**Section 1.APPENDIX A Office of Management and Budget Circular A-102**

Uniform Requirements for Assistance to State and Local Governments (January, 1981)

Attachment A: Cash Depositories

1. This Attachment sets forth standards governing the use of banks and other institutions as depositories of funds advanced under grants.

2. Except for situations described in paragraphs 3, 4, and 5, no grantor agency shall:

a. Require physical segregation of cash depositories for funds which are provided to a grantee.

b. Establish any eligibility requirements for cash depositories for funds which are provided to a grantee.

3. A separate bank account shall be required when applicable letter-of-credit agreements provide that drawdowns will be made when the grantee's checks are presented to the bank for payment.

4. Any moneys advanced to a grantee which are subject to the control or regulation of the United States or any of its officers, agents or employees (public moneys as defined in Treasury Circular No. 176 (31 CFR 202 (1984)), as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

5. Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees shall be encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230

Attachment B: Bonding and Insurance

1. This Attachment sets forth bonding and insurance requirements for grants. No other bonding and insurance requirements shall be imposed other than those normally required by the grantee.

2. Except as otherwise required by law, a grant that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the grantee to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal agency may accept the bonding policy and requirements of the grantee provided the Federal agency has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

a. 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.

b. 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 contractor's obligations under such contract.

c. 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.

3. Where the Federal Government guarantees or insures the repayment of money borrowed by the grantee, the Federal agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interest of the Federal Government. (See 47 Ill. Adm. Code 1.50(c), Cash Management)

4. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

Attachment C: Retention and Custodial Requirements for Records

1. This Attachment sets forth record retention requirements for grants. Federal grantor agencies shall not impose any record retention requirements upon grantees other than those described below.

2. Financial records, supporting documents, statistical records, and all other records pertinent to a grant shall be retained for a period of three years, with the following qualifications.

a. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

b. Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition.

c. When records are transferred to or maintained by the Federal sponsoring agency, the 3-year retention requirement is not applicable to the grantee.

3. The retention period starts from the date of the submission of the final expenditure report or, for grants that are renewed annually, from the date of the submission of the annual financial status report.

4. Grantees should be authorized by the Federal grantor agency, if they so desire, to substitute microfilm copies in lieu of original records. (The Department will forward all requests to microfilm records to the Secretary of State's Record Commission, which will render a decision based on the Secretary of State Regulations (44 Ill. Adm. Code 4000) of the Local Records Commission and Local Records Act (Ill. Rev. Stat. 1983, ch. 116, pars. 43.102 et seq.).)

5. The Federal grantor agency shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, a Federal grantor agency may make arrangements with grantees to retain any records that are continuously needed for joint use. (The Department will take possession of grant records only when the Grantee no longer exists.)

6. The head of the Federal grantor agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of grantees and subgrantees to make audits, examinations, excerpts and transcripts.

7. Unless otherwise required by law, no Federal grantor agency shall place restrictions on grantees that will limit public access to the records of grantees that are pertinent to a grant except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the grantor agency.

Attachment E: Program Income

1. Federal grantor agencies shall apply the standards set forth in this Attachment in requiring grantees to account for program income related to projects financed in whole or in part with Federal grant funds. Program income means gross income earned by the grantee from grant-supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

2. Interest earned on advances of Federal funds shall be remitted to the Federal agency except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577)) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Public Law 93-638).

3. Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or part with Federal funds, shall be handled in accordance with Attachment N to this Circular pertaining to Property Management.

4. Unless the grant agreement provides otherwise, grantees shall have no obligation to the Federal Government with, respect to royalties received as a result of copyrights or patents produced under the grant or other agreement. (See paragraph 7, Attachment N.)

5. All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be:

a. Added to funds committed to the project by the grantor and grantee and be used to further eligible program objectives.

b. Used to finance the non-Federal share of the project when approved by the Federal Sponsoring agency; or

c. Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

6. Federal grantor agencies shall require the grantees to record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

Attachment F: Matching Share

1. This Attachment sets forth criteria and procedures for the allowability of cash in-kind contributions made by grantees, subgrantees or third parties in satisfying cost sharing and matching requirements of Federal grantor agencies.

2. The following definitions apply for the purpose of this Attachment:

a. Project Costs. Project costs are all allowable costs as set forth in Federal Management Circular No. 74-4 incurred by a grantee and the value of the in-kind contribution made by the grantee or third parties in accomplishing the objectives of the grant during the project or program period.

b. Cost Sharing and Matching. In general, cost sharing and matching represents that portion of project costs not borne by the Federal Government. Usually, a minimum percentage for matching share is prescribed by program legislation, and matching share requirements are included in the grant agreements.

c. Cash Contributions. Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other grants may be considered as grantees' cash contributions.

d. In-kind Contributions. In-kind contributions represent the value of noncash contributions provided by the grantee, and non-Federal parties. Only when authorized by Federal legislation may property purchased with Federal funds be considered as the grantee's in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

3. General guidelines for computing cost sharing or matching are as follows:

a. Cost sharing or matching share may consist of:

1) Charges incurred by the grantee as project costs. (Not all charges require cash outlays during the grant period by the grantee; examples are depreciation and use charges for buildings and equipment.)

2) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals.

3) Project costs represented by services and real or personal property, or use thereof, donated by other public agencies and institutions, and private organizations and individuals.

b. All contributions, both cash and in-kind, shall be accepted as part of the grantee's matching share when such contributions meet all of the following criteria:

1) Are verifiable from the grantee's records;

2) Are not included as contributions for any other federally-assisted program;

3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

4) Are types of charges that would be allowable under FMC 74-4.

5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and the laws and regulations it is subject to.

6) Are provided for in the approved budget when required by the Federal agency; and

7) Conform to other provisions of this Attachment.

4. Values for grantee in-kind contributions will be established at the grantee's actual cost in accordance with FMC 74-4.

5. Specific procedures for the grantees in establishing the value of in-kind contributions from non-Federal third parties are set forth below:

a. Valuation of volunteer services. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteered service may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program. ("Integral and necessary" is defined as an allowable cost for the program if purchased.)

1) Rates for volunteer services. Rates for volunteers should be consistent with those paid for similar work in other activities of the State or local government. In those instances in which the required skills are not found in the grantee organization, rates should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved. (Rates shall be based on the Department of Employment Security's Occupational Employment Statistic Survey.)

2) Volunteers employed by other organizations. When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

b. Valuation of donated expendable personal property. Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Values assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the fair market value of the property at the time of the donation.

c. Valuation of donated nonexpendable personal property, buildings and land or use thereof.

1) The method used for charging matching share for donated nonexpendable personal property, buildings, and land may differ depending upon the purpose of the grant as follows:

a) If the purpose of the grant is to furnish equipment, buildings, or land to the grantee or otherwise provide a facility, the total value of the donated property may be claimed as a matching share.

b) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land on a temporary or part-time basis, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be made provided that the grantor agency has approved the charges.

2) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

a) Land and Buildings. The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the grantee.

b) Nonexpendable personal property. The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

c) Use of space. The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

d) Loaned equipment. The value of loaned equipment shall not exceed its fair rental value.

6. The following requirements pertain to the grantee's supporting records for in-kind contributions from non-Federal third parties.

a. Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees.

b. The basis for determining the valuation for a personal services, material, equipment, buildings, and land must be documented.

Attachment G: Standards for Grantee Financial Management Systems

1. This Attachment prescribes standards for financial management systems of grant-supported activities of State, local, and federally recognized Indian tribal governments. Federal grantor agencies shall not impose additional standards on grantees unless specifically provided for in other Attachments to this Circular. However, grantor agencies are encouraged to make suggestions and assist the grantees in establishing or improving financial management systems when such assistance is needed or requested.

2. Grantee financial management systems shall provide for:

a. Accurate, current, and complete disclosure of the financial results of each grant program in accordance with reporting requirements set forth in Attachment H to this Circular. When a Federal grantor agency requires reporting on an accrual basis, the grantee shall not be required to establish an accrual accounting system but shall develop such accrual data on its reports on the basis of an analysis of the documentation on hand.

b. Records that identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

c. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes. (See 47 Ill. Adm. Code 1.90, Financial Management Standards.)

d. Comparison of actual outlays with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.

e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Advances made by primary recipient organizations (those which receive payments directly from the Federal Government) to secondary recipients shall conform substantially to the same standards of timing and amount as apply to advances by Federal agencies to primary recipient organizations.

f. Procedures for determining reasonableness, allowability and allocability of costs in accordance with the provisions of Federal Management Circular 74-4.

g. Accounting records that are supported by source documentation.

h. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Primary grantees shall require subgrantees to adopt the standards in paragraph 2, above, except for the requirement in subparagraph 2a, regarding reporting forms and frequencies prescribed in Attachment H to this Circular.

Attachment H: Financial Reporting Requirements

1. This Attachment prescribes uniform reporting procedures for grantees to: summarize expenditures made and Federal funds unexpended for each award, report the status of Federal cash advanced, request advances and reimbursement when the letter-of-credit method is not used; and promulgates standard forms incident thereto. Grantees when obtaining financial information required by Federal agencies from subgrantees are not required to use the forms contained in this Attachment.

2. The following definitions apply for purposes of this Attachment:

a. Accrued expenditures. Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims, and other benefit payments.

b. Accrued income. Accrued income is the sum of (1) earnings during a given period from (i) services performed by the grantee; and (ii) goods and other tangible property delivered to purchasers; and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

c. Federal funds authorized. Federal funds authorized are the total amount of Federal funds obligated by the Federal Government for use by the grantee. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or agency regulation.

d. In-kind contributions. In-kind contributions are defined in Attachment F to this Circular.

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

f. Outlays. Outlays or expenditures represent 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 actual cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subgrantees. For reports prepared on an accrual basis, outlays are the sum of actual 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 grantee for goods and other property received, for services performed by employees, contractors, subgrantees and other payees and other amounts becoming owed under programs for which no current services or performance are required such as annuities, insurance claims, and other benefit payments.

g. Program income. Program income is defined in Attachment E of this Circular. It may be reported on a cash or accrual basis, whichever is used for reporting outlays.

h. Unobligated balance. The unobligated balance is 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.

i. Unliquidated obligations. For reports prepared on a cash basis, unliquidated obligations represent 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.

Attachment I: Monitoring and Reporting of Program Performance

1. This Attachment sets forth the procedures for monitoring and reporting program performance under Federal grants. These procedures are designed to place greater reliance on grantees to manage the day-to-day operations of the grant-supported activities.

2. Grantees shall constantly monitor the performance under grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application or award document.

3. Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved as prescribed by the Federal agency:

a. A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons why established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

4. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

b. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

5. If any performance review conducted by the grantee discloses the need for change in the budget estimates, the grantee shall submit a request for budget revision.

6. The grantor agency shall make site visits as frequently as practicable to:

a. Review program accomplishments and management control systems.

b. Provide such technical assistance as may be required.

Attachment L: Grant Closeout Procedures

1. This Attachment prescribes uniform closeout procedures for grantees.

2. The following definitions shall apply for the purpose of the Attachment:

a. Grant closeout. The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

b. Date of completion. The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

c. Termination. The termination of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

d. Suspension. The suspension of a grant is an action by a Federal grantor agency which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the grantor agency.

e. Disallowed costs. Disallowed costs are those charges to a grant which the grantor agency or its representative determines to be unallowable. (See Federal Management Circular No. 74-4.)

3. All Federal grantor agencies shall establish grant closeout procedures which include the following requirements:

a. Upon request, the Federal grantor agency shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

b. The grantee shall immediately refund to the grantor agency any balance of unobligated (unencumbered) cash advanced to the grantee that is not authorized to be retained by the grantee for use on other grants.

c. The grantor agency shall obtain from the grantee within 90 days after the date of completion of the grant all financial, performance, and other reports required as a condition of the grant. The agency may grant extensions when requested by the grantee. (This federal requirement is further restricted by the Grants Funds Recovery Act (Ill. Rev. Stat. 1984 Supp., ch. 127, pars. 2301 et seq.) which does not allow extensions.)

d. When authorized by the grant the grantor agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

e. The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of Attachment N to this Circular.

f. In the event a final audit has not been performed prior to the closeout of the grant, the grantor agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

4. All Federal grantor agencies shall provide procedures to be followed when a grantee has failed to comply with the grant award stipulations, standards,or conditions. When that occurs, the grantor agency may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph 5.a. The grantor agency shall allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of Federal Management Circular No. 74-4.

5. Subject to the provisions of paragraph 5 of the basic Circular, of which this Attachment is a part, all Federal grantor agencies shall provide for the systematic settlement of terminated grants including the following:

a. Termination for cause. The grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The grantor agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by the grantor agencies under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

b. Termination for convenience. The grantor agency or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portions to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Federal agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

Attachment N: Property Management Standards

1. This Attachment prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds or whose cost was charged to a project supported by a Federal grant. Federal grantor agencies shall require grantees to observe these standards under grants from the Federal Government and shall not impose additional requirements unless specifically required by Federal law. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this Attachment are included.

2. The following definitions apply for the purpose of this Attachment:

a. Real property. Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

b. Personal property. Personal property of any kind except real property. It may be tangible -- having physical existence, or intangible -- have no physical existence, such as patents, inventions, and copyrights.

c. Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

d. Expendable personal property. Expendable personal property refers to all tangible personal property other than nonexpendable property.

e. Excess property. Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibilities.

f. Acquisition cost of purchased nonexpendable personal property. Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property 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 grantee's regular accounting practices.

g. Exempt property. Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph 6a below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides the Federal sponsoring agency with adequate authority.

3. Real property. Each Federal grantor agency shall prescribe requirements for grantees concerning the use and disposition of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

a. Title to real property shall vest in the recipient subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.

b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

c. When the real property is no longer needed as provided in a and b above, the grantee shall request disposition instructions from the Federal agency or its successor Federal agency. The Federal agency shall observe the following rules in the disposition instructions:

1) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

2) The grantee may be directed to sell the property under guidelines provided by the Federal agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the grantee 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 grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

4. Federally-owned nonexpendable personal property. Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal agency. Upon completion of the agreement or when the property is no longer needed, the grantee shall report the property to the Federal agency for further agency utilization.

If the Federal agency has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal agency review.

5. Exempt property. When statutory authority exists title to nonexpendable personal property acquired with project funds shall be vested in the recipient upon acquisition unless it is determined that to do so is not in the furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition except as provided in 6a below.

6. Other nonexpendable property. When other nonexpendable tangible property is acquired by a grantee with project funds title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

a. Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, the Federal agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

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

2) The Federal agency shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal agency fails to issue disposition instructions within the 120 calendar-day period, the grantee shall apply the standards of subparagraph 6b and 6c as appropriate.

3) When the Federal agency exercises its right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in paragraph 4, above.

4) When title is transferred either to the Federal Government or to a third party, the provisions of subparagraph 6c(2)(b) should be followed.

b) Use of other tangible nonexpendable property for which the grantee has title.

1) The grantee shall use the property 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. When no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

a) Activities sponsored by the same Federal agency.

b) Activities sponsored by other Federal agencies.

2) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal agency that financed the property; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal agency. User charges should be considered if appropriate.

c. Disposition of other nonexpendable property. When the grantee no longer needs the property as provided in 6b above, the property may be used for other activities in accordance with the following standards:

1) Nonexpendable property with a unit acquisition cost of less than $1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

2) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The grantee may retain the property for other uses provided that compensation is made to the original Federal agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original grantor agency.

The Federal agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal agency shall issue instructions to the grantee no later than 120 days after the grantee request and the following procedures shall govern:

a) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse the Federal agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retail from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

b) If the grantee is instructed to ship the property elsewhere the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

c) If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by the Federal agency for such costs incurred in its disposition.

d. Property management standards for nonexpendable property. The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

1) Property records shall be maintained accurately and shall include:

a) A description of the property.

b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

c) Source of the property including grant or other agreement number.

d) Whether title vests in the grantee or the Federal Government.

e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

g) Location, use and condition of the property and the date the information was reported.

h) Unit acquisition cost.

i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates the Federal agency for its share.

2) Property owned by the Federal Government must be marked to indicate Federal ownership.

3) A physical inventory of property shall be taken and the results reconciled with the property 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 grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify the Federal agency.

5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

7. Expendable personal property. Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant, and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

8. Intangible property.

a. Inventions and patents. If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to the Federal agency. Unless there is a prior agreement between the grantee and the Federal agency on disposition of such items, the Federal agency shall determine whether protection on the invention or discovery shall be sought. The Federal agency will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administrated in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Department and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

b. Copyrights. Except as otherwise provided in the terms and conditions of the agreement the author or the grantee organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but the Federal agency shall reserve a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

9. Excess personal property. When title to excess property is vested in grantees such property shall be accounted for and disposed of in accordance with paragraphs 6c and 6d of this Attachment.

Attachment O: Procurement Standards

1. Applicability

a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders.

b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by Federal law or executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to Section 10 of the basic circular or the provisions of this or other OMB circulars.

c. Provisions of current subordinate requirements not conforming to this Attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. Grantee/Grantor Responsibility

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

b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs conform to the standards set forth in this Attachment and applicable Federal law.

3. Grantee Procurement Improvement. Executive agencies awarding Federal grants or other assistance which require or allow procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providing them with technical assistance training, publications, and other aid.

4. Procurement System Reviews

a. Executive agencies are encouraged to perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such provisions of the Model Procurement Code for State and local government; and (2) whether the grantee's procurement system should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval, as provided by Section 6.

b. In conducting procurement system review, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a period of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

5. Protest Procedures

a. Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

b. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

c. Review is limited to:

1) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

2) Violations of grantee's protest procedures or failure to review a complaint or protest.

6. Grantor Review of Proposed Contracts. Federal grantor pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposal and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed $10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

7. Code of Conduct. Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer or agent;

b. Any member of his immediate family;

c. His or her partner; or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by the State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

8. Procurement Procedures. The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of suppliers, equipment, construction and services. Affirmative steps shall include the following:

1) Including qualified small and minority businesses on solicitation lists.

2) Assuring that small and minority businesses are solicited whenever they are potential sources.

3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. Selection Procedures

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this Attachment. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirements.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation shall:

a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

11. Method Procurement. Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $10,000. Grantees shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

a) A complete, adequate and realistic specification or purchase description is available.

b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

2) If formal advertising is used for a procurement under a grant the following requirements shall apply:

a) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

b) The invitation for bids, including specifications and pertinent Attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

c) All bids shall be opened publicly at the time and place stated in the invitation for bids.

d) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

2) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

4) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

5) Grantees may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitors' is selected, subject to negotiation of fair and reasonable compensation.

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is unfeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

1) The item is available only from a single source;

2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

3) The Federal grantor agency authorizes noncompetitive negotiation; or

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

e. Additional innovative procurement methods may be used by grantees with the approval of the grantor agency. A copy of such approval shall be sent to the OFPP.

12. Contract Pricing. The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

13. Grantee Procurement Records. Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

14. Contract Provision. In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal law or the grantor agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for 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.

b. All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all construction contracts in excess of $2,000 awarded by grantees and subgrantees shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (290 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for 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). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protectional Agency (USEPA) regulations (40 CFR, Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

j. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

15. Contract Administration. Grantees shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Attachment P: Audit Requirements

1. This Attachment establishes audit requirements for State and local governments, and Indian tribal governments that receive Federal assistance. It provides for independent audits of provisions of Federal law and regulation. The requirements are established to ensure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis. Such audits are to determine whether (a) financial operations are conducted properly, (b) the financial statements are presented fairly, (c) the organization has complied with laws and regulations affecting the expenditure of Federal funds, (d) internal procedures have been established to meet the objectives of federally assisted programs, and (e) financial reports to the Federal Government contain accurate and reliable information. Except where specifically required by law, no additional requirements for audit will be imposed unless approved by the Office of Management and Budget.

2. Definitions. "Cognizant agency" means the Federal agency that is assigned audit responsibility for a particular recipient organization by the Office of Management and Budget.

"Recipient organization" means a State department, a local government, an Indian tribal government, or a subdivision of such entities, that receives Federal assistance. It does not include State and local institutions of higher education or hospitals, which are covered by Circular A-110.

3. State and local governments and Indian tribal governments shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth below. Where contracts are awarded for audit services, the contracts shall include a reference to this Attachment.

4. The provisions of this Attachment do not limit the authority of Federal agencies to make audits of recipient organizations. However, if independent audits arranged for by recipients meet the requirements prescribed below, all Federal agencies shall rely on them, and any additional audit work shall build upon the work already done.

5. Audits shall be made in accordance with the General Accounting Office Standards for Audits of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

6. Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether:

a. There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.

b. The financial statements are presented fairly in accordance with generally accepted accounting principles.

c. The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of this Circular.

d. Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

7. In order to accomplish the purposes set forth above, a representative number of charges to Federal awards shall be tested. The test shall be representative of (1) the universe of Federal awards received, and (2) all costs categories that materially affect the award. The test is to determine whether the charges:

a. Are necessary and reasonable for the proper administration of the program.

b. Conform to any limitations or exclusions in the award.

c. Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient.

d. Were net of applicable credits.

e. Did not include costs properly chargeable to other federally assisted programs.

f. Were properly recorded (i.e., correct amount, date) and supported by source documentation.

g. Were approved in advance, if subject to prior approval in accordance with Circular 74-4.

h. Were incurred in accordance with competitive purchasing procedures if covered by Attachment O of this Circular.

i. Were allocated equitably to benefiting activities, including non-Federal activities.

8. Audits usually will be made annually, but not less frequently than every two years.

9. If the auditor becomes aware of irregularities in the recipient organization, the auditor shall promptly notify the cognizant agency and recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

10. The audit report shall include:

a. Financial statements, including footnotes, of the recipient organization.

b. The auditors' comments on the financial statements which should:

1) Identify the statements examined, and the period covered.

2) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

3) State that the audit was done in accordance with the standards in paragraph 5.

4) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

c. The auditors' comments on compliance and internal control should:

1) Include comments on weaknesses in and noncompliance with the system of internal control, separately identifying material weaknesses.

2) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports.

3) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

d. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement of Federal agencies.

e. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies.

11. Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

12. The Office of Management and Budget will work with Federal agencies and State and local governments to assure that recipient audits are made in accordance with the standards set forth in paragraph 5.

13. The Office of Management and Budget will designate cognizant agencies for major recipient organizations.

14. The cognizant agency shall have the following responsibilities:

a. Obtain or make quality assessment reviews of work of non-Federal audit organizations, and provide the results to other interested audit agencies. (If a non-Federal audit organization is responsible for audits of recipients that have different cognizant audit agencies, a single quality assessment review should be arranged.)

b. Assure that all audit reports of recipients that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

c. Whenever significant inadequacies in an audit are disclosed, the recipient organization will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient organization and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

d. Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this Attachment.

e. Provide technical advice and act as a liaison between Federal agencies, independent auditors, and recipient organizations.

f. Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

g. Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

15. Recipients shall require subrecipients that are State and local governments or Indian tribal governments to adopt the requirements in paragraph 1 through 11 above. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for these reports described in paragraph 14.

16. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded with Federal funds. Grantees of Federal funds shall take the following affirmative action to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in P.L. 95-507 are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged audit firms.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms.

d. Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small or disadvantaged audit firms as described in paragraph a. when a contract is too large for an individual small or disadvantaged audit firm.

f. Use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration in the solicitation and utilization of small or disadvantaged audit firms.