



Grants and Contracts Administration Handbook

2012 Edition

Florida State College at Jacksonville™

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Florida State College at Jacksonville is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools ("SACS") to award the baccalaureate and associate degree. Contact the Commission on Colleges at 1866 Southern Lane, Decatur, Georgia 30033-4097, or call 404-679-4500 for questions about the accreditation of Florida State College at Jacksonville. The Commission is to be contacted only if there is evidence that appears to support an institution's significant non-compliance with a requirement or standard.

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REFERENCE MATERIALS

- A. Applicable Grant Definitions
- B. The College Administrative Procedures Manual (APM) Travel Requirements
- C. Resource Development 2007 Grant Activity Report
- D. Memorandum re: General Assurances, Terms and Conditions for Participation in Federal and State Programs
- E. Resource Development Annual Report (7/1/06 to 6/30/07)
- F. Revised status report to OFCCJP Per Request of 7/20/06, for 7/1/06 to 6/30/07
- G. Affirmative Action Plan for Minorities and Females, for 7/1/06 to 6/30/07
- H. Affirmative Action Plan for The Disable and Veterans, for 7/1/06 to 6/30/07
- I. Summary of Davis-Bacon Act
- J. EDGAR Part 75 – Direct Grant Programs
- K. EDGAR Part 76 – State-Administered Programs
- L. OMB Circular A-110 - Uniform Administrative Requirements for Grants and Other Agreement with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
- M. OMB Circular A-21 - Cost Principles for Educational Institutions
- N. OMB Circular A-133 - Audits of States, Local Government, and Non-Profit Organizations
- O. OMB Circular A-133 Compliance Supplement (2009)

Purpose

This handbook (“Handbook”) is intended to be your primary resource for managing your grant or contract. It provides guidance on how to be a responsible and effective grantee or contractor, and is divided into two main sections: Grants Management and Federal Contract Requirements. The 2012 Edition of the Handbook provides new information regarding compliance with the principals of accreditation mandated by the Southern Association of Colleges and Schools (SACSCOC) as well as the new “Program Integrity” rules promulgated by the U.S. Department of Education.

A grant (or cooperative agreement) is used when the principal purpose of the transaction is to accomplish a public purpose of support or incentive authorized by Federal Statute. A contract, on the other hand, is used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. *See* OMB Circular A-110, Subpart B, Sec. 11(a).

It can sometimes be hard to distinguish between a grant and a contract. Grant agreements may be in the form of an application or a contract. The terminology is important because different rules and regulations apply to contracts and grants. Florida State College at Jacksonville (“the College”) staff should ensure that grant agreements are not called contracts and vice versa and that this terminology is consistently applied. While this distinction is important because certain rules do not apply to contracts, auditors are not bound by the title of a document, but rather review various criteria to determine whether an entity is acting as a grantee or a contractor. These criteria are detailed in OMB Circular A-133.

This Handbook outlines the process for management of grant awards and federal contracts. Once a grant proposal is awarded, it becomes a legal obligation for the College. Similarly, purchases with public funds trigger issues of compliance with both federal and state procurement rules. Finally, in any grant which involves recruitment of students or the development of programs, accreditation standards and Program Integrity rules will apply. For this reason, the Office of the General Counsel (“OGC”) for the College is involved in providing guidance and oversight and will continue to be a resource to the College community in this complex area of regulation. Please see our website at <http://www.fscj.edu/general-counsel> or access the OGC page in the employee portal.

Grant Awards

When you accept a grant award you accept responsibilities involving the management and administration of programmatic, financial and reporting aspects of the grant project. These responsibilities may include hiring personnel, purchasing supplies, services and equipment and planning authorized travel and training. A well-developed project plan will help ensure the success of the grant project. A project that does not start functioning after the effective date of the project grant period increases the risk of failing to complete the grant objectives and may result in unused grant funds. More importantly, the intended beneficiaries of the grant services and activities may not receive all or some of the intended benefits.

Federal Contracts

When the College enters into a contractual relationship with a governmental agency, the College is required to comply with the terms of the contract. This handbook also outlines the contractual responsibilities that the College staff must follow to ensure compliance with the contract under the Federal Acquisition Regulations System.

SACSCOC Accreditation

To maintain accreditation with the Southern Association of Colleges and Schools (SACSCOC), the College must comply with the standards contained in the *Principles of Accreditation: Foundations for Quality Enhancement* and with the policies and procedures of SACSCOC. **These requirements apply to all of the College's programs and services, "wherever located or however delivered."** Please note that some standards and requirements in the Principles of Accreditation apply to continuing education courses. Furthermore, Florida State College at Jacksonville is expected to ensure the quality of educational programs and courses offered through consortial relationships or contractual agreements by periodically evaluating their effectiveness and compliance with the Principles of Accreditation (see Comprehensive Standard 3.2.7). Some types of consortial relationships or contractual agreements may also be considered Substantive Changes by SACSCOC, and the College must promptly notify SACSCOC of such relationships and agreements. Substantive Change is a "significant modification or expansion in the nature and scope of an accredited institution," which can include development of new programs, program inactivation, agreements with other institutions and more. The institution is also expected to maintain appropriate fiscal control over externally funded programs.

Please visit the SACSCOC website (www.sacscoc.org) to obtain a copy of the current *Principles of Accreditation: Foundations for Quality Enhancement* and become familiar with the policies and procedures of SACSCOC. To consult with the College's Accreditation Liaison, please email OIEA@fscj.edu.

U.S. Department of Education Program Integrity Rules

On October 29, 2010, the U.S. Department of Education made amendments to the Code of Federal Regulations ("CFR") which impact institutions of higher education. These new rules for Program Integrity apply to all Colleges participating in Title IV Student Aid Programs and apply to all programs, even those where the student is not receiving federal financial aid. The regulations were generally effective July 1, 2011. Outlined in 34 CFR Part 668, subpart F details Student Assistance General Provisions on *Misrepresentation*. Substantial misrepresentations to students about the nature of the College's educational programs, the costs, or the certifications or job qualifications a graduate will receive upon completion can result in severe consequences for the College. All grant employees should be aware of these regulations and be keen to what is communicated orally, in advertising, and in program materials. Completion of the College's 30 minute *Program Integrity Misrepresentation Training*, which is available through the Academy for Professional Development, is the best way to learn about practices for compliance. If you have any questions or need additional training in this area, please contact the Office of General Counsel.

Web Resources:

[Electronic Code of Federal Regulations-34CFR Part 668 Subpart F-Misrepresentation](#)

[34 CFR Part 668 Subpart F-Amendment\(s\) published October 29, 2010](#)

Introduction to Grants

Applicable Rules, Regulations and Requirements

Florida State College at Jacksonville (“the College”), as a recipient of federal funds, must follow all of the rules, regulations and other requirements that apply to those funds.

Grants

The primary sources of grant requirements most frequently referred to, especially for direct Federal Grants, are:

- The relevant program statute (e.g., Carl D. Perkins Career and Technical Education Act);
- Relevant program regulations (if they exist);
- Administrative regulations of the grantor agency, for example, **Education Department General Administrative Regulations** (EDGAR Parts 74-86, 97-99), applicable to grants awarded by the U.S. Department of Education;
 - **EDGAR Part 74** is the U.S. Department of Education’s implementation of OMB Circular A-110 (discussed below).
 - **EDGAR Part 75** (Attachment J) is applicable to Direct Grant Programs for the U.S. Department of Education.
 - **EDGAR Part 76** (Attachment K) is applicable to State Administered Programs for the Florida Department of Education.
- Office of Management and Budget (OMB) Circulars; and
- Request for Proposal (RFP) grant application and Grant Award Notice.

OMB Circulars

The Office of Management and Budget (OMB) is a branch of the Executive Office of the President and assists the President with the preparation of the federal budget and the administration of federal programs.

As an institution of higher education, the College is subject to the following OMB Circulars:

- **OMB Circular A-21** (Attachment M), Cost Principles for Educational Institutions (colleges and universities);
- **OMB Circular A-110** (Attachment L), Uniform Administrative Requirements for Grants and Other Agreement with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
 - OMB Circular A-110 is a ‘common rule’ that sets out general standards for federal agencies to follow. Each federal agency has implemented its own version of A-110 through general administrative regulations. If an agency has promulgated its own regulations, those regulations, and not the common rule, will apply); and
- **OMB Circular A-133** (Attachment N), Audits of States, Local Government, and Non-Profit Organizations. The College is also subject to the A-133 Compliance Supplement (Attachment O).

Grant Terms

The College is responsible for administering and supervising all awarded grants in accordance with the terms and conditions of the award. (See EDGAR 34 C.F.R. § 75.701 and the General Education Provisions Act (GEPA) at 34 C.F.R. Part 76). Awards may sometimes include special conditions. These are discussed more fully below.

Direct Grant Special Award Conditions

Under OMB Circular A-110, Subpart B, Sec. 14, the awarding agency may impose special award conditions, if an recipient:

- Has a history of poor performance;
- Is not financially stable;
- Has a management system that does not meet the standards in OMB Circular A-110;
- Has not conformed to the terms and conditions of a previous award; or
- Is not otherwise responsible.

If special award conditions are imposed, the awarding agency notifies the recipient of:

- The nature of the additional requirements;
- The reason why the additional requirements are being imposed;
- The nature of the corrective action needed;
- The time allowed for completing the corrective actions; and
- The method for requesting reconsideration of the additional requirements imposed.

Any special award conditions are promptly removed once the conditions that prompted them have been corrected.

State-Administered Special Award Conditions

FLDOE may impose special conditions for approval of state-administered grant applications or grant amendments or implementation of existing projects when auditing or monitoring findings demonstrate that an agency is in substantial non-compliance with either of the following:

- Program or fiscal requirements for the operation of state or federally funded projects agreed to by the project recipient at the initial approval time of the project application or amendment.
- State statutes or rules pertaining to educational programs or services provided by school districts or other agencies. See Green Book, Section G, p. G-3.

Grant Award Notice - When a federal agency awards a grant, it sends a notification of the grant award, sometimes referred to as a Grant Award Notice (GAN) to the grantee. The GAN establishes the amount of the grant award and typically describes the regulations that are applicable and any other specific or special conditions relevant to that particular award.

Contracts

When the College is awarded a contract with the federal government, it must follow all of the rules, regulations and other requirements that apply to those contracts. The College is responsible for administering and supervising all awarded contracts in accordance with the term and conditions of the contract.

The primary sources of contract requirements are:

- **The Contractual Agreement;** and

- **The Federal Acquisition Regulations System** (this may at times reference other regulations or rules, such as OMB Circular A-21, which are listed above and included in the Appendix for your reference).

Types of Federal Grants

As previously stated, a grant (or cooperative agreement) is used when the principal purpose of the transaction is to accomplish a public purpose of support or incentive authorized by Federal Statute.

The College can receive grants directly from a federal agency, such as the U.S. Department of Labor or the U.S. Department of Education. This is known as a direct grant. When the federal grant is administered through the State, it is known as a state-administered grant. Whether the College receives a direct or state-administered grant, there are generally two types of grants: formula grants and discretionary grants.

Direct Federal Grants

When the College receives a direct grant, the College has a direct relationship with the granting agency. Funds do not flow through another entity as is the case with state-administered grants (see below).

If funds are improperly expended under a direct grant program, the federal granting agency may request a recovery of funds directly from the College. The federal granting agency is responsible for overseeing direct grants and ensuring that the grant is carried out according to all requirements, including ensuring that funds are spent appropriately.

State-Administered Grants

In a state-administered grant, the applicable state agency is responsible for administering all aspects of the program, from approving the application for funds (either by formula or through a competitive process, depending on the program), disbursing funds, and ensuring that the College complies with the programmatic and fiscal requirements of the program.

If funds are improperly expended under a state-administered program, the College will not be required to pay back federal funds to the federal government. However, the applicable state agency may then impose sanctions on the College as a subgrantee for the failure of the College to properly expend funds.

Federal Grant Eligibility

Formula Grant

A formula grant distributes funds based on a formula established by law. Eligibility for formula grants is typically based on criteria such as population, poverty level or number of students in special populations (such as homeless students). Under formula grants applicants are not competing with each other for funds, but the granting agency can impose a rigorous application process upon formula funds.

Discretionary Grants

Discretionary grants, also known as competitive grants, permit the granting agency to exercise discretion over the selection of entities for funding. The criteria for applying for and receiving a discretionary grant are defined by federal laws and, in certain cases, regulations. Under certain programs, the entity responsible for selecting grantees has relatively wide discretion in establishing competitive criteria.

Grant Financial Management Systems

The College must have a proper financial management system in place in order to receive both direct and state-administered grants and to expend funds associated with a grant awarded. Failure to establish and maintain a proper financial management system could result in the return of funds to the granting agency, for example the U.S. Department of Education or U.S. Department of Labor, and/or the termination of the grant.

OMB Circular A-110, Subpart C, Sec. 21(b)(1)-(7), requires that the College's financial management system provide the following:

- (1) **Financial Reporting and Disclosure:** Accurate, current, and complete disclosure of the financial results of each federally-sponsored project in accordance with federal reporting requirements (discussed in Reporting Section of the handbook);
- (2) **Source Documentation:** Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to awards, authorizations, obligations, unobligated balances, assets, outlays, income, and interest.
- (3) **Internal Controls:** Effective control over and accountability for all funds, property, and other assets. Recipients shall adequately safeguard all assets and assure they are used solely for authorized purposes. The College shall ensure that no one person has complete control over all aspects of a financial transaction. *See also* OMB Circular A-21, Attachment C, paragraph 4.d (2).
- (4) **Budget Reporting:** Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) **Cash Management:** Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient.
- (6) **Basic Cost Principles:** Written procedures for determining the reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award. OMB Circular A-21 establishes "federal cost principles" for institutions of higher education. This is discussed below in more detail under "Basic Cost Principles".
- (7) **Account Records:** Accounting records including cost accounting records that are supported by source documentation.

Source Documentation

The College must maintain adequate documentation to support charges to the grant. Grant accounting shall include the details of all grant transactions, from the approval of the proposed grant, to final action by the College. The College must maintain adequate documentation that demonstrates it adhered to the terms and conditions of the grant and performed the approved activities. Source documents may include:

- Purchase orders;
- Contracts;
- Time & effort records;
- Delivery receipts;
- Vendor invoices;

- Travel documentation; and
- Payment documents (including check stubs).

Internal Controls

The College must maintain an effective control and accountability system for all cash, real and personal property, and other assets. This means the College must implement controls that adequately safeguard grant property and ensure such property is used solely for authorized purposes.

“Internal controls” are tools to help program and financial managers achieve results and safeguard the integrity of their program. Internal controls should be designed to provide reasonable assurance that the following objectives are achieved:

- Effectiveness and efficiency of operations;
- Adequate safeguarding of property;
- Assurance property and money is spent in accordance with grant program and to further the Selected objectives; and
- Compliance with applicable laws and regulations.

Internal controls consist of five interrelated parts:

A. Control Environment

The goal of a strong control environment is to allow management and employees to maintain a positive and supportive attitude toward internal controls and conscientious management. Examples of a control environment include:

- Ensuring all personnel possess and maintain a level of competence that allows them to accomplish their assigned duties;
- An organizational structure that clearly defines key areas of authority and responsibility and establishes appropriate lines of reporting;
- Good human capital policies and practices that provide training and counseling, as well as a proper amount of supervision; and
- A good relationship with oversight agencies.

B. Risk Assessment

Internal controls should be designed to reasonably manage relevant risks. While the methodology for assessing and analyzing risks for each office will vary, common risk factors include: changes in operating environment; new personnel or rapid growth; new technology; and new programs or activities.

C. Control Activities

Once risks are assessed, control activities are created in response to the risks, to help ensure that the goals of the program or project are carried out.

Examples of control activities include:

- Maintaining physical control over valuable assets;
- Segregating key responsibilities among different people;
- Maintaining appropriate documentation;
- Implementing clear written policies in key areas; and
- Restricting access to systems and records.

D. Information and Communications

The goal of information and communications is to ensure that personnel receive relevant, reliable and timely information that enables them to carry out their responsibilities. The College should develop procedures for identifying pertinent information and distributing it in a form and time frame that permits people to perform their duties efficiently.

E. Monitoring

The goal of monitoring is to assess the quality of internal controls over time and ensure that any findings are promptly resolved. Monitoring should occur on an ongoing basis in the course of normal operations. It can include regular oversight by supervisors, reconciliations, and formal program reviews or audits. Monitoring systems should include policies and procedures for correcting any findings in a timely manner.

Under the Single Audit Act, auditors are required to review and test an entity's internal controls. Thus, it is important to ensure the entity has adequate internal controls over federal programs. Part 6 of the A-133 Compliance Supplement is a helpful resource. It describes, for each type of compliance area that auditors test during the single audit, the objectives of internal controls, and certain characteristics of internal controls that may help ensure compliance with program requirements. The Compliance Supplement can be accessed at: <http://www.whitehouse.gov/OMB/circulars/a133>. *For more information see the "Audit" section of this handbook.*

Budget Reporting

Grants must have funds budgeted in such detail as required by the grant. The College is required to follow the conditions of the grant that include, but may not be limited to:

- Spending funds in accordance with the approved budget of the grant;
- Returning unused balances of grant funds;
- Establishing property records of grant-acquired property, if so indicated; and
- Providing program and fiscal reports at given intervals as required.

The College, auditors, and field monitors must be able to compare actual expenditures to budgeted expenditures. It is important to obligate and expend funds in accordance with the approved budget. An obligation is when the College formally designates funds for a specific expense. Obligations must occur by the end date of the grant.

Expenditures must be made in sufficient time to allow preparing and submitting the final expenditure report by the due date. An expenditure is a charge made to a grant or program. *For more information on obligation of funds, see the "Basic Cost Principles" section of this handbook.*

Cash Management

The College is required to have reasonable procedures in place to ensure the timely transfer of funds, as well as a system to monitor cash drawdowns. The College must minimize the timing between drawdown and payment and must follow the specific cash management procedures applicable to the program or grant.

For example, when advance payment procedures are used (meaning that funds are disbursed prior to the use of the funds, as opposed to a reimbursement method), federal laws and regulations mandate minimizing the time that elapses between the transfer of funds from the U.S. Treasury and the disbursement of funds by the College. The purpose of this requirement is to prevent the federal government from losing money on interest payments. Accordingly, only enough federal funds should be

advanced to meet immediate needs – this has been interpreted to mean that the College should not have more than three days cash available (known as the “three-day rule”). *See* Cash Management Improvement Act (CMIA) at 34 C.F.R. § 205.

Accounting Records

Much like the requirement for financial disclosure and source documentation, the College 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 and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

The College must provide a mechanism to ensure that data is accumulated, financial reports can be generated, and costs do not exceed the approved budgeted amount or allowable budget variation for each program, activity, or other budget category.

Basic Cost Principles

In order to calculate the total cost of a grant, the College must add allowable direct costs together with the allocable portion of facilities & administrative (F&A) costs minus applicable credits. These terms are explained in more detail below. *See* OMB Circular A-21, Attachment C.

Allowable Costs

OMB Circular A-21 establishes “federal cost principles” for institutions of higher education. *See* EDGAR 34 C.F.R. § 74.27. These “cost principles” are the basic guidelines describing permissible ways federal monies may be spent. The general principles in OMB Circular A-21 state that for costs to be allowable, they must be:

- **Reasonable and necessary** (meaning that, for example, sound business practices were followed, and purchases were comparable to market prices);
 - A cost may be reasonable if the nature of the goods or services acquired and the amount involved reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. *See* OMB Circular A-21, Attachment C, paragraph 3.
- **Allocable to the federal award** (meaning that the federal grant program derived a benefit in proportion to the funds charged to program – for example if 50% of a professor’s salary is paid with grant funds, then that professor must spend at least 50% of his or her time on the grant program);
 - A cost is allocable to a particular cost objective (i.e. a specific function, project, sponsored agreement, etc.) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. *See* OMB Circular A-21, Attachment C, paragraph 4.
- **Are properly documented** (and accounted for on a consistent basis with generally accepted accounting principles (GAAP));
- **Consistent with the provisions of the grant program;**
- **Not used for cost-sharing or matching any other grant agreement; and**

- **Legal under state and local law** (meaning that the expenditure is not prohibited under state or local laws or regulations).

In addition to the general federal cost principles, OMB Circular A-21 Attachment J contains cost principles for 50 specific items (such as advertising, entertainment, and travel costs). *For more information see the “Specific Items of Cost” section of this handbook.*

Unallowable Costs

An unallowable cost is any cost that cannot be charged to the grant regardless of whether the cost is treated as direct or F&A cost. *See* OMB Circular A-21, Attachment C, paragraph 12.

It is important to note that while a cost may be allowable under an OMB Circular, it may not be allowable under the terms and conditions of a grant program because each grant has specific programmatic goals and requirements. Therefore, it is important to always check the terms of the grant itself, to ensure a cost is allowable.

Obligation of Funds

An obligation is when the College formally designates funds for a specific expense. It is important to obligate and expend funds in accordance with the approved budget. All obligations must occur on or between the beginning and ending dates of the grant project. *See* EDGAR 34 C.F.R. § 75.703 (for direct grants) and EDGAR 34 C.F.R. § 76.707 (for state-administered grants) – although the requirements are the same.

The following table illustrates when funds are determined to be obligated under federal regulations.

If the obligation is for:	The obligation is made:
Acquisition of property	On the date which the subgrantee makes a binding written commitment to acquire the property
Personal services by an employee of the Subgrantee	When the services are performed
Personal services by a contractor who is not an employee of the subgrantee	On the date which the subgrantee makes a binding written commitment to obtain the services
Public utility services	When the subgrantee receives the services
Travel	When the travel is taken
Rental of property	When the subgrantee uses the property

Direct and Facilities and Administrative (F&A) Costs

As previously stated, all allowable direct and facilities and administrative (F&A) costs (also known as indirect costs) allocated to the grant, minus any applicable credits, constitute the total costs.

An incurred cost is either a direct cost ONLY or an F&A Cost ONLY. No final cost objective can be both a direct cost and F&A cost if incurred for the same purpose, in like circumstances, or previously included as either a direct or F&A Cost. *See* OMB Circular A-21, Attachment C, paragraph 11. Therefore, it is important that the College personnel ensure that all costs are treated consistently.

Direct Costs

Direct Costs are those costs that can be identified specifically with a particular sponsored project, an instructional activity, any other institutional activity, or that can be directly assigned to such activities

relatively easily with a high degree of accuracy. *See* OMB Circular A-21, Attachment D. Direct Costs include:

- Costs for personnel who supervise the activities of program staff, or any direct costs for personnel who perform fiscal and reporting activities related to the grant;
- Costs for contracted services associated with the administration of the program;
- Costs for supplies and materials requested for administrative use;
- Other operating costs requested for administrative purposes; and
- Equipment requested for administrative purposes.

Sponsored Agreements

Typical costs charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than F&A costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption.

The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements, provided such items are consistently treated, in like circumstances, by the institution as direct rather than F&A costs, and are charged under a recognized method of computing actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution. *See* OMB Circular A-21, Attachment D, paragraph 2.

Direct Cost Allocation Principles: If a cost benefits two or more projects or activities proportionally in a manner that can be determined without undue effort or cost, the cost should be allocated to the projects based on the proportional benefit. *See* OMB Circular A-21, Attachment C, paragraph 4.d(3).

- For example, if a professor has documented time and effort that he/she worked 50% of his/her time on the Perkins program and 50% of his/her time on state activities, then 50% of his/her salary may be charged to the Perkins program, as that is the direct allocable cost chargeable to the Perkins program.

Facilities and administrative (F&A) Costs

F&A costs are costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. F&A costs are also known as "indirect" costs. *See* OMB Circular A-21, Attachment B.

Indirect Costs (another name for F&A costs) are broadly defined as central administrative costs and certain other organization-wide costs that are incurred in connection with a project but that cannot readily be identified with the project. Indirect Costs include:

- Costs of operating and maintaining facilities;
- General administration and general expenses, such as budgeting, accounting, human resources, legal, and purchasing.
- Centralized services, such as motor pools and information systems; and
- Personnel and accounting administration.

While this handbook provides examples of different types of F&A costs, the College has a negotiated F&A cost rate which includes those items that must be considered F&A costs. Therefore, when determining whether an item is a direct cost or an F&A cost, the College staff must review the College's specific F&A

cost rate to properly determine what costs must be F&A Costs. Please contact Financial Services if you have any questions.

Applicable Credits

The term "applicable credits" refers to those receipts or negative expenditures that operate to offset or reduce direct or F&A cost items. Typical examples of such transactions are:

- Purchase discounts;
- Rebates or allowances;
- Recoveries or indemnities on losses; and
- Adjustments of overpayments or erroneous charges.

This term also includes "educational discounts" on products or services provided specifically to educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor. *See OMB Circular A-21, Attachment C, paragraph 5.*

State F&A Requirements

Certain program statutes restrict the amount or percentage that can be charged to a project's administration, which may include indirect costs, as specified in the Request for Proposal (RFP) and reflected in the approved project award notification or amendment approval where applicable. The College staff should be aware that if there is a cap on indirect costs, the College will be required to comply with the required limit.

Specific Items of Cost

OMB Circular Items of Cost

OMB Circular A-21, Attachment J provides principles the College must apply when determining whether 50 specific costs are allowable. The College staff must check all costs against these specific requirements to ensure the cost is allowable. *See Attachment M for the specific principles.*

The list in OMB Circular A-21 Attachment J includes the following (in alphabetical order):

1. Advertising and public relations costs.	26. Maintenance and repair costs.
2. Alcoholic beverages.	27. Material costs.
3. Alumni/ae activities.	28. Memberships, subscriptions and professional activity costs.
4. Bad debts.	29. Patent costs.
5. Civil defense costs.	30. Plant security costs.
6. Commencement and convocation costs.	31. Preagreement costs.
7. Communication costs.	32. Professional services costs.
8. Compensation for personal services.	33. Profits and losses on disposition of plant equipment or other capital assets.
9. Contingency provisions.	34. Proposal costs.

10. Deans of faculty and graduate schools.	35. Rearrangement and alteration costs.
11. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.	36. Reconversion costs
12. Depreciation and use allowances.	37. Recruiting costs.
13. Donations and contributions.	38. Rental cost of buildings and equipment.
14. Employee morale, health, and welfare costs and credits.	39. Royalties and other costs for use of patents.
15. Entertainment costs.	40. Sabbatical leave costs
16. Equipment and other capital expenditures.	41. Scholarships and student aid costs.
17. Executive lobbying costs.	42. Selling and marketing.
18. Fines and penalties.	43. Severance pay.
19. Goods or services for personal use.	44. Specialized service facilities.
20. Housing and personal living expenses.	45. Student activity costs.
21. Insurance and indemnification.	46. Taxes.
22. Interest, fund raising, and investment management costs.	47. Transportation costs.
23. Labor relations costs.	48. Travel costs. (<i>See also</i> Travel Section Below)
24. Lobbying.	49. Termination costs applicable to sponsored agreement.
25. Losses on other sponsored agreements or contracts.	50. Trustees.

Other Notable Items of Cost

Construction

Generally, federal funds may not be used to pay for construction, unless specifically permitted in the statute or award. *See* EDGAR 34 C.F.R. §§ 75.533; 76.533. When construction is permitted, the College has specific rules that it must follow. *For more information, see the “Property Management” section of this handbook.*

Real Property

Generally, federal funds may not be used to pay for real property, unless specifically permitted in a statute or award. *See* EDGAR 34 C.F.R. §§ 75.533; 76.533. When permitted, the College is required to manage real property acquired in whole or in part with grant funds by establishing and using specific procedures in accordance with the requirements in EDGAR. *For more information, see the “Property Management” section of this handbook.*

Travel

OMB Circular A-21 defines travel costs as the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution.

In-district travel (Duval and Nassau counties):

- Complete a Request for Line-of-Duty Leave form (HR 096) and, when a registration fee is involved, attach the agenda;
- Input an online disbursement request into ORION for any pre-paid registration fees; and
- Send both forms to Purchasing for processing

Complete an *In-District Travel Reimbursement Request* form to be reimbursed for mileage accrued as project-related travel between and among campuses or local agencies throughout Nassau and Duval counties. Mileage can be determined by odometer readings or the College's mileage chart in Artemis. Submit the form, signed by the employee and supervising administrator, to the campus business office. Reimbursement Request form should be submitted every month.

Out-of-district and out-of-state travel

Complete a Request for Line of Duty Leave form (HR 096) and, when a registration fee is involved, attach the agenda and input an online disbursement request into ORION for any pre-approved pre-paid registration fees. Allow at least three weeks prior to the beginning date of travel to ensure pre-payment of registration fee is completed and allow at least 21 days prior to the travel date to obtain the best airfare.

NOTE: The funding source may require prior approval for these categories of travel even though they are in the budget. Refer to the project's contract.

Airline tickets

Purchase airline tickets using a Pcard or personal credit card. All airline tickets for official College travel, including travel for the project, must be authorized prior to the travel.

To make airline reservations, call the airline or Navigant Travel Agency, 904.396.3388.

Travel expense reimbursement

Upon return, complete the lower portion of the Line of Duty Leave form. *The meal allowance is \$36 (\$6 Breakfast, \$11 Lunch, and \$19 Dinner) per day. Meal receipts are not required; however, you must follow these requirements:*

- Deduct any meals served as part of the meeting;
- Attach receipts for hotel, taxi, parking, and airline (tips and gratuities are not reimbursable);
- Attach original receipts and a complete program agenda to the leave form;
- Sign the form and have it approved by the supervising administrator of the grant; and
- Make a copy for the project files and forward the package to the campus business office for processing

Allow one week for travel to be processed. Reimbursement will be paid by direct deposit. *See travel APMs 04-1001 through 04-1007 for partial-day travel (Attachment B).*

Additional State Requirements Regarding Allowable Costs

In addition to the requirements of OMB Circular A-21, the Florida Department of Financial Services' "Reference Guide of State Expenditures" manual provides guidance regarding state requirements applicable to the various categories of expenditures. This manual is located at http://www.fldfs.com/aadir/reference_guide/reference_guide.htm. The College staff should check this

manual when determining whether a cost is allowable. *For example: Food purchases are prohibited unless specifically included in the grant budget approved by the funding source. (See 112.061 F.S.).*

Getting Grant Funds

Resource Development Officer (RDO)

The resource development officers assist project staff with the managing of grant programs

The RDO's responsibilities are to:

- Be familiar with the RFP guidelines and compliance issues;
- Help facilitate meetings and discussion on proposal content within the program guidelines;
- Assemble and submit required documents to project accounting to establish the budget and hire personnel;
- Conduct an orientation meeting for the project's supervising administrator, project staff, and College process owners to discuss specific requirements for managing the grant, when needed;
- Draft and obtain approvals and signatures for subcontracts, if necessary;
- Assist in the development and submission of program of budget amendment requests, if needed;
- Provide the project accounting officer (PAO) with the approved amendment *to* adjust the budget; and
- Prepare revised position authorizations as needed in accordance with the provisions of the grant, its budget, and any amendments.

All original documents must be forwarded to the RDO, who will obtain approvals and signatures. The RDO also will ensure that original documents are forwarded to project accounting with copies to appropriate College personnel. *Resource Development Fax: 904-356-5681*

Director of Project Budgeting & Accounting (Director of PBA)

The Director of Project Budgeting & Accounting is part of the finance and accounting department. The Director of PBA works with the Resource Development Officer to generate the documents required to obtain position codes and to revise, establish, and amend, project budgets.

The office of the Director of PBA is the official College repository of all original and pertinent records for externally funded grants. As such, the Director of PBA assists agency, state and federal auditors in reviewing fiscal and program performance of a project. The Director of PBA may have one or more Projects Accounting Officers who assist in maintain project budgets and record keeping.

For grant projects, the primary responsibilities of a Project Accounting Officer are to:

- Establish budget numbers
- Maintain budget records
- Monitor budgets to ensure compliance with funding source requirements and the Accounting Manual for Florida's College System
- Provide financial reports to the funding source
- Provide the financial controls required by the funding agencies
- Coordinate agency fiscal audit monitoring visits
- Determine the appropriateness of financial transactions and processes
- Assist resource development in developing, revising, and amending budgets
- Confirm the accuracy of information provided for position authorizations
- Provide guidance in program budget management
- Facilitate solutions to budget questions or problems
- Provide fiscal reports to funding sources as required

- Assist external auditors in reviewing grant financials and program performance

Bldg./Office	Name/Position	Phone	Email
AO 329	Cassandra Blackmon Director of Project Budgeting & Accounting	632-3347	cblackmo@fscj.edu

Project Staff

Supervising Administrator: A project's supervising administrator is the managing administrator who assumes responsibility for the grant project. The administrator's responsibilities are to:

- Provide guidance for the project manager or coordinator;
- Serve as the liaison between the project and College administration; and
- Ensure the project meets its objectives in a timely manner in regard to the following: performance implementation, agency reports, and budget expenditures.

Project Coordinator or Manager: The project coordinator or manager is responsible for the day-to-day operation of the project and ensures that the objectives of the project are met in accordance with the grant and the specified timetable. As delineated in the project award, the project manager, under direction of the supervising administrator, will:

- Advertise, hire and supervise project personnel;
- Expend the budget in a responsible and timely manner;
- Maintain accurate and complete records; and
- Maintain open lines of communication with project accounting, resource development, human resources, the funding source, and other College departments.

Budget

When the College receives an award notification, the RDO prepares the "Request to Establish a Budget." This is submitted to the PAO with the *original* funding notification, a copy of the proposal, approved Board item or Board information item, budget information, and proof of College counsel review.

Project Accounting will:

- Assign the account number and ORION object codes to line items; and
- Send an e-mail to inform the campus director of administrative services, supervising administrator, project coordinator, and RDO of the account number and requests identification of the individuals who will access ORION for requisition input and approval.

The supervising administrator will respond by e-mail or memorandum to project accounting. Access is limited to one or more persons for input; however, **only one** person may have authority to approve budget expenditures.

Contingency budgets

When there is a delay in receipt of an official notification for a continuing project, a contingency budget is set up to allow continued employment of project personnel without a break in service. Contingency budgets are limited to personnel. Call the RDO 30 days prior to the end of the project to initiate a contingency budget.

Amendments

Revising the Budget

Even though the initial budget was carefully prepared, circumstances change that may require a budget revision or formal amendment. Budget revisions and amendments fall into three categories:

1. Budget revisions when amounts are within the funding source's allowable percentage and categories. Many grants permit a transfer of up to 10 percent of the total budget between line items. The percentage varies by agency. To make an internal revision, send an e-mail to project accounting with a copy to the RDO.
2. Budget revisions that fall within the funding source's allowable percentage but are significant enough to require written notification be sent to the funding source subsequent to the revision. Contact the RDO to generate the notification.
3. Formal budget amendments sent to the funding source indicating a major modification to the budget (e.g., addition of personnel, out of state travel, change of objectives, scope of project or anything not in original budget setup). Amendments require prior approval from the funding source. Contact the RDO for assistance.

Review the budget at least quarterly and estimate expenditures to the end of the project year. When it appears a particular line item may not be spent, or when a line item appears to be over-expended, request a budget revision or amendment. This includes the calculation of personnel funds not spent due to positions not filled for the total project period. Contact the RDO for assistance in this area.

Direct Grant Amendment Requirements

A direct grant is a grant that the College gets directly from a federal agency. The College is required to report deviations from budget and program plans. The College may also need prior approval for budget and program plan revisions (amendments). When an amendment to a direct grant is necessary, the College must follow the federal requirements under OMB Circular A-110. The requirements are broken into two categories: nonconstruction awards and construction awards. *See OMB Circular A-110, Subpart C, Sec. 25(c), (e), (h) and (m).* *Contact the Resource Development Office if you suspect the grant needs to be amended.*

State-Administered Education Grant/ Subgrant Requirements

As previously stated, in a state-administered grant, the applicable state agency is responsible for administering all aspects of the program, from approving the application for funds, disbursing funds, and ensuring that the College complies with the programmatic and fiscal requirements of the program.

If the College is dealing with an education grant, it must comply with the FLDOE's "Project Application and Amendment Procedures for Federal and State Programs (Green Book)," available at: <http://www.fldoe.org/comptroller/gbook.asp>.

Program and Budget Amendments Requiring Forms

When the College needs to make an amendment to any FL state-administered education grant or subgrant, the FL Green Book applies. The Green Book refers to "grant amendments" or "amendments to grants" and "project amendments". The Green Book also refers to "grantees" as "project recipients."

Where a program does not expressly stipulate program or budget amendment requirements, the Green Book, (Section B, p. B-3 - B-5) requires the College obtain prior approval in writing to make any of the following changes to the approved project application:

- Goals and objectives;
- Project evaluation scope;
- Deliverables;
- Work tasks (Example: If a stated objective for the approved project is to provide internal training to selected personnel and, subsequently, the fiscal agent determines that a more efficient means to achieve the objective is through personnel observing best practices at another location, this change would constitute a modification of work task and would require prior written approval.);
- Types of personnel employed by the project (Example: If the approved application lists two Program Specialist positions and to meet the objectives of the approved project three Program Specialists are needed, this change is allowable without prior written approval from FLDOE. If to meet the objectives of the project a Technology Specialist is needed, prior written approval from the FLDOE is required.);
- Under non-construction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities that are central to the purposes of the award;
- Budget revisions that will change the total amount of the project; and
- Budget revisions that are necessary to implement a program amendment requiring prior approval.

Amendments from the College that require prior approval by FLDOE must be completed as follows:

- Program and budget amendments to approved project applications for all programs shall be prepared by project recipients on the project amendment request form DOE 150 and the attached DOE 151 amendment narrative form;
- The College shall submit one original signed copy, unless otherwise specified;
- Both program and budget amendments shall be signed by the Superintendent of the school district or the agency head for other entities. Amendment requests signed by officials other than the Superintendent or agency head must include a letter of authorization on behalf of said official attached to the DOE 150 form when the amendment request is submitted;
- For program amendments, the College shall describe and justify the type of programmatic changes requested on the project amendment request form DOE 150 and cite each affected page of the approved project;
- For budget amendments, the College shall describe the reason for making a budget revision on the project amendment request form DOE 150. On the DOE 151 form, the project recipient shall list only the budget items that are being amended. Project recipients shall not be required to submit a revised total budget unless requested to do so by the department Program Manager;

- If statutes or rules governing a program expressly stipulate that the program or budget amendment requirements differ from or are not stated in this section, the Program Manager shall inform potential project recipients of such requirements at the time project applications are invited (RFP or RFA) and in the “special terms and conditions” section on the project award notification. The authority for such requirements shall be specified;
- Program recipients are responsible for determining that budget revisions comply with applicable statutes, regulations, rules, and program requirements and for using fiscal control and fund accounting procedures that insure proper disbursement of and accounting for state and federal funds in an accurate and timely manner;
- For all performance-based projects, any changes to the approved deliverables must have prior written approval and any reduction in a deliverable must have a justifiable corresponding monetary reduction; and
- Mail all amendments to the unit that administers the project in Grants Management. Do not mail amendments to the program office contact or sub-contracted offices representing FLDOE.

When the amount of the estimated roll-forward funds included in the approved project application is less than the actual amount of roll-forward funds later certified by FLDOE, the College must submit a budget amendment for prior approval in order to increase the total project amount. If the estimated roll-forward funds are more than the actual amount certified, the College must adjust project records to correspond to the reduced amount available for expenditure.

All Other Amendments to State-Administered Education Grants or Subgrants

Certain types of amendments do not require submission of a project amendment request form; however, the FLDOE must receive a written request such as a letter, memorandum, or e-mail. If the amendment is approved, FLDOE will respond with a revised project award notification. Examples of such requests include those that would:

- Revise the project period (request must be received on or before the termination of the current approved project period);
- Change the reporting dates, both programmatic and fiscal (request must be received on or before the current approved reporting date);
- Decrease the allocation; or
- Terminate the project.

Reason for Amendment	Required of Applicant			Response from DOE
	DOE 150	DOE 151	Written Request	Amended DOE 200
<i>Changes to Following</i>				
Objectives	x	x		x
Project evaluation scope	x	x		x
Change in work task	x	x		x
Change in deliverables	x	x		x
Changes in types of personnel	x	x		x
Obtaining services of third party	x	x		x
Budget revision to implement program amendment	x	x		x
Increase project amount	x	x		x
Revise project period			x	x
Change reporting dates (program or fiscal)			x	x
Decrease allocation			x	x
Terminate program			x	x

Amendment Review and Approval Process

Amendments should be submitted directly to the FLDOE Grants Management office and not to the program office. Grants Management will assure that each amendment is date-stamped when received in FLDOE, that forms are filled out correctly, and that the amendment carries the original signature of the Superintendent or agency head. After amendments are entered into the database, they are sent to the program office for compliance review and to insure that the integrity of the project is maintained. After the program compliance review and the technical budget review, the amended project award notification is processed and mailed to the project recipient.

Project amendments that do not meet departmental requirements are returned unprocessed to the College. The FLDOE Grants Management office will provide written notification to the project recipient for amendments not approved and the reason for such action.

Contact the Resource Development Office if you suspect the grant needs to be amended.

Cost Sharing or Matching

The College is permitted to include cash and third party in-kind contributions in the cost sharing or matching as long as the contributions meet the following OMB Circular A-110, Subpart A, Sec. 23:

- (1) are verifiable from the College's records;
- (2) are not included as contributions for any other federally-assisted program;
- (3) are necessary and reasonable for proper and efficient accomplishment of project or program objectives;
- (4) are allowable under the applicable cost principles (listed above);
- (5) are not paid by the Federal Government through another award, except where authorized;
- (6) are provided for in the approved budget; and
- (7) conform to the applicable provisions in OMB Circular A-110.

Cash match for grant-funded projects must be requested through the Director of Resource Development and approved by the District Board of Trustees. Drawn from the College's Fund 1 cash match account,

the matching funds are placed into the project account at the beginning of the project. All cash and in-kind matches required in the grant project must be documented.

Unrecovered F&A or indirect costs may only be included in cost sharing or matching with prior approval of the awarding agency. If the awarding agency authorizes the College to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of:

- Certified value of the remaining life of the property recorded in the College's accounting records at the time of the donation; or
- The current fair market value. (The awarding agency may select the current market value even if it exceeds the certified value at the time of donation of the project.)

The College's federal indirect cost rate ("ICR") agreement was negotiated with the Department of Health and Human Services in 2010. For all programs occurring on-campus, the rate is 35.5 percent. Off campus programs ICR rate is 14.5 percent. Generally, most federal, state and private funding agencies cap ICR anywhere from 5 to 10 percent. Please refer to your specific grant to see what was allowed and requested.

The College's Indirect Cost Rate (ICR) calculation includes the following:

1. Faculty (100% of total time)
2. Department Deans and Chairs: (80% of total time- which means only 20% of their total time can be dedicated towards one or several grants)
3. Academic Support Services
4. Computers and labs
5. Student Services already offered at the College
6. Classroom or facilities space
7. Libraries and Library Services
8. Smart classrooms
9. Administrative offices and services (purchasing, finance, legal, recruitment, etc.)

Therefore, the above items cannot be listed as leveraged resources or match as a direct cost in a grant proposal where you also seek to use the ICR. If you applies the ICR allowed by the granting agency, the only way you can allocate a value to the above listed items in a grant proposal is if you request permission in the original grant proposal to apply the unused portion of the college's indirect cost rate, and the proposal is awarded. For example, if the granting agency is offering a 10% ICR, yet the College has a 35.5% ICR, the grant proposal could request use of the other 25% as leveraged resources, and this value can be calculated as a leveraged resource if the proposal is awarded as drafted.

Project staff need to be aware of the amount of indirect costs calculated in the budget. These are not available funds that can be expended; however, staff need to understand what items and services are calculated in the indirect cost rate so that these same items or services are not calculated as cost sharing, match, or leveraged resources. To do so, would be considered double charging which is prohibited by U.S. Code of Federal Regulations. (See 34 CFR Part 74). The Director of PBA will calculate and deduct the indirect cost from your budget. If you have any questions about this, the Director of PBA will be able to assist you.

Please see page 80 of this Handbook, Section on Indirect Cost Rates and Billing Rates for additional information on this topic.

Leverage

If leveraged resources are listed in the grant proposal, then pursuant to OMB Circular A-110, Subpart A, Sec. 23, the delivery of those resources must be verifiable from the College's records. As noted above, however, leveraged resources provided by the College towards the grant cannot include items already included in the College's negotiated ICR. Examples of leveraged resources are those items, resources, or services that the College will bring to the grant that the College did not include in the ICR calculation. The grant application may also document leveraged resources from partners or collaborators which may include participation in certain meetings, sustainability efforts, program referrals or other services. Sometimes these leveraged resources and/or funds will have a stated dollar amount proposed through a support letter from the collaborator.

Program staff are responsible for ensuring that leveraged resources provided by collaborators are in fact tendered and that documentation is provided. The College requires that all leveraged resources be documented using the "**Letter of Commitment Verification Form**" which is available from the RDO or the Director of PBA. This form must be completed periodically for each partner based on the awarding agency's invoicing requirements (monthly or quarterly) or the requirements set forth by the Director of PBA. For the College, the form must be completed no less than each quarter. The process should be used to ensure the form is completed:

- The Project Coordinator or Manager distributes the form at each project based meeting (i.e. the advisory board meeting) or mails it to all collaborators.
- The collaborators or outside agency representative completes the form and returns it to the Project Coordinator.
- After collecting all forms the Project Coordinator logs the information electronically in a spreadsheet monitoring total amounts of match or leveraged resources until the pledge is fulfilled.
- The Grant Coordinator makes copies for the campus program files and submits the original to the Director of PBA for the official file.

The RDO will ensure that the Project Coordinator maintains a tracking spreadsheet to monitor leveraged resources and will ensure that appropriate documentation and signatures have been secured.

Tuition and Scholarships

Training on tuition or scholarships must be attended if either are included in your grant budget.

Tuition

The College may not count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements. *See* EDGAR 34 C.F.R. § 76.534.

Volunteering

Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program.

- Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable,

allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

- Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees. *See* OMB Circular A-110, Subpart C, Sec. 23.

Supplies

Donated supplies may include such items as:

- Expendable equipment;
- Office supplies;
- Laboratory supplies; and
-
- Workshop and classroom supplies.

Value assessed to **donated** supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

Equipment, Buildings and Land

The method used for determining cost sharing or matching for **donated*** equipment, buildings, and land for which title passes to the recipient may differ according to the purpose of the award.

- If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.
- If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the awarding agency has approved the charges. When determining valuation, the College must use the applicable rules under A-110 and A-21.

** The College staff must be careful with a determination that a building, equipment, or land has been donated. A donation must be from an unrelated 3rd party. If a building, land or equipment is given to the school to use by a partner, affiliated member of the grant or is already owned by the College, then that building, land or equipment has not been donated and valuation must be in accordance with the cost principles under OMB Circular A-21.*

The value of **donated** property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications (*See* OMB Circular A-110, Subpart C, Sec. 23(h)):

- The value of **donated** land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.
- The value of **donated** equipment may not exceed the fair market value of equipment of the same age and condition at the time of donation.
- The value of **donated** space may not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.
- The value of loaned equipment shall not exceed its fair rental value.

Documentation

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

Program Income

The College, like all grantees, is encouraged to earn income to defray program costs. “Program income” is income generated by a grant-supported activity or income generated only as a result of the grant agreement during the grant period. “During the grant period” is defined as the time between the effective date and the ending date of the grant award.

“Program income” includes income such as:

- Fees for services performed;
- The use or rental of real or personal property acquired with grant funds;
- The sale of commodities or items fabricated under a grant agreement; and
- Payments of principal and interest on loans made with grant funds.

Program income generally does not include interest on grant funds, rebates, credits, discounts or refunds. *See* OMB Circular A-110, Subpart C, Sec. 24.

The Green Book, applicable to education State-administered Grants states that:

Any donations or fees required from participants and made specifically for the purposes of the program, which are subsequently used for the purposes of the program, must be considered and treated as program income. Any expenditure that is allowable and reimbursable, including but not limited to administration, overhead, furniture, equipment, etc., is considered to be attributable to the purposes of the program. Thus, fees or donations used to pay for the allowable and reimbursable costs must be considered program income. *See* Green Book, Section F, p. F-3.

To determine what constitutes program income, focus on how the income was generated. If the income was generated from services performed or items fabricated under the grant, the income must be considered program income and treated as such.

Sub-recipients must segregate the revenue they have received from fees and disclose this during the normal course of their annual audit.

How Program Income Is Used and Calculated for Formula Grants

1. Deduction. Generally program income is deducted from total allowable costs to determine the net allowable cost, unless federal agency regulations for the program or the grant agreement state another alternative.

- Under the deduction method, program income must be used for current costs unless the federal agency gives other authorization. Program income that was not anticipated at the time of the award will be used to reduce the federal award rather than to increase the funds to the program.
- Deduction of program income is the standard requirement unless the grantee obtains approval for another method (described below) from the awarding agency.

2. Addition. When authorized by the federal agency, program income may be added to the federal award. When program income is added, it still must be used for the specified purposes and comply with the conditions of the grant.

3. *Cost Sharing/Matching.* When authorized, program income may be used to meet cost-sharing or matching requirements. The amount of the federal award will remain the same if program income is used for cost-sharing or matching purposes.

Exception for Discretionary Grant Programs

In the context of discretionary grant funds, the grantee may use any of the three above options, (deduction, addition, or cost-sharing/matching), in any combination, without prior authorization from the federal awarding agency.

Spending Grant Funds

Project funds can only be spent on items specifically listed in the project budget. Adding new line items or personnel usually requires a budget amendment (*discussed above*).

In order to properly expend the project funds, the Project Director should:

- Know whether the project is funded on a cost-reimbursement basis, cash advance, quarterly invoice, or is a performance-based contract. (The major difference is that performance-based contracts can only spend funds within the expected range of income for a specific time based on completion of program performance or services rendered);
- Work closely with the A.V.P. of Purchasing to comply with the federal purchase procedures found on page numbers 27 - 49.
- Make equipment purchases as quickly as possible after the budget account has been established;
- Order supplies as needed throughout the project period;
- **Expended project funds at least 60 days prior to the end of the budget period;**
- Enter the budget account number on all transactions;
- Get to know the campus director of administrative services. Begin with that person to process all payroll documents, disbursement requests, receiving reports, and similar financial transactions;
- Become familiar with human resources, purchasing and finance requirements for spending project budget. Refer to periodic bulletins issued by these departments in addition to this manual; and
- Retain documentation on all expenditures made for the project!

For assistance with accessing budget information through the ORION system, request training from the Project Accounting Office.

Information via ORION

ORION is the College's computerized enterprise management system. ORION gives online access to review the budget, human resources, purchase order encumbrances, and expenditures. ORION enables staff to enter and track department requisitions. For budget monitoring purposes, use it to review the status of the budget through:

- Reports generated by the system and sent to the supervising administrator each month; and
- Monthly labor distribution reports showing personnel activity for the prior month

Refer to the ORION manual for additional information. Review any discrepancies between project records and what appears in reports or on the screen with project accounting.

- When a project employee with ORION access leaves the project, the project coordinator or campus director of administrative services must immediately notify project accounting and human resources via e-mail or memo.

ORION training is required of all employees who need access to the system for input, approval, and review of financial transactions.

- To schedule Purchasing ORION training, call Purchasing, at 904-632- 3350
- To schedule Finance ORION training, call Purchasing at 904-632- 3350.
- Classes are offered approximately on a monthly basis at the Urban Resource Center or the Advanced Technology Center. The classes *are supplemented by a self-help training manual available from the purchasing/financial services departments.*

Term Employment

Grand-funded projects must follow standard College HR policies and procedures regarding the employment of individuals for the term of the grant. Many questions can be answered by referring to:

- Rules of the District Board of Trustees, Section 3, Personnel;
- Administration Procedures Manual (APM) Chapter III, Human Resources;
- State Board of Education Community College Rules, Chapter 6A-14; and
- The College Pay Plan Board Rule 6Hx7-4.24.

Employment Categories

The College's employees fall into four categories: faculty, career, administrative and professional, and student workers. They can be full-time (FT), regular part-time (RPT), or temporary full-time (TFT) or part-time (TPT) except student workers, whose employment is guided by specific rules related to financial aid, funding source, citizenship status, etc. Faculty, administrative and professional employees must be approved by the District Board of Trustees prior to beginning their employment and career employees must be approved by the DBOT, as well, but may begin work prior to Board approval.

1. **Faculty:** employees whose primary duties involve teaching, library and learning resource support services, or counseling. Instructional titles include counselors, librarians and professors. Adjunct instructors are temporary employees hired to teach a specific course or courses on a term by term basis.
2. **Career employee:** an individual hired for regular employment in a classified position with an assigned pay grade (FT, RPT, TFT or TPT).
3. **Professional employee:** a contractual employee assigned by the District Board of Trustees to a position in the professional category and whose primary duties at the College require specialized knowledge and training customarily acquired by a long formal course of study at the university/college level, or experience of such kind and amount as to provide a comparable background: work performance requires the constant exercise of discretion and judgment and is intellectual and varied as opposed to routine; job functions may include supervision, advising, analyzing, consulting, designing, teaching, reporting, and researching in an area of specialization; professional personnel are employed in the areas of academic support, student support and/or institutional support (FT, RPT or TPT).
4. **Administrative employee:** any person employed by the College in a designated administrative position, whose primary duties involve the directing, scheduling, or supervising other College employees; evaluating and recommending the employment or termination of other College employees; allocating, managing and scheduling resources and facilities; serving in positions involving planning, development, and utilization of personnel, resources, and facilities.
5. **Student workers:** students enrolled at least half-time and employed as either student assistants or College work-study assistants.

Position Authorizations

The position authorization process results in the assignment of the budget position codes necessary for the establishment of any position and the resulting employment of any individual. The RDO prepares the document and identifies the positions to be funded by the project as specified in the approved budget. In addition to the name of the project, project period and budget account number, the position authorization indicates the following:

- Position category and classification;
- Position type based on hours to be worked: full-time (FT), regular part-time (RPT), temporary full-time (TFT) or part-time (TPT);
- Annual salary for each FT position; hourly rate of pay for RPT and TPT positions;

- Hours per week or total number of hours allowed over term of grant (RPT) or hours allowed for up to six months of the grant or up to 2080 over the term of the grant (TFT and TPT); and
- Special information regarding the position.

NOTE: *Position authorizations do not authorize hiring.* Position authorizations only indicate that sufficient award funds are available.

Employee Benefits: Benefits for employees hired for a grant are the same as other College employees in a like position and category and classification.

Project Position Classifications and Job Descriptions

For grant-funded projects, it is sometimes necessary to use a position classification title that is more descriptive of the job duties than the actual College position classification description. Whatever position title is included in the application, the responsibilities of all positions must correspond to classifications and salary range in the College pay plan. The title to be used in the proposal and the actual position title are determined during the proposal development process. The RDO will consult with the HR Compensation Analyst to ascertain the correct classification and pay grade based on the stated duties and responsibilities of the position. The position authorization form will indicate the College title.

Position Advertisement

Project accounting sends the budget account number to project staff by e-mail, and the travel/budget coordinator sends the position codes by e-mail. After the position codes are assigned, the project manager prepares a “Request to Advertise” for each position and obtains the supervising administrator’s signature/approval. The “Request to Advertise” is then forwarded through the appropriate levels of approval and lastly submitted to the employment manager in the Human Resources Department for processing via the APOLLO electronic system.

Positions may be posted internal only or they may be externally advertised or both. Administrative, Professional and Faculty positions must be advertised for 20 working days, and full-time and regular part-time career positions must be advertised for 15 working days. Temporary full-time and part-time positions may be advertised for 15 working days however advertising is not required for temporary full-time part-time positions. Internal only advertisements are posted for 10 working days.

Screening Committees

For Administrative and Professional positions the supervising administrator appoints a search committee chair, which may be a self-appointment. The supervising administrator works with the Faculty Senate, Career Employees Council, Administrative and Professional Collaborative, in the establishment of a search committee. Student and community representatives may be added as appropriate. The supervising administrator will establish, in consultation with the president/chair of each employee group, the composition of the search committee provided that each employee group shall have a minimum of one representative on each search committee (unless waived by the employee group). Representatives of employee groups will be appointed by the group’s president/chair.

For career positions in pay grade 14 or higher the supervising administrator appoints a screening committee of a minimum of three (3) members insuring a representative mixture of staff who relate in some way to the position. In exceptional situations the supervising administrator may recommend the appointment of up to but no more than one-third of the Screening Committee with members who are not full-time College Employees. For career positions in pay grades 1-13, the supervising administrator has the option of appointing a screening committee or performing the screening process personally.

The composition of the search committee should be reflective of the diversity of the College's workforce. Search committee chairs are encouraged to seek the assistance of the HR Employment Manager in establishing a representative committee and in developing objective and legally defensible search committee processes.

For Administrative/Professional and Career positions the supervising administrator will ensure a mixture of committee members representative of the diversity of the College workforce.

- After the advertised closing or review date the College HR Employment Manager or designee will screen applications received and forward those meeting minimum qualifications to the supervising administrator.
- The project manager and supervising administrator meet with the committee to discuss the ideal candidate profile and preferred qualifications.
- Invite the employment manager to attend the organizational meeting and discuss staffing patterns in the area, appropriate interview questions and testing of applicants (if applicable and approved), veteran's preference, and College hiring guidelines.
- The committee screens applications to be interviewed based on the advertised preferred qualifications and/or established ideal candidate profile based on the job specifications and competencies desired.
- The committee compiles a list of interview questions to provide consistency and uniformity throughout the process.
- The committee chairperson or supervising administrator sends letters of regret to those not interviewed and forwards copies of letters to the Human Resources Department.

Interview Process

Interviews are generally scheduled for an entire morning or afternoon. The committee uses questions developed by the screening committee. Initial interviews are often done by telephone, and the committee recommends candidates for in-person interviews based on these results. All applicants who meet minimum qualifications must be considered by the committee and a number of acceptable candidates sufficient to result in a minimum of 3-5 finalists should be invited for in-person interviews.

Second interviews may be conducted by the search committee, project manager or supervising administrator. When a final candidate is selected, references for the current and/or former employer as listed by the applicant are to be checked. If reference checks are satisfactory, the College HR Compensation Analyst may be contacted to verify salary to be offered in the case of faculty or administrative and professional positions. The candidate may be contacted and tentatively offered the position. If the current or most recent employer/supervisor cannot be reached for a reference check, HR should be contacted for assistance.

Candidate Appointment

Submit the completed signed Recommendation to the Employment Manager in the Human Resources Department promptly. Do not hold the Recommendation awaiting satisfactory drug screening and/or criminal history records results notification from the Human Resources Department.

Full-time candidates must submit to being drug screened, fingerprinted and to having the criminal history records results evaluated prior to beginning employment. The campus/department advises the local candidate to visit the Human Resources Department to pickup the drug and criminal history records screening paperwork. Drug and criminal history records screening paperwork will be mailed to the out-of-town candidate who should be advised to contact the employment manager. Once satisfactory drug screening and criminal history records results have been received the employment manager will notify the supervising administrator that the candidate can begin his/her employment. The employment manager will also advise the supervising administrator of the full-time candidates scheduled date to attend New Employee Orientation.

Regular part-time candidates (RPT) must submit to being fingerprinted and to having the criminal history records results evaluated prior to beginning employment. The campus/department advises the candidate to visit the Human Resources Department to pickup the criminal history records screening paperwork. Once satisfactory criminal history records results have been received the employment manager will notify the supervising administrator that the candidate can begin his/her employment. When a candidate is selected for a regular part-time (RPT) position the following documents are to be attached to the Recommendation and forwarded to the Human Resources Department:

1. Application
2. Beneficiary Form
3. Notarized Loyalty Oath
4. W-4 Form
5. Work Schedule
6. Drug-Free Letter
7. I-9 Form (include SS Card and valid ID)
8. FRS New Employee Certification Form
9. Direct Deposit Authorization Agreement
10. EZ Retirement Plan Enrollment Form
11. FRS Pension Plan Form **OR** FRS Investment Plan Form

When a candidate is selected for a **temporary part-time (TPT)** position the following documents are to be attached to the Recommendation and forwarded to the Human Resources Department:

1. Application
2. Beneficiary Form
3. Notarized Loyalty Oath
4. W-4 Form
5. Work Schedule
6. Drug-Free Letter
7. I-9 Form (include SS Card and valid ID)
8. FRS New Employee Certification Form

Note: Temporary part-time employees are not eligible for retirement or health benefits.

Making an Offer

- For full-time Administrative, Professional and Faculty positions the supervising administrator makes an official offer of employment, pending District Board of Trustees approval and satisfactory drug and background screening results.
- Each employee will be issued a contract for up to a year as provided by the grant. If the project continues for more than one year, a new contract will be issued for each year.
- Once the candidate accepts the offer the screening committee chairperson or supervising administrator notifies applicants not selected and sends copies of letters sent to applicants to the employment manager in the Human Resources Department.

New Employee Orientation

The employment manager will advise the supervising administrator of the **full-time** employees scheduled date to attend a New Employee Orientation. The newly hired full-time employee will report to the Human Resources Department in the Martin Center on the scheduled date to complete documents necessary to be added to the payroll and to establish health benefits.

Purchasing

Purchasing guidelines

Determine whether the requested purchase is to be with an individual or a company:

- If contracting with an individual to provide services, use the College's *Other Personal Services (OPS)* process/procedures found at APM 03-0504; or
- If contracting with a company either 1) DR < \$3,500, 2) P-Card < \$2,500, quotations and a purchase order must be processed for orders > \$3,500 and issued **prior** to services being rendered as per the purchase procedures found on page numbers 27 - 49.

For either type of purchase identify the correct budget and general ledger code(s) for each item to be purchased or OPS agreement. Verify, with the project accounting office, that funds are available in the project budget and after review of these procedures, contact the Associate Vice President of Purchasing and Business Services for assistance with the purchasing process and to understand the requirements to quote it out /lead times, etc. on an "or equal basis", including changes after a department requisition has been approved.

NOTE: From time to time, grant proposals may desire to include the exact definition of the name of a partner that the grantor requests that the College utilize. Because the College is a political subdivision of the State of Florida, it must ensure that all purchases are in compliance with Florida Statutes, State Board of Education Rules, Board Rules, College APM, and Federal Regulations. Comply with flowchart on page # 39 to confirm the firm meets the OMB A-133 definition of a "partner". **Being named in a grant does not provide sole source authorization.**

Contractual Agreements

The College has the ability to determine the type of procuring instruments used (e.g., fixed price, contracts, cost reimbursable contracts, purchase orders, and incentive contracts) as long as it is appropriate for the particular procurement and for promoting the best interest of the program or project involved.

- The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting must not be used.
- The requirements under OMB Circular A-110 and other laws do not alter the contractual responsibilities arising under the contract(s) that the College enters into with third-parties. See OMB Circular A-110, Subpart C, Sec. 41.

Contracts/purchase orders are made only with responsible contractors, also referred to as vendors, who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration is given to matters such as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. See OMB Circular A-110, Subpart C, Sec. 42. *For more information see the "debarment" section of this handbook.*

Pursuant to EDGAR 74.42 code of conduct, the College must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved.

Contract Administration

A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract, and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract. *See* OMB Circular A-110, Subpart C, Sec. 47.

The College shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts:

- (a) Contracts in excess of the small purchase threshold fixed at U.S.C. 403(11) (currently \$25,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for remedial actions as may be appropriate.
- (b) All contracts in excess of the small purchase threshold (i.e. \$25K) shall contain suitable provisions for termination by the College.
- (c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the College to follow Florida Statutes, SREF, and its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$ \$100,000. *See* debarment section of this handbook for more information. *See* OMB Circular A-110, Subpart C, Sec. 48.

All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients must include a provision to the effect that the recipient, ED, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

Procurement/Subcontracts

The College must maintain a procurement and contract administration system that ensures all contractors/ subcontractors, including consultants, perform in accordance with the terms, conditions, and specifications of their contracts/written agreements.

A written cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. Some form of cost analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. *See* OMB Circular A-110, Subpart C, Sec. 45 and EDGAR Section 74.45.

Purchasing Department

The College's objective is to obtain the greatest possible value for its money, while conducting all purchasing activities in an open and ethical manner. The College has a centralized purchasing department at the Administrative Offices , 501 W. State Street (third floor), that serves five campuses and six centers located in Duval and Nassau Counties.

The purchasing department is responsible for:

- Evaluating vendors for inclusion on the College's computerized bidder's list including State of Florida OSD certified women, minority and small disadvantaged businesses;
- Maintaining a qualified bidder's list, including the addition or removal of bidders;
- Reviewing and approving specifications for all bid invitations;
- Assistance in the preparing of bid solicitations and request for proposal (RFP) documentation, reviewing and evaluating bids and proposals, as well as recommending to the Florida Community College District Board of Trustees' approval on purchases of \$195,000 or greater and making awards;
- Preparing and issuing purchase orders and negotiating contracts with successful bidders;
- Debarment of vendors who have provided the College with unacceptable quality or service.

The College maintains a computerized bidders list by a commodity and is continually seeking new vendors who can provide quality products at competitive prices. This section covers the purchasing procedures in general.

- End-user departments monitoring vendor compliance with contract/ purchase order terms and conditions
- Designated the College employees are authorized to use a VISA procurement card (Pcard) to make purchases less than \$2,500 per transaction.
 - The State of Florida has established a contract with a bank to provide its Pcard program to state agencies and institutions, including state colleges. The College has implemented the Pcard program to permit College departments to accelerate ordering, receiving and payment of goods less than \$ 1,000 per item and less than \$2,500 per transaction without the use of an Orion department requisition, or a regular or blanket purchase order made out to each supplier.
- The College requires the use of a written purchase order signed by the purchasing department for purchases \$ 3,500 or greater, which is a prerequisite for payment.

Purchase Orders

Purchase orders are prepared and mailed/faxed prior to the purchase of > \$3,500 of property, supplies, or services. Purchasing uses six types of purchase orders:

- Regular purchase orders (PO);
- Limited sum purchase orders (i.e. blanket purchase orders) BO;
- Service contract purchase orders (SC); Construction purchase orders (CO);
- Hazardous chemical purchase orders(HZ); and
- Information technology purchase orders (IT).

Regular Purchase Order

Regular purchase orders are used to procure tangible products on a one-time basis. The purchasing department is responsible for processing, solicitations and approving all regular purchase orders. Once the item(s) have been shipped the receiving department must post an online receipt to facilitate payment.

Blanket Purchase Order

A blanket purchase order establishes a dollar volume of purchases at a discounted price or predetermined unit price that can be made with a vendor over a period of time (i.e. July 1 through June 30 of the following year) or contract period.

- Vendors must comply with the price and terms of the purchase order for the time period that is in effect. Blanket purchase orders are not to be used to purchase hazardous chemicals or any one capital equipment item in excess of \$1,000 in value.

- Each blanket purchase order shall name specific College personnel who are authorized to make purchases and limit the maximum dollar value per purchase. Each vendor shall be required to confirm the identity of the authorized user by photo I.D. or fax signature verification.

Service Contract Purchase Order

All services provided by a company to the College greater than \$3,500 are to use a service contract purchase order that will define a specific scope of services and contracted unit prices.

The College's current procedure regarding purchasing is as follows:

PURPOSE

The purpose of this section is to define Federal funded purchase procedures of value greater than the small purchase threshold amount fixed at 41 U.S.C. 403(11) (currently \$25,000).

PROCEDURE

1. The College, as a political subdivision of the State of Florida, is governed by a District Board of Trustees and required on purchases using State funds to comply with Florida Statutes, State Board of Education (SBE) Rules, College Board Rules, College Administrative Procedure Manual (APM's), and Desktop procedures.
2. However, for federal awards in addition to the regulations noted in item #1 above, federal regulations would also apply, such as, but not limited to:
 - Education Department of General Administrative Regulations (EDGAR)
 - Office of Management & Budget (OMB)
 - Federal Acquisition Regulations (FAR)
 - US Department of Transportation (USDOT)
 - US Department of Labor (USDOL) etc.
 - Notification of Employees Rights under Federal Labor Laws
3. The intent of this procedure is to provide a very brief general summary of significant differences when using federal funds and examples of some of the additional procurement regulations. (Also see federal purchase process flow chart on page #39.)
4. The project manager / administrator in charge of a grant or contract would begin with needing to carefully review both the application guidelines and the approved grant/contract award package. Both documents list the regulations appropriate for that specific award. Some items the project manager/administrator in charge would need to look for include:
 - a) Is the procurement using funds that come to our College directly from a federal agency (i.e. USDOE) or are they coming to our College through a State Agency (i.e. Fla. DOE)?
 - b) Review sections of the agency's Request for Proposal RFP and resultant contract to see if there are any unique additional procurement requirements put on the College (i.e.,

could be additional attestations required, or a requirement the college to do additional procurement process steps).

- c) Does the agency's RFP and resultant contract require the College to use federal funds to pay a specific company?
- d) Does that company meet the federal definition of a Partner/ Sub-Grantee / Sub-Recipient or that of a Vendor? The project manager/administrator would need to schedule a meeting with the Office of General Counsel (OGC) to review your planned total purchases from a firm/person is greater than \$3,500 to help determine if the firm/person is a partner/sub-grantee/ sub-recipient or a vendor.

Listed below is a simple table that helps define indicators of the difference.

Will the company:	<u>Partner/ Sub-Grantee / Sub-Recipient:</u> Note: The College is " <u>not</u> " required to solicit bids/ proposals for a partner / sub-grantee or sub-recipient unless required by the agency's grant/agreement.	<u>Vendor:</u> Note: The College <u>is required</u> to solicit competitive proposals / bids for a Vendor.
Determine who is eligible to receive Federal Financial Assistance?	Yes	No
Have its performance measured against whether the objectives of the Federal Program are met?	Yes	No
Have the responsibility for programmatic decision making?	Yes	No
Have the responsibility to adhere to applicable Federal program compliance requirements?	Yes	No
Use the Federal Funds to carry out a program of the organization as compared to providing goods and services for a program of the pass-through entity?	Yes	No
Provide good or services within their normal business operations?	No	Yes
Provide similar goods / services to many clients & operates in a competitive environment	No	Yes

5. If striving to do business with a **vendor** the project manager / administrator in charge would need to first enter an online ORION department requisition to fund the approximate cost of the purchase (using LIS as the Buyer). The suppliers name field in ORION can be left blank if a vendor is not known.
6. The project manager / administrator in charge would also need to explore if the desired company (if known) has won a publicly solicited contract for the exactly same good or

service with any form of federal agency government, any U.S. state government agency, any city/municipality/school board or public college or university in the country.

7. If yes, pursuant to State Board Rule 6A 14.0734, the Purchasing Department may be able to exempt issuing our own solicitations but would need to see a copy of that agencies solicitation, tabulation sheet, and resultant contract to confirm it's use is not restricted to just that agency (i.e. GSA)
8. Listed below is a simple table of quoting/ bidding thresholds the College is required by Statute/ Board Rules / APM's to comply with:

Annual Purchase value	< \$3500	\$3,500 - \$14,999	\$15,000 - \$64,999	\$65,000 - \$194,999**	\$195,000 + **
# of informal *quotes required	1	2	3		
# Sealed ** formal bids/proposals required	N/R	N/R	N/R	Yes 3+	Yes 3+
Board of Trustee Approval Required?					Yes

- * which can be done by either the end-user department or Purchasing. It is recommended to have a conversation with the Associate Vice President of Purchasing and Business Services, before you begin the informal quotation process.
- ** which must be done by Purchasing.

9. Listed below is a table of additional requirements that might be applicable to your project when using federal funds :

#	Category / Requirements of EDGAR Section #74/ OMB, etc.
1.	While when using State funds the college can exempt from competitive solicitations certain type purchases (i.e, IT systems /equipment, copyrighted items, sole source items) when using Federal funds <u>there are no such clear exemptions identified.</u>
2.	Requirement to solicit competitive proposals/bids using <u>open non restrictive</u> specifications accepting submittal of technical equivalents.
3.	<u>Advertising for recruitment</u> using federal funds require specific language to be included in any print or any media ad (i.e., "Funded by the US Dept. of Labor").
4.	Requirement to compel the vendor to attest compliance with federal attestation requirements (i.e., Davis Bacon Act/ Copeland Anti-Kick Back Act, Executive Order 11246 Equal Opportunity Act, etc).
5.	The purchasing department is required to maintain a detailed record documenting the rationale of both the history of the procurement, the solicitation and contract type used, as well as how they determined the price basis to be fair and reasonable.
6.	There is a restriction on the use of Time and Materials Construction Contracts.
7.	There is a restriction on the use of a Request for Qualification process to only be used when hiring architects and engineers.
8.	There is a restriction on the use of local or state preferences in solicitations except when hiring architects and engineers.
9.	There is a requirement to complete a cost analysis when receiving only one single

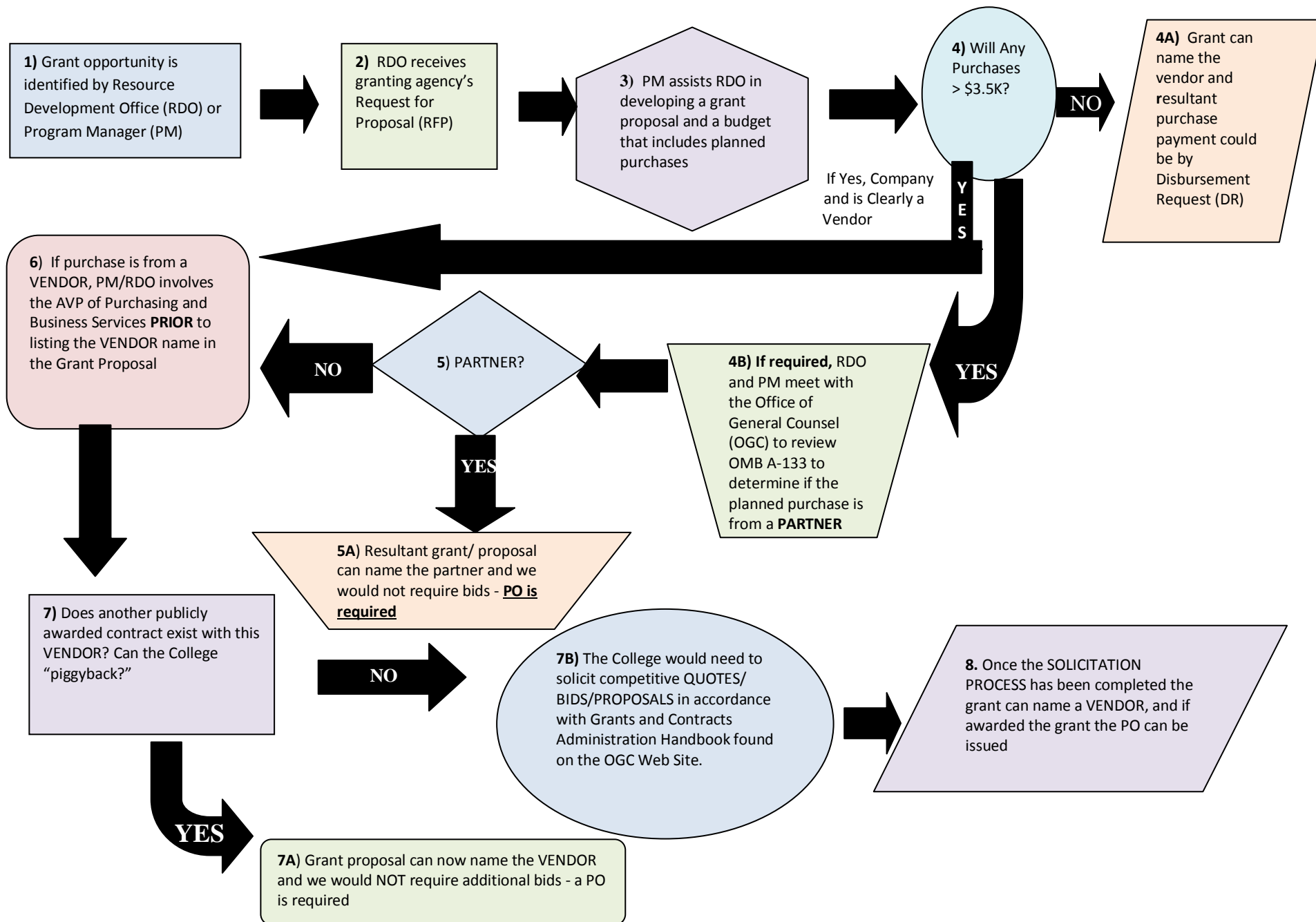
	bid/proposal as the result of a solicitation to document pricing is reasonable.
10.	A Cost / Price Analysis is required with every procurement action “including change orders”.
11.	There is a requirement for the Purchasing Department on PO’s \$25K+ to go to a federal web page to research/verify if the Vendor is on a Federal Excluded Parties List (and print off a copy for the PO file).
<u>12.</u>	There is a January 30, 2009 Executive Order entitled “Notification of Employee Rights under Federal Labor Laws” requirement of four new federal contract and subcontract clause requirements.

A purchase of supplies or services equal to or greater than \$25,000, using Federal funds, require confirmation that the recommended supplier is in compliance with OMB Circular A-110, Subpart B, Section 13.13 Debarment and suspension, where Federal awarding agencies and recipients are required to comply with the non-procurement debarment and suspension common rule implementing E.O.’s 12549 and 12689, “Debarment and Suspension.” This common rule restricts subcontract awards and contracts by the College with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. When the College enters into a subcontract or purchase orders \$25,000 or more, it must verify that the vendor is not suspended or debarred or otherwise excluded. This verification may be accomplished by:

- Checking the Excluded Parties List System (EPLS) Website maintained by the General Services Administration (GSA) <http://epls.gov/epls/servlet/eplsgetinputsearch>, or
- Collecting a certificate from the vendor, or
- Adding a clause or condition to the subcontract or purchase order transaction with that vendor

Florida State College at Jacksonville Grant/Purchase Process Flowchart Procedures

Chart Version



Florida State College at Jacksonville Grant/Purchase Process Flowchart Procedures-- Text Version of FlowChart

- 1) When a grant opportunity is identified by the Resource Development Officer (RDO) or a Program Manager (PM) one or both often seek to list a certain provider of goods or services in the grant application to improve the College's proposal.
- 2) The RDO or PM must review the granting agency's Request for Proposal (RFP) to see if any specific guidance is provided about the use of certain providers or partners.
- 3) RDO and PM must develop a budget for the grant that includes planned purchases or delivery of services and determine the amount of those anticipated purchases.
- 4) RDO and PM must determine if a purchase will be greater than or less than \$3,500.00:

4A) If the purchase amount is less than \$3,500.00, the name of the vendor can be named in the grant and the resultant purchase payment could be by Disbursement Request (DR)

4B) If the purchase is \$3,500.00 or more then RDO and PM must follow the procedures below to determine the next action.

PURCHASE IS \$3500.00 OR MORE:

5) If RDO and PM believe that the organization providing the goods or services is a Partner, Sub Grantee or Sub-Recipient, then RD and PM must schedule a meeting with OGC to review the grant proposal and help determine if the provider of the goods and services is a **PARTNER**, Sub Grantee or Sub-Recipient **or a VENDOR?**

5A) If the provider of the goods or services is a Partner in the grant, then the Partner can be named in the grant. The Office of General Counsel should be informed of the Grant Application and involved early on in the process. OGC will provide guidance as to the applicability of federal regulations in OMB A-133. OGC will also advise the RDO and PM as to the required form and content that will be required in the future agreement which must be drafted to formalize the partnership and facilitate payment through a Purchase Order. If you think the provider is a partner, OGC will assist.

6) If the purchase is from a vendor the RDO and PM must involve the AVP of Purchasing and Business Services **PRIOR** to listing the vendor in the grant proposal.

7) The PM, RDO and AVP of Purchasing and Business Services may be able to confirm that another publicly solicited competitive awarded contract exists with the same vendor, and if so the College may be able to "piggyback" on the previously completed competitive process.

7A) If there is confirmation that another publicly awarded contract exists, and it is not a restrictive use contract, no additional bids are required and the vendor may be listed in the grant application. A purchase order will later be required.

7B) If no other publicly solicited competitively awarded contract exists with the vendor then the College must solicit competitive quotes, bids, or proposals in accordance with Grants and Contracts Administration Handbook found on the OGC Web Site, and the vendor cannot be named in the grant application until that process is completed. The process can be initiated prospectively, prior to the agency issuing their grant RFP proposal or award of the grant.

8. Once the solicitation process is completed, RDO and PM can name the vendor in the grant application, and if the grant is awarded a purchase order will be issued to tender payment.

Signing Authority

The College's College President, Executive Vice President, Vice President of Administrative Services, and Associate Vice President of Purchasing and Business Services or their designees are the only individuals at the College with the authority to commit the College to the > \$3,500 acquisition of supplies, equipment and services by signing contracts, agreements and purchase orders.

The College currently delegates its signing authority as follows:

Board Rule 6Hx7-2.5 Signing Authority (APM 02-0303)

- (1) The Chairman of the District Board of Trustees and the College President or designee shall have the authority to sign checks, contracts and other documents reflecting action by the Board as appropriate.

(A.) In furtherance thereof, the College President may designate:

1. the Executive Vice President of Instruction and Student Services and the Vice President of Administrative Services to sign contracts, external funding proposals and other documents and reports affecting or reporting on the operations of the College or other documents on behalf of the College President as appropriate;
2. the Vice President of Administrative Services to sign financial documents and reports for the financial operation of the College;
3. the campus Executive Deans to sign applications for teaching certificates and faculty workload sheets;
4. the Vice President of Strategic Resources and the Director of Resource Development to sign external grant funding proposals and associated documents on behalf of the College President;
5. the Associate Vice President of Purchasing and Business Services to sign contracts and purchase orders;
6. the Director of Admissions and Registrar to sign College transcripts, enrollment verifications, and student mailings;
7. the Director of Student Aid to sign veteran certifications and financial aid awards and termination letters;
8. the Open Campus President to sign television programming agreements;
9. the Associate Vice President of Educational Technology and Research to sign facility rental agreements for the television studio and related facilities;
10. the Campus Presidents or their designees to sign facility rental agreements and other campus-oriented agreements as appropriate and not otherwise in conflict with any other provision of this Rule-;

11. the Vice President of Community and Economic Development to sign customized training contracts.

(2) Any designation made pursuant to this Rule shall be written, deliberate, specific, and directive. Such delegation is intended to address the signing of documents and not the authority to commit the College to action not approved by the College President and the District Board of Trustees.

All purchases > \$3,500 to a vendor must be made on the basis of an approved purchase order that has been signed by the purchasing department. Payments to vendors >\$3,500 will be made only on the basis of an approved purchase order/ receiving report and an accepted vendor's invoice signed by the budget administrator.

- The College shall not be responsible for the payment of any purchase including P-Card credit card purchases for goods and/or services acquired by employees for their personal use.
- The College does not condone back-door selling. To this end, all sales personnel wishing to do business with the College must register with the purchasing department by submitting a College Vendor Application. Vendors who do not maintain an up-to-date vendor's application and/or respond to the College's solicitations may be dropped from the approved vendor's list.
- The College, as a non-profit political subdivision of the State of Florida, does not pay federal excise or Florida state tangible personal property sales tax. The College's sale tax exemption number is printed on the purchase order form.

Federal Competitive Bidding

The College uses two methods to procure commodities and services through competitive means:

- **Formal Bid** – Formal invitation to bid (ITB)/request for proposal (RFP), or invitation to negotiate (ITN) are used to solicit bids/proposals for procurement of services and commodities using federal funds whose value over the life of the federal contract is estimated at \$ 25,000 or more. Vendors are required to deliver sealed bids/proposals in writing before the designated public bid opening date and time. Bidders and the general public may attend public bid openings at the purchasing department, 501 West State Street, Jacksonville, FL 32202-4068
- **Informal Bid** – Telephone, email, fax and written quotations are solicited from vendors for commodities and services between \$3,500 and less than \$ 25,000. Purchases less than \$3,500 are classified as “direct price.”

It is the responsibility of the purchasing department to award and issue purchase orders to the responsive supplier offering the highest “total value” for the College which may or may not be the supplier recommended by the user department.

Once an award recommendation has been made, all formal bid tabulation records are posted on the College purchasing department Web page <http://fscj.edu/bids> for a Florida statute required 72-hour protest period and are available as public records for inspection by the general public.

Bidder's List

The College retains an approved bidder's list. Once a vendor is on the bidder's list, vendors will be selected periodically for bid solicitation by commodity. The purchasing department periodically updates the bidder's list data by requesting vendors update their application including current financial and product line data.

The Solicitation Bidding Process

Solicitations by the College must include the following:

- (1) a clear and accurate “open” description of technical requirements for the material, product or service to be procured – that does not unduly restrict competition;
- (2) requirements which the bidder must fulfill and other factors to be used in evaluating bids;
- (3) a description of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards;
- (4) specific features of brand name or equal descriptions that bidders are required to meet when these items are included in the solicitation;
- (5) the acceptance of products and services dimensioned in the metric system (to the extent practicable and economically feasible); and
- (6) preference, for products and services that conserve natural resources, protect the environment and are energy efficient (to the extent practicable and economically feasible). *See* OMB Circular A-110, Subpart C, Sec. 44.
- (7) Vendors are required to sign federal compliance attestations.

The purchasing department assists departments prepare and issue competitive solicitations which includes coordinating and defining minimum technical specifications for the item(s) or services(s) to be procured, information concerning quantities and delivery requirements, and due dates and times for bid/proposals to be delivered. At least three qualified companies are solicited. (Note: Current formal construction solicitations are advertised on as well as posted www.myflorida.com and the purchasing Web site <http://fscj.edu/bids> .)

Bid/RFP Preparation

Bids/proposals must be prepared (without deviation) in accordance with the terms, conditions and specifications contained in the ITB/RFP solicitation. If brand names are used in the specifications, bids/proposals may be submitted for that brand, or for an “approved equal.” To be responsive bidders/proposers shall submit adequate literature and assure specifications are attached with the submitted bid/proposal at the opening to completely confirm the proposed “equal” meets or exceeds the defined specifications.

To be responsive bids/proposals must:

- Be signed;
- Reflect net cost;
- Clearly indicate the proposed unit price(s);
- Indicate the units of measure and extensions;
- Note payment discounts and/or other applicable costs; and
- Comply with/include all mandatory “shall” or “to be responsive” requirements (i.e. bonds, insurance, certificates, etc.)

Since the College is a non-profit political subdivision of the State of Florida it does not pay a federal excise or state tangible personal property sales tax. The College’s sales tax exemption number is printed on the purchase order form. It is the College’s policy to define in bids/proposals that only for FOB (free on board) destination (i.e. freight prepaid and included) are to be proposed.

Solicitations for new or special commodities may request vendors to submit samples with their bids/ proposals. All submitted samples become the property of the College for testing and/or other procedures. Samples should be labeled with the solicitation number and the bidder’s name. Companies may request that undamaged samples be returned by submitting a written request with a UPS call tag to the purchasing department.

To be responsive, all submitted bids/proposals must be signed by an authorized representative of the company. It is important that vendors advise the purchasing department of any changes in authorized signatures.

Bid Opening and Review

The purchasing department receives all formal bids/proposals, time stamps them with the date and time and secures them, unopened, until the specified public bid opening time. On ITB the bid unit prices are read aloud and tabulated and reviewed to ensure that all the terms and conditions have been met. The award is recommended to be made to the lowest responsive bidder who meets all requirements and specifications of the bid invitation.

The College will publicly open request for proposals and only state in the public opening meeting the name and the firm submitting a proposal and whether it was signed.

Successful bidders may not execute a contract until an IRS W-9 form is provided, a written purchase order; contract or agreement is negotiated and signed by the associate vice president of purchasing and business services, purchasing manager, or designee.

Bid Bonds

Pursuant to EDGAR Section 74.48, bid bonds or performance and payment bonds are required on the College contraction/renovation projects or other defined projects of \$100,000 or more, and these requirements will be set forth in the bid/RFP solicitation. As specified in the solicitation, the bid bond submitted must cover five percent of the bid amount (unless otherwise stated). A written notification will be sent to the successful bidder requiring that the 100% payment/performance bond be submitted within the required time, or the bidder will be considered “in default,” and the contract may be considered void. The second lowest responsive vendor will then be contacted. The College has the legal right to use the bond to recover any monetary damages that may be incurred because of contract default.

Special Situations

A number of special or unusual situations are sometimes encountered in the bidding process. These are summarized in the chart below:

Late Bids	If bids are delivered after the “exact” established time for public opening, a bid will not be considered unless the bidder documents within 48 hours of bid opening the sole reason for late delivery was that of an overnight carrier (i.e. Fed Ex). Late bids will be refused or stamped with the time and date received, stamped with the designation “late bid” and returned to the bidder unopened.
Tie Bids	When two or more bids, equal as to a total price, quality and service, are received by the College for procurement of commodities or contractual services, preference will be given to the Florida business. If still tied, a bid received from a business that certified that it has implemented a drug-free workplace program shall be given preference in the award process. If still tied, the award will be determined by a public “coin toss.”
Bid Withdrawal	Bidders may withdraw their bids at any time prior to the bid opening. Bidders must submit a written request for bid withdrawal to the associate vice president or purchasing and business services.
Bid Errors	Bidders are responsible for timely submitting accurate information and complete bids and, once bids are opened, they will be held liable for the terms and prices submitted in their bids. Care should, therefore, be taken that bids contain no errors in terms, price or conditions. The College will utilize bidders unit price bid and correct mathematical extension errors.

Consultants

The College may not use federal grant funds to pay for consultants, unless: there is a defined need in the project for the services of that consultant; and the College cannot meet that need by using an employee rather than a consultant. However, the College may pay a consultant’s fee to one of its employees by a preapproved stipend only in unusual circumstances and only if:

- The work performed by the consultant is in addition to his or her regular departmental load and beyond their and work schedule; and
- The consultation is across departmental lines; or
- The consultation involves a separate or remote operation.

Authority for the procurement of professional consultant services, including but not limited to architecture, engineering, design-build Qualifications based selection, (QBS) construction management, landscape architecture and land surveying, is set forth in OMB Circular A-110, SBE 6A-14.0734, FS 287.055, and FS 287.057.

The purpose of this section is to establish the process for obtaining professional consultant services for professional services exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$25,000) and Chapter 287.017 F.S. by use of a request for qualifications (RFQ).

When using federal funds, use of a RFQ is restricted to only architect/engineering (A/E) services.

Three (3) committees will be appointed by the Associate Vice President of Purchasing and Business Services or Associate Vice President of Facilities Management and Construction for the area requiring the services under which qualifications will be solicited and services performed. The committees will be as follows:

- 1. Specifications committee**
- 2. Selection committee**
- 3. Contract negotiation committee**

The procedures for each of the committees are described below.

RFQ Specifications committee

A specifications committee preferably consisting of not less than three members, one of which shall be designated chairman, shall be appointed by the Associate Vice President of Purchasing and Business Services or Associate Vice President of Facilities Management and Construction for the area requiring the services for the purpose of developing a scope of services and conditions under which qualifications will be solicited and services performed. The Associate Vice President of Purchasing and Business Services, or his or her designee, will be designated as a facilitator to the committee.

The specifications committee will prepare a scope of services required together with an estimate of the fees. The requiring department will then prepare an on-line ORION department requisition covering the cost of the fee estimate and forward to purchasing thereto the proposed scope of services. If the scope of services covers a construction project estimated to be more than \$2million as defined in chapter 287.055(2)(G)F.S. or the professional services fee is estimated to exceed \$2,000,000, a second department requisition to cover the cost of legal advertisement shall be included for the public announcement required by Section 287.055(3)(a) Florida Statutes.

The purchasing office will invite firms in the lawful practice of their profession who desire to provide the professional services required to submit a statement of qualifications and performance data. A closing time and date shall be established for the submission of such information. A legal advertisement will be processed when required by Florida Statute.

RFQ Selection Committee

A selection committee consisting of not less than three members, one of which shall be designated as Chairman, shall be appointed by the Associate Vice President of Purchasing and Business Services and/or Associate Vice President of Facilities Management and Construction for the area requiring the services for the purpose of evaluating the criteria for evaluating qualifications submitted, set forth by the specifications committee, reviewing submittals received, selecting those finalist firms to be interviewed and recommending a rank order based on qualifications as best, second best, etc. The selection committee shall evaluate the statements of qualifications and performance data thus obtained. The committee is to consider such factors as the ability of the firms' personnel, past performance, willingness to meet time (and budget in the case of construction) requirements, location, recent, current, and projected work loads of the firms, and the volume of work previously awarded to the firm, with objective of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firm.

After a review of the qualifications submitted has been completed and the qualifications of the firms have been discussed at a public evaluation committee meeting, where the exact time and date of this meeting was noted in the RFQ document itself, , the committee shall determine by assigning evaluation points to each firm for specific criteria the finalist firms deemed to be most highly qualified to perform the required services . Such selection may be done by individual ballot or consensus voting. All the responsive firms shall be listed on the ballot, and each member will vote on each criterion scoring the highest points for each criterion of the firm he/she thinks best qualified. The results of the balloting will be tabulated with the firm scoring the overall highest points ranked

first, the next highest second, and so on. In case of a tie, a second balloting will be held on the tied firms to resolve their order of preference. The committee will schedule public interviews with the top ranked finalists and assign evaluation points to each finalist. A overall committee average evaluation criteria matrix sheet will be prepared by the committee chairman detailing the results of the interviews and a tabulation of the balloting. The matrix sheet will be reviewed by the Associate Vice President of Purchasing and Business Services for co-development with the Associate Vice President of Facilities Management and Construction (as appropriate) of the board agenda recommendation of ranking of firms. This overall committee matrix sheet report will document the firms to be further considered who are fully qualified to render the required services. Committee working papers will be made a part of the RFQ public file.

RFQ Negotiation Committee

A negotiation committee consisting of, but not limited to, the budget administrator, the Associate Vice President of Facilities Management and Construction or designee, the Associate Vice President of Purchasing and Business Services or designee, as appropriate, pursuant to project responsibility and the College's legal counsel as applicable, one of which shall be designated as chairman, shall be appointed by the Associate Vice President of Purchasing and Business Services for the purpose of establishing a contract structure covering scope of services required, the fee, and method of payment for services to be performed. Once Board approved, the negotiation committee will negotiate a contract with the most qualified firm at compensation which the committee determines is fair, competitive, and reasonable. For all lump-sum professional service contracts over \$50,000, the firm to be awarded the contract shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. When this certification is required, the contract will contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the College determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the end of the contract.

Should the committee be unable to negotiate a satisfactory contract with the top ranked firm, negotiations with that firm shall be formally terminated by letter signed by the Associate Vice President of Purchasing and Business Services or designee. The committee shall then undertake negotiations with the second most qualified firm. Failing accord with that firm, the committee, after formal termination, shall undertake negotiations with the third most qualified firm, etc. until a satisfactory contract can be negotiated and entered into.

If the recommended fee is greater than purchase category level IV (\$195,000) the recommended award shall be submitted to the District Board of Trustees for pre-approval. If the fee is less than purchase category level IV the recommended award shall be presented to the Associate Vice President of Purchasing and Business Services for review/approval.

If the recommended professional fee is less than \$25,000, and cost of construction is less than \$2 million, then this selection (request for qualification) process 287.055 F.S. need not be followed. Selection of a qualified A/E professional service for fees of less than purchasing category level II can be directly selected and negotiated by the Associate Vice President of Purchasing and Business Services and Associate Vice President of Facilities Management and Construction on the basis of qualifications and past related experience at a fee structure determined to be reasonable.

Every contract for A/E professional services, greater than purchasing category level II (\$25,000) will contain a prohibition against contingent fees and truth in negotiations statement as specified in Section 287.055(6) of Florida Statutes.

- All documents prepared pursuant to this instruction are public documents and will be filed in the contract file of record as maintained in the centralized purchasing office.

Procurement Documentation

Pursuant to EDGAR 74.44, procurement records and files for purchases in excess of small purchases (i.e. \$25,000 limit) must include, at a minimum:

- (a) Basis for contractor selection;

- (b) Justification of lack of competition when competitive bids are not offered;
- (c) Basis for award price or cost;
- (d) Rationale/cost price analysis for all change orders (EDGAR 74.45); and
- (e) Verification that the contractor is not on the excluded parties list system website (EDGAR, Part 85).

After an audit is completed the purchasing office will submit to the Central Stores office a listing of purchase files > six (6) full fiscal years requesting disposal instructions, in accordance with state approved records retention schedules.

Delivery of Goods

Unless otherwise directed in writing, goods will be delivered to the address stated on the “ship to” section of the purchase order. Any deliveries of supplies, equipment and services to premises other than Florida State College at Jacksonville without the written approval of the Associate Vice President of Purchasing and Business Services or designee will be made at the vendor’s own risk. Under these circumstances, the College will not be responsible for payment to the vendor.

All shipments of goods should include a packing slip noting the College purchase order number, quantity, item description, part number, common carrier and number of cartons. Shippers should obtain upon delivery the signature of the College receiving employee.

Required Contract Provisions

All Federal P.O./ contracts >\$25,000 (including purchase orders), awarded by the College, including small dollar purchases >\$3,500, shall require the vendor sign a vendor attestation form that includes provisions (as applicable):

1. Equal Employment Opportunity--All contracts >\$25,000 must contain a provision requiring compliance with E.O. 11246--Equal Employment Opportunity, as amended by E.O. 11375--Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 C.F.R. Part 60--Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

2. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)—As applicable, all contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. Part 3--Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The College shall report all suspected or reported violations to the Federal awarding agency.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)—As applicable, when required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 C.F.R. Part 5--Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The College shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the vendors acceptance of the wage determination. The College shall report all suspected or reported violations to the Federal awarding agency. *See Attachment I for more information on the Davis-Bacon Act.*

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327- 333)--Where applicable, all contracts awarded by the College in excess of \$2,000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by

Department of Labor regulations (29 C.F.R. Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under a Contract or Agreement—Where applicable, Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 C.F.R. Part 401--Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations issued by the awarding agency.

6. Clean Air Act (42 U.S.C. 7401 et seq.) **and the Federal Water Pollution Control Act** (33 U.S.C. 1251 et seq.), as amended—where applicable, contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to ED and the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)--Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (E.O. 12549 and E.O. 12689)--No contract >\$25,000 may be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O. 12549 and E.O. 12689--Debarment and Suspension. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold (i.e. \$25,000) must provide the required certification regarding its exclusion status and that of its principal employees.

Disposal of Waste

Vendors contracted for removal of the College regulated and hazardous waste shall use Department of Environmental Regulation approved six-part manifest forms and land ban notification forms signed by the College's environmental protection coordinator, who is the only person authorized to do so at the College.

Vendor Payment

The College's accounts payable department/business offices on each campus are responsible for paying vendors for acceptable commodities and satisfactory services delivered.

Vendors shall comply with the requirements of the purchase order to ensure prompt payment. Signed packing slips and invoices should be submitted in triplicate with a complete description, quantity, costs, and lists the purchase order number. This will assist accounts payable in remitting prompt payment by manual check. Under normal circumstances, a vendor will receive payment within 30 days of the receipt of acceptable goods or services and an accurate invoice by the College.

Discounts for prompt payment are encouraged and should be noted on the invoice. All regular and blanket purchase order invoices should be mailed to the remit to address shown on the purchase order. Please direct all

payment questions to the accounts payable supervisor, 904-632-3340, or mail to the attention of: Director of Accounts Payable / Administrative Offices – Florida State College at Jacksonville , 501 West State Street, Jacksonville, FL 32202

Debarment and Suspension

Contracts are made only with responsible contractors who currently possess the ability to perform successfully under the terms and conditions of the proposed procurement contract. Consideration is given to matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. *See* OMB Circular A-110, Subpart C, Sec. 44.

The College may not subcontract with or award subgrants to any person or company who is debarred or suspended. *See* OMB Circular A-110, Subpart B, Sec. 13. The College is required to check the ***Excluded Parties List System*** website for any contract over \$25,000 to ensure the vendor is not on the debarred or suspended list. This list is located at: <http://www.epls.gov/>.

The College reserves the right to remove a vendor from the bidder's list, under the following conditions:

- Failure to deliver commodities according to the schedule indicated on the Purchase Order (PO);
- Delivery of commodities not specified on the PO;
- Delivery of substitute items without the prior approval of the purchasing department;
- Submission of an invoice for payment at a price higher than that specified on the PO;
- Evidence of unsatisfactory performance as reported by end-user departments and reviewed by the associate vice president of purchasing and business services;
- Failure to respond to the College vendor application mailed to all vendors (sent periodically);
- Relocation of the business without advising the College of a forwarding address;
- Two years time, without being awarded a College purchase order (plan to resubmit an application at least every two years);
- Failure to respond to invitations; or
- Being listed on the State of Florida Department of Management Services suspended vendors list or being convicted of a public entity crime as described in Florida Statute 287.132-133.
 - Suspension/debarment from the bidder's list will be for a period of 1-3 years after which the vendor may submit in writing a request to be reinstated to the associate vice president of purchasing and business services.

Record Keeping

Proper Documentation is the key to grant compliance. The College must ensure it has records that show:

- The amount of the funds under the grant;
- How the College uses the funds;
- The total cost of the project;
- The share of the cost provided from other sources;
- Other records that facilitate an effective audit;
- Compliance with federal programmatic requirements;
- Significant project experiences and results; and
- Progress in accomplishing project objectives and revision of objectives as necessary.

In addition, the State of Florida requires project recipients to maintain and use project records to determine compliance with program and fiscal requirements of the project, demonstrate project accomplishment, and make all required reports, including the following:

- Project management records that document the personnel, equipment, materials, and other resources used in the project.
- The extent to which services or activities were completed as scheduled and the degree to which project objectives or other expected outcomes were obtained.

- The use of fiscal control and fund accounting procedures that insure proper disbursement of and accounting for federal and state funds.
- Fiscal and other business records that document all revenues received through the project and any amendments to the project. All disbursements must be supported by adequate documentation, including but not limited to invoices, receipts, and timesheets.
- Other records that will facilitate an effective audit.
- Bank statements. *See* Green Book, Section C, p. C-3.

Creating budget and personnel notebooks

To facilitate record-keeping, it is recommended that the project manager set up a three-ringed notebook; for the budget and personnel. The budget section of the notebook's purpose is to track expenditures for the current project year.

The notebook may be organized as follows:

- Place the negotiated budget in the front of the budget book (this section will always have the current, approved budget first);
- Arrange tabs based on the general ledger codes (GLC) for each line item;
- Include a tab for memos to and from the project accounting office and another for correspondence with the funding source;
- After each GLC tab, create a ledger page for that line item and maintain a current running balance (retain a copy of each expenditure, and file documentation chronologically behind the ledger page);
- Create a separate tab for the finance system's department listing, which is the statement of account generated through ORION and sent to the budget administrator;
- Compare the statement with project records, note any discrepancies, and discuss with project accounting; and
- Retain meeting notes, copies of memos and e-mails, and notes relating to telephone calls.

Set up a separate of a notebook for personnel associated with the grant with sections for:

- Personnel information (including copies of applications, résumés, leave forms, and evaluations); and
- Payroll information (including copies of signed timecards and time sheets for those paid out of more than one grant).

Access to Records

Records must be made accessible to the awarding agency, the Office of Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives. *See* OMB Circular A-110, Subpart C, Sec. 53.

The College must maintain records and accounts in a manner that assure a full accounting of all funds received and expended in connection with the grant project. These records and accounts must be retained by the grantee and made available for programmatic or financial audit.

Records Retention Period

While federal law only requires that the College retain records for 3 years from the date of submission of the final expenditure report (*see* OMB Circular A-110, Subpart C, Sec. 53(b)) Florida Statutes require five years, *the College shall maintain all records for 5 years* (this is explained below in more detail).

The Green Book, applicable to all education grants, requires that the records be retained for five years from the starting date. *See* Green Book, Section C, p. C-3, C-4. The Green book defines the starting date as:

“When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or sub-grantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year’s records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.”

In addition, federal and state law require that if any litigation, claim, negotiation, audit, or other action involving the records has knowingly been started before the expiration of the 5-year period, the records must be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular 5-year period, whichever is later. Therefore, because the statute of limitations is 5 years, it is a best practice to always retain records for the full 5-year period. *See* GEPA 34 C.F.R. Part 81.

Grant-Funded Personnel Records

Grant funds may be used, if provided for in the approved grant, to hire and pay all or part of the salaries and allowable fringe benefits of personnel who are directly working on the grant project. Records must be maintained to describe the duties and pay of each grant-funded position.

The College has the current policy in place:

6Hx7-3.8 Term Employment

- (1) The maximum term of employment for an individual hired for sponsored project, grants, or contracts, shall be limited to the period of the project, grant or contract. The period so referenced shall not constitute a guarantee of employment. Individual terms of employment shall be controlled by employment contracts or employee status as specified by the District Board of Trustees.
- (2) Original funding extension, amendment or refunding of a particular project, grant, or contract shall constitute a new term of employment as provided in paragraph (1) above and as recommended by the project, grant or contract administrator.
- (3) Full-time employees whose positions are funded by a sponsored project, contract, grant or other non-general operating fund source shall receive the same benefits of employment as other full-time employees.
- (4) Funding for the payment of eligible sick and annual leave accruals shall be provided by the sponsored project, grant, or contract, when allowable.
- (5) The administration shall establish a terminal pay liability fund pool sufficient to cover leave accumulation issues, as appropriate.

Payroll and Time Distribution Records

Grant employees may spend 100% of their time conducting grant program activities. In this case, these employees may be paid 100% from grant funds. Other grant employees may spend only part of their time conducting grant activities, in which case these employees may be paid partially from grant funds, according to the time actually spent on grant activities.

All employees to be directly charged to the grant must be budgeted and approved. Grantees may charge the grant program only for actual number of days worked and the actual percentage of time worked on the grant program based on time and effort documentation.

The College must develop a system for distributing payroll costs to ensure:

- Equitable distribution of charges for employee's activities; and
- Distinguish the employees' direct activities from their indirect activities

Payroll Distribution System Requirements

A payroll distribution system must:

- Incorporate into official records of the institution;
- Reasonably reflect activity for which employee is compensated by institution; and
- Encompass sponsored and all other activities on integrated basis.

The data must be confirmed after the fact so that costs distributed represent actual costs, as follows:

- A payroll distribution system must allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify F&A costs and the functions to which they are allocable.
- If F&A cost categories are not initially identified as separate categories, they may be subsequently distributed by any reasonable method mutually agreed to, including, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.
- A payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.
- Direct and F&A charges may be made initially to sponsored agreements on the basis of estimates; when estimates are used, significant changes in the corresponding work activity must be identified and entered into the payroll distribution system (short term (one or two months) fluctuation between workload categories need not be considered).
- Independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

If the above standards are met, the institution is not required to provide additional documentation for the effort actually performed. *See* OMB Circular A-21, Attachment J, paragraph 8.

Examples of Acceptable Methods for Payroll Distribution

Plan Confirmation: The distribution of salaries and wages of professorial and professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution, with the following standards:

- A system of budgeted, planned, or assigned work activity, encompassing both sponsored and all other activities on an integrated basis.
- Reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in subsection a need not be included), expressed as a percentage distribution of total activities (except for institutions in which the total direct cost of work covered by A-21 does not exceed \$10 million in a fiscal year).
- Reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable.
- Provide for modification of an individual's salary or salary distribution commensurate with a significant change in the employee's work activity; whenever it is apparent that a significant change in work activity charged to sponsored agreements will occur, it must be documented over signature of responsible official and entered into system.
- Verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, F&A cost or other categories are reasonable in relation to work performed (signed at least annually by employee, principal investigator or responsible official(s)).
- Independent internal evaluations to ensure the system's effectiveness and compliance with the plan's standards.
- If the above standards are met, the institution is not required to provide additional documentation for the effort actually performed.

After the fact Activity Records: Under this system the distribution of salaries and wages by the institution must be supported by activity reports as follows:

- Activity reports must reflect the distribution of activity expended by employees covered by the system.

- Records reflect an after the fact reporting of the percentage distribution of activity of employees (charges may be made initially on the basis of estimates, provided that charges are promptly adjusted if significant differences are indicated by activity records).
- Reasonably reflect the activities for which employees are compensated by the institution using suitable means of verification that the work was performed (signed by the employee, principal investigator, or responsible official(s)).
- Reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable.
- For professorial and professional staff, the reports must be prepared each academic term, but no less frequently than every six months; for other employees, unless alternate arrangements are agreed to, the reports must be prepared no less frequently than monthly and must coincide with one or more pay periods.
- Where the institution uses time cards or other forms of after the fact payroll documents as original documentation for payroll and payroll charges, these documents shall qualify as records.

Multiple Confirmation Records: Under this system, the distribution of salaries and wages of professorial and professional staff must be supported by records which certify separately for direct and F&A cost activities as follows:

- For employees covered by the system, there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement and F&A cost records to reflect the distribution of that activity to F&A costs; these records may be kept jointly or separately (but are to be certified separately).
- Salary and wage charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences occur.
- Institutional records must reasonably reflect only the activity for which employees are compensated by the institution.
- Reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable.
- To confirm that distribution of activity represents a reasonable estimate of the work performed by the employee, the record for each period must include:
 - The signature of the employee or person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate and,
 - The record of F&A costs must include the signature of responsible person(s) who use suitable means of verification that the work was performed and is consistent with the overall distribution of the employee's compensated activities (signatures may all be on the same document).
- The reports must be prepared each academic term, but no less frequently than every six months.
- Where the institution uses time cards or other forms of after the fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records.

Time & Effort Reports

The College applies the “After the Fact Activity Records” method in tracking employees time on sponsored projects.

Time and effort reports are required by federal regulations to confirm the amount of time a person devotes to fulfill their job responsibilities. That time includes the Fund I (College budget) time as well as the hours or percentages of time as stated by the grant application allocated to each activity represent a reasonable estimate of work performed. The time and effort report should be based on 100% of the persons time (For example, if you work 20 hours a week, 20 hours represents 100% effort, while a person who works 40 would document 40 hours as 100% effort).

Time and effort reporting varies by grant and the job responsibilities of the individual charged to the grant. That “effort” may include 1) support paid by a grant as well as 2) support expended in support of a grant but not paid by the grant. For example:

- A person may be paid by a grant, or more than one grant, with funds dedicated in the budget.

- A grant may state that a Fund I person will dedicate a certain percentage or hours each week to support the grant. In this case, dedicated funds might not be included in the grant budget, but the effort must be tracked to support the grant proposal.

Please see the current Time & Effort form in the Appendix (Attachment 2). Occasionally check with Resource Development for any updates or changes.

Property Management

Grant agreements frequently include budgetary authorization for the purchase of supplies and capital outlay (furniture and/or equipment) considered necessary to successfully carry out the purpose of the grant program. The College is required to ensure that a property control system is in effect to: guarantee adequate safeguards to prevent loss, damage or theft of the property; the property is kept in good condition; and that the property is used for the purposes of the grant program.

Property Management Requirements

The College must manage the property acquired in whole or in part with grant funds by establishing and using procedures that meet the following requirements (*see* OMB Circular A-110, Subpart C, Sec. 32):

- The College must maintain property records for all property with a value of \$1,000.00 or more within a fixed asset inventory system that include:
 - 1) the description of the property;
 - 2) the serial number;
 - 3) the source of the property;
 - 4) the name of the entity that holds title;
 - 5) the acquisition date and cost;
 - 6) the percentage of federal/state participation in the cost of the property;
 - 7) the location and condition of the property; and
 - 8) any disposition data including date and sale price of the property.
- Develop maintenance procedures to keep property in good condition; and
- Establish procedures to sell grant-acquired property (when authorized or required) to ensure the highest possible return.

Physical Inventory

The College must take physical inventory of grant acquired property every year. The College then must reconcile those results with property records. Any differences between quantities determined by the physical inventory and the accounting records must be investigated.

- Under federal law, the College has to do an inventory at least every two years, however because FL State law requires a physical review every year, the College must conduct the review at least yearly. *See* OMB Circular A-110, Subpart C, Sec. 34.

Control System

The College must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property. Capital outlay items must be properly tagged in order to maintain control and inventory. Any loss, damage, or theft shall be investigated and fully documented. *See* OMB Circular A-110, Subpart C, Sec. 34.

Trust

Real property, equipment, intangible property, and debt instruments that are acquired or improved with federal funds must be held in trust by the College as trustee for beneficiaries of the project or program under which the property was acquired or improved. *See* OMB Circular A-110, Subpart C, Sec. 37.

Construction

Unless specifically authorized in statute, federal funds may not be used to pay for construction. *See* EDGAR 34 C.F.R. §§ 75.533; 76.533. When construction is permitted, the College must ensure that it:

- Preserves historical sites (*See* EDGAR 34 C.F.R. § 75.601);

- Obtains full title to the site for 50 years or useful life (whichever is longer) (*See* EDGAR 34 C.F.R. § 75.603);
- Begins construction on time (*See* EDGAR 34 C.F.R. § 75.605);
- Receives final approval from ED on drawings and specifications (*See* EDGAR 34 C.F.R. § 75.605);
- Completes construction in a reasonable time and in accordance with approved drawings (*See* EDGAR 34 C.F.R. § 75.606);
- Insures construction is functional, economical and not elaborate (*See* EDGAR 34 C.F.R. § 75.607);
- Complies with safety and health standards (*See* EDGAR 34 C.F.R. § 75.609);
- Complies with accessibility requirements (*See* EDGAR 34 C.F.R. § 75.610);
- Includes provisions to evaluate flood hazards (*See* EDGAR 34 C.F.R. § 75.611);
- Inspects the work (*See* EDGAR 34 C.F.R. § 75.612);
- Maintains funds for effective operation and maintenance (*See* EDGAR 34 C.F.R. § 75.615);
- Constructs the facilities to maximize efficient use of energy (*See* EDGAR 34 C.F.R. § 75.616); and
- Complies with the Coastal Barrier Resources Act (*See* EDGAR 34 C.F.R. § 75.617).

Equipment

The College retains the title to equipment acquired with federal funds. The College is not permitted to charge students or school personnel for ordinary use of equipment purchased with grant funds. *See* EDGAR 34 C.F.R. § 75.618. The College may not use equipment acquired with federal funds to provide services to non-federal outside organizations for a fee that is less than private companies charge for equivalent services, unless otherwise authorized, for as long as the federal government retains an interest in the equipment.

- If replacement equipment is needed, the College may trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to ED approval.

The equipment must be made available for use on other projects or programs if it will not interfere with the project or program for which it was purchased. The College must use the purchase equipment as long as needed, whether or not the project or program continues to be supported with federal funds. When no longer needed for the original project or program, the College must use the equipment in connection with its other federally-sponsored activities in order of priority:

- (1) activities sponsored by the Federal awarding agency which funded the original project; and then
- (2) activities sponsored by other Federal awarding agencies.

Disposition

When property acquired with grant funds is no longer needed for the original purpose or for other activities currently or previously supported by the U.S. Department of Education, disposition will be made as follows pursuant to OMB Circular A-110, Subpart C, Sec. 34:

Items of equipment with a current per-unit fair market value of less than \$5,000:	or	Items of equipment with a current per-unit fair market value of \$5,000 or more:
↓		↓
May be retained, sold or otherwise disposed of with no further obligation to the granting agency, except that the granting agency reserves the right to transfer equipment (regardless of how it is classified) to another grantee after the grant period.		May be retained or sold and the granting agency has a right to an amount calculated by multiplying the current market value or proceeds from the sale by the granting agency's share of the equipment. The grantee must notify the granting agency, in writing, of any equipment meeting these conditions to give the granting agency the right to a refund or to transfer the items to another grantee.

The College has the following procedures for use and disposal of property purchased through grant funds:

6Hx7-4 Administrative and Business Services (APM 04-1502)

Specific terms for managing personal or real property are specified by external funding agencies in their requests for proposals (RFPs). The College, as a grant recipient or contractor, is subject to monitoring for compliance with the rules of property usage and disposal. Sanctions may be imposed by the funding agency if a contractor is in violation of the conditions of property management standards. In view of the aforementioned, prudent consideration should be given to the worth, benefits and risks that are involved in the purchase of personal or real property with the use of external funds. To that end, the following actions must be taken prior to the submission of proposals that include plans to purchase personal or real property in part or in full.

If after funding agency guidelines have been reviewed and it is determined that there are minimal to no restrictions for the use and/of disposal of property, the proposed supervising administrator and appropriate executive officer's signature will be required to acknowledge approval to include property purchases in the proposed budget and their understanding and acceptance of the applicable agency's terms. Examples of minimal restriction would include but not be limited to the following terms.

Purchases of personal property must have prior approval from funding agency; shall be used for the purpose of the program; must be inventoried and reported annually; and must have approval for disposal when no longer used for the original program.

If after funding agency guidelines have been reviewed and it is determined that there are substantial restrictions for the use and/or disposal of property, the proposed budget must be submitted to the executive vice president's Council (EVPC).

Examples of substantial restriction would include but not be limited to the following terms.
Title to equipment is retained by the funding agency; equipment usage is restricted to eligible program participants only; equipment not used must be returned to the funding agency.

Proposals for on-going projects affected by substantial use and/or disposal restrictions for personal or real property must be presented to the EVPC prior to each submission whenever additional property purchases are anticipated.

In every case, due regard must be given to specific requirements for the renovation of facilities or the availability of space. Whenever there are questions or cause for concern, the proposal in process must be brought before the EVPC.

The resource development office will be responsible for placing the proposal on the EVPC agenda for review and discussion. If the EVPC agrees that the proposed acquisition should be included, the appropriate executive officer's signature must be obtained.

Supplies

The College should have a control system in place to safeguard equipment and supplies and ensure the purchase of supplies benefit the program. The College is not permitted to charge students or school personnel for ordinary use of supplies purchased with grant funds. *See* EDGAR 34 C.F.R. § 75.618. When the College purchases supplies, the title rests with the College. When the project or program is complete, if the residual inventory of unused supplies exceeds \$5,000 in total value, the College must either sell the supplies or use them on non-Federal sponsored activities, but in either case must compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as equipment. *See* OMB Circular A-110, Subpart C, Sec. 35.

Intangible Property

The College may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. *See* OMB Circular A-110, Subpart C, Sec. 36.

With respect to education grants, the College may decide the format and content of any publications but publications that contain project materials must also contain the following statement: “the contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the U.S. Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.” *See* EDGAR 34 C.F.R. § 75.620.

Any patent application filed by the College for an invention made under an education grant must include the following statement in the first paragraph: “The invention described in this application was made under a grant from the Department of Education.” *See* EDGAR 34 C.F.R. § 76.626.

Real property

Generally, federal funds may not be used to pay for real property, unless specifically permitted in a statute or award. *See* EDGAR 34 C.F.R. §§ 75.533; 76.533. When permitted, the College is required to manage real property acquired in whole or in part with grant funds by establishing and using procedures that meet the following requirements (*See* OMB Circular A-110, Subpart C, Sec. 32):

- 1) **Title.** The title to real property acquired under a grant or subgrant must vest in the grantee or subgrantee (upon acquisition).
- 2) **Use.** Real property must be used for the originally authorized purpose in the grant, as long as needed for that purpose, and the grantee or subgrantee cannot dispose of or encumber the title or any other interests.
- 3) **Disposition.** When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee must request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:
 - a. **Retention of title.** The grantee or subgrantee retains the title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency’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.
 - b. **Sale of property.** The grantee or subgrantee sells the property and compensates the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency’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.
 - c. **Transfer of title.** The grantee or subgrantee transfers title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee will 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.

Insurance Coverage

The College must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the College. *See* OMB Circular A-110, Subpart C, Sec. 31. Federally-owned property need not be insured unless required by the terms and conditions of the award.

The College’s current requirements for insuring college owned facilities and contents are as follows:

6Hx7-4.16 (APM 04-1402)

The Colleges Insurance Consultant as requested assists the College Administration in securing adequate insurance coverage on the most economical basis for buildings, contents, boilers and machinery, and other property owned and under the control of the District Board of Trustees.

Normal competitive bidding procedures are followed to secure proposals.

Current insurance policies offer blanket coverage on building and contents. A \$5,000.00 deductible applies to each occurrence. The College assumes no responsibility for the personal property of employees or students while on college premises. Therefore, employees and students should ascertain that coverage is provided under their own insurance policies.

Questions concerning coverage should be addressed to the Director of Risk Management

The College's Director of Risk Management shall be responsible for maintaining insurance policies, payment records, schedules of values and loss experience data.

The premiums for such insurance will be paid from the College operating funds.

Copies of incident reports concerning loss or damage to any of the above assets shall be forwarded to the Risk Manager in accordance with instructions in APM 06-0909.

Program Reporting

Program reports are an integral part of the grant agreement. The College is responsible for monitoring grant-supported activities to ensure compliance with applicable federal and State requirements, the RFP, and the approved grant application. In addition, the College must monitor progress of the project on an ongoing basis to ensure that time schedules are met and performance goals are being achieved.

Program Reports

For federal programs, progress/activity reports must be submitted when required. The grant agreement will specify the requirements and timelines for submitting interim and final reports. Progress/activity reports usually describe the activities conducted and compare actual accomplishments to the objectives established for the grant period. Narratives provide a means to explain the variances between the actual accomplishments and established objectives. Grantees and subgrantees should, at a minimum, provide a statement of progress in achieving the stated goals with a list of results (both positive and negative).

OMB Circular A-110, Subpart C, Sec. 51 sets forth general regulations regarding performance reports, although often grants have specific requirements. Performance reports generally must contain the following:

- A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, this quantitative data should be related to cost data for computation of unit costs;
- Reasons why established goals were not met, if appropriate; and
- Other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.

Reports generally are due as follows:

- Performance reports are not required more frequently than quarterly or, less frequently than annually;
- Annual reports are due 90 calendar days after the grant year;
- Quarterly or semi-annual reports are due 30 days after the reporting period; and
- The final performance reports are due 90 calendar days after the expiration or termination of the award.

Significant Developments

Recipients must immediately notify the awarding agency of developments that have a significant impact on the award-supported activities. Also, notification must be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

Financial Reporting

Financial reporting is an integral part of the grant process. The reports are submitted to provide financial information about a grant project and to request grant payments. The two most common problems with financial reports are timeliness and accuracy. There are different financial reporting requirements for the College's direct grant programs and state-administered grants.

Financial Reporting for Direct Grant Programs

For direct grants, OMB Circular A-110, Subpart C, Sec. 52 describes the financial reporting requirements the College must adhere to. The requirements are as follows:

- 1) ***Financial Status Report.*** Grant recipients are required to use the SF-269 or SF-269A form to report the status of funds for all nonconstruction projects or programs, subject to the following requirements:
 - a. The Federal awarding agency prescribes whether the report is on a cash or accrual basis. If the awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient is not required to convert its accounting system, but shall develop accrual information through best estimates based on an analysis of the documentation on hand.
 - b. The awarding agency determines the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. The report cannot be required more frequently than quarterly or less frequently than annually. A final report is required at the completion of the agreement.
 - c. The awarding agency requires recipients to submit the report no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the awarding agency upon request of the recipient.
- 2) ***Report of Federal Cash Transactions.*** When funds are advanced to recipients the awarding agency requires each recipient to submit the SF-272. The awarding agency uses this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients. The awarding agency may also require the following:
 - a. Forecasts of Federal cash requirements in the "Remarks" section of the report.
 - b. When practical and deemed necessary, the awarding agency may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.
 - c. A monthly report from those recipients receiving advances totaling \$1 million or more per year.
- 3) ***Additional Information/Reports.*** When the awarding agency needs additional information or more frequent reports, the following must be observed:
 - a. When additional information is needed to comply with legislative requirements, the awarding agency shall issue instructions to require recipients to submit information under the "Remarks" section of the reports.
 - b. When the awarding agency determines that a recipient's accounting system does not meet the appropriate standards (according to OMB Circular A-110, Subpart C, Sec. 21), additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until the system is brought up to standard.
 - c. The awarding agency may shade out any line item on any report if not necessary.
 - d. The awarding agency may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.
 - e. The awarding agency may provide computer or electronic outputs to recipients when these outputs expedite or contribute to the accuracy of reporting.

Financial Reporting for State-Administered Grants

For state-administered grants, the state agency may impose additional financial reporting requirements. *See* EDGAR 34 C.F.R. § 76.722.

For education grants, the Green Book, Section C, specifies that:

- Project recipients must make all periodic or final reports as required by FLDOE and specified in the project award notification; and
- Reporting requirements established FLDOE shall be reasonable and sufficient to evaluate the accomplishments of the project.

Currently, the College has procedures for reporting requirements to the Florida Division of Community Colleges (6Hx7-4.1, APM Section 04-1601), but not to FLDOE.

Audits

The College is subject to the audit requirements which include the Federal Student Financial Aid Audit, the Single Audit Act Amendments of 1996, and OMB Circular A-133, Audits of State, Local Governments, and Nonprofit Organizations. *See* OMB Circular A-110, Subpart C, Sec. 26. This section provides an overview of those audit requirements and the College's responsibilities for audit follow-up and resolution. The College must cooperate with all audits. *See* EDGAR 34 C.F.R. § 75.910.

Federal Student Financial Aid Audit

The Higher Education Act of 1965 (HEA) requires annual financial and compliance audits (34 C.F.R. § 668.23) of Title IV HEA programs for all institutions that participate in:

- Federal Family Educational Loan Program (FFELP);
- Federal Direct Loan Program (FDLP);
- Federal Pell Grant (Pell);
- Federal Perkins Loan (FPL);
- Federal Work-Study (FWS), or
- Federal Supplemental Educational Opportunity Grant (FSEOG) Program.

Institutional Responsibilities

Financial Statement

Any institution that participates in any Title IV, HEA program must submit to the Secretary of ED a set of financial statements for its latest complete fiscal year, as well as any other documentation the Secretary deems necessary to make that determination, as required by 34 C.F.R. § 668.23(d)(1). Financial statements submitted to the Secretary must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards, as well as the guidance contained in the OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations," or in audit guides developed by, and available from, the ED's Office of Inspector General, whichever is applicable.

As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in the Statement of Financial Accounting Standards (SFAS) 57. The disclosure requirements under this provision extend beyond those of SFAS 57 to include all related parties and a level of detail that would enable to Secretary of ED to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

Under 34 C.F.R. § 668.23(d)(2), to the extent requested by the Secretary of ED in determining whether an institution is financially responsible, the Secretary of ED may also require the submission of audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements or the

audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Secretary of ED.

Compliance Audit

Under 34 C.F.R. § 668.23(b), the institution must undergo a compliance audit that must cover, on a fiscal year basis, all Title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution's last compliance audit. The required compliance audit must be conducted in accordance with:

- The general standards and the standards for compliance audits contained in the U.S. General Accounting Office's (GAO's) Government Auditing Standards; and
- Procedures for audits contained in audit guides developed by and available from the ED's Office of Inspector General.

Access to records

Under 34 C.F.R. § 668.23(e), an institution that has a compliance or financial statement audit conducted under this section is required to:

- Give the Secretary of ED and the Inspector General access to records or other documents necessary to review that audit, including the right to obtain copies of those records or documents; and
- Require an individual or firm conducting the audit to give the Secretary of ED and the Inspector General access to records, audit work papers, or other documents necessary to review that audit, including the right to obtain copies of those records, work papers, or documents.

The institution must also give the Secretary of ED and the Inspector General access to records or other documents necessary to review a third-party servicer's compliance or financial statement audit, including the right to obtain copies of those records or documents.

Liability: Under 34 C.F.R. 668.23(f), based on the audit finding and the institution's response, the Secretary of ED determines the amount of liability, if any, owed by the institution and instructs the institution as to the manner of repayment.

Repayment: Under 34 C.F.R. 668.23(f), an institution that must repay funds based on a finding of liability must repay those funds at the direction of the Secretary of ED within 45 days of the date of the notification, unless:

- The institution or servicer files an appeal; or
- The Secretary of ED permits a longer repayment period.

If, under the appeal proceedings, the liabilities asserted in the Secretary's notification against the institution are upheld, the institution must repay those funds at the direction of the Secretary within 30 days of the final decision unless:

- The Secretary permits a longer repayment period; or
- The Secretary determines that earlier collection action is appropriate pursuant to paragraph (g)(2) of this section.

More Information- ED's Office of Inspector General has an audit guide for Title IV, HEA program participants, entitled "Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers," available at:

<http://www.ed.gov/about/offices/list/oig/nonfed/sfgd2000.pdf>.

Single Audit Requirements for Federal Programs

Grant recipients that expend \$500,000 or more annually of federal financial assistance (i.e., the total for all federal programs) must have a single audit or program-specific audit performed as stipulated in the federal Single Audit Act Amendments of 1996 and in OMB Circular A-133. The definition of "federal financial assistance" as provided by OMB is assistance received or administered in the form of grants, cooperative agreements, loans, loan guarantees, property (including surplus property), interest subsidies, insurance food commodities, direct appropriations and other assistance. The cost for auditing a federal program may be charged to the grant when the audit is required under and conducted in accordance with OMB Circular A-133. Costs for auditing a federal

program may not be charged to the grant when the audit is not required under and not conducted in accordance with OMB Circular A-133.

The purpose of the single audit is to determine whether:

- The financial position is presented fairly through the grantee's financial statements; and
- Internal controls and other control systems are in place to provide “reasonable assurance” that the grantee is in compliance with relevant laws, regulations, and agreements.

Grantee Audit Responsibilities

The College has the following general responsibilities:

- Providing access to records and financial statements (*see* EDGAR 34 C.F.R. § 76.910);
- Assisting monitoring and oversight activities;
- Submitting notification that an audit was conducted and no audit findings or questioned costs were determined;
- Following up and taking appropriate and timely corrective action to resolve audit findings; and
- Maintaining audit files.

Under OMB Circular A-133, Subpart C, Section 300, the College must also do the following:

- Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.
- Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.
- Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.
- Prepare appropriate financial statements, including the schedule of expenditures of Federal awards.
- Ensure that the required audits are properly performed and submitted when due. When extensions to the report submission due date required are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.
- Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan.

Financial Statements

Under OMB Circular A-133, Subpart C, Section 310, the financial statements required in the audit must adhere to the following standards:

- Financial statements must reflect the grantee’s financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits and prepare separate financial statements.
- The grantee must also prepare a schedule of expenditures of Federal awards for the period covered by the financial statements. While not required, the grantee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the grantee may list the amount of Federal awards expended for each award year separately.
- At a minimum, the schedule of expenditures must:
 - List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For

- R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency.
- For Federal awards received as a subgrantee, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.
 - Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.
 - Include notes that describe the significant accounting policies used in preparing the schedule.
 - To the extent practical, pass-through entities should identify in the schedule the total amount provided to subgrantees from each Federal program.
 - Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

Follow-up and Corrective Action

Under OMB Circular A-133, Subpart C, Section 315, the College has the following responsibilities after the audit:

- *Follow-up and corrective action on all audit findings.* As part of its responsibility, the grantee must prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings. Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.
- *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected, no longer valid or not warranting further action. The grantee must develop the summary schedule as follows:
 - When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
 - When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.
 - When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.
 - When the grantee believes the audit findings are no longer valid or does not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:
 - Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;
 - The Federal agency or pass-through entity is not currently following up with the grantee on the audit finding; and
 - A management decision was not issued.
- *Corrective action plan.* At the completion of the audit, the grantee must prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the grantee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

Audit Reports for Recipients of State Education Grants

Project recipients that expend a total of \$500,000 or more per year in federal or state funds must provide to the FLDOE Comptroller's Office a copy of their annual audit report completed by a Certified Public Accountant

(CPA) or the Florida Auditor General in accordance with OMB Circular A-133 or the Florida Single Audit Act, (Sec. 215.97, F.S.). *See* Green Book, Section C, p. C-6, C-7. Failure to submit audit reports will jeopardize the College's funding.

Each agency must submit the audit report by the due date and comply with the audit requirements or be considered in noncompliance with state and/or federal requirements. The FLDOE Comptroller will notify the respective recipient, the Chief of Grants Management, and the appropriate FLDOE Program Director if noncompliance is determined. No awards will be issued to any recipient who is in noncompliance with audit requirements. It is the responsibility of each Program Director to notify the appropriate personnel in his or her area.

When a recipient is deemed in noncompliance, all funding from FLDOE will be terminated until the noncompliance is corrected. When eligibility for funding is restored, the Comptroller's Office will notify the respective recipient, the Chief of Grants Management, and the Program Director. Again, it is the responsibility of each Program Director to notify the appropriate personnel in his or her area.

The End of the Grant

The College must complete all work on the grant by the end date of the grant period. Where a funding period is specified, the College may only charge to the grant allowable costs resulting from obligations incurred during the funding period and any authorized pre-award costs. *See* OMB Circular A-110, Subpart C, Sec. 28.

Grant Close-out

The following activities must be completed when closing out a grant contract:

- Encumber all expenses through a Purchase Order (EN) [*not* a Requisition Order (CO)];
- Adhere to the College's standard purchasing end-of-year deadlines as closely as possible for projects that end June 30;
- Encumber all expenses 60 days before the end of the project whenever possible;
- Note that accounts for projects ending June 30 will remain on the ORION system **for generation of final reports only**;
- Inform the staff of the ending date as soon as possible, or a minimum of one month prior to the end of the project, unless the project is continuing;
- The supervisor notifies the AVP of HR and copies the RDO, by e-mail or memo, identifying the personnel affected;
- AVP of HR sends confirmation letter to affected personnel confirming the effective end date of employment and attaches Rule 6Hx7-3.8 Term Employment;
- APM 03-1602 Exit Process will be followed for personnel terminating employment with the College;
- Check the award notification regarding retention guidelines, return, or disposal of equipment;
- Collect, label, and prepare all records, correspondence, budget documentation, schedules, and other pertinent documents for storage in the central warehouse, and inform project accounting where the records are stored; and
- Comply with agency requests or requirements regarding final reports, and coordinate with the campus director of administrative services and project accounting.

NOTE: Dollars cannot be spent after the project ends!

Termination of Grants

A grant may be terminated by the awarding agency if the College fails to comply with the terms and conditions of the award, with the consent of the College, or by the College through written notification.

Termination is effective on the latest of:

- the date of delivery to the grantee of the notice of termination;
- the termination date given in the notice of termination; or

- the date of a final decision of the awarding agency under Part 78 of EDGAR. *See* EDGAR 34 C.F.R. § 75.903.

If costs are allowed under an award, the College's responsibilities will be considered in the termination and provisions must be made for continuing the College's responsibilities after termination, as appropriate. *See* OMB Circular A-110, Subpart C, Sec. 61.

Enforcement

If the College fails to comply with the terms and conditions of an award, the awarding agency may take one or more of the following actions:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement.
- (2) Disallow (deny both use of funds and any applicable matching credit) all or part of the cost of the activity or action not in compliance.
- (3) Wholly or partly suspend or terminate the current award.
- (4) Withhold further awards for the project or program.
- (5) Take other remedies that may be legally available.

If any action is taken by the awarding agency, the College is permitted an opportunity for hearing, appeal and other administrative proceedings. Costs resulting from obligations incurred by the College during suspension or after termination of an award are not allowed. *See* OMB Circular A-110, Subpart C, Sec. 62.

Close Out Procedures

To close out a grant, the following requirements must be met:

1. The College must submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The awarding agency may approve extensions when requested by the recipient;
2. The College must liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award (unless an extension is granted by the awarding agency);
3. The College must promptly refund any balances of unobligated cash that the awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects (OMB Circular A-129 governs unreturned amounts that become delinquent debts);
4. The College must account for real and personal property acquired with grant funds and properly dispose of equipment, if necessary, in accordance with disposition requirements;
5. Any additional reimbursement or settlement due to the College will be paid promptly;
6. When authorized by the terms and conditions of the award, the awarding agency makes a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received; and
7. In the event a final audit has not been performed prior to the closeout of an award, the awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

Subsequent Adjustments and Continuing Responsibilities

The closeout of an award does not affect the following:

- The obligation of the grantee to refund any monies due as a result of later corrections or other transactions;
- The need for the grantee to meet applicable audit requirements;
- The requirement for retaining records for grants and grant contracts; and

- For records retention purposes, audit or litigation will "freeze the clock" until the issue is resolved.
- Property management standards must continue.

If the College is paid in excess of the amount finally determined to be entitled under the terms and conditions of the award, that excess constitutes a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the awarding agency may reduce the debt by--

- (1) Making an administrative offset against other requests for reimbursements;
- (2) Withholding advance payments otherwise due to the recipient; or
- (3) Taking other action permitted by statute.

Except as otherwise provided by law, the awarding agency charges interest on an overdue debt in accordance with 4 C.F.R. Chapter II—Federal Claims Collection Standards.

Federal Contract Awards

Federal Acquisition Regulations System

Introduction

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System applies to all contracts between U.S. military branches and their contractors (for example, the College's contracts with the Department of the Navy for the training of military personnel). The Federal Acquisition Regulations System consists of the Federal Acquisition Regulations (FAR), which is the primary document, and acquisition regulations for each federal agency that implement or supplement the FAR.¹ The FAR is prepared, issued, and maintained, and the FAR System is prescribed jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities. FAR 1.103.

The purpose for the Federal Acquisition Regulations System is to deliver, on a timely basis, the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility. FAR 1.102.

The following sections detail the main requirements for conforming with applicable FARs. The applicable FAR sections are referenced where relevant. In the event the College personnel have questions, they should consult the FAR section for the text of the applicable regulations. A link to the website containing full text of the FARs is located at the bottom of this page.

Contract Documentation

Contract Clauses and Forms

There are a number of standard contract clauses (listed in FAR Part 52), which are very specific and apply to different types of federal contracts. The clauses are often cross-referenced within FAR sections. The instructions for using these clauses are located at FAR Subpart 52.1. The text of the clauses is available at FAR Subpart 52.2.

There are a number of required forms, which are also specific and depend on the contract type. FAR Subpart 53.1 provides general information and policies for using the various forms, while FAR Subpart 53.2 contains links to the forms.

“Contractor” means any individual or other legal entity that—

- (1) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or
- (2) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor. (*See* FAR 9.403).

Central Contractor Registration

The College, as a contractor, and other prospective and existing contractors are required to register in the Central Contractor Registration (CCR) database in order to increase visibility of vendor sources (including their

¹ The Federal Acquisition Regulations (FAR) are available at: <http://www.arnet.gov/far/>. FAR is also issued as Chapter 1 of Title 48 of the Code of Federal Regulations (CFR).

geographical locations) for specific supplies and services and establish a common source of vendor data for the Government. FAR 4.1100. There are exceptions to the requirement, as follows (FAR 4.1102):

- Purchases that use a Government-wide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card only as a payment method;
- Classified contracts (a contract in which the contractor or its employees must have access to classified information during contract) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;
- Contracts awarded by:
 - Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations or humanitarian or peacekeeping operations; or
 - Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies;
- Contracts to support unusual or compelling needs;
- Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration; and
- Micro-purchases that do not use the electronic funds transfer (EFT) method for payment and are not required to be reported.

Assignees to Government contracts must be separately registered in the CCR database. FAR 1102(c)(3).

Representations and Certifications

FAR prescribes policies and procedures for requiring submission and maintenance of representations and certifications via the Online Representations and Certifications Application (ORCA). The purpose of these procedures is to eliminate the administrative burden for contractors of submitting the same information to various contracting offices and to establish a common source for this information to procurement offices across the Government. FAR 4.1200.

Prospective contractors must complete electronic annual representations and certifications at <http://orca.bpn.gov> in conjunction with required registration in the CCR database (discussed immediately above). FAR 4.1201. The ORCA website has a comprehensive list of the required representations and certifications. Prospective contractors must update the representations and certifications submitted to ORCA as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The representations and certifications are effective until one year from the date of submission or update to ORCA. Data in ORCA is archived and is electronically retrievable.

Contractor Records Retention

Contractors have a number of records retention requirements for documents involved with their contractual relationship, including allowed reductions in the retention period for specific classes of records. FAR Subpart 4.7 specifically applies to audits and records for sealed bidding, as well as negotiated contracts. FAR 4.702.

As a general policy, contractors must make records (books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies) available for 5 years after final payment. FAR 4.703.

Despite the general rule, the following documents must be retained for 5 years from the end of the contractor's fiscal year in which an entry was made charging or allocating a cost to a Government contract or subcontract (FAR 4.705-1 – 4.705-3):

- Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices;
- Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies;

- Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses;
- Paid, canceled, and voided checks, other than those issued for the payment of salary and wages;
- Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of material or services, and debit and credit memoranda;
- Work orders for maintenance and other services;
- Equipment records, consisting of equipment usage and status reports and equipment repair orders;
- Expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract;
- Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and materials;
- Purchase order files for supplies, equipment, material, or services used in the performance of a contract; supporting documentation and backup files including, but not limited to, invoices, and memoranda (e.g., memoranda of negotiations showing the principal elements of subcontract price negotiations);
- Production records of quality control, reliability, and inspection; and
- Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements.

In addition, the following documents must be retained for 5 years from the end of the contractor's fiscal year in which an entry was made charging or allocating a cost to a Government contract or subcontract (FAR 4.705-1 – 4.705-3):

- Labor cost distribution cards or equivalent documents;
- Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents;
- Clock cards or other time and attendance cards;
- Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees; and
- Store requisitions for materials, supplies, equipment, and services.

A longer retention period than what is required by law can be specified in any contract clause. FAR 4.703(b)(1).

Bidding

Elements of sealed bidding: **vendor** sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. FAR 14.101. The following steps are involved:

- ***Preparation of invitations for bids.*** Invitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.
- ***Publicizing the invitation for bids.*** Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must occur a sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.
- ***Submission of bids.*** Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.
- ***Evaluation of bids.*** Bids must be independently evaluated without discussions.
- ***Contract award.*** After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.

Responsiveness of bids: To be considered for an award, a vendor's bid must comply in all material respects with the invitation for bids. FAR 14.301. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system. Telegraphic bids are not considered unless permitted by the invitation. The term "telegraphic bids" means bids submitted by telegram or by mailgram.

Facsimile bids are not to be considered unless permitted by the solicitation. Bids submitted by electronic commerce must be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if:

- The bidder accepts all the terms and conditions of the invitation; and
- Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.

Modification or withdrawal of bids: Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for public opening of bids. FAR 14.303. Unless proscribed by agency regulations, a telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office must be considered. However, the message must be confirmed by the telegraph company by sending a copy of the written telegram that formed the basis for the telephone call. If the solicitation authorizes facsimile bids, bids may be modified or withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified.

A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for public opening of bids, the identity of the persons requesting withdrawal is established and that person signs a receipt for the bid. Upon withdrawal of an electronically transmitted bid, the data received must not be viewed and will be purged from primary and backup data storage systems.

Rejection of individual bids: A vendor's bid that fails to conform to the essential requirements of the invitation for bids must be rejected. FAR 14.404-2. Bids must be rejected for the following reasons:

- Failure to conform to the applicable specifications (unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation).
- Failure to conform to the delivery schedule or permissible alternates stated in the invitation.
- When a bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the College/Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids must be rejected in which the bidder—
 - Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;
 - Fails to state a price and indicates that price must be "price in effect at time of delivery;"
 - States a price but qualifies it as being subject to "price in effect at time of delivery;"
 - When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;
 - Requires that the College/Government is to determine that the bidder's product meets applicable Government specifications; or
- Limits rights of the College/Government under any contract clause.
- Low bids received from concerns determined to be not responsible (pursuant to FAR subpart 9.1).
- When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids (except as otherwise provided in FAR 28.101-4).
- After submitting a bid, if all of a bidder's assets or parts related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the contracting officer must reject the bid unless the transfer is affected by merger, operation of law, or other means not barred.

A bid may be rejected for the following reasons:

- A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders.

A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

- If the contracting officer determines in writing that it is unreasonable as to price; Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.
- Any bid may be rejected if the prices for any line items or subline items are materially unbalanced (see 15.404-1(g)).
- Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date must be rejected unless a compelling reason determination is made (see Subpart 9.4).

Contract Types

A wide selection of contract types are available in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by federal agencies. Contract types vary according to:

- The degree and timing of the responsibility assumed by the contractor for the costs of performance; and
- The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

The contract types are grouped into two broad categories: fixed-price contracts (under FAR Subpart 16.2) and cost-reimbursement contracts (under FAR Subpart 16.3). The specific contract types range from firm-fixed-price, in which the College has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the College has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts (see Subpart 16.4), in which the College's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

Negotiating contract type

Under FAR 16.103, selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, must be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may make a different contract type appropriate in later periods than that used at the outset. In particular, contracting officers should avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

Factors in Selecting Contract Types

Under FAR 16.104, contracting officers consider a number of factors in selecting and negotiating the contract type, including the following:

- **Price competition.** Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.
- **Price analysis.** Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (Covered by 15.404-1(b)).

- **Cost analysis.** In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the basis for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.
- **Type and complexity of the requirement.** Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.
- **Urgency of the requirement.** If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.
- **Period of performance or length of production run.** In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.
- **Contractor's technical capability and financial responsibility.**
- **Adequacy of the contractor's accounting system.** Before agreeing on a contract type other than firm-fixed-price, the contracting officer must ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis.
- **Concurrent contracts.** If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.
- **Extent and nature of proposed subcontracting.** If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.
- **Acquisition history.** Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

Fixed-Price Contracts

In general, fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. FAR 16.201. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. The contracting officer must use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items.

Firm-Fixed-Price Contract (FAR 16.202-1)

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (under FAR 16.404) and performance or delivery incentives (under FAR 16.402-2, 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

Fixed-price contracts with economic price adjustment (FAR 16.203-1)

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:

- **Adjustments based on established prices.** These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.

- **Adjustments based on actual costs of labor or material.** These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.
- **Adjustments based on cost indexes of labor or material.** These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

Fixed-price incentive contracts (FAR 16.204)

A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total cost to total target cost.

Fixed-price contracts with prospective price redetermination (FAR 16.205)

A fixed-price contract with prospective price redetermination provides for:

- A firm fixed price for an initial period of contract deliveries or performance; and
- Prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

Fixed-ceiling-price contracts with retroactive price redetermination (FAR 16.206)

A fixed-ceiling-price contract with retroactive price redetermination provides for:

- A fixed ceiling price; and
- Retroactive price redetermination within the ceiling after completion of the contract.

Firm-fixed-price, level-of-effort term contracts (FAR 16.207)

A firm-fixed-price, level-of-effort term contract requires:

- The contractor to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms; and
- The Government to pay the contractor a fixed dollar amount.

Cost-Reimbursement Contracts

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent allowed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer. FAR 16.301-1. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. A cost-reimbursement contract may be used only when: (1) the contractor's accounting system is adequate for determining costs applicable to the contract, and (2) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used. FAR 16.301-3.

Cost Contract

A cost contract is a cost-reimbursement contract in which the contractor receives no fee. A cost contract may be appropriate for research and development work, particularly with nonprofit educational institutions or other nonprofit organizations. FAR 16.302.

Cost-sharing Contracts

A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs. A cost-sharing contract may be used when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits. FAR 16.303.

Cost-plus-fixed-fee Contracts

A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. This contract type permits

contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs. FAR 16.306(a).

A cost-plus-fixed-fee contract may take one of two basic forms (FAR 16.306(d)):

- The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (*e.g.*, a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee. However, in the event the work cannot be completed within the estimated cost, the Government may require more effort without increase in fee, provided the Government increases the estimated cost.
- The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if the performance is considered satisfactory by the Government, the fixed fee is payable at the expiration of the agreed-upon period, upon contractor statement that the level of effort specified in the contract has been expended in performing the contract work. Renewal for further periods of performance is a new acquisition that involves new cost and fee arrangements.

Because of the differences in obligation assumed by the contractor, the completion form is preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work.

Incentive Contracts

Incentive contracts are appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. FAR 16.401. Incentive contracts are designed to obtain specific acquisition objectives by:

- Establishing reasonable and attainable targets that are clearly communicated to the contractor; and
- Including appropriate incentive arrangements designed to—
 - Motivate contractor efforts that might not otherwise be emphasized; and
 - Discourage contractor inefficiency and waste.

The two basic categories of incentive contracts are fixed-price incentive contracts and cost-reimbursement incentive contracts. Since it is usually to the Government's advantage for the contractor to assume substantial cost responsibility and an appropriate share of the cost risk, fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain.

Fixed-price Incentive Contracts

A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. FAR 16.403. The final price is subject to a price ceiling, negotiated at the outset. A fixed-price incentive contract is appropriate when:

- A firm-fixed-price contract is not suitable;
- The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and
- If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

In fixed-price incentive contracts, billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated cost will be substantially different from the target cost. FAR 16.403(c).

The two forms of fixed-price incentive contracts, firm target and successive targets, are further described in FAR 16.403-1 and FAR 16.403-2.

Fixed-price Contracts with Award Fees

Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor and other incentives cannot be used because contractor performance cannot be measured objectively. FAR 16.404(a). These contracts must:

- Establish a fixed price (including normal profit) for the effort. This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to that fixed price; and
- Provide for periodic evaluation of the contractor's performance against an award-fee plan.

A solicitation contemplating award of a fixed-price contract with award fee must not be issued unless the following conditions exist (FAR 16.404(b)):

- The administrative costs of conducting award-fee evaluations are not expected to exceed the expected benefits;
- Procedures have been established for conducting the award-fee evaluation;
- The award-fee board has been established; and
- An individual above the level of the contracting officer approved the fixed-price-award-fee incentive.

Cost-plus-incentive-fee contracts

The cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee. FAR 16-405-1(a).

A cost-plus-incentive-fee contract is appropriate for services or development and test programs when (FAR 16-405-1(b)):

- A cost-reimbursement contract is necessary; and
- A target cost and a fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.

The contract may include technical performance incentives when it is highly probable that the required development of a major system is feasible and the Government has established its performance objectives, at least in general terms. This approach also may apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical. The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost. For instance, if a high maximum fee is negotiated, the contract must also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

Cost-plus-award-fee contracts

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (1) a base amount fixed at inception of the contract and (2) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management. FAR 16-405-2(a). The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract.

The cost-plus-award-fee contract is generally suitable for use when (FAR 16-405-2(b)):

- The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;
- The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and
- Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

The number of evaluation criteria and the requirements they represent will differ widely among contracts. The criteria and rating plan should motivate the contractor to improve performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas. Cost-plus-award-fee contracts provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected. Partial payment of fee will generally correspond to the evaluation periods. This makes effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

Contracts with Educational Institutions

Under FAR 31.104, for contracts and modifications for research and development, training, and other work performed by educational institutions, the applicable agency's contracting officer must incorporate the cost principles and procedures Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions by reference in cost-reimbursement contracts with educational institutions as the basis for the following:

- Determining reimbursable costs under the contracts and cost-reimbursement subcontracts performed by educational institutions;
- Negotiating indirect cost rates; and
- Settling costs of cost-reimbursement terminated contracts (under FAR Subpart 49.3 and 49.109-7).

Therefore, the College should refer to OMB Circular A-21 for applicable cost principles. For more information see "Basic Cost Principles" in the Grants Management Section of this handbook.

Indirect Cost Rates and Billing Rates

An "indirect cost" is any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective under a federal contract. FAR 2.101. The indirect cost rate is the percentage that expresses the ratio of indirect expenses incurred in a given period to direct labor costs, manufacturing costs, or another appropriate base for the same period. FAR 2.101.

FAR determines indirect cost rates for the purpose of providing:

- Uniformity of approach with a contractor when more than one contract or agency is involved;
- Economy of administration; and
- Timely settlement under cost-reimbursement contracts.

The billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, which is adjusted, as necessary, pending establishment of final indirect cost rates. FAR 42.701.

A single agency is responsible for establishing final indirect cost rates for each contractor. FAR 42.703-1. These rates are binding on all agencies and their contracting offices, unless otherwise specifically prohibited by law. Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

Billing Rates

The contracting officer or auditor establishes billing rates on the basis of information resulting from the following (FAR 42.704(b)):

- Recent review;
- Previous rate audits or experience; or
- Similar reliable data or experience of other contracting activities.

Establishing billing rates provides a method for interim reimbursement of indirect costs at estimated rates subject to adjustment during contract performance and at the time the final indirect cost rates are established. FAR 42.702(b).

In establishing billing rates, the contracting officer or auditor ensures that the billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period (adjusting for any unallowable costs under the contract). FAR 42.704(b). When the value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal (as determined by the contractor officer or auditor), the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the billing rates may be unilaterally determined by the contracting officer. FAR 42.704(c).

When the contractor provides the contracting officer with a certified final indirect cost rate proposal (in accordance with FAR 42.705-1(b) or 42.705-2(b)), the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. FAR 42.704(e).

Final Indirect Cost Rates

Final indirect cost rates must be established on the basis of:

- Contracting officer determination procedure (under FAR 42.705-1); or
- Auditor determination procedure (FAR 42.705-2).

Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. FAR 42.705(b). If the contractor fails to submit a completion invoice or voucher within that time period, the contracting officer may (FAR 42.705(c)):

- Determine the amounts due to the contractor under the contract; and
- Record this determination in a unilateral modification to the contract.

Contracting Officer Determination Process

The contracting officer determination process is generally used for educational institutions, such as FCCJ. If the contracting officer determination process is used, under FAR 42.705-1(b)(1), the contractor must submit to the contracting officer and contract auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, the contractor must submit an adequate proposal to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor must support its proposal with adequate supporting data.² Once

² For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, the College should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available at <http://www.dcaa.mil>.

the contracting officer (after consulting with the auditor), determines the contractor's individual costs which were considered unallowable and the respective amounts of the disallowance, he or she must notify the contractor. FAR 42.705-1(b)(5).

Auditor Determination Process

While the contracting determination procedures in FAR 42.705-1 are generally applicable for educational institutions, auditor determination procedures (under FAR 42.705-2) may be used for contractors when the contracting officer and auditor agrees that the indirect costs can be settled with little difficulty and any of the following circumstances apply (FAR 42.705-2(a)(2)):

- The contractor has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts;
- The administrative cost of contracting officer determination would exceed the expected benefits;
- The contractor does not have a history of disputes and there are few cost problems; or
- The contracting officer and auditor agree that special circumstances require auditor determination.

Under the auditor determination procedures, the contractor must submit to the contracting officer and auditor a final indirect cost rate proposal, with supporting data. FAR 42.705-2(b). The proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities.

After receiving the contractor's proposal, the auditor must:

- Audit the proposal and seek agreement on indirect costs with the contractor;
- Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;
- If agreement with the contractor is not reached, forward the audit report to the contracting officer who will then resolve the disagreement; and
- Distribute resulting documents agreement to the contractor and to each affected contracting agency (in accordance with FAR 42.706).

Final Indirect Cost Rate Regulations for Educational Institutions

Postdetermined Final Indirect Cost Rates

In general, postdetermined final indirect cost rates must be used in the settlement of indirect costs for all cost-reimbursement contracts with educational institutions (unless predetermined final indirect cost rates are authorized and used). FAR 42.705-3(a). OMB Circular A-21 assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and provides that those rates must be accepted by all Federal agencies. For educational institutions, cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. The College should contact its contracting officer for each specific contract if it has a question regarding its cognizant agency. OMB A-21, Attachment G, paragraph 11, sec. 1.

That cognizant agency must establish the billing rates and final indirect cost rates at the educational institution, consistent with the requirements of this FAR Subpart 31.3 and the OMB Circular. The agency must follow the Contracting officer determination procedures outlined immediately above in FAR 42.705-1(b). If the cognizant agency is unable to reach agreement with an institution, the appeals system of that agency must be followed for resolution of the dispute.

Predetermined Final Indirect Cost Rates

Under cost-reimbursement research and development contracts with universities, colleges, or other educational institutions, payment for reimbursable indirect costs may be made on the basis of predetermined final indirect cost rates. The cognizant agency is not required to establish predetermined rates, but if they are established, their use must be extended to all the institution's Government contracts. FAR 42.705-3(b).

Disallowance of Costs

FAR prescribes policies and procedures for (1) Issuing notices of intent to disallow costs and (2) Disallowing costs already incurred during the course of performance. FAR 42.800.

Notice of Intent to Disallow Costs:

At any time during the performance of a cost-reimbursement contract or fixed-price incentive contract, the cognizant contracting officer responsible for administering the contract may issue the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence. However, before issuing the notice, the contracting officer responsible for administering the contract must make every reasonable effort to reach a satisfactory settlement through discussions with the contractor. FAR 42.801(a).

As a minimum, the notice must FAR 42.801(c):

Refer to the contract's Notice of Intent to Disallow Costs clause (within the relevant contract(s));

- State the contractor's name and list the numbers of the affected contracts;
- Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance;
- Describe the potential impact on billing rates and forward pricing rate agreements;
- State the notice's effective date and the date by which written response must be received;
- List the recipients of copies of the notice; and
- Request the contractor to acknowledge receipt of the notice.

The contracting officer issuing the notice must send copies to all contracting officers cognizant of any segment of the contractor's organization. If the notice involves elements of indirect cost, it must not be issued without coordination with the contracting officer or auditor having authority for final indirect cost settlement.

The contractor may submit to the contracting officer a written response to the notice. FAR 42.801(b). Any response must be answered by the contracting officer by a withdrawal of the notice or by making a written decision within 60 days. If elements of indirect cost are involved in the notice, in which case the contracting officer for determining final indirect cost rates must issue the written decision. FAR 42.801(f).

Disallowing Costs after Incurrence

Cost-reimbursement contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts that provide for reimbursement of costs, and time-and-material and labor-hour contracts provide for disallowing costs during the course of performance after the costs have been incurred. FAR 42.803.

When contracting officers receive vouchers directly from the contractor and, with or without auditor assistance, approve or disapprove them, the process must be conducted in accordance with the normal procedures of the individual agency. The contract auditor examines the submitted voucher to ensure it was used for an allowable cost. If the examination of a voucher raises a question regarding the allowability of a cost under the contract terms, the auditor, after informal discussion as appropriate, may issue a notice of contract costs suspended and/or disapproved simultaneously to the contractor and the disbursing officer. The auditor must send a copy to the contracting officer, for deduction from current payments to the contractor, with respect to costs claimed but not considered reimbursable. FAR 42.803(b).

If the contractor disagrees with the deduction from current payments, the contractor may:

- Submit a written request to the contracting officer to consider whether the unreimbursed costs should be paid and to discuss the findings with the contractor;
- File a claim under the Disputes clause, which the contracting officer will process in accordance with agency procedures; or
- Do both of the above.

Contract Modifications

Contract modifications are covered under FAR Part 43. The following contract modification requirements apply to all contracts except for:

- Orders for supplies or services not otherwise changing the terms of contracts or agreements (*e.g.*, delivery orders under indefinite-delivery contracts); or
- Modifications for extraordinary contractual relief (see FAR Part 50).

The College should be aware that only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government.

If the College considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor (*i.e.* the College) notify the Government in writing as soon as possible.

Types of Contract Modifications

Bilateral. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor (*i.e.* the College) and the contracting officer. Bilateral modifications are used to:

- Make negotiated equitable adjustments resulting from the issuance of a change order;
- Definitize letter contracts; and
- Reflect other agreements of the parties modifying the terms of contracts.

Unilateral. A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to:

- Make administrative changes;
- Issue change orders;
- Make changes authorized by clauses other than a changes clause (*e.g.*, Property clause, Options clause, or Suspension of Work clause); and
- Issue termination notices.

Government contracts contain a changes clause that permits the contracting officer to make unilateral changes, in designated areas, within the general scope of the contract. As a contractor, the College must continue performance of the contract as changed, except that in cost-reimbursement or incrementally funded contracts the contractor is not obligated to continue performance or incur costs beyond the limits established in the Limitation of Cost or Limitation of Funds clause.

Price Modifications

Contract modifications must be priced before their execution if this can be done without adversely affecting the interest of the Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum price must be negotiated unless impractical.

EFFECTIVE DATES FOR CONTRACT MODIFICATIONS

Type of Federal Agency Document	Effective Date
Solicitation Amendment, Change Order, or Administrative Change	Issue Date of the Amendment, Change Order, or Administrative Change
Supplemental Agreement	Date Agreed Upon by the Contracting Parties
Modification Issued as a Confirming Notice of Termination for the Convenience of the Government	The Date of the Confirming Notice Shall be the Effective Date of the Initial Notice

Modification Converting a Termination for Default to a Termination for the Convenience of the Government	The Effective Date is the Same as the Date of the Termination for Default
Modification Confirming the Termination Contracting Officer's Previous Letter Determination of the Amount Due in Settlement of a Contract Termination for Convenience	The Effective Date Shall be the Same as the Effective Date of the Previous Letter Determination

For the purpose of this modification section:

Administrative change - a unilateral contract change, in writing that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data).

Change Orders

Accounting Procedures

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The College, for each change or series of related changes, must maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The College must maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause. (Change Order Accounting (Apr 1984)).

The following categories of direct costs normally are segregable and accountable under the terms of the Change Order Accounting clause:

- Nonrecurring costs (e.g., engineering costs and costs of obsolete or reperfomed work).
- Costs of added distinct work caused by the change order (e.g., new subcontract work, new prototypes, or new retrofit or backfit kits).
- Costs of recurring work (e.g., labor and material costs).

Documentation

When change orders are not forward priced, they require two documents:

- The change order; and
- A supplemental agreement reflecting the resulting equitable adjustment in contract terms.

If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a supplemental agreement need be issued, but administrative changes and changes issued pursuant to a clause giving the Government a unilateral right to make a change (e.g., an option clause) initially require only one document.

When the contracting officer requires a field pricing review of requests for equitable adjustment, the contracting officer must provide a list of any significant contract events which may aid in the analysis of the request. This list should include:

- Date and dollar amount of contract award and/or modification;
- Date of submission of initial contract proposal and dollar amount;
- Date of alleged delays or disruptions;
- Performance dates as scheduled at date of award and/or modification;
- Actual performance dates;
- Date entitlement to an equitable adjustment was determined or contracting officer decision was rendered if applicable;
- Date of certification of the request for adjustment if certification is required; and

- Dates of any pertinent Government actions or other key events during contract performance which may have an impact on the contractor's request for equitable adjustment.

When a modification to a contract is necessary, the Government may request that the College use the Standard Form 30. This form is located at:

<http://www.arnet.gov/far/current/html/FormsStandard9.html#wp1176651>.

However, it is important to follow the procedures outlined in the actual contract.

Subcontracting Policies and Procedures

FAR Subpart 44 prescribes policies and procedures for consent to subcontracts or advance notification of subcontracts, and for review, evaluation, and approval of contractors' purchasing systems. This section is not applicable to prime contracts for commercial items acquired pursuant to FAR Subpart 12.

For this section, the following definitions apply:

Approved purchasing system – A contractor's purchasing system that has been reviewed and approved in accordance with this part.

Contractor purchasing system review (CPSR) – The complete evaluation of a contractor's purchasing of material and services, subcontracting, and subcontract management from development of the requirement through completion of subcontract performance.

Subcontract – Any contract as defined in FAR Subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor – Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Consent Requirements

If the College has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in the subcontracts clause of the contract. The contracting officer may require consent to subcontract if the contracting officer has determined that an individual consent action is required to protect the Government adequately because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance.

If the College does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold, for:

- Cost-reimbursement, time-and-materials, or labor-hour subcontracts; and
- Fixed-price subcontracts that exceed—
 - For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold (i.e. \$100,000) or 5 percent of the total estimated cost of the contract; or
 - For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold (i.e. \$100,000) or 5 percent of the total estimated cost of the contract.

Under cost-reimbursement contracts, the College is required by statute to notify the contracting officer as follows:

- For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, unless the contractor maintains an approved purchasing system, 10 U.S.C. 2306 requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds the

greater of the simplified acquisition threshold (i.e. \$100,000) or 5 percent of the total estimated cost of the contract.

- For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, even if the contractor has an approved purchasing system, 41 U.S.C. 254(b) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds either the simplified acquisition threshold (i.e. \$100,000) or 5 percent of the total estimated cost of the contract.

Contracting Officer's Evaluation

The cognizant administrative contracting officer (ACO) is responsible for consent to subcontracts, except when the contracting officer retains the contract for administration or withholds the consent responsibility from delegation to the ACO. In such cases, the contract administration office should assist the contracting office in its evaluation as requested.

Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent. However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer must identify those subcontracts.

The contracting officer responsible for consent must, at a minimum, review the request and supporting data and consider the following:

Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any?

- Is the subcontract for special test equipment or real property that is available from Government sources?
- Is the selection of the particular supplies, equipment, or services technically justified?
- Has the contractor complied with the prime contract requirements regarding
 - Small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns; and
 - Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48))?
- Was adequate price competition obtained or its absence properly justified?
- Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?
- Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?
- Has the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certifications?
- Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?
- Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-provided equipment and real property?
- Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?
- Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?
- Is the proposed subcontractor in the Excluded Parties List System (EPLS)?

Particularly careful and thorough consideration is necessary when:

- The prime contractor's purchasing system or performance is inadequate;
- Close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices;
- Subcontracts are proposed for award on a non-competitive basis, at prices that appear unreasonable, or at prices higher than those offered to the Government in comparable circumstances; or
- Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

Contracting officers must not consent to:

- Cost-reimbursement subcontracts if the fee exceeds the fee limitations of FAR 15.404-4(c)(4)(i);
- Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;
- Subcontracts obligating the contracting officer to deal directly with the subcontractor;
- Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; or
- Repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts (contracting officers should follow the principles of FAR 16.103(c)).

Contractors' Purchasing Systems Reviews

The objective of a contractor purchasing system review (CPSR) is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

The ACO must determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. Once an initial determination is made, the ACO must make a determination at least every three years whether a purchasing system review is necessary. If necessary, the cognizant contract administration office will conduct a purchasing system review.

Extent of CPSR

A CPSR requires an evaluation of the contractor's purchasing system. Unless segregation of subcontracts is impracticable, this evaluation must not include subcontracts awarded by the contractor exclusively in support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items.

The considerations listed for consent evaluation of particular subcontracts also must be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention must be given to:

- The degree of price competition obtained;
- Pricing policies and techniques, including methods of obtaining accurate, complete, and current cost or pricing data and certification as required;
- Methods of evaluating subcontractor responsibility, including the contractor's use of the Excluded Parties List System and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests;
- Treatment accorded affiliates and other concerns having close working arrangements with the contractor;
- Policies and procedures pertaining to small business concerns, including small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns;
- Planning, award, and postaward management of major subcontract programs;
- Compliance with Cost Accounting Standards in awarding subcontracts;
- Appropriateness of types of contracts used; and
- Management control systems, including internal audit procedures, to administer progress payments to subcontractors.

In addition, the ACO must maintain a sufficient level of surveillance to ensure that the contractor is effectively managing its purchasing program.

Granting, Withholding, or Withdrawing Approval

The cognizant ACO is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system. The ACO must:

- Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and provide adequate protection of the Government's interests; and
- Promptly notify the contractor in writing of the granting, withholding, or withdrawal of approval.

The ACO must withhold or withdraw approval of a contractor's purchasing system when there are major weaknesses or when the contractor is unable to provide sufficient information upon which to make an affirmative determination. The ACO may withdraw approval at any time on the basis of a determination that there has been deterioration of the contractor's purchasing system or to protect the Government's interest.

Approval must be withheld or withdrawn when there is a recurring noncompliance with requirements, including but not limited to:

- Cost or pricing data;
- Implementation of cost accounting standards (see 48 CFR Chapter 99 (FAR Appendix, loose-leaf edition));
- Advance notification; or
- Small business subcontracting.

When approval of the contractor's purchasing system is withheld or withdrawn, the ACO must within 10 days after completing the in-plant review:

- Inform the contractor in writing;
- Specify the deficiencies that must be corrected to qualify the system for approval; and
- Request the contractor to furnish within 15 days a plan for accomplishing the necessary actions.

If the plan is accepted, the ACO must make a follow-up review as soon as the contractor notifies the ACO that the deficiencies have been corrected.

Reports

The ACO must distribute copies of: CPSR reports; notifications granting, withholding, or withdrawing system approval; and Government recommendations for improvement of an approved system, including the contractor's response, to at least:

- The cognizant contract audit office;
- Activities prescribed by the cognizant agency; and
- The contractor (except that furnishing copies of the contractor's response is optional).

Subcontracts for Commercial Items and Commercial Components

This subpart prescribes the policies limiting the contract clauses FCCJ may be required to apply to any subcontractors that are furnishing commercial items or commercial components.

Contractors and subcontractors at all tiers must, to the maximum extent practicable:

- Be required to incorporate commercial items or nondevelopmental items as components of items delivered to the Government; and
- Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those:
 - Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or
 - Determined to be consistent with customary commercial practice for the item being acquired.

Termination of Contracts

FAR Subpart 49 establishes policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default. It prescribes contract clauses relating to termination and excusable delay and includes instructions for using termination and settlement forms.

This part applies to contracts that provide for termination for the convenience of the Government or for the default of the contractor. The College must use this part, unless inappropriate, to settle subcontracts terminated as a result of modification of prime contracts.

In addition, the contracting officer must use this part as a guide in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever the settlement will be the basis of a proposal for

reimbursement from the Government under a cost-reimbursement contract. When action to be taken or authority to be exercised under this part depends upon the “amount” of the settlement proposal, that amount must be determined by deducting from the gross settlement proposed the amounts payable for completed articles or work at the contract price and amounts for the settlement of subcontractor settlement proposals. Credits for retention or other disposal of termination inventory and amounts for advance or partial payments must not be deducted.

The following definitions apply in this section:

Other work – Any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

Plant clearance period – The period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

Settlement agreement – A written agreement in the form of a contract modification settling all or a severable portion of a settlement proposal.

Settlement proposal – A proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by this part. A settlement proposal is included within the generic meaning of the word “claim” under false claims acts (see 18 U.S.C. 287 and 31 U.S.C. 3729).

Unsettled contract change – Any contract change or contract term for which a definitive modification is required but has not been executed.

Authorities and Responsibilities

The termination clauses or other contract clauses authorize contracting officers to terminate contracts for convenience, or for default, and to enter into settlement agreements under this regulation. The contracting officer must terminate contracts, whether for default or convenience, only when it is in the Government’s interest. The contracting officer must effect a no-cost settlement instead of issuing a termination notice when:

- It is known that the contractor will accept one,
- Government property was not furnished, and
- There are no outstanding payments, debts due the Government, or other contractor obligations.

When the price of the undelivered balance of the contract is less than \$5,000, the contract should not normally be terminated for convenience but should be permitted to run to completion.

After the contracting officer issues a notice of termination, the termination contracting officer (TCO) is responsible for negotiating any settlement with the contractor, including a no-cost settlement if appropriate. Auditors and TCO’s must promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on all settlements involving small business concerns.

If the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part of the units still to be delivered, preference must be given to the continuing performance of small business contracts over large business contracts unless the chief of the contracting office determines that this is not in the Government’s interest.

The contracting officer is responsible for the release of excess funds resulting from the termination unless this responsibility is specifically delegated to the TCO.

Notice of Termination

The contracting officer must terminate contracts for convenience or default only by a written notice to the contractor. When the notice is mailed, it must be sent by certified mail, return receipt requested. When the

contracting office arranges for hand delivery of the notice, a written acknowledgement must be obtained from the contractor. The notice must state:

- That the contract is being terminated for the convenience of the Government (or for default) under the contract clause authorizing the termination;
- The effective date of termination;
- The extent of termination;
- Any special instructions; and
- The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force. If the termination notice is by telegram, include these "steps" in the confirming letter or modification.

Distribution of copies

The contracting officer must simultaneously send the termination notice to the contractor, and a copy to the contract administration office and to any known assignee, guarantor, or surety of the contractor.

Amendment of termination notice

The contracting officer may amend a termination notice to:

- Correct nonsubstantive mistakes in the notice;
- Add supplemental data or instructions; or
- Rescind the notice if it is determined that items terminated had been completed or shipped before the contractor's receipt of the notice.

Reinstatement of terminated contracts

Upon written consent of the contractor, the contracting office may reinstate the terminated portion of a contract in whole or in part by amending the notice of termination if it has been determined in writing that:

- Circumstances clearly indicate a requirement for the terminated items; and
- Reinstatement is advantageous to the Government.

Duties After Receipt of Notice of Termination

After receipt of the notice of termination, the College must comply with the notice and the termination clause of the contract, except as otherwise directed by the TCO. The notice and clause applicable to convenience terminations generally require that the contractor (i.e. the College):

- Stop work immediately on the terminated portion of the contract and stop placing subcontracts thereunder;
- Formally terminate all subcontracts related to the terminated portion of the prime contract;
- Immediately advise the TCO of any special circumstances precluding the stoppage of work;
- Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial;
- Take necessary or directed action to protect and preserve property in the contractor's possession in which the Government has or may acquire an interest and, as directed by the TCO, deliver the property to the Government;
- Promptly notify the TCO in writing of any legal proceedings growing out of any subcontract or other commitment related to the terminated portion of the contract;
- Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;
- Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and
- Dispose of termination inventory, as directed or authorized by the TCO.

Duties of TCO After Issuance of Notice of Termination

Consistent with the termination clause and the notice of termination, the TCO must:

- Direct the action required of the prime contractor;
- Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;
- Promptly negotiate settlement with the contractor and enter into a settlement agreement; and
- Promptly settle the contractor's settlement proposal by determination for the elements that cannot be agreed on, if unable to negotiate a complete settlement.

To expedite settlement, the TCO may request specially qualified personnel to:

- Assist in dealings with the contractor;
- Advise on legal and contractual matters;
- Conduct accounting reviews and advise and assist on accounting matters; and
- Perform the following functions regarding termination inventory:
 - Verify its existence.
 - Determine qualitative and quantitative allocability.
 - Make recommendations concerning serviceability.
 - Undertake necessary screening and redistribution.
 - Assist the contractor in accomplishing other disposition.

The TCO should promptly hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the TCO, after consulting with the contractor, principal subcontractors should be requested to attend. Topics that should be discussed at the conference and documented include:

- General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;
- Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;
- Status of any continuing work;
- Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;
- Names of subcontractors involved and the dates termination notices were issued to them;
- Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;
- Arrangements for transfer of title and delivery to the Government of any material required by the Government;
- General principles and procedures to be followed in the protection, preservation, and disposition of the contractor's and subcontractors' termination inventories, including the preparation of termination inventory schedules;
- Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information (FAR 49.602-3));
- Form in which to submit settlement proposals;
- Accounting review of settlement proposals;
- Any requirement for interim financing in the nature of partial payments;
- Tentative time schedule for negotiation of the settlement, including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules (see FAR 49.206-3 and FAR 49.303-2);
- Actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph (g) of the letter notice in FAR 49.601-2); and
- Obligation of the contractor to furnish accurate, complete, and current cost or pricing data, and to certify to that effect in accordance with FAR 15.403-4(a)(1) when the amount of a termination settlement agreement, or a partial termination settlement agreement plus the estimate to complete the continued portion of the contract exceeds the threshold in FAR 15.403-4.

Release of Excess Funds

The TCO must estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, recommend the release of excess funds to the contracting officer. The TCO must not recommend the release of amounts under \$1,000, unless requested by the contracting officer.

The TCO must maintain continuous surveillance of required funds to permit timely release of any additional excess funds. If previous releases of excess funds result in a shortage of the amount required for settlement, the TCO must promptly inform the contracting officer, who must reinstate the funds within 30 days.

Construction Contracts

In the case of terminated construction contracts, the contracting officer must direct action to ensure the cleanup of the site, protection of serviceable materials, removal of hazards, and other action necessary to leave a safe and healthful site.

If the TCO suspects fraud or other criminal conduct related to the settlement of a terminated contract the TCO must discontinue negotiations and report the facts under agency procedures.

Audit of Prime Contract Settlement Proposals and Subcontract Settlements

The TCO must refer each prime contractor settlement proposal of \$100,000 or more to the appropriate audit agency for review and recommendations. The TCO may submit settlement proposals of less than \$100,000 to the audit agency.

The responsibility of the prime contractor and of each subcontractor includes performance of accounting reviews and any necessary field audits.

However, the TCO should request the Government audit agency to perform the accounting review of a subcontractor's settlement proposal when:

- A subcontractor objects, for competitive reasons, to an accounting review of its records by an upper tier contractor;
- The Government audit agency is currently performing audit work at the subcontractor's plant, or can perform the audit more economically or efficiently;
- Audit by the Government is necessary for consistent audit treatment and orderly administration; or
- The contractor has a substantial or controlling financial interest in the subcontractor.

The audit report is advisory only, and is for the TCO to use in negotiating a settlement or issuing a unilateral determination. Government personnel handling audit reports must be careful not to reveal privileged information or information that will jeopardize the negotiation position of the Government, the prime contractor, or a higher tier subcontractor. Consistent with this and when in the Government's interest, the TCO may furnish audit reports to prime and higher tier subcontractors for their use in settling subcontract settlement proposals.

Settlement of Subcontract Settlement Proposals

A subcontractor has no contractual rights against the Government upon the termination of a prime contract. A subcontractor may have rights against the prime contractor or intermediate subcontractor with whom it has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the settlement proposals of their immediate subcontractors.

Prime Contractor's Rights and Obligations

Termination for convenience clauses provide that after receipt of a termination notice the prime contractor must, unless directed otherwise by the TCO, terminate all subcontracts to the extent that they relate to the performance of prime work terminated. Therefore, the College should include a termination clause in their subcontracts for their own protection.

Contractors must settle with subcontractors in general conformity with the policies and principles relating to settlement of prime contracts. Each settlement must be supported by accounting data and other information

sufficient for adequate review by the Government. In no event will the Government pay the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract. The TCO must require that:

- All subcontractor termination inventory be disposed of and accounted for in accordance with the procedures contained in the Government Property Section; and
- The prime contractor submits, for approval or ratification, all termination settlements with subcontractors.

The TCO must promptly examine each subcontract settlement received to determine that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order). The TCO will also determine if the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or, if allocable only in part, that the proposed allocation is reasonable). After the examination, the TCO must notify the contractor in writing of (1) Approval or ratification, or (2) The reasons for disapproval.

Authorization for subcontract settlements without approval or ratification

The TCO may, upon written request, give written authorization to the prime contractor to conclude settlements of subcontracts terminated in whole or in part without approval or ratification when the amount of settlement is \$100,000 or less, if:

- The TCO is satisfied with the adequacy of the procedures used by the contractor in settling settlement proposals, including proposals for retention, sale, or other disposal of termination inventory of the immediate and lower tier subcontractors (the TCO must obtain the advice and recommendations of:
 - The appropriate audit agency relating to the adequacy of the contractor's audit administration, including personnel, and
 - The cognizant plant clearance officer relating to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters);
- Any termination inventory included in determining the amount of the settlement will be disposed of as directed by the prime contractor, except that the disposition of the inventory must not be subject to:
 - Review by the TCO under FAR 49.108-3(c); or
 - The screening requirements in FAR 45.602-3; and
- A certificate similar to the certificate in the settlement proposal form in FAR 49.602-1(a) will accompany the settlement.

Except as provided in this section, the TCO must accept, as part of the prime contractor's settlement proposal, settlements of terminated lower tier subcontracts concluded by any of the prime contractor's immediate or lower tier subcontractors who have been granted authority as prime contractors to settle subcontracts; provided, that the settlement is within the limit of the authority. Authorization to settle proposals of lower tier subcontractors must not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise this authority in its capacity as a subcontractor, with respect to its terminated subcontracts and orders. When exercising this authority as a subcontractor, the contractor must notify the purchaser.

A TCO granting the authorization in paragraph (a)(1) of this section must periodically (at least annually) make a selective review of settlements and settlement procedures to determine if the contractor is making adequate reviews and fair settlements, and whether the authorization should remain in effect.

Recognition of judgments and arbitration awards

When a subcontractor obtains a final judgment against a prime contractor, the TCO must, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the contractor, to the extent the judgment is properly allocable to the terminated portion of the prime contract, if:

- The prime contractor has made reasonable efforts to include in the subcontract a termination clause described in FAR 49.502(e), FAR 49.503(c), or a similar clause excluding payment of anticipatory profits or consequential damages;

- The provisions of the subcontract relating to the rights of the parties upon its termination are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;
- The contractor made reasonable efforts to settle the settlement proposal of the subcontractor;
- The contractor gave prompt notice to the contracting officer of the initiation of the proceedings in which the judgment was rendered and did not refuse to give the Government control of the defense of the proceedings; and
- The contractor diligently defended the suit or, if the Government assumed control of the defense of the proceedings, rendered reasonable assistance requested by the Government.

If these conditions are not all met, the TCO may allow the contractor the part of the judgment considered fair for settling the subcontract settlement proposal, giving due regard to the policies in this part for settlement of proposals.

Assignment of Rights Under Subcontracts

The termination for convenience clauses in FAR 52.249, except the short-form clauses, obligate the prime contractor to assign to the Government, as directed by the TCO, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract. The TCO must not require the assignment unless it is in the Government's interest.

The termination for convenience clauses (except the short-form clauses) also provides the Government the right, in its discretion, to settle and pay any settlement proposal arising out of the termination of subcontracts. This right does not obligate the Government to settle and pay settlement proposals of subcontractors. As a general rule, the prime contractor is obligated to settle and pay these proposals. However, when the TCO determines that it is in the Government's interest, the TCO must, after notifying the contractor, settle the subcontractor's proposal using the procedures for settlement of prime contracts. An example in which the Government's interest would be served is when a subcontractor is a sole source and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's proposal will jeopardize the financial position of the subcontractor. Direct settlements with subcontractors are not encouraged.

Settlement Agreements

When a termination settlement has been negotiated and all required reviews have been obtained, the contractor and the TCO must execute a settlement agreement. The settlement must cover:

- Any setoffs that the Government has against the contractor that may be applied against the terminated contract and
- All settlement proposals of subcontractors, except proposals that are specifically excepted from the agreement and reserved for separate settlement.

No-cost settlement

The TCO must execute a no-cost settlement agreement if:

- The contractor has not incurred costs for the terminated portion of the contract or
- The contractor is willing to waive the costs incurred and
- No amounts are due the Government under the contract.

Joint settlements

With the consent of the contractor, the TCO or TCOs concerned may negotiate jointly two or more termination settlement proposals of the same contractor under different contracts, even though the contracts are with different contracting offices or agencies. In such cases, accounting work must be consolidated to the greatest extent practical.

The resulting settlement may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved. When the settlement agreement covers more than one contract, it must:

- Clearly identify the contracts involved;
- Assign an amendment modification number to each contract;
- Apportion the total amount of the settlement among the several contracts on some reasonable basis;

- Have attached or incorporated a schedule showing the apportionment; and
- Be distributed and attached to each contract involved in the same manner as other contract modifications.

Settlement by Determination

If the contractor and TCO cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the TCO must issue a determination of the amount due consistent with the termination clause, including any cost principles incorporated by reference. Copies of determinations must receive the same distribution as other contract modifications.

Notice to contractor

Before issuing a determination of the amount due the contractor, the TCO must give the contractor at least 15 days notice by certified mail (return receipt requested) to submit written evidence, so as to reach the TCO on or before a stated date, substantiating the amount previously proposed.

Appeals

The contractor may appeal, under the Disputes clause, any settlement by determination, except when the contractor has failed to submit the settlement proposal within the time provided in the contract and failed to request an extension of time. The pendency of an appeal must not affect the authority of the TCO to settle the settlement proposal or any part by negotiation with the contractor at any time before the appeal is decided.

Payment

Partial Payments

If the contract authorizes partial payments on settlement proposals before settlement, a prime contractor may request them at any time after submission of interim or final settlement proposals.

A subcontractor must submit its application through the prime contractor which must attach its own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor must be made only through the prime contractor and only after the prime contractor has submitted its interim or final settlement proposal.

Amount of Partial Payment

If the reviews and the TCO's examination of the data indicate that the requested partial payment is proper, reasonable payments may be authorized in the discretion of the TCO up to:

- 100 percent of the contract price, adjusted for undelivered acceptable items completed before the termination date, or later completed with the approval of the TCO;
- 100 percent of the amount of any subcontract settlement paid by the prime contractor if the settlement was approved or ratified by the TCO or was authorized under 49.108-4;
- 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;
- 90 percent of other allowable costs (including settlement expense and manufacturing and administrative indirect costs) allocable to the terminated portion of the contract and not included in paragraphs (b)(1), (2), or (3) of this section; and
- 100 percent of partial payments made to subcontractors under this section.

The total amount of all partial payments must not exceed the amount that will, in the opinion of the TCO, become due to the contractor because of the termination. If the total of partial payments exceeds the amount finally determined due on the settlement proposal, the contractor must repay the excess to the Government on demand, together with interest.

Final Payment

After execution of a settlement agreement, the contractor must submit a voucher or invoice showing the amount agreed upon, less any portion previously paid.

If the *settlement is by determination* and—

- There is no appeal within the allowed time, the contractor must submit a voucher or invoice showing the amount determined due, less any portion previously paid; or
- There is an appeal, the contractor must submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

In the case of construction contracts, before forwarding the final payment voucher, the contracting officer must ascertain whether there are any outstanding labor violations. If so, the contracting officer must determine the amount to be withheld from the final payment.

Interest

The Government must not pay interest on the amount due under a settlement agreement or a settlement by determination. The Government may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Disputes clause.

Settlement of Terminated Incentive Contracts

Fixed-price Incentive Contracts

The TCO must settle terminated fixed-price incentive (FPI) contracts under the provisions, as follows:

- *Partial termination.* Under a partially terminated contract, the TCO must negotiate a settlement. The contracting officer must apply the incentive price revision provisions to completed items accepted by the Government, including any for which the contractor may request reimbursement in the settlement proposal. The TCO must reimburse the contractor at target price for completed articles included in the settlement proposal for which a final price has not been established. The TCO must incorporate in the settlement agreement an appropriate reservation as to final price for these completed articles.
- *Complete termination.* If any items were delivered and accepted by the Government, the contracting officer must establish prices under the incentive provisions of the contract. The TCO responsible for the termination settlement will ensure, on the basis of evidence considered proper (including coordination with the contracting officer), that no portion of the costs considered in the negotiations under the incentive provisions is included in the termination settlement.

Cost-Plus-Incentive-Fee Contracts

The TCO must settle terminated cost-plus-incentive-fee contracts, as follows:

- *Partial termination.* Under a partial termination, the TCO must limit the settlement to an adjustment of target fee. The settlement agreement must include a reservation regarding any adjustment of target cost resulting from the partial termination. The contracting officer must adjust the target cost, if required.
- *Complete termination.* The parties must negotiate the settlement. The fee must be adjusted on the basis of the target fee, and the incentive provisions must not be applied or considered.

Additional Principles for Fixed-Price Contracts Terminated for Convenience

A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting related to the settlement of terminated contracts should be kept to a minimum compatible with the reasonable protection of the public interest.

Profit

The TCO may use any reasonable method to arrive at a fair profit. In negotiating or determining profit, factors to be considered include:

- Extent and difficulty of the work done by the contractor as compared with the total work required by the contract (engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered);
- Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;
- Efficiency of the contractor, with particular regard to:
 - Attainment of quantity and quality production;
 - Reduction of costs;
 - Economic use of materials, facilities, and manpower; and
 - Disposition of termination inventory;
- Amount and source of capital and extent of risk assumed;
- Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;
- Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;
- The rate of profit that the contractor would have earned had the contract been completed;
- The rate of profit both parties contemplated at the time the contract was negotiated; and
- Character and difficulty of subcontracting, including selection, placement, and management of subcontracts, and effort in negotiating settlements of terminated subcontracts.

Adjustment For Loss

In the negotiation or determination of any settlement, the TCO must not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The TCO must negotiate or determine the amount of loss and make an adjustment in the amount of settlement.

Deductions

From the amount payable to the contractor under a settlement, the TCO must deduct:

- The agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds from any materials sold that have not been paid or credited to the Government;
- The fair value, as determined by the TCO, of any part of the termination inventory that, before transfer of title to the Government or to a buyer under Part 45, is destroyed, lost, stolen, or so damaged as to become undeliverable (normal spoilage is excepted, as is inventory for which the Government has expressly assumed the risk of loss); and
- Any other amounts as appropriate in the particular case.

Completed End Items

Promptly after the effective date of termination, the TCO must (1) have all undelivered completed end items inspected and accepted if they comply with the contract requirements, and (2) determine which accepted end items are to be delivered under the contract.

Settlement Proposals

Submission of Settlement Proposals

Subject to the provisions of the termination clause, the contractor should promptly submit to the TCO a settlement proposal for the amount claimed because of the termination. The final settlement proposal must be submitted within one year from the effective date of the termination, unless the period is extended by the TCO. Termination

charges under a single prime contract involving two or more divisions or units of the prime contractor may be consolidated and included in a single settlement proposal.

The settlement proposal must cover all cost elements including settlements with subcontractors and any proposed profit. With the consent of the TCO, proposals may be filed in successive steps covering separate portions of the contractor's costs. Such interim proposals must include all costs of a particular type, except as the TCO may authorize otherwise.

Settlement proposals must be on the forms prescribed in 49.602 unless the forms are inadequate for a particular contract. Settlement proposals must be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs may be used in preparing settlement proposals if they are determined under generally recognized accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the TCO. Contractors must not be required to maintain unduly elaborate cost accounting systems merely because their contracts may subsequently be terminated.

The contractor may use the Settlement Proposal (Short Form), SF 1438 (see 49.602-1(d) and 53.249), when the total proposal is less than \$10,000, unless otherwise instructed by the TCO. Settlement proposals that would normally be included in a single settlement proposal; *e.g.*, those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and not divided to bring them below \$10,000.

The Schedule of Accounting Information, SF 1439, must be submitted for each termination under a contract for which a settlement proposal is submitted, except when the Standard Form 1438 is used. Although several interim proposals may be submitted, SF 1439 need be submitted only once unless, subsequent to filing the original form, major changes occur in the information submitted.

Limitation on Settlements

The total amount payable to the contractor for a settlement, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

Equitable Adjustment After Partial Termination

Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. The TCO must forward the proposal to the contracting officer except when negotiation authority is delegated to the TCO. The contractor must submit the proposal in the format of Table 15-2 of 15.408.

When the contracting officer retains responsibility for negotiating the equitable adjustment and executing a supplemental agreement, the contracting officer must ensure that no portion of an increase in price is included in a termination settlement made or in process. The TCO must also ensure that no portion of the costs included in the equitable adjustment is included in the termination settlement.

Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

Termination clauses for cost-reimbursement contracts provide for the settlement of costs and fee, if any. The contract clauses governing costs must determine what costs are allowable.

Discontinuance of Vouchers

When the contract has been completely terminated, the contractor must not use Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal) after the last day of the sixth month following the month in which the termination is effective. The contractor may elect to stop using vouchers at any time during the 6-month period. When the contractor has vouchered out all costs within the 6-month period, a proposal for fee, if any, may be submitted on SF 1437 (see 49.602-1) or by letter appropriately certified. The contractor must submit a substantiated proposal for fee to the TCO within 1 year from the effective date of termination, unless the period is extended by the TCO. When the use of vouchers is discontinued, the contractor must submit all unvouchered costs and the proposed fee, if any, as specified in 49.303.

Procedure After Discontinuing Vouchers

Submission of settlement proposal

The contractor must submit a final settlement proposal covering unvouchered costs and any proposed fee to within 1 year from the effective date of termination, unless the period is extended by the TCO. The proposal must not include costs that have been:

- Finally disallowed by the contracting officer; or
- Previously vouchered and formally questioned by the Government but not yet decided as to allowability.

Submission of inventory disposal schedules

Subject to the terms of the termination clause, and whenever termination inventory is involved, the contractor must submit complete inventory disposal schedules to the TCO reflecting inventory that is allocable to the terminated portion of the contract. The inventory disposal schedules must be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension.

Adjustment of Indirect Costs

If the contract contains the Allowable Cost and Payment clause, and it appears that adjustment of indirect costs will unduly delay final settlement, the TCO, after obtaining information from the appropriate audit agency, may agree with the contractor to:

- Negotiate the amount of indirect costs for the contract period for which final indirect cost rates have not been negotiated, or to use billing rates as final rates for this period if the billing rates appear reasonable; or
- Reserve any indirect cost adjustment in the final settlement agreement, pending establishment of negotiated rates under FAR Subpart 42.7.

When an amount of indirect cost is negotiated, the contractor must eliminate the indirect cost and the related direct costs on which it was based from the total pool and base used to compute indirect costs for other contracts performed during the applicable accounting period.

Final Settlement

The TCO must proceed with the settlement and execution of a settlement agreement upon receipt of the audit report, if applicable, and the contract audit closing statement covering vouchered costs. The TCO must adjust the fee as provided in 49.305.

The final settlement agreement may include all demands of the Government and proposals of the contractor under the terminated contract. However, no amount must be allowed for any item of cost disallowed by the Government, or for any other item of cost of the same nature.

If an overall settlement of costs is agreed upon, agreement on each element of cost is not necessary. If appropriate, differences may be compromised and doubtful questions settled by agreement. An overall settlement must not include costs that are clearly not allowable under the terms of the contract.

Procedure for Partial Termination

In a partial termination, the TCO must limit the settlement to an adjustment of the fee, if any, and with the concurrence of the contracting office to a reduction in the estimated cost. The TCO must adjust the fee as provided in FAR 49.304-2 and FAR 49.305, unless:

- The terminated portion is clearly severable from the balance of the contract; or
- Performance of the contract is virtually complete, or performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

Submission of Settlement Proposal (Fee Only)

The contractor must limit the settlement proposal to a proposed reduction in the amount of fee. The final settlement proposal must be submitted to the TCO within one year from the effective date of termination, unless the period is extended by the TCO.

Submission of Vouchers

When a partial termination settlement is limited to adjustment of fee, the contractor must continue to submit the Public Voucher for Purchases and Services Other than Personal, for costs reimbursable under the contract. The contractor must not be reimbursed for costs of settlements with subcontractors unless required approvals or ratifications have been obtained.

Adjustment of Fee

The TCO must determine the adjusted fee to be paid, if any, in the manner provided by the contract. The determination is generally based on a percentage of completion of the contract or of the terminated portion. When this basis is used, factors such as the extent and difficulty of the work performed by the contractor (*e.g.*, planning, scheduling, technical study, engineering work, production and supervision, placing and supervising subcontracts, and work performed by the contractor in (1) stopping performance, (2) settling terminated subcontracts, and (3) disposing of termination inventory) must be compared with the total work required by the contract or by the terminated portion. The contractor's adjusted fee must not include an allowance for fee for subcontract effort included in subcontractors' settlement proposals.

The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion is only one factor in computing the percentage of completion. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the TCO of other pertinent factors.

Construction Contracts

The percentage of completion basis refers to the contractor's total effort and not solely to the actual construction work. Generally, the effort of a contractor under a cost-reimbursement construction or professional services contract can be segregated into factors such as—

- Mobilization including organization,
- Use of finances,
- Contracting for and receipt of materials,
- Placement of subcontracts,
- Preparation of shop drawings,
- Work in place performed by own forces,
- Supervision of subcontractors' work,
- Job administration, and
- Demobilization.

Termination for Default

Termination for default is generally the exercise of the Government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. If the contractor can establish, or it is otherwise determined that the contractor was not in default or that the failure to perform is excusable; *i.e.*, arose out of causes beyond the control and without the fault or negligence of the contractor, the default clauses located at FAR 52.249 provide that a termination for default will be considered to have been a termination for the convenience of the Government, and the rights and obligations of the parties governed accordingly.

The contracting officer may, with the written consent of the contractor, reinstate the terminated contract by amending the notice of termination, after a written determination is made that the supplies or services are still required and reinstatement is advantageous to the Government.

Termination of Fixed-Price Contracts for Default

When a default clause is contained in the contract, the Government has the right, subject to the notice requirements of the clause, to terminate the contract completely or partially for default if the contractor fails to:

- Make delivery of the supplies or perform the services within the time specified in the contract,

- Perform any other provision of the contract, or
- Make progress and that failure endangers performance of the contract.

Effect of Termination for Default

Under a termination for default, the Government is not liable for the contractor's costs on undelivered work and is entitled to the repayment of advance and progress payments, if any, applicable to that work. The Government may elect, under the Default clause, to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, as directed by the contracting officer.

The contracting officer must not use the Default clause as authority to acquire any completed supplies or manufacturing materials unless it has been ascertained that the Government does not already have title under some other provision of the contract. Subject to certain restrictions under this section, the Government must pay the contractor the contract price for any completed supplies, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials, acquired by the Government under the Default clause.

Repurchase Against Contractor's Account

When the supplies or services are still required after termination, the contracting officer must repurchase the same or similar supplies or services against the contractor's account as soon as practicable, as follows:

- The contracting officer must repurchase at as reasonable a price as practicable, considering the quality and delivery requirements.
- The contracting officer may repurchase a quantity in excess of the undelivered quantity terminated for default when the excess quantity is needed, but excess cost may not be charged against the defaulting contractor for more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract).
- If the repurchase is for a quantity not over the undelivered quantity terminated for default, the Default clause authorizes the contracting officer to use any terms and acquisition method deemed appropriate for the repurchase. However, the contracting officer must obtain competition to the maximum extent practicable for the repurchase.
- If repurchase is made at a price over the price of the supplies or services terminated, the contracting officer must, after completion and final payment of the repurchase contract, make written demand on the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs such as transportation, discounts, etc.

Other Damages

If the contracting officer terminates a contract for default or follows a course of action instead of termination for default, the contracting officer promptly must assess and demand any liquidated damages to which the Government is entitled under the contract.

If the Government has suffered any other ascertainable damages, including administrative costs, as a result of the contractor's default, the contracting officer must, on the basis of legal advice, take appropriate action to assert the Government's demand for the damages.

Termination of Cost-Reimbursement Contracts for Default

The right to terminate a cost-reimbursement contract for default is provided for in the Termination for Default or for Convenience of the Government clause at FAR 52.249-6. A 10-day notice to the contractor before termination for default is required in every case by the clause.

Settlement of a cost-reimbursement contract terminated for default is subject to the principles as when a contract is terminated for convenience, except that—:

- The costs of preparing the contractor's settlement proposal are not allowable; and
- The contractor is reimbursed the allowable costs, and an appropriate reduction is made in the total fee, if any.

Other Contract Requirements

Limitation on the Payment of Funds to Influence Federal Transactions

A recipient of a Federal contract, grant, loan, or cooperative agreement is prohibited from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress (i.e. the College), an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. FAR 3.802. To the extent a contractor can demonstrate that it has sufficient monies, other than Federal appropriated funds, the Federal agency must assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

There are exceptions to this general prohibition, under FAR 3.803, as follows:

- Agency and legislative liaison by the contractor's employees is allowed under certain conditions, including:
 - Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action;
 - Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern (A) the qualities and characteristics (including individual demonstrations) of the contractor's products or services, conditions or terms of sale, and service capabilities, or (B) the application or adaptation of the person's products or services for an agency's use;
 - Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - Making capability presentations prior to formal solicitation of any covered Federal action when seeking an award from an agency pursuant to the provisions of the Small Business Act.
- Professional and technical services are allowed in certain circumstance conditions, including:
 - Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;
 - Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action (persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations); and
 - Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

The term "covered Federal action" refers any of the following actions:

- Awarding any Federal contract;
- Making any Federal grant;
- Making any Federal loan;
- Entering into any cooperative agreement; and
- Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Equal Employment Opportunity

Executive Order 11246³ requires that all agencies:

- Include the “Equal Opportunity clause” in all nonexempt contracts and subcontracts; and
- Act to ensure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

The Equal Opportunity clause is contained within FAR 52.222-26.

Generally, no contract or modification involving new acquisition can be entered into, and no subcontract can be approved by a contracting officer, with a contractor who has been found ineligible for reasons of noncompliance with the requirements of the Equal Opportunity clause. FAR 22.802.

There are exemptions to the requirement that the Equal Opportunity Clause be included in a contract or modification, under FAR 22.807(a), for the following reasons:

- ***National security.*** The agency head may determine that a contract is essential to the national security and that the award of the contract without complying with one or more of the requirements of this subpart is necessary to the national security. Upon making such a determination, the agency must notify the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor in writing within 30 days.
- ***Specific contracts.*** The Deputy Assistant Secretary may exempt an agency from requiring the inclusion of one or more of the requirements of E.O. 11246 in any contract if the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the Deputy Assistant Secretary finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of E.O. 11246.

The following exemptions apply, under FAR 22.807(b), even though a contract or subcontract contains the Equal Opportunity clause:

- ***Transactions of \$10,000 or less.*** The Equal Opportunity clause is required to be included in prime contracts and subcontracts. Individual prime contracts or subcontracts of \$10,000 or less are exempt from application of the Equal Opportunity clause, unless the aggregate value of all prime contracts or subcontracts awarded to a contractor in any 12-month period exceeds, or can reasonably be expected to exceed, \$10,000.
- ***Work outside the United States.*** Contracts are exempt from the requirements of E.O. 11246 for work performed outside the United States by employees who were not recruited within the United States.
- ***Contracts with State or local governments.*** The requirements of E.O. 11246 in any contract with a State or local government (or any agency, instrumentality, or subdivision thereof) is not be applicable to any agency, instrumentality, or subdivision of the State or local government that does not participate in work on or under the contract.
- ***Work on or near Indian reservations.*** It is not a violation of E.O. 11246 for a contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.
- ***Facilities not connected with contracts.*** The Deputy Assistant Secretary may exempt from the requirements of E.O. 11246 any of a contractor’s facilities that the Deputy Assistant Secretary finds to be in all respects separate and distinct from activities of the contractor related to performing the contract.

³ Executive Order 11246 is available at: <http://www.dol.gov/esa/regs/statutes/oFCCJp/eo11246.htm>.

Affirmative Action Programs

Generally, nonconstruction prime contractors (and their subcontractors) with 50 or more employees and either a contract or subcontract of \$50,000 or more are required to develop a written affirmative action program for each of their establishments. Each contractor and subcontractor must develop its written affirmative action programs within 120 days from the commencement of its first such Government contract or subcontract. FAR 22.804-1.

Debarment and Suspension

General Information

FAR prescribes policies and procedures governing the debarment and suspension of contractors by agencies, provides a listing of contractors debarred, suspended, proposed for debarment, and declared ineligible, and sets forth the consequences of this listing. FAR 9.400. Any debarment, suspension or other Governmentwide exclusion must be recognized by and effective for all Executive Branch agencies as a debarment or suspension under FAR. FAR 9.401. The General Services Administration (GSA) operates and maintains the Excluded Parties List System (EPLS), which contains the names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified under the nonprocurement common rule, with cross-references when more than one name is involved in a single action. FAR 9.404.

Effect of listing

Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies cannot solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action. Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors. FAR 9.405.

Contractors included in the EPLS as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation (depending on the type of contract). Agencies cannot solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

Continuation of current contracts

Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the agency head directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action. FAR 9-405-1.

Restrictions on subcontracting

When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent, contracting officers cannot consent to subcontracts with such contractors unless the agency head states in writing the compelling reasons for this approval action.

Causes for debarment

The debarring official may debar for a number of reasons. A contracting official can debar a contractor for a conviction of or civil judgment for the following:

- Commission of fraud or a criminal offense in connection with—
 - Obtaining;
 - Attempting to obtain; or
 - Performing a public contract or subcontract.
- Violation of Federal or State antitrust statutes relating to the submission of offers;
- Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
- Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was

not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558)); or

- Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

A contracting official may also debar a contractor, based upon a preponderance of the evidence, for the following:

- Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—
 - Willful failure to perform in accordance with the terms of one or more contracts; or
 - A history of failure to perform, or of unsatisfactory performance of, one or more contracts.
- Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—
 - Failure to comply with the requirements of the clause at FAR 52.223-6, Drug-Free Workplace; or
 - Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see FAR 23.504).
- Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas.
- Commission of an unfair trade practice as defined (see FAR 9.403).

A contractor or subcontractor may be debarred based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

Period of debarment

Debarment periods vary based upon the type of activity by the contractor. FAR dictates that debarment must be for a period commensurate with the seriousness of the cause. FAR 9.406-4. Generally, debarment should not exceed 3 years. However there are exceptions, for the following:

- Debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (under FAR 23.506) may be for a period up to 5 years; and
- Debarments, based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see 9.406-2(b)(2)) must be for one year unless extended.

If a suspension precedes a debarment, the suspension period must be considered in determining the debarment period.

The debarring official may reduce the period or extent of debarment, upon the contractor’s request, supported by documentation, for reasons such as:

- Newly discovered material evidence;
- Reversal of the conviction or civil judgment upon which the debarment was based;
- Bona fide change in ownership or management;
- Elimination of other causes for which the debarment was imposed; or
- Other reasons the debarring official deems appropriate.

Suspension

A suspending official may, in the public interest, suspend a contractor. FAR 9.407-1. Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government’s interest. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor’s acts or omissions and may, but is not

required to, consider remedial measures or mitigating factors. A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

A contractor's suspension must be effective throughout the executive branch of the Government, unless an agency head states in writing the compelling reasons justifying continued business dealings between that agency and the contractor. FAR 9.407-1.

Causes for Suspension

A suspending official may suspend a contractor suspected, under FAR 9.407-2, upon adequate evidence of:

- Commission of fraud or a criminal offense in connection with—
 - Obtaining; Attempting to obtain; or
 - Performing a public contract or subcontract.
- Violation of Federal or State antitrust statutes relating to the submission of offers;
- Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
- Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—
 - Failure to comply with the requirements Drug-Free Workplace (see FAR 52.223-6); or
 - Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see FAR 23.504);
- Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas;
- Commission of an unfair trade practice (as defined in FAR 9.403); or
- Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

An indictment for any of these causes constitutes adequate evidence for suspension. The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

Period of suspension

A suspension must be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this subsection. FAR 9.407-4. If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.