

Department of Energy

Pt. 600, Subpt. D, App. B

identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (d) and (e) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (c) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copies for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by Federal support service Contractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copies for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States."

(End of clause)

APPENDIX B TO SUBPART D OF PART 600—CONTRACT PROVISIONS

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, must contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 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)*—All contracts and subawards 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 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 is otherwise entitled. The recipient must report all suspected or reported violations to the responsible DOE contracting officer.

3. *Contact Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics

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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 CFR part 5). Under Section 102 of the Act, each contractor is 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 1½ 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 is 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.

4. *Rights to Inventions and Data Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, development, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

5. *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*—Contracts and subawards of amounts in excess of \$100,000 must 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 (41 U.S.C. 7401 et seq.) and the Federal Water Pollution control act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to the responsible DOE contracting officer and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more 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 recipient.

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—Contract awards that exceed the

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simplified acquisition threshold and certain other contract awards must not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "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 must provide the required certification regarding its exclusion status and that of its principals.

8. *Davis-Bacon Act (40 U.S.C. 276a)*—As a general rule, it is unlikely that the Davis-Bacon Act, which among other things requires payment of prevailing wages on projects for the construction of public works, would apply to financial assistance awards. However, the presence of certain factors (e.g., requirement of particular program status; title to a construction facility resting in the Government) might necessitate a closer analysis of the award, to determine if the Davis-Bacon Act would apply in the particular factual situation presented.

Subpart E [Reserved]

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

SOURCE: 60 FR 65514, Dec. 20, 1995, unless otherwise noted.

§ 600.500 Purpose and scope.

This subpart implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

§ 600.501 Definitions.

The definitions in § 600.3 of this part, including the definition of the term "financial assistance," are applicable to this subpart. In addition, as used in this subpart:

Act means the Energy Policy Act of 1992.