



NIST Construction Grant Program General Terms and Conditions

September 2010

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1. Kick-Off Meeting

After the award start date, NIST will contact the Recipient to arrange an award Kick-Off Meeting. The purpose of the project management conference is to explain to the Recipient its post-approval responsibilities for administration of the award, including its responsibilities with respect to the Terms and Conditions of the award and applicable Federal requirements. The Recipient's authorized representative, architect/engineer, and the Recipient's financial representative should attend.

2. Security Interest

The Recipient shall execute a security interest or other statement of the Federal Interest in real property, acceptable in form and substance to NIST, which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate. The Recipient must provide NIST with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with local law. The Recipient may use model documentation available from NIST. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The Recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from NIST. No funds under this award shall be released until the Recipient has complied with this provision, unless other arrangements satisfactory to NIST are made.

3. Land, Easements, and Rights of Way

The Recipient must disclose all encumbrances to NIST. NIST will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of the project during its estimated useful life.



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Prior to commencement of construction the Recipient must furnish evidence, satisfactory in form and substance to NIST, that title to real property is vested in the Recipient, and that it has obtained any rights-of-way, easements, State and local government permits, long-term leases, or other property interests.

4. **Project Sign**

Before construction begins, the Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign satisfactory to NIST that identifies the project and indicates that the project is Federally funded. NIST also may require that the Recipient maintain a permanent plaque or sign at the project site with the same or similar information.

5. **Eminent Domain**

In accordance with Executive Order 13406, "*Protecting the Property Rights of the American People*" the Recipient agrees:

- (a) Not to use any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;
- (b) Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and
- (c) Any use of the power of eminent domain to acquire land, easements or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of NIST is an unauthorized use of the project. If the Recipient puts the project to an unauthorized use, the Recipient shall be required to compensate NIST for its fair share in accordance with 15 C.F.R. §§ 14.32.

6. **Construction Bond**



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Pursuant to 15 CFR 14.48(c), for contracts and subcontracts exceeding \$100,000, the Recipient may submit its bonding policy and requirements to the Grants Officer for a determination whether the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum bonding requirements of 15 C.F.R. 14.48 will apply.

7. Energy Efficiency

The Recipient shall apply, where feasible, sustainable, and energy efficient, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction.

8. Requirements During Construction

During construction, the Recipient is responsible for:

1. Ensuring project completion in accordance with approved plans and specifications;
2. Monitoring project progress and reporting progress to NIST;
3. Providing for adequate construction inspection;
4. Promptly paying costs incurred for the project purposes;
5. Monitoring contractors' compliance with Federal, State, and local requirements.

9. Inspection And Testing Of Materials

The Recipient shall ensure that all materials and equipment used in the completion of the work shall be subject to adequate inspection and testing in accordance with accepted standards. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. The Recipient shall ensure that documentation of same is cataloged and retained.

10. Recipient and Contractor Compliance with Applicable Requirements



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The Recipient shall comply, and must require each contractor or subcontractor to comply, with all applicable Federal, state, and local laws and regulations. The Recipient is responsible for ensuring that all contracts necessary for design and construction of the Project facilities are implemented in compliance with the Terms and Conditions of this Award.

11. Additional Statutory Requirements for Construction Projects

The Recipient and any sub Recipient(s) must, in addition to other statutory and regulatory requirements detailed in Department of Commerce Standard Terms, 15 CFR Part 14, these Construction Grant Program General Terms and Conditions, and the assurances made to NIST in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable federal, State, territorial, and local laws, the following federal public laws (and the regulations issued there under), Executive Orders, OMB Circulars, and local law requirements.

1. The National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 et seq.), and the Advisory Council on Historic Preservation Guidelines, requiring projects involving Federal funds to follow the requirements of the National Historic Preservation Act, which requires stewardship of historic properties.
2. The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 et seq.), which requires appropriate surveys and preservation efforts if a federally-licensed project may cause irreparable loss or destruction of significant scientific, prehistoric, historical, or archeological data.
3. Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 et seq.), and the regulations issued there under, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.
4. Relocation Assistance. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Pub. L. No. 91-



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646; 42 U.S.C. § 4601 *et seq.*), are applicable to each Recipient of assistance from NIST.

This Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with Federal assistance funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition.

12. Tribal Employment Rights Ordinances

In accordance with Departmental policy, NIST must recognize Tribal Employment Rights Ordinances (“TEROs”), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards, including this award and any sub-tier agreements it may have involving American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports costs for a tribal employment rights office to administer the preferences, should generally be allowable as an expense that is “necessary and reasonable for proper and efficient performance and administration” of an award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

13. Notification of Environmental Requirements

The Recipient agrees to notify the Grants Officer of any environmental requirement or restriction, regulatory or otherwise, with which it must comply.

14. Supplement to the DoC, Standard Terms and Conditions B.01, entitled “Programmatic Requirements” and 15 C.F.R. § 14 or 24, as applicable

Reporting of Project Progress. Progress reports shall be due from the Recipient on a calendar quarter basis, at minimum, and contain the following information:



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- (a) A comparison of actual accomplishments to the schedule established in the award;
- (b) Reasons for delays in those cases where the schedule approved by NIST was not met;
- (c) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;
- (d) All change orders issued up to the date of the report and not previously reported to NIST; and other pertinent information including, when appropriate, an analysis and explanation of the cost overruns or high unit costs.

The Recipient may elect to use the Federal standard form for performance progress reporting, SF-PPR.

15. Final Acceptance

The Recipient will schedule a walk-through of the facility when substantial construction has been completed. Representatives of the Recipient, the architect/engineer, and the contractor(s) will make the final inspection. NIST must be given advance notice of the final inspection so that a representative of NIST may participate.

16. Operation of Project during Its Useful Life

The Recipient agrees that, for the 20 year useful life of the facility funded with this award, the project will be properly and efficiently administered, operated, and maintained for the purpose authorized by this award and in accordance with the terms, conditions, requirements, and provisions of the award. If NIST determines at any time during the estimated useful life of the project, that the project and any project property is not being properly and efficiently administered, operated, and maintained, NIST shall have the right to terminate this award for cause and pursue any other remedies allowed by law.