Appendix 2
Attachment 2

24 CFR Part 84

OVERVIEW OF 24 CFR Part 84

Administrative Requirements for
Grants and Agreements with Institutions of
Higher Education, Hospitals, and Other
Non-Profit Organizations

What follows is a summary of sections of Part 84 that are important to the administration of ESG grants. These descriptions only highlight aspects of Part 84.

Cash Depositories - 24 CFR 84.22

Summary:

Provides standards for the deposit of grant funds into banks and other financial institutions.

Guidance:

No eligibility requirements may be established for the use of banks or other financial institutions selected by recipients for the deposit of grant funds.

Separate bank accounts are not required for the deposit of grant funds.

As with States and local governments, nonprofit organizations are encouraged to deposit grant funds into minority-owned banks (banks with at least 50 percent minority ownership).

Bonding and Insurance - 24 CFR 84.48

Summary:

Sets minimum thresholds for bid, performance and payment bonds in connection with construction and improvements contracts over $100,000, which contractors must meet to ensure, in case of default, the completion of general and subcontract work.

Guidance:

A nonprofit's own bonding policy is acceptable, except that for construction and improvements contracts, contractors are required to obtain a 5 percent bid bond, a 100 percent performance bond, and a 100 percent payment bond. Bonds are to be obtained from acceptable sureties (companies holding certificates of authority) pursuant to 31 CFR Part 223.

Retention and Custodial Requirements for Records - 24 CFR 84.53

Summary:

Establishes record maintenance requirements subsequent to final financial reporting, property disposition, and resolution of claims against the grant.

Guidance:

Access to grant records of a nonprofit organization shall be available to HUD authorized personnel and the Comptroller General of the U.S. Records must be kept for at least three years after submission of the final expenditure report, except where there is litigation, claims, or findings against the grant requiring a longer period. In cases involving nonexpendable personal property, the three-year period starts with the final disposition of the property.

Standards for Financial Management Systems - 24 CFR 84.21

Summary:

Prescribes standards for financial management systems necessary for the accountability of funds and property, allocability of costs, maintenance of internal controls, and proper receipt and disbursement of grant dollars.

Guidance:

Recipients' financial management systems shall provide for the following:

1.Accurate, current, and complete disclosure of the financial results of the ESG program. The ESG Program Reports provide a mechanism to report the financial status of each grant.

2.Records that identify adequately the source and application of funds for ESG activities. These records must contain information pertaining to the award, obligations, unobligated balance, assets, outlays, income, and interest.

3.Effective control over and accountability for all funds, property, and other assets purchased with ESG funds. Recipients shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.

4.Comparison of outlays with budget amounts for each award. The ESG Program Reports provide the mechanism to report this information.

5.Written procedures to minimize the time elapsing between the receipt of funds and the issuance of checks for program purposes by the recipient.

6.Written procedures for determining the reasonableness, allocability, and allowability of costs in accordance with the provisions of Circular A-122 and the terms and conditions of the award.

7. Accounting records including costs accounting records that are supported by source documentation.

Payment Requirements - 24 CFR 84.22

Summary:

Establishes procedures and rules governing the receipt of grant payments by recipients and assures that obligations properly incurred shall be honored under the payment system used by the recipient.

Guidance:

Regardless of the method of payment it uses, the recipient must institute procedures to minimize the time required to disburse funds in accordance with Treasury Circular 1075. To evaluate compliance with the Treasury requirement, HUD uses a standard of three days for the disbursement of grant funds by the recipient.

Property Management Standards - 24 CFR 84.30 through 84.37

Summary:

Requires recipients to follow uniform standards for using and disposing of real property and equipment. Equipment is defined as having a useful life of one year and a per unit value of $5,000 or more.

Guidance:

Recipients must have source documentation for expenditures associated with real property or equipment. For equipment, additional records are to evidence HUD's participation in the original cost of the equipment, a description of the equipment, a system of coding or tagging, a description of the equipment's condition, a record of bi-annual inventories, and property disposition procedures.

Real property may be used in the same project as long as it is needed. When no longer needed, disposition instructions should be requested, and in most cases the recipient should be required to sell the property and compensate its program account from the proceeds of the sale in an amount equal to the program's percentage of participation in the original acquisition cost of the property.

A similar approach is used in the disposition of equipment with a value of $5,000 or more. Generally, equipment can be used in the same project without compensation to HUD, whether or not additional funding is received from HUD. When equipment is no longer needed in the same project and it cannot be used in any other Federally-assisted project of the recipient, and the value of the property in question is less than $5,000, the recipient may dispose of the equipment and retain the proceeds as miscellaneous revenue.

When equipment is no longer needed in the same project, cannot be used in any other Federally-assisted project of the recipient, and the value of the property in question is $5,000 or more, disposition instructions should be requested from HUD. If HUD does not provide instruction in 120 days or HUD has no use for the equipment, the recipient may dispose of the equipment provided the ESG account is reimbursed by applying to the sales price or fair market value of the equipment an amount equal to the percentage of HUD's participation in the original acquisition price of the equipment.

Procurement - 24 CFR 84.40 through 84.48

Summary:

Establishes standards and guidelines for the procurement of supplies, equipment, construction, and services to ensure that they are obtained as economically as possible, that their procurement is through an open and competitive process, and that contracts are managed with good administrative practices and sound business judgement.

Guidance:

Recipients are allowed to use their own procurement procedures as long as those procedures conform to the provisions of the regulations.

Recipients must maintain a system to handle disputes, protests, and other matters arising out of its contracts; maintain a code of conduct to prevent conflicts of interest (personal, financial, and organizational); and use solicitations which are clear and accurately describe the materials, products or services being procured. Recipients must use some form of cost or price analysis in connection with each of its procurements. They must be able to justify procurements awarded on a noncompetitive basis and justify the awarding of procurements by bid on a basis other than the lowest bid.

Recipients must initiate positive efforts to use small and minority-owned business to the maximum extent possible; include all applicable contract provisions in contracts; and not use cost-plus-percentage of cost contracts.

The regulations outline four methods for making procurements under grants:

Small Purchase Procedures

To be used for procurement that is relatively simple in nature where competition may be realized through price quotes from qualified sources and the cost of the contract is $25,000 or less.

Competitive Sealed Bids (Formal Advertising)

To be used for procurement that lends itself to bidders responding strictly to specifications in sealed bids, publicly solicited and the contract provides for a firm-fixed price (not subject to any adjustment on the basis of the contractor's cost experience in performing the contract). In such contracts available cost or pricing information permits realistic estimates of the probable cost of performance by offerors and assumption of the risks involved.

Competitive Negotiation

To be used for procurement where uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a firm-fixed price contract. The cost-reimbursement contract is preferred, especially the cost-plus-fixed-fee type. The

fixed-price contract may be used also, but the nature of grant procurements usually do not lend themselves to these types of contracts.

Noncompetitive Negotiation

To be used for procurements where methods described above are inappropriate or where competition is proved to be nonexistent or inadequate or HUD determines it is acceptable or a situation exists that makes it necessary (e.g., emergency, local crisis) to forego competition. It is advisable that a decision to use this method not be made unilaterally by the recipient.

OVERVIEW OF OMB Circular A-122

Cost Principles for NonProfit Organizations

Basic Considerations

Among the basic considerations, the costs must:

1. be reasonable and allocable to the award;

2. conform to cost principles and/or limitations set forth in the agreement;

3. be afforded consistent treatment; and

4. be adequately documented.

Direct Costs versus Indirect Costs

Direct costs are those costs that can be identified specifically with a final cost objective, (i.e., ESG-related activities). For example, any cost incurred exclusively for a particular activity is a direct cost to that activity.

Indirect costs are those costs that are incurred for common or joint objectives and cannot be readily identified with a common cost objective. Examples include rent, utilities, general administrative expenses, and other overhead-type costs that benefit all activities undertaken by the organization. Organizations that charge indirect costs must have a cost allocation plan on file.

Allowable versus Unallowable Costs

Attachment B of the Circular identifies some of the most common types of costs that a recipient may incur, but is not all-inclusive. It discusses both allowable and unallowable cost and the accounting treatment required. Some unallowable costs include:

1. Bad debts and losses.
2. Contingency reserves.
3. Contributions and donations.
4. Entertainment costs.
5. Fines and penalties.
6. Interest costs.
7. Fund raising.
8. Underrecovery of costs from other grants.