

§ 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s requirements under such contract.

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

§ 200.327 Contract provisions.

The non-Federal entity’s contracts must contain the applicable provisions described in appendix II to this part.

PERFORMANCE AND FINANCIAL
MONITORING AND REPORTING

§ 200.328 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements available from the OMB-designated standards lead. This information must be

collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting. The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information.

§ 200.329 Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.332.

(b) *Reporting program performance.* The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data and accomplishments to performance goals and objectives of the Federal award. Also, in accordance with above mentioned common information collections, and when required by the terms and conditions of the Federal award, recipients must provide cost information to demonstrate cost effective practices (*e.g.*, through unit cost data). In some instances (*e.g.*, discretionary research awards), this will be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal

award has a standard against which non-Federal entity performance can be measured.

(c) *Non-construction performance reports.* The Federal awarding agency must use standard, governmentwide OMB-approved data elements for collection of performance information including performance progress reports, Research Performance Progress Reports.

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Reports submitted annually by the non-Federal entity and/or pass-through entity must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semi-annually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report submitted by the non-Federal entity and/or pass-through entity must be due no later than 120 calendar days after the period of performance end date. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the period of performance end date, all final performance reports as required by the terms and conditions of the Federal award. See also § 200.344. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) As appropriate in accordance with above mentioned performance reporting, these reports will contain, for each Federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:

(i) A comparison of actual accomplishments to the objectives of the

Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

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

(d) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(e) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

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

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

(f) *Site visits.* The Federal awarding agency may make site visits as warranted by program needs.

(g) *Performance report requirement waiver.* The Federal awarding agency may waive any performance report required by this part if not needed.

§ 200.330 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

SUBRECIPIENT MONITORING AND
MANAGEMENT

§ 200.331 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in §200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision-making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in §200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 200.332 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the