

# Chapter 11

## Contract Provisions

The Part 200 Uniform Requirements require that non-Federal entities' contracts contain the applicable provisions described in Appendix II to Part 200 — "[Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.](#)"<sup>9</sup> Non-Federal entities may develop language suited to accommodate a specific contractual situation, providing such clauses are consistent with the procurement standards and other applicable law. Non-Federal entities should be aware that they bear full responsibility for the settlement of all contractual and administrative issues arising out of their procurements, and that the Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the proper authority in the applicable jurisdiction.<sup>10</sup> A discussion of a few of these provisions is set forth below:

1. Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address administrative, contractual, or legal remedies in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.  
*Reference: [Part 200 Appendix II\(A\)](#).*
2. **Termination.** Any contract over \$10,000 must address termination for cause and termination for convenience by the non-Federal entity, including the manner by which it will be affected and the basis for settlement.
  - a. **Termination for Convenience.** Contract is terminated due to reasons known to the non-Federal entity, i.e., program changes, changes in state-of-the-art equipment or technology, insufficient funding, etc. This type of termination is utilized when the contractor is not in violation of the contract terms and conditions.
  - b. **Termination for Cause.** Contract is terminated due to actions by the contractor, i.e., failure to perform, financial difficulty, slipped schedules, etc. In certain instances, termination settlement may include reprocurement costs to be paid by the contractor.

Termination settlements shall be accommodated by negotiations carefully planned in order to achieve an equitable resolution.

*Reference: [Part 200 Appendix II\(B\)](#).*

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<sup>9</sup> [2 C.F.R. § 200.327](#).

<sup>10</sup> [2 C.F.R. § 200.318\(k\)](#).

3. **Construction.** Contracts awarded for construction (generally DOJ grants do not allow construction) have special requirements and clauses. Refer to the DOJ Grants Financial Guide in the procurement chapter for specifications. If you have a DOJ grant allowing construction costs, please read the associated solicitation, award documents, and special conditions carefully. Regular contact with your program manager is very important. Construction contracts must include all relevant clauses found in Appendix II to Part 200, including Part 200 Appendix II(C) (Equal Employment Opportunity), (D) (Davis-Bacon Act), and (E) (Contract Work Hours and Safety Standards).
4. **Rights to Inventions Made Under a Contract or Agreement.** Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. This clause should require the contractor to disclose promptly inventions to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and [Title 37 C.F.R. § 401](#).

If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §.401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of [Title 37 C.F.R. § 401](#), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

*Reference: [Part 200 Appendix II\(F\)](#).*

DOJ award terms and conditions contained in grant or cooperative agreement award documentation also may contain provisions regarding patents and intellectual property, specifically including requirements or special instructions, that may require that non-Federal entities include specific contract provisions (as applicable) in procurement contracts entered into under DOJ grant or cooperative agreement awards.

5. **Debarment and Suspension.** A contract award meeting the definition in [2 C.F.R. § 180.220](#) must not be made to parties listed on the System for Award Management (SAM) Exclusion lists. The debarment and suspension certification requires that agencies establish and implement procedures to ensure that Federal assistance is not awarded to entities that are prohibited from receiving Federal funds. Those procedures should include a review of information in SAM regarding exclusion status. (See OMB guidance at [2 C.F.R. § 180](#) implementing Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235 and DOJ regulations at 2 CFR Part 2867 adopting and supplementing subparts A through I of 2 CFR Part 180), "Debarment and Suspension.").
- Reference: [Part 200 Appendix II\(H\)](#).*

6. **Clean Air and Water.** Contracts (and subrecipients) exceeding \$150,000.00, must contain a provision requiring the contractor (or subrecipients) to agree to comply with all requirements of the Clean Air Act ([42 U.S.C. 7401 et seq.](#)), and the Clean Water Act [Federal Water Pollution Control Act] as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).  
*Reference: [Part 200 Appendix II\(G\)](#).*
7. **Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.  
*Reference: [Part 200 Appendix II\(I\)](#).*
8. **Procurement of recovered materials.** A non-Federal entity that is a state agency or agency of a political subdivision of a state must include a provision requiring contractors to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Per Section 6002, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, these non-Federal entities and their contractors must procure only items, designated in guidelines of the EPA at [40 C.F.R. § 247](#), containing the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. These non-Federal entities and their contractors must procure solid waste management services so that energy and resource recovery are maximized, and they must establish an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.  
*Reference: [Part 200 Appendix II\(J\)](#), [2 C.F.R. § 200.323](#).*

## 9. New Regulatory Requirements and Considerations

- Non-Federal entities should be aware of a new provision in the regulations, [2 C.F.R. §200.322](#) “Domestic preferences for procurements” which requires the non-Federal entity to “provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products” under the award.

- Another new regulatory provision, Part 183 “Never Contract With The Enemy”, prohibits grants, cooperative agreements, and procurements with individuals or entities considered to be enemies of the United States, within a narrow set of parameters. Under [2 C.F.R. §183.10](#) the value of the award must exceed \$50,000, the proposed work is to be performed outside of the United States and its territories, and will support a contingency operation in which U.S. Armed Forces are actively engaged, as defined under [2 C.F.R. § 183.35](#). Non-Federal entities should consult their respective Federal awarding agency if they believe that a potential award may meet this criteria.