

TERMS AND CONDITIONS FOR ADMINISTRATION OF GRANTS

Effective for Project Periods Beginning on or After July 1, 2023



**Prepared by:
Grants and Auditing**

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INTRODUCTION

The application, award, and administration of a grant is subject to applicable laws, regulations, and policies. This document, "Terms and Conditions for Administration of Grants," presents a compilation of the salient features of such policies and becomes a legal part of the award of a grant. When funds are obtained from the grant payment system, the grantee acknowledges acceptance of the grant terms and conditions that are expressed in this document.

The State of New Jersey Department of Health (the Department) administers a diverse array of grant programs which address the missions of its several divisions. The awarding divisions within the Department are responsible for the award, administration, and monitoring of these programs under a variety of legislative authorities, governing regulations, policies, and procedures. Grants are made to a wide range of grantees, including local governments, institutions of higher education, hospitals, and nonprofit organizations.

The administration of a grant not only requires adherence to the program objectives for which the grant was made, but also requires that objectives be accomplished in a businesslike manner. This is particularly important when the costs to grantees and the State are rising and the Department's funds are limited. For these reasons, grantees must establish sound and effective business management systems to ensure proper stewardship of funds and activities. Grantees are expected to exercise the same degree of prudence in the expenditure of the Department's funds as they use in expending their own funds.

The Department views its relationship with grantees as a partnership, with grantees providing the effort and expertise necessary to carry out approved activities and the Department providing financial assistance. In furtherance of its role in this relationship, the Department has designated Grants Management Officers in each of its awarding divisions. The Grants Management Officer (GMO) serves as the focal point for the business management aspects of grants administration, including receipt of required reports. Questions concerning the interpretation of policies or the applicability of certain policies to particular programs should be directed to the designated GMO.

Subgrantees and Contractors Under Grants

The information contained in this publication applies principally to the primary grantee receiving the grant from the Department. When subgrants are authorized by the awarding division, the information and standards contained in this publication also applies to subgrantees. The Department expects grantees to use an objective system for making subawards that is at least as rigorous as the grantees' procurement systems in order to ensure proper accountability of funds, compliance with Federal Cost Principles, and satisfactory performance under the subaward. Grantees must also ensure that contracts contain the clauses necessary to guarantee that all requirements under the grant will be satisfied.

Effective Date and Order of Precedence

This document is effective for project periods beginning on or after July 1, 2023 and supersedes all prior versions of the "Terms and Conditions for Administration of Grants."

In the event there are conflicting or otherwise inconsistent policies applicable to the administration of grant funds, the following order of precedence shall prevail:

1. Federal or State legislation and statutes.
2. Federal or State regulations.
3. Terms and Conditions for Administration of Grants.

This publication is intended to provide a common understanding of the framework for the administration of grants. Any question relating to the subject matter in this document or the Department's grant agreement or policies, in

general, should be directed to the Department of Health, Grants and Auditing, P.O. Box 360, Trenton, New Jersey 08625-0360.

State of New Jersey Policy Update

Pursuant to the Governor's Executive Order 4, the Department encourages grantees to disseminate information relative to the Affordable Care Act Marketplace and to notify its service participants and employees, through information and materials or through an awareness program, of ACA marketplace insurance options and enrollment assistance where available.

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SUBPART A - GENERAL

1.1 Purpose

This document establishes uniform requirements for the administration of grants awarded by the State of New Jersey Department of Health (the Department).

1.2 Definitions

"Accrued expenditures" means 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, subcontractors, 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.

"Accrued income" means the sum of: (1) earnings during a given period from services performed by the grantee and 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.

"Acquisition" means the purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment 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.

"Administrative costs" include but are not limited to:

(a) Salaries, fringe benefits, training and other support costs such as supplies, equipment, telephone, etc. of the activities of an executive director, administrative assistants and other members of their staff that relate to their performance of general and administrative functions.

(b) All costs associated with conducting support of boards of directors (Trustees) and their activities.

(c) The cost of establishing and maintaining accounting, auditing, personnel recruitment and human resource management, procurement services, bonding costs, legal services, public information, public

relations, payroll and all management information systems that are required for the proper management of the grant program. Also, includes any advertising costs of personnel recruitment, solicitation of bids for procurement of goods and services, and the cost of the annual single audit.

(d) Certain costs benefit both direct program and administrative activities and need to be prorated based on an acceptable allocation method. Some examples of costs which might need to be prorated:

- Cost of leased vehicles;
- Building, space, and related costs such as taxes, heat, light, power, alterations, maintenance, repairs, taxes, depreciation, use allowance;
- Insurance and indemnification costs;
- Office supplies, printing and reproduction

costs;

(e) All travel costs except for transportation of clients.

(f) If a grantee has an approved indirect cost rate, the application of the rate to the applicable base will result in costs that are classified as administrative cost.

"Administrative requirements" mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic requirements," which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Advance or advanced payment." See the definition for "Scheduled Advanced Payment."

"Alterations and Renovations" means work required to change the interior arrangement or install equipment of an existing facility so it may be more effectively utilized for its current designated purpose or adapted to an alternate use to meet a programmatic requirement. Alterations and renovations may include work referred to by such terms as improvement, conversion, reconversion, rearrangement, rehabilitation, remodeling, or modernization.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Applicant" means any eligible legal entity that makes an application to the Department for a grant.

"Approved budget" means the financial plan for the project or program that the awarding division approves during the award process or in subsequent amendments. The approved budget is contained in Attachment B of the grant agreement.

"Awarding division" means the organization within the Department that is legally authorized to award and administer grants.

"Budget period" means the time during which the grantee may incur costs, and obligate grant funds for costs incurred, to carry out the work authorized under the grant award.

"Capitalization limit" means the minimum acquisition cost of equipment when recording a long-term asset. Nonprofit organizations, excluding governments and hospitals, that do not have a written policy shall capitalize equipment with a per-unit acquisition cost that equals or exceeds \$500, unless otherwise approved by the Department. Other grantees shall use a limit that equals the lesser of the capitalization level established for financial statement purposes or \$5,000.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other agencies and institutions, and private organizations and individuals.

"Cash expenditures," as used in the "cash basis" reporting system, means the sum of actual cash disbursements for goods and services and the amount of cash advances and payments made to subgrantees and contractors.

"Cognizant audit agency" means a State agency that is assigned the responsibility to review or audit a grantee receiving funds from the State of New Jersey.

"Consortium/Lead Agency" is the entity that is responsible for coordination of grant supported activities and provides funds to subgrantees. The Consortium/Lead Agency is to advise subgrantees of all grant compliance requirements imposed on them as stated in the "Terms and Conditions for Administration of Grants." The Consortium/Lead Agency is to ensure that audits are completed and reports are received in a timely basis and in accordance to the "Terms and Conditions for Administration of Grants." The Consortium/Lead Agency is to monitor the activities of subgrantees as necessary to ensure that the grant funds are used for authorized purposes in compliance with the "Terms and Conditions for Administration of Grants."

"Construction grant" means a type of grant awarded for the purpose of constructing a new facility, completing alterations and renovations, or purchasing an existing facility.

"Cost reimbursement payment" is the payment system that grantees will use when not on an advance payment method and are paid for actual costs incurred.

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

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs.

"Debarment" means the prohibition to award grants by the Department and the State of New Jersey to those agencies that are not in compliance with state or federal procurement and non-procurement programs rules and regulations.

"Department" means the State of New Jersey Department of Health.

"Equipment" means a fixed asset, tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the applicable capitalization limit.

"Expenditures" mean charges made to the project or program. They may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied. For reports prepared on a cash basis, expenditures are the sum of cash disbursements for direct charges for property and services; the amount of indirect expense charged; the value of third-party in-kind contributions applied; and the amount of cash advance payments and payments made to subrecipients. For reports prepared on an accrual basis, expenditures are the sum of cash disbursements for direct charges for property and services; the amount of indirect expense incurred; the value of third-party in-kind contributions applied; and the net increase or decrease in the amounts owed by the grantee for goods and other property received, services performed by employees, contractors, subrecipients, and other payees, and programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

"Expenditure report" means the form designated by the Department for the reporting of grant expenditures.

"Fixed amount award" means a type of grant that provides a specific level of support, usually on a per unit basis, without regard to actual costs incurred. For fixed amount awards, accountability is based on performance and results, and grantees receive progress payments.

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Department to an eligible grantee.

"Grant closeout" means the process by which an awarding division determines that all applicable administrative actions and all required work of the grant have been completed by the grantee.

"Grantee" means an organization, government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the Department for the use of funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant agreement.

"Grantee's Fiscal Year" means the grantee's financial reporting cycle.

"Grants Management Officer" (GMO) means the employee designated by the awarding division to be responsible for the business management responsibilities of the grant.

"Interest-bearing Account" is the type of account for depositing payments a grantee receives under the advanced payment method.

"Indirect Cost" means a cost incurred for common or joint objectives that cannot be readily identified with a particular, final cost objective. After direct costs have been determined and assigned to awards or other work, as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

"Obligations," when used in connection with the grantee's utilization of funds under a State or Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the grantee during the same or a future period.

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

"Personally Identifiable Data" or "Personally Identifiable Information" means information which can be used to distinguish or trace an individual's identity, including but not limited to their name, social security number, biometric records, alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, including but not limited to date and place of birth, mother's maiden name.

"Prior approval" means documentation evidencing consent prior to incurring specific costs.

"Program income" means gross income earned by the grantee or subgrantee that is directly generated by a grant supported activity, or earned as a result of the

grant during the budget period. Program income does not include interest earned from interest-bearing accounts required for advanced payment.

"Program Management Officer" (PMO) means the employee designated by the awarding division to be responsible for the technical, scientific and programmatic aspects and monitoring of the grant.

"Progress payment" is a payment made to a grantee based upon the performance of a negotiated level of service.

"Project period" means the time during which the grantee must complete the objectives of the grant.

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

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, the equipment must be replaced and of the same nature or character, although not necessarily the same model, grade, or quality.

"Research" means all research activities, both basic and applied, and all development activities that are performed by grantees. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

"System for Administering Grant Electronically" or "SAGE" means the web-based application used by the Department for processing grant applications, issuing awards, and maintaining electronic signatures.

"Scheduled advance payment" is a payment based upon a schedule developed at the time the grant is negotiated. This schedule is intended to provide cash in advance of anticipated expenditures.

"Share," when referring to the Department's portion of real property, equipment or supplies, means the same percentage as the Department's portion of the acquiring party's total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted, not the value of third-party in-kind contributions.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

"Subgrantee" means the government, nonprofit corporation, or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant agreement.

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

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

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. Termination does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) Voiding of a grant upon determination that the grant was obtained fraudulently, or was otherwise illegal or invalid from inception.

"Terms of the grant or subgrant" means all requirements of the grant or subgrant, whether in statutes, regulations, the grant or subgrant agreement, or this document.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by third parties without charge to the grantee or the subgrantee, under the grant or subgrant.

"Unobligated balance" means the portion of the funds authorized by the awarding division that has not been obligated or expended by the grantee.

1.3 Appeals

(a) Policy

The Department's grant appeals process will be administered in accordance with the New Jersey Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 *et seq.* Appeals will be heard and decided by a Grant Appeals Board (Board).

(b) Procedure

Awarding divisions will provide written notice:

- (1) To grant applicants, when declining a grant application; and

- (2) To grantees and subgrantees, before imposing any special condition or taking any enforcement action that would limit a grantee's or subgrantee's access to grant funds.

(c) A notice recipient may challenge the awarding division's decision by submitting a written request for appeal to the Board.

- (1) Submissions must be mailed to:

Grant Appeals Board
Division of Program Compliance & Health
Care Financing
P.O. Box 358
Trenton, NJ 08625-0358

(2) Requests must be postmarked within 30 days of the date of the awarding division's original notification and contain a full statement of the petitioner's position, including all pertinent facts and any necessary supporting documentation.

(d) Upon receipt of an appeal request, the Board will notify the petitioner, in writing, of the time and nature of the hearing to be held, or of the reasons the appeal request is being denied.

1.4 Deviations

(a) Except as provided in 1.5, a deviation is any exception to this part not required by State or Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant or subgrant term which is inconsistent with an applicable provision of this document, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant or subgrant term which is required by this document.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a grantee, or an official of the awarding division, may be authorized only when it is necessary to meet programmatic objectives or to conserve grant funds, or when it is otherwise essential in the public interest.

1.5 Special grant or subgrant conditions for "high-risk" grantees

(a) Without regard to the procedures referenced in 1.4, special conditions more restrictive than those prescribed may be imposed as needed when the awarding division has determined that the grantee:

- (1) Has a history of unsatisfactory performance;

(2) Is not financially stable;
(3) Has a financial management system which does not meet the standards set forth in this document;

(4) Has not conformed to the terms and conditions of previous grant awards;

(5) Is in bankruptcy proceedings; or

(6) Is otherwise not responsible. If the awarding division still determines that a grant will be made; special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the grant agreement.

(b) Special conditions or restrictions may include:

(1) Payments will be made on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given budget period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring may be required;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) When special conditions or restrictions are imposed, the grantee or subgrantee will be notified as early as possible, in writing, of;

(1) The nature of the special conditions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/ restrictions imposed.

1.6 Compliance with existing laws

(a) The Grantee, in order to permit the Department to award this Grant, agrees to comply with all Federal, State, and municipal laws, rules, and regulations generally applicable to the activities in which the Grantee is engaged in the performance of this Grant.

(b) These laws and regulations include, but are not limited to the following:

(1) Federal Office of Management and Budget (OMB) document: 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards": <https://www.ecfr.gov/cgi-bin/text-idx?SID=ea06d61c09381901a569b4536454a19e&node=pt2.1.200&rgn=div5>.

(2) State of New Jersey Department of the Treasury, Office of Management and Budget documents:

(i) Circular Letter 15-08-OMB, "Single Audit Policy for Recipients of Federal Grants, State Grants, and State Aid": http://www.state.nj.us/infobank/circular/cir1508_omb.pdf.

(ii) State Grant Compliance Supplement: <https://www.state.nj.us/treasury/omb/stategrant.shtml>.

(3) State Affirmative Action Legal Citations: The Grantee agrees to require its contractors to comply with the requirements of N.J.A.C. 17:27, applicable provisions of N.J.S.A. 10:5, *et al*, and P.L. 1975, c.127 and all implementing regulations.

Failure to comply with such laws, rules, or regulations shall be grounds for termination of this Grant.

1.7 Indemnification

In providing any aid, benefit, or service on behalf of the Department pursuant to this grant, the Grantee/Agency agrees that the performance shall be in strict compliance with any applicable State or Federal laws. In event that the Grantee/Agency, its agents, servants, employees or subcontractors violate or are alleged to have violated any relevant laws during the performance of this grant, the Grantee/Agency shall defend the State in any action or administrative proceeding commenced pursuant to such laws. The Grantee/Agency shall indemnify, protect, and save harmless the Department, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Grantee/Agency shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In the event that an individual files a complaint with the Department, which is investigated by the Department, the Grantee/Agency agrees to abide by any decision rendered by the Department. If any action or administrative proceeding results in an award of damages against the Department or if the Department incurs any expense to cure a violation, the Grantee/Agency shall satisfy and discharge the same at its own expense.

The Department shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Grantee/Agency along with full and

complete particulars of the claim. If any action or administrative proceeding is brought against the Department or any of its agents, servants, and employees, the Department shall expeditiously forward or have forwarded to the Grantee/Agency every demand, complaint, notice, summons, pleading, or other process received by the Department or its representatives.

It is expressly agreed and understood that any approval by the Department of the services provided by the Grantee/Agency pursuant to this grant will not relieve the Grantee/Agency of the obligations to comply with State and Federal laws and to defend, indemnify, protect, and save harmless the Department.

It is further agreed and understood that the Department assumes no obligation to indemnify or save harmless the Grantee/Agency, its agents, servants, employees and subgrantees for any claim which may arise out of their performance of this Agreement. Furthermore, the Grantee/Agency expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Grantee's/Agency's obligations assumed in this Agreement, nor shall they be construed to relieve that Grantee/Agency from any liability, nor preclude the Department from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.

The Agency (grantee) agrees to be solely responsible for and to indemnify and keep harmless the Department against all loss or liability arising out of the work undertaken by the Grantee, its employees, agents or subcontractors, regardless of the Grantee's negligence, and whether or not the Department or its employees or agents have been negligent or have breached any statutory duty, and Grantee will defend against the Grantee and/or against the Department arising out of the work undertaken by the Grantee and will make good to, and reimburse the Department for any expenditures that the Department may make to defend such suits.

State government agencies are exempted from this provision.

1.8 Assignability

The Grantee shall not subgrant any of the work or services covered by this Grant, nor shall any interest be assigned or transferred except as may be provided for in this Grant or with the express written approval of the Awarding Division.

1.9 Availability of funds

The Grantee shall recognize and agree that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the availability to the Department of funds appropriated by the State Legislature from State and/or Federal revenue or such other funding sources as may be applicable. A failure of the Department to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach of the Agreement by the Department or an event of default under the Agreement and the Department shall not be held liable for any breach of the Agreement because of the absence of available funding appropriations. In addition, future funding shall not be anticipated from the Department beyond the duration of the award period set forth in the Grant Agreement and in no event shall the Agreement be construed as a commitment by the Department to expend funds beyond the termination date set in the Grant Agreement.

1.10 Subawards to debarred and suspended parties

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspensions, 12689, and 2CFS part 180."

1.11 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART B - FORMS FOR APPLYING FOR GRANTS

2.1 Scope of subpart

This subpart prescribes forms and special instructions to be used in applying to the Department for grants. General grant application instructions may be found on the grant application forms. Additional, program-specific instructions may be provided by the awarding division in the Request for Applications.

2.2 Special instructions

This subpart applies only to applications for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged not to adopt more detailed or stringent application requirements for subgrants.

(a) Grantees will be required to submit the grant application through SAGE to the awarding division.

(b) When a grantee applies for a change in scope, additional funding, an extension of award period or amends a previously submitted application, a Grant Amendment/Budget Revision Request form and appropriate justification will be required.

2.3 Submission of applications

The application shall be submitted through SAGE to the appropriate awarding division as stipulated in the Request for Applications. Only in extraordinary circumstances will the Department accept applications in a format other than the electronic version. The time allowed for submission shall be determined by the awarding division, allowing adequate time for the applicant to prepare the proposal, the negotiation of the award to be made, and the issuance of a grant so the grantee can commence work within a reasonable amount of time after the effective date.

An application for grant funds will be prepared by the applicant and processed by the awarding division when there is reasonable certainty that appropriations are or will become available to support the activity. When full funding is not available, the grant is issued for the available amount and amended incrementally as funds become available.

2.4 Processing application forms

The process for determining the award of funds will be governed by the policies of the awarding division and other Department requirements.

2.5 Application forms

(a) The standard grant application forms shall be used for all grants. These electronic forms shall be accessed, and completed in SAGE.

(b) Each awarding division will determine the necessity for requiring additional attachments.

(c) Instructions on completing the forms shall be provided by the awarding division. Any additional information required shall be provided by the designated Program Management Officer or Grants Management Officer.

(d) The awarding division is also required to provide the applicant with a listing of applicable grant requirements, including the following:

(1) "Terms and Conditions for Administration of Grants"; and

(2) Compliance Requirements. The awarding division shall provide the applicant with the general and specific compliance requirements applicable to the funding source.

(e) For a specific group of applications that will be considered for negotiation, the forms required from the grantees shall be the same to ensure continuity and a fair assessment of each applicant's submission.

(f) When a Request for Applications is issued as the basis for awards, the application must be exactly the same for all applicants.

2.6 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART C - BONDING AND INSURANCE

3.1 General

In administering grants and subgrants, grantees and subgrantees shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in Sections 3.2 through 3.4.

3.2 Construction and facility improvement

(a) Scope of this section.

This section covers requirements for bid guarantees, performance bonds, and payments bonds when the grantee or subgrantee will contract for construction or facility improvements (including alterations and renovations of real property) under a grant or subgrant.

(b) Definitions.

(1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) Bids and contracts of \$150,000 or less.

The grantee or subgrantee shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) Bids and contracts exceeding \$150,000.

The grantee or subgrantee may follow its own regular policy and requirements if the awarding division has determined that its interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

3.3 Fidelity bonds

(a) If the grantee is not a government, the awarding division may require it to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) If the subgrantee is not a government, the awarding division or the grantee may require that it carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

(c) A fidelity bond is a bond indemnifying the grantee or subgrantee against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

3.4 Source of bonds

Any bonds required under 3.2(d) (1) through (3) or 3.3 shall be obtained from companies holding certificates of authority as acceptable sureties.

SUBPART D - CONSTRUCTION GRANTS

4.1 Limitations

(a) A construction grant may be awarded for periods up to three (3) years with appropriate extensions of time as would be reasonably necessary to accomplish the intent of the grant.

(b) State and federal regulations, including compliance requirements governing the allowability of the use of funds, will determine whether funds may be used for construction grants.

4.2 Application, Award Document and Terms and Conditions

(a) The standard grant application forms shall be used for construction grants supplemented by such additional information as will be needed to evaluate the proposal and establish the approval for the costs. This includes the Cost Estimate Outline form (FS-26).

(b) The standard grant agreement shall be used to make the grant.

(c) The "Terms and Conditions for Administration of Grants" will apply to construction grants except for those sections that are determined as beyond the scope and intent of the grant.

4.3 Special Conditions for Construction Grants

(a) A grant for construction shall be separate from a grant for services.

(b) A grant for services may contain funds for alterations and renovations if the cost will be incurred and disbursed in accordance with the terms of the grant and within the budget period. Funds not obligated within the budget period may not be charged to a construction grant if the intent is to extend the time available to spend the funds.

(c) The awarding division shall review and approve the working drawings and specifications before a bid may be advertised or negotiation of a contract can take place.

(d) The building has a useful life consistent with program purposes and is architecturally and structurally suitable for conversion to the type of space required to meet program needs.

(e) It is cost effective to perform such work.

(f) The construction is essential for the grantees program and the space involved will actually be occupied by the program. If space is unused for the program's basic purposes, it may be rented. Program income earned from the rent will be returned to the

Department in proportion to the share of the construction costs borne from grant funds and approved program income.

(g) Unused space remaining after six (6) months from completion of the project will be considered excess and any costs for the building will be adjusted so that the Department only pays for the share approved for program operations.

(h) The unexpended balances of the construction grant including grant funds, program income and earned interest at the end of the grant period will be returned to the Department.

4.4 Payments

(a) Payments will be made commencing after the grantee has submitted all the required information for grant approval of the project.

(b) The method of payment will be by payment voucher. The scheduled advanced payment system will not apply for construction grants. Payments should be processed to cover initial advances needed to commence work with additional reimbursement on the basis of completion of each phase of the work.

(c) Program income and grantee funds will be considered first dollar.

(d) A Report of Grant Expenditures, supplemented with the FS-26 spending breakdown, and a request for reimbursement for construction grants shall accompany each payment voucher. The report shall be reviewed and funding authorized as appropriate and to minimize excess State cash in the hands of the grantee.

(e) Program income designated for a construction grant will be deposited in an interest-bearing account until the funds are needed. Interest earned will be used for the approved purposes of the grant.

4.5 Allowable and Unallowable Costs

(a) A grant for construction may include costs associated with the following:

(1) Physical characteristics - interior dimensions, surfaces and finishes.

(2) Interior environment - temperature, humidity, ventilation and acoustics.

(3) Utility services - plumbing, electricity, gas, vacuum or other laboratory piping.

(4) Unfinished shell space - to make it suitable for purposes other than human occupancy such as the storage of supplies.

(5) Fixed equipment - casework, large equipment.

(6) Certain costs of installing equipment such as the removal and replacement of wall sections and door frames, cost of connecting utility lines, replacing finishes and furnishings, and installing any accessory devices required.

(7) Costs associated with new construction, including relocation of exterior walls, roofs and floors, attachment of fire safety devices, development and repair of parking lots (when associated with interior or exterior building construction or renovation).

(8) Costs necessary to obtain an initial occupancy permit.

(9) Modular furniture.

(b) Costs that are not allowable under a construction grant are as follows:

(1) Mortgage and operational costs of the structure.

(2) Routine maintenance and repairs to the facility or its contents.

(3) Moveable equipment and furniture excluding modular furniture.

4.6 Other Conditions

(a) A construction grant may be incrementally funded over the period of the award. Additional application information will not be needed if the grant is modified only to increase the funding level.

(b) A grant may consist of grant funds, program income and grantee support and will be reflected as a total plan.

(c) A construction grant will be subject to the same audit requirements that the agency must comply with for other funding sources, including the single audit if applicable.

SUBPART E - STANDARDS FOR GRANTEE AND SUBGRANTEE FINANCIAL MANAGEMENT SYSTEMS

5.1 Scope of subpart

(a) This subpart contains standards for financial management systems.

(b) A grantee or subgrantee must expend and account for grant funds in accordance with applicable federal and state legislation, regulations, and the "Terms and Conditions for Administration of Grants." Grantee or subgrantee laws or procedures for expending and accounting for its own funds may be followed if they do not conflict with the terms of the grant or subgrant. Fiscal control and accounting procedures of the grantee, as well as its subgrantees must be sufficient to:

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(c) The financial management systems of other grantees and subgrantees must also meet the following standards of this subpart.

5.2 Financial management standards

At the highest level of the organization, systems must be established to control and account for funds received from the Department.

(a) Financial reporting. Accurate, current, and complete disclosure of the financial results of the financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis.

(b) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, liabilities, expenditures and income.

(c) Internal control. The grantee and subgrantee must establish and maintain effective internal control over the award that provides reasonable assurance that the grantee is managing the award in compliance with statutes, regulations, and the terms of the grant or subgrant. The grantee and subgrantee must take

reasonable measures to safeguard protected personally identifiable information and other information the Department considers sensitive consistent with applicable Federal, State, and local laws regarding privacy and obligations of confidentiality. The grantee and subgrantee must adequately safeguard all assets and property and assure that it is used solely for authorized purposes.

(d) Budget control. The expenditures must be compared with budgeted amounts for each grant or subgrant on a regular basis. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant agreement. The Grants Management Officer and Program Management Officer must be promptly notified when the grantee learns that it is unable to expend the budgeted amounts.

(e) Advanced Payments are not permitted with subgrants without expressed written approval of the Grants Management Officer (see Subpart G).

(f) Allowable costs. Establish procedures in accordance with applicable cost principles (see Subpart H), program regulations, and the terms of the grant and subgrant agreement in determining the reasonableness, allowability, and allocability of cost.

(g) Source Documentation. Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, time, activity and attendance records, contracts and subgrant award documents, etc. Specific attention should be given to the documentation of costs to activities for employees charged in whole or in part to grant awards.

(h) External and Internal Audits. See Subpart L.

(i) Cash Management. See Subpart F for Cash Management Standards.

5.3 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART F - CASH MANAGEMENT

6.1 Scope of subpart

This subpart prescribes the cash management standards for minimizing the time elapsing between the transfer of funds from the Department and disbursement by grantees and subgrantees.

6.2 Financial management for subgrantees

(a) Grantee responsibilities

(1) Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate expenditure reports to the awarding division.

(2) Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

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

6.3 Payment methods

(a) The method of payment for grants will be stipulated in the grant agreement (Attachment A). All grantees will be paid using the cost reimbursement method, unless an alternate payment method is authorized by the awarding division. Nonprofit applicants, excluding governmental agencies, hospitals, and institutions of higher education, may request the advance payment method by submitting a written justification with their grant application. This justification will be evaluated and considered for approval by the Program Management Officer and Grants Management Officer respectively, and if approved, an advance payment schedule will be negotiated with the grantee to minimize the time elapsing between the transfer of funds from the Department and disbursement by the grantee. Grantees classified as governmental agencies, hospitals, and institutions of higher education are not eligible for advance payments.

(b) The advanced payment method is not permitted with subgrants without the express written approval of the Grants Management Officer.

6.4 Physical segregation and eligibility

Awarding divisions or grantees shall not impose grant or subgrant terms which:

(a) Require the grantee or subgrantee to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which grantees or subgrantees deposit grant or subgrant funds.

6.5 Minority-owned banks

Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks (a bank which is owned at least 50 percent by minority group members.)

6.6 Interest-bearing Account

(a) Funds provided by advance payments, under certain grant conditions as stated in (b) below, will be deposited into an interest-bearing account.

(b) Grantees that receives less than \$250,000 in Federal and State awards per year, will not be required to deposit funds received on the advanced payment system into an interest-bearing account but, if a grantee chooses to deposit the grant funds into an interest-bearing account, then the grantee must submit any interest earned over \$500 to the Department. If a grantee receives \$250,000 or more in Federal and State awards per year, the grantee must deposit all grant funds received on the advanced payment system into an interest-bearing account and submit any earned interest over \$500 directly to: Department of Health, Accounting and Procurement, P.O. Box 360, Trenton, New Jersey 08625-0360. The grantee may keep interest amounts up to \$500 per year for administrative expenses.

(c) The awarding division will provide the grantee with the required form which must be submitted annually, at the end of the grantee's fiscal year indicating the interest earned.

6.7 Exceptions

Exceptions to this policy may be submitted to the awarding division for consideration, and if approved, shall be specified in the grant agreement.

6.8 Effect of program income, refunds, and audit recoveries on payment

Except as provided in paragraph 6.6(a) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

6.9 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART G - GRANT AND SUBGRANT PAYMENT REQUIREMENTS

7.1 Scope of subpart

This subpart prescribes the basic standard under which the Department will make grant payments to grantees and grantees will make payments to subgrantees.

7.2 Basic standard

Methods and procedures for payments shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee.

7.3 Payment methods

(a) The method of payment will be determined by the awarding division. Unless otherwise noted in Attachment A of the grant agreement, the method of payment will be cost reimbursement.

(b) Where deemed applicable, the awarding division may authorize advance payments to be made to the grantee. When advance payments are authorized, an advance payment schedule will be attached to the grant agreement. The final advance payment may be withheld pending receipt and approval of the Grantee's final progress and expenditure reports. The Department reserves the right to alter, hold, or cancel the scheduled advance for any period if, in the judgment of the Department, the grantee is making expenditures at a rate that will result in an excessive cash balance for that period.

(c) For fixed amount awards, the Department will make progress payments in accordance with the grant agreement, regardless of the costs incurred.

7.4 Withholding of payments

(a) Unless otherwise required by Federal or State statutes, the awarding division shall not withhold payments for proper charges incurred by grantees or subgrantees unless:

(1) The grantee or subgrantee has failed to comply with the terms of the grant, including submission of periodic reports;

(2) The grantee or subgrantee is indebted to the State of New Jersey;

(3) There are unresolved audit problems;

(4) The grant is suspended pursuant to Subpart T.

(b) Cash withheld for failure to comply with a grant condition, but without suspension of the grant,

shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with Subpart T. When a debt is to be collected, the Department may withhold payments or recorded grant cash balances for which the grantee is accountable to the Department, in order to liquidate the indebtedness.

(c) An awarding division shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to ensure satisfactory completion of work. Payments shall be made by the awarding division when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to ensure satisfactory completion of work.

7.5 Payments to subgrantees

Grantees shall observe the requirements of their organization in making (or withholding) payments to subgrantees, and they must follow the standards established in 6.2 of Subpart F.

7.6 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART H - ALLOWABLE COSTS

8.1 Limitation on use of funds

Grant funds may only be used for:

(a) The allowable costs of grantees, subgrantees, and cost-type contractors. The allowable cost of grant supported activities is comprised of the allowable direct costs incident to the performance of grant related activities plus the allocable portion of allowable indirect costs less applicable credits.

(b) Reasonable fees or profit to cost type contractors, but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

- (h) Be net of all applicable credits.
- (i) Be adequately documented.
- (j) Costs, expended or obligated, must be incurred within the grant's approved budget period.

8.4 Administrative Costs

The total amount of administrative costs as defined in Subpart A shall be reviewed by the Grants Management Officer in a manner which will determine the appropriate relationship between direct service and administrative costs. Administrative costs will be evaluated based on allowability and reasonableness, and all costs requested may not be approved.

8.2 Applicable cost principles

The Department has adopted the Federal cost principles for all grants. Allowable costs will be determined in accordance with 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." The Federal cost principles can be viewed online at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=ea06d61c09381901a569b4536454a19e&node=pt2.1.200&rgn=div5>.

8.5 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

8.3 Allowable Costs

Costs must meet certain criteria to be allowable under a grant. Therefore, a cost must:

(a) Be necessary and reasonable and for the proper and efficient administration of the award and be allocable under the appropriate cost principles.

(b) Be authorized or otherwise not prohibited under Federal, State, or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in the cost principles, grant agreement, Federal or State law, terms of the grant, or other governing regulations as to types and amounts of cost items.

(d) Be consistent with the policies, regulations, and procedures that apply uniformly to grant related activity and other activities performed by the grantee.

(e) Be accorded consistent treatment.

(f) Be determined in accordance with generally accepted accounting principles.

(g) Not be included in or allocable to any other grant support programs in either the current or prior period. This would also include costs used to meet any cost sharing or matching requirements of any other financed program.

SUBPART I - PERIOD OF AVAILABILITY OF FUNDS

9.1 General

A grantee may only charge expenditures and obligations to the grant when costs have been incurred during the budget period.

9.2 Liquidation of obligations

A grantee must liquidate all obligations incurred under the grant no later than 60 days after the end of the budget period.

The Grants Management Officer may extend this deadline at the request of the grantee.

9.3 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART J - MATCHING OR COST SHARING

10.1 Scope of subpart

This subpart contains rules for satisfying requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by statute or by other terms of the grant.

10.2 Basic rule

With the qualifications and exceptions listed in 10.3, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, or subgrantee, under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

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

10.3 Qualifications and exceptions

(a) Cost borne by other grants

(1) Except as provided by statute, a cost-sharing or matching requirement may not be met by cost borne by another grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another grant.

(2) For the purpose of this part, general revenue sharing funds under 31 U.S.C. 6702 are not considered a grant. Therefore, in the absence of any provision of statute to the contrary, allowable costs borne by these funds may count towards satisfying a cost-sharing or matching requirement.

(b) Costs or contributions counted towards other cost-sharing requirements.

Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of another grant, a procurement contract, or any other award of funds.

(c) Cost financed by general program income as defined in Subpart K, shall not count towards satisfying a cost-sharing or matching requirement of the grant unless the terms of the grant expressly permit the income to be used for cost sharing or matching.

(d) Services or property financed by income earned by contractors.

Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by

this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(e) Records.

Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantees. These records must show how the value placed on third-party in-kind contributions was derived. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(f) Special standards for third-party in-kind contributions.

(1) Third-party in-kind contributions count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) Some third-party in-kind contributions are goods and services that, if the grantee or subgrantee receiving the contribution had to pay for them, the payments would have been an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the grantee or subgrantee has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(a) A third-party in-kind contribution to a fixed-price contract may count towards satisfying a cost-sharing or matching requirement only if it results in:

(1) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(2) A cost savings to the grantee or subgrantee.

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third-party in-kind contribution is of a type of treated in those sections, the value placed upon it shall be fair and reasonable.

10.4 Valuation of donated services

(a) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals shall be valued at rates consistent with those ordinarily paid of similar work in the grantee or subgrantees organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor

market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) Employees of other organizations. When an employer other than a grantee or subgrantee furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

10.5 Valuation of third-party donated supplies and loaned equipment or space

(a) If a third-party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(b) If a third-party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

10.6 Valuation of donated equipment, buildings, and land

If a third-party donates equipment, buildings, or land, and title passes to grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(a) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost-sharing or matching.

(b) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following rules apply:

(1) If approval is obtained from the awarding division, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the awarding division as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal or State funds, only the non-federal share of the property may be counted as cost sharing or matching.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated

land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third-party in-kind contributions. Instead, they are treated as cost incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the Federal cost principles specified in Subpart H, in the same way as depreciation or use allowances for purchased equipment and buildings.

The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

10.7 Valuation of grantee or subgrantee donated real property for construction/acquisition

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

10.8 Appraisal of real property

In some cases, under 10.5, 10.6 and 10.7, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the awarding division may require the market value or fair rental rate be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee to subgrantees.

10.9 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART K - PROGRAM INCOME

11.1 General

Grantees are encouraged to earn income to defray program costs. Program income means gross income earned by a grantee or subgrantee that is directly generated by a grant supported activity or earned as a result of the grant during the budget period. Program income includes, but is not limited to income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement. Except as otherwise provided in regulations of the State, or Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

Grantees or subgrantees who generate revenue from activities that are not supported in whole or in part with Department grant funds may keep the program income as long as the grantee or subgrantee can demonstrate that no Department grant funds are used to support the non-grant related activity.

11.2 Cost of generating program income

If authorized by State or Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

11.3 Government revenues

Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement.

11.4 Royalties

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

11.5 Property

Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Subpart N.

11.6 Use of program income

Program income shall be deducted from total expenditures as described below, unless the awarding division regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives the awarding division may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When awarding divisions are authorized to use alternatives in paragraphs 11.6 (b) and (c) of this section, program income in excess of any limits stipulated shall also be deducted from expenditures.

(a) Deduction. Program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the awarding division authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the grant and grantee contributions rather than to increase the funds committed to the project.

(b) Addition. When authorized, program income may be added to the funds committed to the grant by the awarding division. The program income shall be used for the purposes and under the conditions of the grant agreement.

(c) Cost sharing or matching. When authorized, program income may be used to meet the cost-sharing or matching requirement of the grant agreement. The amount of the grant remains the same.

11.7 Interest earned on advances of grant funds

(a) Interest income earned from the scheduled advance payment system in Subpart F is not program income, and interest income over \$500 must be paid to the Department.

11.8 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART L - AUDITS

12.1 Basic rule

(a) The New Jersey Single Audit Policy as established by the New Jersey Treasury Department in Circular Letter 15-08-OMB requires that grantees of funds from the State of New Jersey must have an audit performed in accordance with the United States Council on Financial Assistance Reform (COFAR) Code of Federal Regulations (C.F.R.) 2 C.F.R. 200: Uniform Guidance.

(b) Awarding divisions may not impose additional audit requirements on grantees or sub-grantees.

(c) Audits must be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

12.2 Definition

- (a) Grantee is a recipient and a subgrantee is a subrecipient.
- (b) Recipient is defined as any unit of local government (including a county, borough, municipality, city, town, township, local public authority, special district, school district, welfare agency, and any other instrumentality of local government), Indian tribe, institution of higher education, non-profit organization (including hospitals), or for-profit that receives from a State agency any federal grant, State grant, or State aid funds to carry out or administer a program.

12.3 Single Audit Policy

(a) The State Single Audit Policy may be found at the following website address:

<http://www.state.nj.us/infobank/circular/circindx.htm>.

(b) All State agencies that disburse Federal grant, State grant, or State aid funds to grantees that expend \$750,000 or more in federal financial assistance or State financial assistance within their fiscal year must require these grantees to have annual single audits or program-specific audits performed in accordance with the Act, Amendments, Subpart F – Audit Requirements (of 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and State policy. It should be noted that the federal government

will not pay for the costs of auditing a grantee that is exempted from having an audit conducted under the Act and Subpart F – Audit Requirements because its expenditures under federal awards are less than \$750,000 during the grantee's fiscal year.

(c) All State agencies that disburse federal grant, State grant or State aid funds to grantees that expend less than \$750,000 in federal or State financial assistance within their fiscal year, but expend \$100,000 or more in State and/or federal financial assistance within their fiscal year, must require these grantees to have either a financial statement audit performed in accordance with Government Auditing Standards (Yellow Book) or a program-specific audit performed in accordance with the Act, Amendments, Subpart F – Audit Requirements (of 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and State policy.

(d) Program-specific audits in accordance with Subpart F – Audit Requirements (of 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) can be elected and preapproved by State Cognizant Department when a grantee expends federal or State awards under only one federal or State program and the federal or State program's statutes, regulations, or terms and conditions of the grant award do not require a financial statement audit of the grantee. A Pre-Approval to submit a Program Specific Audit will be required every 3 years by the State Cognizant Department.

(e) All audits shall be performed annually.

(f) In addition to federally required reports and opinions, grantee single audits must contain similar reports and opinions for State grant and State aid funds.

(g) Auditors should use the risk-based approach for Federal/State programs as described in Federal Subpart F – Audit Requirements, Section 200.518 to determine which Federal/State programs are major programs. Auditors should also use the criteria outlined in Sections 200.519 and 200.520 when making risk determinations for State programs.

(h) Grantee single audit reports, as well as yellow book and program specific reports, must include a Schedule of Expenditures of Federal Awards (SEFA) and a supplementary schedule of the entity's State grant and State aid financial assistance programs. The schedule entitled Schedule of Expenditures of State Financial Assistance

must show for each State grant:

- State Grantor Department
- Program Title/Name
- State Grant Award Number or Account Number
- Grant Award Period
- Fiscal Year Grant Expenditures
- Total Grant Expenditures to Date

(i) Unless a funding department's policy requires an earlier submission, audit reports are due nine months after the end of the audit period.

(j) Each department must maximize the recovery of federal audit costs (as direct or indirect) in accordance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, to fund federal monitoring positions.

(k) Any State department that mandates audit requirements, above and beyond the minimum federal and State requirements, is responsible for funding the additional audit work performed. Additional audit requirements must be communicated to the grantee and the State Cognizant Department Single Audit Contact at least 180 days prior to the grantee's fiscal year end.

(l) State Cognizant Departments must update the Grantee Single Audit Tracking System on a timely basis.

(m) In instances of reported grantee noncompliance with material terms and conditions of grant agreements or State and federal laws and regulations, State agencies must ensure that appropriate corrective action is initiated within six months after receipt of the audit report.

12.4 Responsibility of cognizant agency

(a) State Cognizant Department is the State department or agency that has been assigned audit oversight responsibility for a grantee to ensure the timely receipt of a quality audit report from the entity that complies with Federal and State requirements. State Cognizant Department recipient assignments are made annually upon the conclusion of the State fiscal year.

(b) It is the State Cognizant Audit Department's responsibility to ensure that the timely performance of desk reviews of single audit reports and issuance of a management decision on audit

findings within six months after receipt of the recipient's audit report.

(c) State Cognizant Audit Department is responsible for requesting corrective action plans from recipients where necessary and ensuring that audit exceptions are resolved.

(d) State Cognizant Audit Department is responsible for the confirmation of independent audit organization external Quality Control Reviews (QCR).

12.5 Single Audit Policy Limitations

(a) The Single Audit Policy does not replace any existing requirements for an economy and efficiency audit or for a program results audit. Nor does the single audit eliminate the responsibility the awarding division has to maintain proper oversight of assistance programs. However, any such additional audit must be planned to avoid unnecessary duplication and must either be performed by or arranged for and paid for by the awarding division. Any additional audit must "build upon" the single audit, and not duplicate what has already been performed.

12.6 Access to grantee records and public accountants workpapers

(a) As an integral part of the Single Audit Policy the Department reserves the right to access to the grantees/subgrantees records to ensure proper monitoring reviewing functions as required in Section 19.6

(b) Access to grantee's/subgrantee's public accountant's workpapers supporting their opinions relating to the grantee's/subgrantee's financial and compliance statements and ample time to review the same is reserved by the Department in this section.

(c) The exclusion from the Single Audit Policy does not limit access to the overall certified audit or overall accounting records of the grantee/subgrantee. Under certain circumstances the Department reserves the right to review the same to comply with the Single Audit Policy and Section 19.6 of this document.

12.7 Completion of the audit

(a) The grantee will ensure that an independent auditor completes the audit within nine months after the end of the grantee or subgrantee's fiscal year.

(b) The grantee will ensure that appropriate corrective action is taken within six months after receipt of the recipient's audit report in instances of noncompliance with State and Federal regulations and the terms of the grant.

12.8 Auditor selection

(a) In arranging for audit services Subpart O, Procurement, Section 15.2 shall be followed.

12.9 Audit costs

The costs of an audit may be an eligible expense to the grant. The cost must be treated consistently with appropriate cost principles, see Subpart H, Section 8.1.

The Department reserves the right to disallow audit costs if the audit report is not consistent with the terms of this Subpart.

12.10 Submission of Audit Report

The grantee shall submit an annual audit report no later than nine months after the end of its fiscal year. The required audit report is to be submitted to the Department's Office of Grants and Auditing, Audit Unit through SAGE. Failure to submit the required annual audit report to the Department may result in termination or suspension of grants to the grantee and the grantee will not be considered for future funding.

12.11 Penalties

(a) No audit cost can be charged to a grant unless the audit has been performed in compliance with the applicable circular.

(b) The following restrictions may apply if the audit is not completed in a satisfactory manner.

(1) Withhold a percentage of the grant award until the audit is completed satisfactorily, or

(2) Withhold or disallow the cost of the audit, or

(3) Suspend the grant award until the audit is completed.

12.12 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D).

12.13 Consortium or Lead Agency Audit Requirement

Grantees that are considered a consortium or lead agency shall ensure that their audit report incorporates each subgrantee's applicable financial results as part of the audit report of the consortium or lead agency. Audit reports must include as part of the

supplementary data, the Schedule of Expenditures of State Financial Assistance for each State grant and each subgrantee. The consortium or lead agency shall ensure that each subgrantee is in compliance with the Terms and Conditions of the grants along with Federal, State, and Department audit policies.

SUBPART M - PROGRAM CHANGES AND BUDGET REVISIONS

13.1 Scope and applicability of this subpart

The grant application and grant agreement are based on the best estimate or plan of program activities and expenditures. It is almost inevitable that some changes or unanticipated circumstances will occur. In many programs, revisions are common and expected. The most common change, for example, is simply a shift of dollars from one budget line item to another.

A number of actions or changes require the approval of the awarding division. Grants are also subject to many prior-approval requirements, which extend to both grantee and subgrantee costs. Prior approval is defined as "documentation evidencing consent prior to incurring specific costs." All requests must be initiated, processed, and approved through SAGE. Prior approval entails advance written permission from the Department's authorized Grants Management Officer. Notes of a telephone conversation with a Program Management Officer would not constitute prior approval.

There is a difference between a budget revision and an amendment. A budget revision changes the line-item budget without increasing or decreasing the approved budget. A grant amendment changes the contractual agreement between the grantee and awarding division. An amendment includes an increase or decrease in the approved budget, a change in scope of the activities, or a change in the grant period. An amendment requires all approvals including the Department's Approval Officer.

Before beginning the project, grantees shall obtain prior approval from the Department. Approval of the budget line items in Attachment B of the grant agreement constitutes "prior approval" for the performance of activities and expenditures for the specific purposes and items described in the grant application, unless otherwise restricted by the grant agreement.

Grantees and subgrantees are permitted to rebudget within the approved direct cost categories to meet unanticipated requirements, and may make limited program changes to the approved project. However, unless waived by the awarding division, certain types of post-award changes in budgets and activities shall require the prior written approval of the awarding division.

13.2 Relationship to cost principles

The applicable cost principles for prior approvals of certain types of costs can be found in 2 CFR 200,

"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

13.3 Budget changes

For projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the Department's share and the grantee's share). However, the awarding division may specify that the recipient's share not be included in the approved budget.

Some grants and subgrants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, if the awarding division has approved separate budgets by activities, etc., any changes among the anticipated costs of each programmatic activity will require prior approval.

(a) Nonconstruction projects. Except as stated in the grant agreement, grantees or subgrantees shall obtain the prior approval of the awarding division whenever any of the following changes are anticipated under a nonconstruction award:

(1) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(2) Grants that are for \$150,000 or less do not require prior approval for transfers among direct cost categories, except for those items referenced in the applicable cost principles and other sections of this subpart. For example, equipment, subgrants, and professional service agreements require prior written approval from the awarding division.

Grants that are more than \$150,000 require an approved budget revision request for transfers among direct cost categories, when the cumulative amount of transfers exceeds, or is expected to exceed, 10 percent of the total budget as last approved. In other words, when the total transfer from amounts and transfer to amounts add up to 10% of the current total award amount, the grantee needs prior approval. All transfers must be consistent with the original intent of the award. See two examples shown below.

An example where no revision is required. A grant is approved for \$200,000 and the budgeted line-item expenditures are reducing Supplies by 8,000,

increasing Salaries and Wages by \$6,000, and increasing Facility Costs by \$2,000. Under this scenario, there is no budget revision required because the cumulative total is less than \$20,000 ($\$200,000 \times 10\%$). Note that $\$8,000 + \$6,000 + \$2,000$ equals \$16,000, which is less than \$20,000.

An example where a revision is required. A grant is approved for \$200,000 and the budgeted line-item expenditures are reducing Supplies by \$12,000, increasing Salaries and Wages by \$10,000, and increasing Facility Costs by \$2,000. Under this scenario, a budget revision is required because the cumulative total is equal to, or more than, \$20,000 ($\$200,000 \times 10\%$). Note that $\$12,000 + \$10,000 + \$2,000$ equals \$24,000, which is more than the \$20,000.

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

(4) Any line item not approved in the original budget.

(5) Direct to indirect. Using amounts budgeted for direct costs to absorb increases in indirect costs (non-governmental grantees only).

(6) Indirect to direct. Using amounts budgeted for indirect costs to absorb increases in direct costs (non-governmental grantees only).

(7) Restrictions in the grant agreement. Using funds for any purpose or type of cost that was expressly disapproved as a condition of the grant.

(b) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds or substantially change the approved construction plan.

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

13.4 Programmatic changes

(a) Grantees or subgrantees must obtain prior approval from the awarding division whenever any of the following actions is anticipated:

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

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

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

(4) To continue a project during any continuous period of more than 3 months without the active direction of an approved project director, or to replace the project director or any other persons named and expressly identified as key project people in the grant or subgrant agreement or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(5) Transferring substantive programmatic work. Subgranting, contracting or otherwise transferring substantive project activities to a third party.

(6) Additional prior approval requirements. Any event described in the grant agreement.

13.5 Requesting prior approval.

(a) When required, prior authorization shall be requested by the grantee and approved by the awarding division through SAGE.

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

(c) Retroactive Approval

A grantee or subgrantee which fails to obtain a required prior approval may be permitted to request approval after the fact. Requests for retroactive approval will be entertained only in instances where:

(1) The transaction would have been approved had approval been requested in advance;

(2) The transaction is approved by both the Grants Management Officer and the Program Management Officer, who has the authority to grant such approval; and,

(3) The grantee or subgrantee agrees to institute controls to ensure that prior approval requirements are met in the future.

13.6 Timing

Within 30 days from the date of receipt of a request for prior approval, the awarding division shall review the request and notify the grantee of its decision. If the request for approval is still under consideration at the end of 30 days, the awarding division shall inform the grantee in writing as to when to expect the decision.

13.7 Grant changes

Changes to an approved grant shall be considered by the awarding division if the grantee has submitted on a timely basis the required performance and expenditure reports as stipulated in the grant agreement. Failure to have conformed with these requirements may result in the disapproval of a request by the awarding division.

13.8 Other changes

(a) The Department may request changes in the scope of the services of the grantee to be performed hereunder. Such changes, including any increase or decrease in the amount of the grantee's compensation, which are mutually agreed upon by and between the Department and the grantee must be incorporated in written amendments to this grant.

(b) If the grantee is making program expenditures or providing grant services at a rate which, in the judgement of the awarding division, will result in substantial failure to expend the grant amount or provide grant services, the Department may so notify the grantee. If, after consultation, the grantee is unable to develop to the satisfaction of the awarding division a plan to rectify its low level of program expenditures or grant services, the Department may, upon thirty (30) days notice to the grantee reduce the grant amount by a sum so that the

revised amount fairly projects program expenditures over the grant period. This reduction shall take into account the grantee's fixed costs and shall establish the level of services for each program element of grant services at the reduced grant amount.

13.9 Costs allowable with approval

(a) The Federal cost principles identify certain costs that, in order to be allowable, must be approved by the awarding division (see 13.2).

(b) The following procedures govern approval of these costs.

(1) When costs are treated as indirect costs (or are allocated pursuant to an agency-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(2) When the costs are treated as direct costs:

(a) They must be approved in advance by the awarding division.

(b) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) In the case of subgrants, no approval shall be given which is inconsistent with the purpose or the terms of the grant.

13.10 Construction Grants

This subpart applies to Construction Grants except for those section that are beyond its scope and intent. (See Subpart D.)

SUBPART N – REAL PROPERTY, EQUIPMENT, SUPPLIES AND COPYRIGHTS

14.1 Scope and applicability of this subpart

(a) This subpart applies to real property, equipment and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant or a subgrant, and must be borne by Department grant funds or program income funds earned as the result of a Department grant.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to:

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution; or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

14.2 Prohibition against additional requirements

Grantees and subgrantees may follow their own property management policies and procedures provided they observe the requirements of this subpart. Awarding divisions and grantees may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart unless specifically approved by the Department Grant Approval Officer.

14.3 Title

Subject to the obligations and conditions set forth in this subpart and any additional terms included in the Grant Agreement (Attachment C), title to real property, equipment and supplies acquired under a grant or subgrant shall vest upon acquisition in the grantee or subgrantee respectively.

14.4 Real property

(a) Use. Except as otherwise provided by State or Federal statutes, real property will be used for the originally authorized purposes and the grantee or subgrantee shall not dispose of or encumber its title or other interest.

(b) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition

instructions from the awarding division. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain title after compensating the Department. The amount paid to the Department will be computed by applying the Department's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the Department. The amount due to the Department will be calculated by applying the Department's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the Department or to a third-party designated/approved by the awarding division. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

(c) Purchase requirements. The purchase of real property with grant funds will require the following minimum requirements:

(1) A period of time will be given for use of the facility for its stated purpose.

(2) A survey and an appraisal of the property and an inspection report on its physical conditions.

(3) A clear title of the property as certified by a reputable title insurance company.

(4) A promissory note in the amount of the grant will be executed and delivered to the awarding division. The amount of the note will be reduced by an amount to be determined for each full year of the obligation.

(5) The Department is exempt from any and all liability regarding its purchase or construction on the property.

(6) The grantee must, at a minimum, provide the equivalent insurance coverage to real property and equipment acquired or improved with grant funds as provided to property owned by the grantee.

(7) A lien will be placed on the property in a decreasing amount equal to the amortization of the grant amount.

14.5 Equipment

(a) Grantees are expected to have a written policy on capital expenditures that identifies the base acquisition cost for capitalizing long term assets. Nonprofit organizations, excluding governments and hospitals, that do not have a written policy shall capitalize equipment with an acquisition cost of \$500 and a life expectancy of 1 year or greater. Grantees may use a different acquisition threshold provided it is in a written policy, is customary and reasonable for the organization type, is agency wide, and complies with Generally Accepted Accounting Principles and the applicable Federal cost principles. Any exception requires prior approval by the awarding division.

(b) Use. (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by the Department.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the State or Federal government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding division. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in Subpart K to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding division.

(c) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with

grant funds, until disposition takes place will, as a minimum, meet the following requirements:

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

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

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

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

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

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

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

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

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

(e) Grant equipment. In the event a grantee or subgrantee is provided with equipment:

(1) Title will remain vested in the State government.

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

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

(f) Right to transfer title. The Department reserves the right to transfer title to a party named by the awarding division when such a third-party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

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

(2) The awarding division shall issue disposition instruction within 120 calendar days after the end of the support of the project for which it was acquired. If the awarding division fails to issue disposition instructions within the 120 calendar day period, the grantee shall follow 14.5 (d).

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

14.6 Supplies

(a) Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the grant, and if the supplies are not needed for any other sponsored programs or projects, the grantee or subgrantee shall compensate the Department for its share.

14.7 Copyrights

The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Department purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

14.8 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART O - PROCUREMENT

15.1 Procurements subject to this subpart

(a) This subpart applies to the procurement of supplies, equipment and services (including construction) by grantees and subgrantees.

(b) This subpart applies if any part of the cost of the property or services being procured by a grantee or subgrantee is treated as a direct cost under a grant or subgrant and is either borne by grant funds or counted toward satisfying a cost-sharing or matching requirement of the grant.

(c) This subpart does not apply to the acquisition of property or services by one government from another government or by one agency or instrumentality of a government from another agency or instrumentality of the same or another government.

15.2 Procurement standards

(a) (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements also conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Grantees and subgrantees must have written procedures for selecting procurement transactions that reflect applicable Federal, State, and local laws, regulations, and standards.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by State or Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) 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 or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential

contractors, or parties to subagreements. Grantee and subgrantees 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 State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The Department may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items and to promote efficiencies. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

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

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

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

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

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

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

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

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

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

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

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest.

Protests received by the awarding division other than those specified above will be referred to the grantee or subgrantee.

(b) Competition

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

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

(ii) Requiring unnecessary experience and excessive bonding,

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

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

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be

offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable statutes expressly mandate or encourage geographic preferences. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees must have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) 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; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitations period.

(c) Methods of procurement to be followed.

(1) Procurement by micro-purchase procedures. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold as defined by the Federal regulation at 2 CFR

Part 200, Subpart A. To the extent practicable, the grantee must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the grantee considers the price to be reasonable.

(2) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold as defined by the Federal regulation at 2 CFR Part 200, Subpart A. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(3) Procurement by sealed bids (formal advertising). 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 materials terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 15.2(c)(3)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

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

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts

will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

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

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

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

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

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

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

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

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

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

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

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

(C) The awarding division authorizes noncompetitive proposal; or

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

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

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

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

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

(2) Affirmative steps shall include:

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

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

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

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

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

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

(e) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost

analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Cost or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Subpart H).

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(f) Awarding division review.

(1) Grantees and subgrantees must make available, upon request of the awarding division, technical specifications on proposed procurements where the awarding division believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding division may still review the specification, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must, upon request of the awarding division, make available pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed \$25,000 and is to be awarded without competition or only one bid or offer is received in a response to a solicitation; or

(iii) The procurement, which is expected to exceed \$25,000, specifies a "brand name" product; or

(iv) The proposed award over \$25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contractor or increases the contract amount by more than \$25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (f)(2) of this section if the awarding division determines that the grantee's or subgrantee's procurement system complies with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding division to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

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

(g) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding \$150,000, the awarding division may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding division has made a determination that the Department's interest is adequately protected. If such a determination has not been made the minimum requirements shall be as follows:

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

contractual documents as may be required within the time specified.

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

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

(h) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (h) of this Section. Awarding divisions are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases.)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantee.)

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

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation.)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other

contracts which involve the employment of mechanics or laborers.)

(7) Notice of Department requirements and regulations pertaining to reporting.

(8) Notice of Department requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Department requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Attorney General, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear 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 Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000.)

(13) 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 (Pub. L. 94-163).

15.3 Purchase of Real Property

The acquisition of real property by a grantee will be subject to the following policy. The title, disposition and use of real property acquired by the grantee under item (a) below, will be subject to Subpart N, Real Property, Equipment, Supplies, and Copyrights. Attachment C shall be used to clearly define the agreement for payment and use of real property related to a grant.

(a) The Department may support the costs associated with the acquisition of real property under two basic conditions as specified in this subpart.

(1) Grantee Purchase of Building

(a) The awarding division shall approve the terms and conditions of the purchase agreement (including the type of purchase obligation, interest rates, amount and terms of the agreement). The terms

shall represent the most favorable conditions possible to the Department, including a repayment schedule that demonstrates that the cost to the Department is not excessive.

(b) The agreement must explicitly state that the Department is held harmless in case of default of the obligation, and to any liabilities occurring as a result of the purchase obligation.

(c) The Department shall have use of the property in accordance with the negotiated agreement if its share of the cost (grant funds and program income) represent a portion of the total costs of the acquisition that would in effect represent ownership of the property.

(d) Sale of the property will require prior approval of the awarding division.

(e) Any portion of the property used for non-grant related activities in any current or future period, either during the repayment of the purchase obligation or thereafter, shall be treated as program income and treated according to the terms of the grant.

(f) For the purpose stated in this part, the Department will waive the cost principle prohibiting the charging of interest to a health service grant if the funds used for the purchase are other than an appropriation that precludes the Department Grant Approval Officer from making such determination, i.e. State and Federal block funds will allow interest as an allowable cost, Federal categorical funding sources or other awards that prohibit the charging of interest as an allowable cost may not include interest as an allowable cost to the grant.

(b) Purchase by a Holding Company

(1) A separate legal organization may be established to purchase real property that will be used to carry out the terms of a grant, and that would result in a cost to a grant, if there is in form and substance an "arm's-length" relationship between the grantee and corporation holding the property. As a minimum the following conditions must be present to indicate that an "arm's-length" relationship exists:

(a) No member of the holding company, or corporation may serve on the board of directors of the grantee's organization, be an employee of the grantee or a member of the family of a board member or employee of the grantee organization.

(b) Separate legal counsel must represent the grantee and the holding company.

(c) The awarding division may award grant funds or approve the use of program income to cover the usage cost of that portion of the property that will be used to carry out the intent of the grant if it can be determined that this cost will not exceed the fair

rental value of comparable property available for the grantee use.

(d) No grant funds or program income earned from the grant may be used to support the "up-front" funding required for the purchase or renovation of the property.

Exceptions to this policy may be authorized by submitting a request with appropriate justification to the Department Grant Approval Officer.

15.4 Domestic Preferences for Procurements

(a) As appropriate and to the extent consistent with law, the Grantee should, to the greatest extent practicable under a Federal award, 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 a Federal award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

15.5 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART P - SUBGRANTS

16.1 Subgrants

(a) The grantee shall follow and comply with the terms of the grant when awarding and administering subgrants. The grantee shall:

(1) Provide all subgrant agreements to the Program Management Officer and Grants Management Officer for prior approval (see Subpart M);

(2) Ensure that subgrant agreements:

(i) Clearly identify the award as a subgrant under a grant from the

Department;

(ii) Include a statement that the terms of the grant flow down through the subgrant to the subgrantee and a reference to the Department's "Terms and Conditions for Administration of Grants";

(iii) Include all clauses required by statute, regulation, and the grantee's agreement with the Department.; and

(iv) Specifically require compliance with the Department's records retention and access policy for grants (see Subpart S);

(3) Ensure that subgrantees are aware of requirements imposed upon them by statute, regulation, and the subgrant agreement; and

(4) Monitor and manage the subgrant in accordance with all laws, regulations, and the terms of the grant agreement, including a requirement to:

(i) Substantially hold subgrantees to the same standard to which the awarding division holds the grantee with respect to the timing and amount of payments (see Subpart F); and

(ii) Substantially hold subgrantees to the same standard to which the awarding division holds the grantee with respect to the timing and format of reports (see Subpart Q and Subpart R).

16.2 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART Q - MONITORING AND REPORTING PROGRAM PERFORMANCE

17.1 Monitoring by grantees

Grantees are responsible for managing the day-to-day operations of grant- and subgrant-supported activities. Grantees must monitor grant- and subgrant-supported activities to ensure compliance with applicable requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

17.2 Performance reports

(a) The awarding division shall determine the performance information and forms required. This information is included in the grant agreement.

(b) The content of performance reports shall conform to any instructions issued by the awarding division, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the reporting period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(c) At a minimum, a performance report will be submitted upon expiration or termination of grant support.

17.3 Significant developments between scheduled reporting dates

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the grantee shall inform the awarding division as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the grant. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

17.4 Site visits

Site visits may be made by representatives of the awarding division to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

(c) Conduct monitoring of program activities and records to ensure compliance with the grant deliverables and conditions.

17.5 Submission of reports

(a) Non-construction performance reports

(1) The required reporting frequency is stated in the grant agreement (Attachment A). The final progress report will be due on the same date as the Final Report of Grant Expenditures. Reports are to be submitted through SAGE to the Program Management Officer.

(b) Construction performance report

(1) For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily to monitor progress under construction grants and subgrants. The awarding division will require additional formal performance reports only when considered necessary, and never more frequently than quarterly. (See Subpart D)

(c) Waivers and extensions

(1) If a justified request is submitted by the grantee, the awarding division may extend the due date for any performance report. If any performance report required by this part is not needed by the awarding division, the awarding division may waive that reporting requirement.

(2) If the grantee will be able to meet its performance reporting obligations, the grantee may extend the due date for any performance report required under a subgrant. If any performance report required under a subgrant is not needed by the grantee, the grantee may waive that reporting requirement.

17.6 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART R - FINANCIAL REPORTING

18.1 Scope and applicability of subpart

(a) This subpart prescribes requirements for grantees to report financial information.

(b) Grantees are not required to use the forms prescribed in this subpart in dealing with their subgrantees. However, grantees must require financial reporting from subgrantees, and shall not impose more burdensome requirements.

18.2 General

(a) The grantee shall submit the Report of Grant Expenditures comparing actual expenditures with the approved budget. These forms are to be submitted through SAGE on a periodic basis as prescribed in the grant agreement (Attachment A).

(b) When an awarding division has determined that a grantee's accounting system does not meet the standards for financial management systems contained in Subpart E, it may require financial reports with more frequency or more details, or both, upon written notice to the grantee.

(c) Awarding divisions may extend the due date of any financial report upon receiving a justified request from the grantee.

18.3 Report of grant expenditures

(a) Forms. Grantees shall use a standard form, "Report of Grant Expenditures," and a status of cash report, if required, for all grants. The report is to be submitted through SAGE to the Grants Management Officer.

(b) Accounting basis. Each grantee shall report program expenditures and program income on the same accounting basis (i.e., cash or accrued expenditures), which it uses in its accounting system. If the awarding division requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through an analysis of the documentation on hand.

(c) Frequency. The required reporting frequency is stated in the grant agreement (Attachment A). A final report shall be required upon expiration or termination of grant support.

(d) Unless otherwise stated in the grant agreement, interim reports shall be due ten (10)

working days after each reporting period and the final report shall be due no later than sixty (60) days after the expiration or termination of grant support. Reports are to be submitted through SAGE to the Grant Management Officer.

18.4 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART S – SECURITY, RETENTION, AND ACCESS REQUIREMENTS FOR RECORDS

19.1 Applicability

(a) This subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of grantees and subgrantees which are:

(1) Required to be maintained by terms of this subpart, program regulations, or the grant agreement;

(2) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(b) This section does not apply to records maintained by contractors or subcontractors.

19.2 Secure protection and handling of data

The following Data Privacy Terms and Conditions are hereby incorporated into and provides for additional provisions and conditions between the Department and the Grantee. Grantees must ensure that any subaward contracts with any subgrantees contain the clauses necessary to guarantee that all data security, retention, and access requirements will be satisfied.

(a) Network Security. Grantee agrees at all times to maintain network security that – at a minimum – includes: network firewall provisioning, intrusion detection, and regular (three or more annually) third party vulnerability assessments. Likewise, Grantee agrees to maintain network security that conforms to generally recognized industry standards and best practices that Grantee then applies to its own network.

(b) Application Security. Grantee agrees at all times to provide, maintain and support subsequent updates, upgrades, and bug fixes such that the Grantee is and remains secure from those vulnerabilities as described in generally recognized and comparable industry practices or standards. User access will be controlled through a user id and password, must be verified through multi-factor or two-factor authentication, and privileges within the system will be restricted based on user role.

(c) Data Security. Grantee agrees to preserve the confidentiality, integrity and accessibility of any personally identifiable data, created, maintained, received pursuant to this Grant Agreement, with administrative, technical and physical measures that conform to generally recognized industry standards and best practices that Grantee then applies to its own processing environment. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes and updates to

operating systems and applications as provided by Grantee or open source support.

(d) Data Storage. Grantee agrees that any and all personally identifiable data, created, maintained, received pursuant to this Grant Agreement, will be stored, processed, and maintained solely on designated target servers and that no personally identifiable data, created, maintained, received pursuant to this Grant Agreement, at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of Grantee' designated backup and recovery processes and encrypted in accordance with "(f) Data Encryption."

(e) Data Transmission. Grantee agrees that any and all electronic transmission or exchange of system and application of personally identifiable data, created, maintained, received pursuant to this Grant Agreement, with the Department and/or any other parties expressly designated by the Department shall take place via secure means (using HTTPS or SFTP or equivalent) and solely in accordance with "(g) Data Ownership and Use."

(f) Data Encryption. Grantee agrees to store all personally identifiable data, created, maintained, received pursuant to this Grant Agreement, as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution. Grantee further agrees that any and all personally identifiable data, created, maintained, received pursuant to this Grant Agreement, defined as personally identifiable information under current legislation or regulations stored on any portable or laptop computing device or any portable storage medium be likewise encrypted.

(g) Data Ownership and Use. Grantee agrees that any and all personally identifiable data created, maintained, or received pursuant to this Grant Agreement is owned by the New Jersey Department of Health. Grantee agrees that all personally identifiable data shall be used expressly and solely for the purposes enumerated in this Grant Agreement and the Data Privacy Terms and Conditions. Grantee agrees that it will not distribute, repurpose, or share personally identifiable data created, maintained, or received pursuant to this Grant Agreement across other applications, environments, or business units of Grantee. Grantee further agrees that it will not transmit, exchange, or otherwise pass personally identifiable data created, maintained, or received pursuant to this Grant Agreement to other interested parties except on a case-

by-case basis as specifically agreed to in writing by the New Jersey Department of Health.

(h) Closeout of Agreement Data Handling. Grantee agrees that upon closeout of this Grant Agreement it shall turn-over all personally identifiable data created, maintained, received pursuant to this Grant Agreement, to the Department and Grantee shall erase, destroy, and render unrecoverable all personally identifiable data created, maintained, received pursuant to this Grant Agreement, maintained by Grantee and certify in writing that these actions have been completed within 30 days of the closeout of this Grant Agreement or within 7 days of the written request of the Department, whichever shall come first. At a minimum, a "Clear" media sanitization is to be performed according to the standards enumerated by the National Institute of Standards, Guidelines for Media Sanitization. Upon written approval of the Department, the Grantee may retain all data created, maintained, received pursuant to this Grant Agreement contingent upon the Department and Grantee entering a new Grant Agreement for continuation of the project activity under this Grant Agreement.

(i) Security Breach Notification. Grantee agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Grantee's security obligations, or other event requiring notification under applicable law, Grantee agrees to:

1. Notify the Department by telephone and e-mail of such an event within 24 hours of discovery, and
2. Assume responsibility for informing all such individuals in accordance with applicable law, and
3. Indemnify, hold harmless and defend the Department and its employees from and against any claims, damages, or other harm related to such Notification Event.

(j) Right to Audit. The Department or an appointed audit firm (Auditors) has the right to audit Grantee and any affiliates that provide a service for the processing, transport or storage of personally identifiable data created, maintained, received pursuant to this Grant Agreement. The Department will announce its intent to audit Grantee by providing at a minimum two weeks (10 business days) notice to Grantee. This notice will go to the Grantee. A scope document along with a request for deliverables will be provided at the time of notification of an audit. If the documentation requested cannot be removed from Grantee's premises,

Grantee will allow the Auditors access to their site. Where necessary, Grantee will provide a personal site guide for the Auditors while on site. Grantee will provide a private accommodation on site for data analysis and meetings; the accommodation will allow for a reasonable workspace, with appropriate lighting, electrical, a printer and Internet connectivity. Grantee will make necessary employees or contractors available for interviews in person or on the phone during the time frame of the audit. In lieu of the Department or its appointed audit firm performing their own audit, if Grantee has an external audit firm that performs a certified Type II SSAE 18 review, the Department has the right to review the controls tested as well as the results, and has the right to request additional controls to be added to the certified Type II SSAE 18 review for testing the controls that have an impact on the Department data. Audits will be at the Department's sole expense, except where the audit reveals material noncompliance with contract specifications, in which case the cost will be borne by Grantee.

(k) Industry Standards. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the:

1. Center for Internet Security - see <http://www.cisecurity.org>
2. Payment Card Industry/Data Security Standards (PCI/DSS) – see <http://www.pcisecuritystandards.org>
3. National Institute for Standards and Technology – see <https://www.nist.gov/standardsgov>
4. Federal Information Security Management Act (FISMA) - see <https://www.cisa.gov/federal-information-security-modernization-act>
5. ISO/IEC 27000-series - see <http://www.iso27001security.com/>
6. Organization for the Advancement of Structured Information Standards (OASIS) – see <http://www.oasis-open.org/>

19.3 Length of retention period

(a) Except as otherwise provided, records must be retained for 3 years from the starting date specified in 19.4 of this subpart.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of

all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

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

19.4 Starting date of retention period

(a) General

(1) Where grant support is continued or renewed at annual or other intervals, the retention period for the records of each project period starts on the day the grantee or subgrantee submits to the awarding division its final expenditure report for that period.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) Real property and equipment records

The retention period for real property and equipment records starts from the date of disposition or replacement or transfer at the direction of the awarding division.

(c) Records for income transactions after grant or subgrant support.

(1) In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the cost is earned.

(d) Indirect cost rate proposals, cost allocation plans, etc.

(1) This paragraph applies to the following types of documents, and their supporting records:

(a) Indirect cost rate computations or proposals;

(b) Cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) If submitted for negotiation.

If the proposal, plan, or other computation is required to be submitted to the awarding division (or to

the Federal Government) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) If not submitted for negotiation

If the proposal, plan, or other computation is not required to be submitted to the awarding division for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

19.5 Substitution of original records

Copies made by microfilming and photocopy methods may be substituted for the original records.

19.6 Access to records

(a) Records of grantees and subgrantees

The Department, Federal agencies, the State Auditor, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, and other records of the grantee and subgrantee which are pertinent to the grant, in order to make audit, examination, excerpts, and transcripts.

(b) Expiration of right of access

The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

19.7 Restrictions on public access

The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State or local law; grantees and subgrantees are not required to permit public access to their records.

19.8 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

SUBPART T - ENFORCEMENT

20.1 Enforcement

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a statute or regulation, an assurance, in a State plan or application, a grant or subgrant agreement, or elsewhere, the Department may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding division or grantee,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the grant,

(4) Withhold further grants for the project or program, or

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

(b) Hearings, appeals. In taking an enforcement action, the awarding division will provide the grantee and subgrantees an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee and subgrantees are entitled (see Subpart A, Section 1.3).

(c) Effects of suspension and termination. Costs to the grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of a grant are not allowable unless the awarding division expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the grant were not suspended or expired normally at the end of the budget period in which the termination takes effect.

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

(b) By the grantee upon written notification to the awarding division, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding division determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the Department may terminate the grant in its entirety under either Section 20.1 or paragraph (a) of this section.

20.3 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)

20.2 Termination for convenience

Except as provided in Section 20.1, grants may be terminated in whole or in part only as follows:

SUBPART U - AFTER-THE-GRANT-REQUIREMENTS

21.1 Closeout

(a) General. The awarding division will close out the grant after each budget period when it determines that all applicable administrative actions and all required work of the grant has been completed. Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out grants, the following shall be observed:

(1) Upon request, the awarding division shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payment.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from the awarding division, any unobligated balance of cash advanced to the grantee.

(c) Reports. Unless otherwise stated in the grant agreement, final reports are due no later than sixty (60) days after the expiration or termination of the grant. The grantee must submit all financial, performance, and other reports required as a condition of the grant to the awarding division. Upon request by the grantee, the awarding division may extend this timeframe. Reports may include but are not limited to:

- (1) Final Report of Grant Expenditures;
- (2) Final Payment Voucher, if necessary;
- (3) Final Progress Report;
- (4) Statement of equipment inventory, if applicable;
- (5) Statements of copyright and royalties, if applicable; and

(6) Loaned property report: In accordance with Subpart N, a grantee must submit an inventory of all property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the awarding division if the property is no longer needed.

(d) Cash adjustments.

(1) The awarding division will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the awarding division any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

(3) When a grantee or subgrantee receives payments in excess of the expenditures, a refund must be submitted at the time the final Report of Grant Expenditures is processed. The check is drawn to "Treasurer, State of New Jersey" and mailed to the

GMO for appropriate posting.

21.2 Later disallowances and adjustments

The closeout of a grant does not affect:

(a) The awarding division's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) The grantee's responsibilities with respect to property under Subpart N;

(d) Audit requirements in Subpart L;

(e) The retention period for, or rights of access to, grant records under Subpart S;

(f) Program income for which the grantee is still accountable under Subpart K.

21.3 Amounts payable to the Department

For each grant, the following sums shall constitute a debt or debts owed by the grantee and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by setoff or other action as provided by law:

(a) Any grant funds paid to the grantee by the Department in excess of the amount which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due pursuant to 11.7;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Department (see Subpart K);

(d) Any amounts due under Subpart N; and

(e) Any other amounts finally determined to be due to the State of New Jersey under the terms of the grant.

The check is drawn to "Treasurer, State of New Jersey" and mailed to the GMO for appropriate posting.

21.4 Remedies for non-compliance

(a) If a grantee or subgrantee materially fails to comply with any terms of a grant or subgrant, whether stated in Federal or State statute or regulation, an assurance, in a plan or application, a grant or subgrant agreement, or elsewhere, the Department may take one or more of the following actions:

(1) Suspend the grant, in accordance with Subpart T;

(2) Terminate the grant for cause, as provided in Subpart T; or

(3) Take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more budget periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

21.5 Collection of amounts due

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant constitute a debt to the State Government. If not paid within a reasonable period after demand, the Department may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Taking other actions permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Department will charge interest on an overdue debt in accordance with State of New Jersey Department of Treasury policy. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

(c) Charges for Unresolved Audit Findings. An interest charge on unallowable costs that are not repaid by the grantee shall begin to accrue 30 days from the date the grantee is notified of the debt. The interest shall continue to accrue while any appeal of the audit findings is underway. In the event the grantee is successful in its appeal, the accrued interest will be eliminated. The interest rate applied shall be prescribed by the State of New Jersey Department of Treasury at the date the penalty is assessed.

21.6 Applicability to subgrants

Grantees shall adhere to the same standards regarding closeout as prescribed in this subpart for subgrantees.

21.7 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D.)