

**Required Contract Provisions from Code of Federal Regulations (CFR)  
Title 2 Grants and Agreements Part 200  
Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

The CFR annual edition is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office.

**Definitions from 2 CFR §200.1**

- *Federal agency* means an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
- *Federal awarding agency* means the Federal agency that provides a Federal award directly to a non-Federal entity.
- *Federal program* means:
  - (a) All Federal awards which are assigned a single number in the CFDA.
  - (b) When no CFDA number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program.
  - (c) Notwithstanding paragraphs (a) and (b) of this definition, a cluster of programs. The types of clusters of programs are:
    - 1) Research and development (R&D);
    - 2) Student financial aid (SFA); and
    - 3) “Other clusters,” as described in the definition of Cluster of Programs.
- *Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

**Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or Non-Federal entity, all contracts made by the Non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

**Quick Reference Table**

	Title	Contract Type and Value	CFR Regulation
A.	Contractual Procedures	Contractual procedure requirements for <u>all</u> awarded contracts with a value <u>greater than</u> \$150,000	2 CFR 200 Appendix II to Part 200 (A)
B.	Termination Clause	Contractual procedure requirements for <u>all</u> awarded contracts with a value <u>greater than</u> \$10,000	2 CFR 200 Appendix II to Part 200 (B)
C.	Equal Employment Opportunity	Contractual procedure requirements for <u>all</u> awarded contracts	2 CFR 200 Appendix II to Part 200 (C)
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F.	Rights to Inventions Made Under a Contract or Agreement	Contractual procedure requirements for <u>all</u> awarded contracts related to experimental, developmental, or research work type Contracts	2 CFR 200 Appendix II to Part 200 (F)
G.	Environmental Protection	Contractual procedure requirements for <u>all</u> awarded contracts with a value <u>greater than</u> \$150,000	2 CFR 200 Appendix II to Part 200 (G)
H.	Debarment and Suspension Certification	Contractual procedure requirements for <u>all</u> awarded contracts with a value <u>greater than</u> \$25,000	2 CFR 200 Appendix II to Part 200 (H)
I.	Lobbying Certification	Contractual procedure requirements for <u>all</u> awarded contracts with a value <u>greater than</u> \$100,000	2 CFR 200 Appendix II to Part 200 (I)
J.	Recovered Materials	Contractual procedure requirements for <u>all</u> purchase price of the items <u>exceeds</u> \$10,000 or the value of the quantity acquired during the preceding <u>fiscal year exceeded</u> \$10,000	2 CFR 200 Appendix II to Part 200 (J)

**A. Contractual procedure requirements for all awarded contacts with a value greater than \$150,000**

2 CFR 200 Appendix II to Part 200 (A)

**Contractual Procedures** - Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address:

- administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**B. Contractual procedure requirements for all awarded contacts with a value greater than \$10,000**

2 CFR 200 Appendix II to Part 200 (B)

**Termination Clause** - All contracts in excess of \$10,000 must address:

- termination for cause and for convenience by the non-Federal entity, and
- the manner by which it will be effected and the basis for settlement.

**C. Contractual procedure requirements for all awarded contacts**

2 CFR 200 Appendix II to Part 200 (C)

**Equal Employment Opportunity** - Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "**federally assisted construction contract**" in 41 CFR Part 60-1.3 must include:

- the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246,
- "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and
- implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**Notes:** reference following definition of terms for this section:

- Federally assisted construction contract** means any agreement or modification thereof between any applicant and a person for **construction work** which is paid for in whole or in part with funds obtained from the U.S. Government or borrowed on the credit of the U.S. Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the U.S. Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- Construction work** means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

**D. Contractual procedure requirements for all awarded construction contacts with a value greater than \$2,000**

2 CFR 200 Appendix II to Part 200 (D)

- **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to

laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

- In addition, contractors must be required to pay wages not less than once a week.
  - The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.
  - The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.
  - The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- The contracts must also include a provision for compliance with the Copeland “**Anti-Kickback**” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR 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 must 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 or she is otherwise entitled.
    - The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**E. Contractual procedure requirements for all awarded contracts related to “mechanics and labors” with a value greater than \$150,000**

2 CFR 200 Appendix II to Part 200 (E)

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

- Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of **mechanics or laborers** must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- Under 40 U.S.C. 3702 of the Act, each contractor must 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 one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer, or mechanic must 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.

**Notes:** reference following definition of term for this section:

- i. **Laborers and mechanics.** This chapter applies to all laborers and mechanics employed by a contractor or subcontractor in the performance of any part of the work under the contract—
  - (A) including watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the U.S., a territory, or the District of Columbia; but
  - (B) not including an employee employed as a seaman.

**F. Contractual procedure requirements for all awarded contracts related to experimental, developmental, or research work type Contracts**

2 CFR 200 Appendix II to Part 200 (F)

**Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “**funding agreement**” under 37 CFR §401.2 (a) and the **recipient** or **subrecipient** wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding

agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR 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.

**Notes:** reference following definition of terms for this section:

- i. 37 CFR § 401.2 Definitions. As used in this part— (a) The term **funding agreement** means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- ii. 2 CFR §200.86 **Recipient**. Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also 2 CFR §200.69 Non-Federal entity.
- iii. 2 CFR §200.93 **Subrecipient**. Subrecipient means a non-Federal entity that receives a subaward from a pass through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

**G. Contractual procedure requirements for all awarded contacts with a value greater than \$150,000**

2 CFR 200 Appendix II to Part 200 (G)

**Environmental Protection**

- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- Violations must be reported to the Federal awarding agency and the regional office of the Environmental Protection Agency (EPA).

**H. Contractual procedure requirements for all awarded contacts with a value greater than \$25,000**

2 CFR 200 Appendix II to Part 200 (H)

**Debarment and Suspension Certification**

- Debarment and Suspension (Executive Orders 12549 and 12689)
- A contract award (**see 2 CFR 180.220**) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.”
- SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**I. Contractual procedure requirements for all awarded contacts with a value greater than \$100,000**

2 CFR 200 Appendix II to Part 200 (I)

## Lobbying Certification

Contract must adhere to:

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

### J. Contractual procedure requirements for all purchase price of the items exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000

2 CFR 200 Appendix II to Part 200 (J)

**Recovered Materials** - See §200.322 Procurement of recovered materials.

**Notes:** reference following definition of terms for this section:

- i. Recovered Materials - Waste materials and byproducts that have been recovered or diverted from solid waste, but does not include materials and byproducts generated from, and commonly reused within, an original manufacturing process
- ii. §200.322 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

The requirements of Section 6002 include:

- procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000;
- procuring solid waste management services in a manner that maximizes energy and resource recovery; and
- establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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