2), the Secretary may waive the imposition of sanctions authorized by this section upon such recipient. The Secretary is authorized to impose any sanction consistent with the provisions of this title and any applicable Federal or State law directly against any subgrantee or contractor for violation of this title, including regulations issued under this title.

(e) IMMEDIATE TERMINATION OR SUSPENSION OF ASSISTANCE IN EMERGENCY SITUATIONS.—In emergency situations, if the Secretary determines it is necessary to protect the integrity of the funds or ensure the proper operation of the program or activity involved, the Secretary may immediately terminate or suspend financial assistance, in whole or in part, to the recipient if the

recipient is given prompt notice and the opportunity for a subsequent hearing within 30 days after such termination or suspension. The Secretary shall not delegate any of the functions or authority specified in this subsection, other than to an officer whose appointment is required to be made by and with the advice and consent of the Senate.

(f) **DISCRIMINATION AGAINST PARTICIPANTS.**—If the Secretary determines that any recipient under this title has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this title, or has testified or is about to testify in any such proceeding or investigation under or related to this title, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of this title or the Secretary's regulations, the Secretary shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

(g) **REMEDIES.**—The remedies described in this section shall not be construed to be the exclusive remedies available for violations described in this section.

29 USC 2935.

SEC. 185. REPORTS; RECORDKEEPING; INVESTIGATIONS.**(a) REPORTS.**—

(1) **IN GENERAL.**—Recipients of funds under this title shall keep records that are sufficient to permit the preparation of reports required by this title and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully.

(2) **SUBMISSION TO THE SECRETARY.**—Every such recipient shall maintain such records and submit such reports, in such form and containing such information, as the Secretary may require regarding the performance of programs and activities carried out under this title. Such records and reports shall be submitted to the Secretary but shall not be required to be submitted more than once each quarter unless specifically requested by Congress or a committee of Congress, in which case an estimate may be provided.

(3) **MAINTENANCE OF STANDARDIZED RECORDS.**—In order to allow for the preparation of the reports required under subsection (c), such recipients shall maintain standardized records for all individual participants and provide to the Secretary a sufficient number of such records to provide for an adequate analysis of the records.

(4) AVAILABILITY TO THE PUBLIC.—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), records maintained by such recipients pursuant to this subsection shall be made available to the public upon request.

(B) **EXCEPTION.**—Subparagraph (A) shall not apply to—
(i) information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and



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Puerto Rico

PUERTO RICO 100 AÑOS DE HISTORIA

Ley Núm. 84 del año 2001

(P. del S. 312), Ley 84, 2001

Para enmendar la Ley Núm. 458 del 2000: Prohibición de contratación por el Gobierno a convictos de delitos.

LEY NUM. 84 DE 29 DE JULIO DE 2001

Para enmendar los Artículos 1, 4, 5 y 6 de la Ley Núm. 458 de 29 de diciembre de 2000, a fin de que las disposiciones de esta ley apliquen a la Rama Legislativa y a la Rama Judicial; aumentar a veinte (20) años el término de la prohibición a la contratación por la convicción en los casos de delitos graves y a ocho (8) años en los delitos menos graves.

EXPOSICIÓN DE MOTIVOS

La custodia y la más efectiva utilización de los fondos públicos constituye un deber del Estado. Como parte de este deber, en toda relación contractual el Estado tiene la responsabilidad de velar que se proteja el interés público.

El propósito de los procedimientos relacionados con subastas que se establecen en las agencias gubernamentales no confieren a nadie el derecho a que el Estado lo contrate como proveedor de bienes o servicios o que considere sus propuestas. Por el contrario, el propósito de todo procedimiento de subasta es promover y asegurar el beneficio de la agencia o entidad en aras del interés público.

El no permitir a las personas convictas por delitos relacionados con el uso ilegal de fondos públicos participar como licitadores en procedimientos de subastas ni ser contratados por el gobierno por un período razonable, resulta una medida cónsona con las normas de una sana administración pública.

Sopesando el interés apremiante del Estado con cualquier potencial interés que puedan tener las personas convictas por este tipo de delito, no cabe duda que como cuestión de ley y política pública, el interés del Estado indiscutiblemente sobrepasa al segundo.

Resulta imperativo además, ampliar el alcance de las prohibiciones dispuestas para que todas las ramas de gobierno uniformemente establezcan los criterios y las limitaciones propuestas por la Ley Núm. 458 de 29 de diciembre de 2000, para regir sus procedimientos de subastas. Ello dará mayor fortaleza a la política pública plasmada en dicha legislación.

A su vez, no hay razón de ser para considerar inelegible para reingresar al servicio público por el término de veinte (20) años cuando sea delito grave y ocho (8) años cuando sea menos grave a los empleados y funcionarios públicos convictos por los mismos delitos contemplados en el Artículo 3 de la Ley Núm. 458 de 29 de diciembre de 2000 y establecer, por otra parte, una prohibición más leniente para las personas que contratan con el gobierno y que igualmente corrompen los principios de honestidad y respeto al dinero del pueblo.

En aras de proteger el interés público la Asamblea Legislativa considera necesario aprobar esta legislación.

Decrétase por la Asamblea Legislativa de Puerto Rico:

Artículo 1.- Se enmienda el Artículo 1 de la Ley Núm. 458 de 29 de diciembre de 2000, para que se lea:

“Artículo 1.- Se dispone que ningún jefe de agencia gubernamental o instrumentalidad del Gobierno, corporación pública, municipio, o de la Rama Legislativa o Rama Judicial adjudicarán subasta o contrato alguno para la realización de servicios o la venta o entrega de bienes a persona natural o jurídica que haya sido convicta o se haya declarado culpable en el foro estatal o federal, o en cualquier otra jurisdicción de los Estados Unidos de América, de aquellos delitos constitutivos de fraude, malversación o apropiación ilegal de fondos públicos enumerados en el Artículo 3 de esta Ley.

Artículo 2.- Se enmienda el Artículo 4 de la Ley Núm. 458 de 29 de diciembre de 2000, para que se lea:

“Artículo 4.- La convicción o culpabilidad por cualquiera de los delitos enumerados en el Artículo 3 de esta Ley conllevará, además de cualesquiera otras penalidades, la rescisión automática de todos los contratos vigentes a esa fecha entre la persona convicta o culpable y cualesquiera agencias o instrumentalidades del Gobierno Estatal, corporaciones públicas, municipios, la Rama Legislativa o la Rama Judicial. Además de la rescisión del contrato, el Gobierno tendrá derecho a exigir la devolución de las prestaciones que hubiese efectuado con relación al contrato o contratos afectados directamente por la comisión del delito.”

Artículo 3.- Se enmienda el Artículo 5 de la Ley Núm. 458 de 29 de diciembre de 2000, para que se lea:

“Artículo 5.- La prohibición para la contratación, subcontratación o adjudicación de una subasta contenida en esta Ley tendrá una duración de veinte (20) años, a partir de la convicción correspondiente en casos por delito grave, y una duración de ocho (8) años en casos por delito menos grave.”

Artículo 4.- Se enmienda el Artículo 6 de la Ley Núm. 458 de 29 de diciembre de 2000, para que se lea:

“Artículo 6.- A partir de la vigencia de esta Ley, todos los contratos suscritos por cualquier agencia o instrumentalidad del Gobierno, corporación pública, municipio, o por la Rama Legislativa o Rama Judicial deberán incluir una cláusula o cláusulas penales que consignent expresamente las disposiciones contenidas en el Artículo 4 de esta Ley. En la eventualidad de que por omisión o inadvertencia se omita la inclusión de dicha cláusula o cláusulas en el contrato en el cual debieran haberse incluido, las mismas se tendrán por incluidas en dichos contratos para todos los efectos de Ley.”

Artículo 5.- Esta Ley comenzará a regir inmediatamente después de su aprobación.

Presione Aquí para regresar al Menú anterior y seleccionar otra ley.

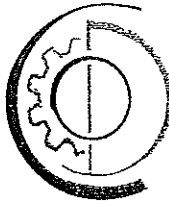
ADVERTENCIA

Este documento constituye un documento de las leyes del Estado Libre Asociado de P.R. que está sujeto a los cambios y correcciones del proceso de compilación y publicación oficial de las leyes de Puerto Rico. Su distribución electrónica se hace como un servicio público a la comunidad. Siempre busque leyes posteriores para posible enmiendas a estas leyes.

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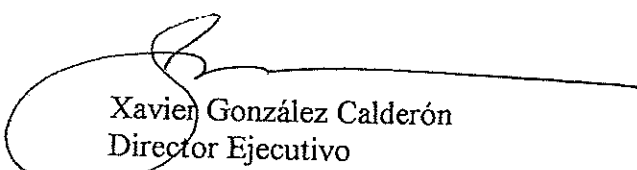


Consejo de Desarrollo Ocupacional y Recursos Humanos

Xavier González Calderón
Director Ejecutivo

22 de abril de 2002

**Presidentes Juntas de Alcaldes, Presidentes Juntas Locales
y Directores Ejecutivos de Areas Locales Bajo WIA**


Xavier González Calderón
Director Ejecutivo

MEMORIAL ADMINISTRATIVO NUMERO WIA- 01 - 2002

Acompaño el Memorial Administrativo Número WIA - 01 - 2002, en torno al establecimiento de los necesarios mecanismos para asegurar la integridad ética de todos los licitadores, proponentes, contratistas, concesionarios y proveedores de servicios de las respectivas Juntas y Areas Locales.

Mucho agradeceré la más estricta observancia de lo aquí enunciado, de modo que nos aseguremos de que entre los criterios de selección de propuestas siempre se incluya el de integridad ética en el manejo de fondos públicos.

La Vera
De surgirle alguna duda relacionada a este asunto, puede comunicarse con la Lcda. ~~Melissa Rios Montoya, Oficial Estatal de Igualdad de Oportunidades al (787) 754-5504 extensión 324.~~

emcr

Anejo

