

**NATIONAL INSTITUTE OF FOOD AND AGRICULTURE**  
**U.S. Department of Agriculture**  
**SPECIAL TERMS AND CONDITIONS**  
**1890 Facilities Program, Section 1447**  
**EFFECTIVE OCTOBER 2020**

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## 1. APPLICABILITY, ORDER OF PRECEDENCE, AND DOCUMENTS INCORPORATED BY REFERENCE

**Applicability.** In carrying out approved activities under the 1890 Facilities Program award, you will follow 2 CFR 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” as supplemented by these award terms and conditions. These award terms and conditions, will refer to other documents as applicable. The statutory authority for this grant award is stated in Block 11 of the Award Face Sheet (Form NIFA-2009).

**Order of Precedence.** Where the terms, conditions, or other requirements relating to this grant award conflict with each other, the following order of precedence will apply:

- Applicable laws and statutes of the United States, including any specific legislative provisions mandated in the statutory authority for the award
- Code of Federal Regulations (CFR)
- NIFA terms and conditions as set forth herein
- Agency policy
- Application documents

**About the Document.** The document incorporates:

- 2 CFR 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (as referred to as Uniform Guidance (UG)), by reference;
- frequently asked questions for 2 CFR 200 (located at <https://cfo.gov/cofar>) which have the full force and effect of the UG;
- 7 CFR 3430, Competitive and Noncompetitive Non-formula Financial Assistance Programs-- General Award Administrative Provisions,
- The NIFA Policy Guide

## 2. NIFA CONTACT PERSONS

Except as otherwise noted, questions relating to programmatic and administrative aspects of this grant award should be referred to the NIFA contact person whose name and telephone number appears in Block 14 of the Award Face Sheet (Form NIFA-2009).

Where these terms and conditions direct information to be submitted to the Authorized Departmental Officer (ADO), the address to be used is as follows:

1890 Buildings and Facilities Program  
Authorized Departmental Officer  
Awards Management Division  
Office of Grants and Financial Management  
National Institute of Food and Agriculture  
6501 Beacon Drive  
Kansas City, MO 64133

The preferred method to receive information is electronic submission via a pdf attachment to an email to [awards@usda.gov](mailto:awards@usda.gov).

### 3. DEFINITIONS

Applicable definitions are included in Subpart A of 2 CFR 200 and 7 CFR 3430. The following are additional definition:

**a. *Acquisition cost*** is defined in 2 CFR 200.2. In furtherance of that definition, the term *acquisition*, as used here, means the obtaining of goods, property, or services by and for the use of a recipient through purchase, lease, or barter under a grant award.

**b. *Appraisal***, and its derivatives, mean a written statement independently and impartially prepared by a state-certified real estate appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

**c. *Architectural, Engineering (A/E)*** and their derivatives, mean the professional services of an architectural or engineering nature, as defined by the laws of the state in which the services are rendered, and which are required to be performed by a person licensed, registered, or certified to provide such services.

**d. *Bond*** means a written instrument executed by a bidder (i.e., offeror) or contractor and a second party to assure fulfillment of the bidder or contractor's obligations to a third party. As used herein, the following types of bonds may be required:

1. ***Bid Guarantee***—assures that a bidder will not withdraw a bid within the period specified for acceptance.
2. ***Payment Bond***—assures payments as required by law to all persons supplying labor or materials in the prosecution of work provided for in a contract.
3. ***Performance Bond***—secures performance and fulfillment of a contractor's obligations under a contract.

**e. *Building* and *Facility*** are synonymous terms, each meaning a physical structure consisting of foundation and substructure, superstructure, interior construction, and necessary mechanical, electrical, safety, and specialized systems to make the structure functional.

**f. *Change Orders*** are a written agreement between the grantee and the general contractor to change a building construction contract.

**g. *Construction***, and its derivatives, mean the erection, alteration, consolidation, remodeling, conversion, modernization, improvement, rehabilitation, or extension of physical facilities, including necessary paved areas (i.e., sidewalks and vehicle parking areas) that provide direct and immediate access to facilities within the scope of work approved by NIFA under this grant award. This term includes the acquisition and installation of necessary fixed equipment in such facilities.

**h. Contingency Fee** is a predetermined amount or percentage of the contract held for unpredictable changes to the project.

**i. Fair Market Value** means the most probable price, in cash or its equivalent, that a willing buyer would pay to a willing seller in an arms-length transaction in the open market to acquire real property.

**j. Fixed Equipment** means any piece of property which, when installed in a facility for continuing use in connection with the facility, is considered a permanent part of the facility and cannot be reasonably removed without affecting the structural integrity of the facility, including its utility or ventilation systems. To be considered as fixed equipment, the item must be capitalized in the grantee's records as part of the facility to which it is attached. Further, if the facility were to be sold or otherwise disposed of, such equipment would be sold or otherwise disposed of as part of the facility. Examples include, but are not limited to, elevators, boilers, and furnaces; plumbing, electrical, heating-ventilating-air conditioning (HVAC), and refrigeration systems; and specialized items such as cage washers, laboratory casework, some growth chambers, and certain other large, specialized equipment meeting this definition.

**k. Force Account** means the direct performance of facility construction by a grantee's own permanent workforce (consisting of trades and crafts personnel), equipment, materials, and supplies furnished by the grantee and used under the direct control of the grantee.

**l. Maintenance and Operations** means programmatic activities and those activities required to assure the dependable and economical function of a completed facility as follows:

1. **Maintenance**—preservation of the functional integrity and efficiency of the facility and its fixed equipment, including preventive maintenance, corrective maintenance, testing, and replacement of defective components thereof.

2. **Operations**—activities or processes associated with the programs to be housed in a completed facility and those processes which are necessary to run the facility. These include, but are not limited to, research, extension, or teaching programs; acquisition of programmatic machinery or equipment; post-occupancy installation of utilities or wiring; utility usage, repair, or upgrade; services (e.g., trash, snow, hazardous waste removal); administration; recordkeeping; laboratory or process control; and safety or emergency operations.

**m. Movable Equipment** means an article of tangible personal property which can be shifted from place to place without requiring a change in utilities or structural characteristics of the space. These items normally have a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established. Examples include, but are not limited to, office equipment, furniture, and scientific instrumentation.

**n. Onset of Construction** means, in general, initiation of physical on-site construction activities which are of a permanent or irreversible nature. Such activities include, but are not limited to, site clearing and removal, excavation, installation of building supports and foundations, and laying of underground piping.

**o. Program**, and its derivatives, as used in these award terms, refer to the 1890 Facilities Program.

**p. *Project*** is defined in 7 CFR 3430.2. In furtherance of that definition, means an organized assembly of approved activities or tasks that have been determined by NIFA to lie within the scope of, or have been identified for performance by the recipient or a third party under, this grant.

**q. *Shelled space*** is space constructed to meet future needs; it is space enclosed by an exterior building structure, but otherwise unfinished inside.

**r. *Shop areas*** means 1) a space used for the manufacture, repair, or maintenance of products or equipment. This description includes carpenter, plumbing, HVAC, electrical, and painting shops, and similar physical plant maintenance facilities. This category also includes centralized shops for construction or repair of research or instructional equipment, and repair and maintenance of multimedia equipment and devices. Special purpose shops (e.g., glass blowing, machining) supporting multiple spaces for scientific instruction and research are included in this category; and 2) a space that directly serves a shop facility as an extension of the activities in that facility. This description includes tool storage rooms, materials storage rooms, and similar equipment or material supply or storage rooms. Locker, shower, first aid, and similar nonpublic areas that serve the shop facility should be included.

**s. *Value Engineering*** means an organized effort directed by a person trained in value engineering techniques to analyze the functions of a facility and its fixed equipment for the purpose of achieving their respective essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

#### **4. STATUTORY AND NATIONAL POLICY REQUIREMENTS**

As a condition of this grant award, the grantee assures that it is in compliance and will comply with applicable statutory and national policy requirements, including those specified in 2 CFR 200.300 and Appendix II of 2 CFR 200, which hereby are incorporated in this grant award by reference, and such other provisions as are specified herein.

<b>Regulation/Statute</b>	<b>Title</b>
<b><u>2 CFR Part 25</u></b>	Universal Identifier and System for Award Management
<b><u>2 CFR Part 170</u></b>	Reporting Subaward and Executive Compensation Information  Also see Section 23 of these award terms.
<b><u>2 CFR Part 175</u></b>	Award Term for Trafficking in Persons
<b><u>2 CFR Part 180</u></b>	OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)

<b>Regulation/Statute</b>	<b>Title</b>
<b><u>2 CFR Part 182</u></b>	Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
<b><u>2 CFR Part 200</u></b>	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
<b><u>2 CFR Part 400</u></b>	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
<b><u>2 CFR Part 400.2</u></b>	Conflict of Interest
<b><u>2 CFR Part 415</u></b>	General Program Administrative Regulations
<b><u>2 CFR Part 416</u></b>	General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments
<b><u>2 CFR Part 417</u></b>	Nonprocurement Debarment and Suspension
<b><u>2 CFR Part 418</u></b>	New Restrictions on Lobbying
<b><u>2 CFR Part 421</u></b>	Requirements for Drug-Free Workplace (Financial Assistance)
<b><u>2 CFR Part 422</u></b>	<p>Research Institutions Conducting USDA Funded Extramural Research; Research Misconduct</p> <p>All research awards issued by NIFA are subject to 2 CFR 422,; USDA’s implementation of the Federal Policy on Research Misconduct published at 65 FR 76260. In accordance with sections 2, 3, and 8 of 2 CFR Part 422, institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity, bear primary responsibility for prevention and detection of research misconduct and are to maintain and effectively communicate and train their staff regarding policies and procedures. The AOR assures, through acceptance of the award that the institution will comply with the above requirements. Grant recipients must, upon</p>

<b>Regulation/Statute</b>	<b>Title</b>
	request, make available to NIFA the policies and procedures as well as documentation to support the conduct of the training.  To report allegations of research misconduct see <a href="https://nifa.usda.gov/research-misconduct">https://nifa.usda.gov/research-misconduct</a>
<b><u>7 CFR Part 1, Subpart A</u></b>	Official Records
<b><u>7 CFR Part 1b</u></b>	National Environmental Policy Act
<b><u>7 CFR Part 3</u></b>	Debt Management
<b><u>7 CFR Part 15, Subpart A</u></b>	Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture – Effectuation of Title VI of the Civil Rights Act of 1964
<b><u>7 CFR Part 3100</u></b>	Cultural and Environmental Quality
<b><u>7 CFR Part 3403</u></b>	Small Business Innovation Research Grants Program
<b><u>8 U.S.C. 1324a.</u></b>	Unlawful employment of aliens
<b><u>29 U.S.C. 794</u></b>	Nondiscrimination under Federal grants and programs
<b><u>41 U.S.C. 6306</u></b>	Interest of Member of Congress
<b><u>41 U.S.C. 4712</u></b>	Enhancement of contractor protection from reprisal for disclosure of certain information
<b><u>45 CFR 75.521, Appendix IX to Part 75</u></b>	Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals
<b><u>48 CFR Subpart 31.2</u></b>	Principles for determining costs with profitmaking firms and those nonprofit organizations that are specifically excluded from the provisions of 2 CFR part 200

Regulation/Statute	Title
<b><u>Executive Order (EO) 13513</u></b>	“Federal Leadership on Reducing Text Messaging While Driving,”
<b><u>Executive Order 13798; 7 CFR Part 16.3</u></b>	“Promoting Free Speech and Religious Liberty”
<b><u>2 CFR 200.216</u></b>	Prohibition on certain telecommunications and video surveillance services or equipment
<b><u>2 CFR 200.340</u></b>	Termination
<b><u>Frequently Asked Questions (FAQs) for 2 CFR Part 200</u></b>	Located at: <a href="https://cfo.gov/grants/">https://cfo.gov/grants/</a> and <a href="https://cfo.gov/wp-content/uploads/2015/09/9.9.15-Frequently-Asked-Questions.pdf">https://cfo.gov/wp-content/uploads/2015/09/9.9.15-Frequently-Asked-Questions.pdf</a>
<b>Other laws, agency-specific regulations applicable to USDA agencies and staff offices</b>	<p>USDA agencies and staff offices must comply with provisions found in the Consolidated Appropriations Act, 2016, Pub. L. 114-113, Division E, Title VII, General Provisions Government-wide, Sections 743, 744, 745, 746 respectively <i>or any successor provisions of law.</i></p> <p><b><u>Prohibition Against Certain Internal Confidentiality Agreements</u></b></p> <ul style="list-style-type: none"> <li>(a) You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.</li> <li>(b) You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.</li> <li>(c) The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.</li> <li>(d) If NIFA determines that you are not in compliance with this award provision, NIFA: <ul style="list-style-type: none"> <li>1) Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;</li> <li>2) May pursue other remedies available for your material failure to comply with award terms and conditions.</li> </ul> </li> </ul> <p><b><u>Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants</u></b></p> <p>This award is subject to the provisions contained in the Consolidated Appropriations Act, 2016, Pub. L. 114-113, Division E, Title VII, sections 745 and 746, as amended and/or subsequently enacted for</p>



Regulation/Statute	Title
	<p>U.S. Department of Agriculture (USDA) agencies and offices regarding corporate felony convictions and corporate federal tax delinquencies.</p> <p>Accordingly, by accepting this award the corporation recipient acknowledges:</p> <ol style="list-style-type: none"> <li data-bbox="548 415 1388 632">(1) that it does not have a Federal tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, <b>and</b></li> <li data-bbox="548 638 1388 1029">(2) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debaring official of the USDA has considered suspension or debarment of the recipient corporation based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the agency will annul this agreement and may recover any funds the recipient has expended in violation of the above cited statutory provisions.</li> </ol>

**National Policy Requirements**

A listing of National Policy Requirements recipients must adhere to, where applicable, is located at: <http://www.nsf.gov/bfa/dias/policy/gc1/policymatrix.pdf>.

The following requirements are highlighted -

- a. Equal Employment Opportunity. E.O. 11246, as amended, requires contractors and subcontractors performing Federally assisted construction projects to provide equal opportunity, without regard to race, color, religion, sex or national origin, to persons employed or seeking employment with them. Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR Part 60.41 CFR 60-1.4(b) prescribes a clause that recipients must include in federally assisted, construction awards and subawards [60-1.4(d) allows incorporation by reference].
- b. It will assist NIFA in complying with §106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C 300101 et seq.), E.O. 11593, and the Archeological and Historic Preservation Act of 1974 (54 USC 312501-312508), as implemented in 7 CFR Part 3100 by:
  1. Consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects by the construction activity (see 36 CFR 800.8);

2. Notifying the ADO of the existence of any such properties; and
  3. Avoiding or mitigating, to the extent possible, adverse effects upon such properties.
- c. It will have sufficient funds available to meet any non-Federal costs necessary to ensure completion of approved project plans. Sufficient funds also must be available when the facility is completed to assure effective operation and maintenance of the facility for the purpose for which constructed.
  - d. It will submit to the ADO a copy of an artist's conception of the completed facility and a copy of the final floor plans in which space allocations and planned space use are identified (**but NOT the actual blueprints or specifications**. USDA-NIFA will not retain these documents if submitted.) before the project is advertised or placed on the market for competitive construction bidding; will construct the project or cause it to be constructed to completion in accordance with grantee-approved drawings and specifications; and will submit to the ADO for prior approval any changes that materially alter the approved scope of the grant project.
  - e. It must clearly state in all requests for applications, bid solicitations, press releases, statements, and other documents describing this project, (1) the percentage of the total cost of the project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project [§733 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1992 (Pub. L. No. 102-142)].
  - f. It must comply with Sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 8301-8305, popularly known as the Buy American Act).

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, January 31, 2019) (i.e., infrastructure project) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under this Award. "Infrastructure project" as used herein means a project to develop public or private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production, generation, and storage, including from fossil - fuels, renewable, nuclear, and hydroelectric sources; electricity transmission; gas, oil, and propane storage and transmission; electric, oil, natural gas, and propane distribution systems; broadband internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; cybersecurity; and any other sector designated through a notice published in the Federal Register by the Federal Permitting Improvement Steering Council.

- g. National Environmental Policy Act (NEPA). Unless the grantee is notified in writing from the ADO that this grant project is categorically excluded from a NEPA requirement in accordance with 7 CFR 3407.6(a)(2), an Environmental Assessment (EA) must be prepared by a qualified, independent person or entity (e.g., A/E firm) and submitted to the NIFA programmatic contact person at least 30-days prior to the onset of construction. *The EA must cover the entire project (Federal and non-Federal portions, if applicable)*. The EA must be signed and dated by the preparer and countersigned and dated by the Authorized Representative (AR).

The EA will be evaluated independently by NIFA and/or its representatives, a decision notice must be issued in accordance with [7 CFR 3407.10\(c\)](#), and the grantee will be informed of the decision. *The grantee must not issue the "Notice to Proceed" with construction work until it has received written notification from the ADO that the EA is acceptable.*

- h. Flood Disaster Protection Act of 1973. The following states have been determined by the Administrator of the Federal Emergency Management Agency (FEMA) to be exempt from the requirement to obtain flood insurance on *state-owned structures and their contents* because they have in effect adequate state plans of self-insurance (44 CFR 75.14): Florida, Georgia, Iowa, Kentucky, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont. If the grantee's state is listed as exempt in this article, and its exemption certificate is revoked by FEMA subsequent to the date of these terms and conditions, the grantee will be notified and requested to comply with insurance requirements specified in this article.
- i. Undeveloped Coastal Barriers. The "Coastal Barrier Resources Act," Pub. L. No. 97-348 (16 U.S.C. 3501-3510), established a Coastal Barrier Resources System consisting of certain undeveloped coastal barriers along the *Atlantic and Gulf Coasts* and along the *shore areas of the Great Lakes* of the United States. It also prohibits Federal financial assistance from being made available for constructing any new roadway leading to, or new facility (including additions to existing facilities) within, any part of the System. If any part of the construction site under this grant is determined to lie within a part of the System, the grantee must immediately halt the project and notify the ADO. No further action on the project may be undertaken without prior approval from the ADO.
- j. **Prohibition on certain telecommunications and video surveillance services or equipment**  
The grantee (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in [2 CFR 200.216](#). See [Public Law 115-232](#), Section 889 for additional information.

In accordance with [2 CFR 200.216](#), the grantee (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:

1. procure or obtain, extend or renew a contract to procure or obtain;
2. enter into a contract (or extend or renew a contract) to procure; or
3. obtain the equipment, services or systems.

## **5. PROJECT STANDARDS AND RESPONSIBILITIES**

- a. See [2 CFR 200.318](#) regarding maintaining written standards of conduct.
- b. The architectural-engineering (A/E), construction, and inspection work must conform to high professional standards. With the exception of requiring the use of nationally recognized building codes, *NIFA will not prescribe standards or other criteria relating to engineering, design, or building activities under any grant award.* Thus, responsibility for carrying out all approved project activities and for ensuring that high standards are met rests solely with the grantee. The grantee is fully responsible for project performance, including adherence to these terms and conditions of grant award. Although the

grantee is encouraged to communicate with NIFA on special problems that may arise during project performance, such communication does not diminish the grantee's responsibility for making sound judgments and is not intended to imply that responsibility for technical and operating decisions has shifted to NIFA.

c. The grantee is responsible for obtaining all necessary licenses, permits, easements, approvals, and the like, required for construction activities performed under a grant. In addition, the grantee is required to take all proper, reasonable, and necessary precautions to prevent injury, loss, or damage to the work, employees, workers, the general public, and property during project performance. This includes taking steps to avoid unsafe working or project conditions and ensuring that all work meets applicable safety and health standards and requirements.

d. The grantee is responsible for complying with all applicable Federal, state, municipal, and other laws and regulations. This includes local zoning laws and laws relating to landscaping, open space, minimum distance of a building from the property line, maximum building height, environmental protection, and historic preservation. Further, all buildings constructed under this grant must be constructed in compliance with the latest edition of one of the nationally recognized building codes and with other applicable nationally recognized codes. Such other codes include, but may not be limited to, electrical, fire and life safety, plumbing, energy conservation, and seismic codes, as well as standards established by the General Services Administration relating to handicapped access. Local building codes may be used as long as they are at least as stringent as nationally recognized codes.

e. The grantee is responsible for ensuring that competent and adequate supervision and inspection are provided and maintained at the worksite to ensure that completed work conforms to design drawings and specifications approved by the grantee. In addition, the grantee is required to provide appropriate project monitoring, inspection, and testing to assure that all work and systems are of acceptable quality and that time and cost schedules are met. On-site inspections may be performed by the A/E firm that designed the project, by a separate construction management firm, by qualified employees already working for the grantee, or by any other qualified individual or firm, at the grantee's discretion. However, inspection may not be carried out by the same firm that performed the construction work. The grantee is required to permit inspection by agents of state or local government during construction according to the customary schedule of inspections in the locality where the construction takes place.

f. Costs of A/E or other services necessary to correct errors, omissions, or other defects in facility plans, design drawings, specifications, or other construction documents due to mismanagement, negligence, or oversight on the part of the grantee's employees or of the A/E firm or other party with whom the grantee has contracted to perform such services must not be borne from project funds. The grantee must pursue all legal remedies against responsible contractual parties for such errors, omissions, or defects.

g. The grantee is responsible, without recourse to NIFA or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the grantee and third parties to carry out approved project activities. Matters concerning violation of law should be referred to the Federal, state, or local authority having proper jurisdiction.

## 6. ALLOWABLE AND UNALLOWABLE COSTS

Allowable project costs must be determined in accordance with the authorizing statute, the purpose of the grant award, and to the extent applicable, by the cost-principles as outlined in 2 CFR 200.400 through 200.475 that are applicable to the type of organization receiving the award, regardless of tier, and these award terms and conditions.

**A. Cost Escalation.** Costs incurred in excess of the NIFA share of approved project costs under this grant are the sole responsibility of the grantee. Unless this grant award is terminated for cause, the grantee must complete the construction project even if it requires additional funds from the grantee or other non-Federal source or results in an increase in the amount or percentage of matching on the grantee's part.

Project costs which are determined to be allowable may be charged to the Federal or the non-Federal share of such costs. Project costs which are determined to be unallowable, whether by statutory, regulatory, or administrative mechanism, may not be charged to the Federal share of costs and may not be used to meet any required non-Federal share of costs.

The listings of allowable and unallowable costs found in this article are not exhaustive.

### **B. Allowable Project Costs.**

The following project costs have been determined to be generally allowable, subject to statutory limitations, program requirements, or the applicable Federal cost principles listed in Subpart E of 2 CFR part 200.

1. Necessary site clearing and removal costs on the construction site where construction cannot reasonably be undertaken without such site clearing and removal;
2. Reasonable and necessary costs of performing the preconstruction environmental assessment required by these guidelines and costs incurred to mitigate direct, adverse, physical impacts resulting from construction activities, including restoration of the construction site to its original condition;
3. Charges for A/E services incurred under contract to design the facility (including "as-built" drawings and related documentation) and to perform such necessary additional services as agreed upon in writing between the grantee and the A/E firm;
4. Charges for construction management services incurred under contract to perform on-site supervision and inspection of construction activities;
5. Salaries and wages to perform required A/E, construction, and inspection services, provided that these services are not duplicated through contract or other arrangement. Charges for salaries and wages must be consistent with the actual time devoted to the activity and may not exceed the employee's normal salary or rate of pay;
6. Engineering professional(s) to design the structural, mechanical, electrical, and specialized systems;
7. An architect to prepare the schematic design documents consisting of three-dimensional drawings, renderings, models, and mock-ups illustrating the scale and relationship of facility components;

8. An architect to prepare design development documents consisting of drawings depicting the size and character of the project as to architectural, structural, mechanical, electrical, and specialized systems, materials, and related elements;
9. An architect to prepare construction documents consisting of working drawings and specifications setting forth in detail the requirements for construction of the facility;
10. A construction manager qualified by education, training, or experience to perform actual on-site supervision and inspection of construction activities to check the quality and quantity of construction work in progress and to ensure that all work conforms to approved construction documents. This is not a permanent position and is based on on-going construction projects; and
11. Trades and crafts personnel engaged in constructing the facility.
12. Real property acquisition costs, including deeded access and real estate agency fees associated with such acquisition, as necessary for constructing the facility;
13. Filing fees incurred for recording the Federal interest in any approved acquisition or construction of real property;
14. Costs incurred for any real estate appraisal required by these terms and conditions and performed by a state-certified appraiser during the project period;
15. Costs of bonding, insurance, and permits, where such bonding, insurance, and permits are direct costs to the project and are required by Federal, state, or local laws or regulations, or by these terms and conditions;
16. Temporary relocation expenses incurred by the grantee for moving employees displaced as a result of approved renovation activities (*but NOT costs incurred for moving employees headquartered elsewhere into a new facility*);
17. Acquisition and installation of equipment (as defined in 2 CFR 200.33);
18. Excavation and grading costs at the site of construction;
19. Brick-and-mortar costs, including costs incurred for special features that comply with safety standards and codes such as earthquake resistance or accessibility by the physically handicapped;
20. Costs of pollution control equipment for the facility's boilers, incinerators, wastewater treatment, etc., which are required to meet Federal, state, or local codes or standards;
21. Sanitary sewer, storm sewer, and potable water connections, provided that such municipal utilities are located in streets, roads, or alleys contiguous to the construction site;
22. Costs of connecting to existing central utility distribution systems contiguous to the site, such as steam and chilled water that service the campus from centrally located boiler and refrigeration plants, prorated costs for a new boiler and chiller intended to serve the completed facility and other campus facilities; or the costs of a new boiler and chiller dedicated only to the completed facility;
23. Reasonable costs for sidewalks, vehicle parking areas, and related curbs and gutters that are located on the site and provide direct and immediate access to the completed facility;
24. Costs incurred for the acquisition of construction-related materials and supplies if the facility is being constructed with force account labor;

25. Costs incurred for landscaping around the perimeter of the building and along the sidewalks that provide facility ingress and egress;
26. Construction and safety signs erected at the site of construction that give recognition to the Federal share of project costs and that outline safety precautions, respectively;
27. Costs incurred for systems testing and balancing;
28. Contingency costs not to exceed 5% of eligible project costs following the award of a construction contract;
29. Consulting costs not covered elsewhere and in compliance with 2 CFR 200.430(c);
30. Shop areas and completion of existing "shelled space"; if outlined in the NIFA-approved project; and
31. Costs of finishing renovated or constructed space to include installing carpeting, blinds, and curtains.

### **Unallowable Project Costs.**

In addition to any other costs that have been determined to be generally unallowable, the following project costs are unallowable under this grant unless specifically permitted by law **or approved in writing by the ADO prior to incurring such costs**:

1. Any NIFA share of costs that exceeds the amount of NIFA funds authorized to be obligated or expended by the grantee under this award;
2. New or additional costs incurred during a period of suspension or after the termination or expiration date of award;
3. Costs which lie outside the scope of the approved project and any amendments or changes thereto, including all costs associated with the program to be housed in the completed facility (e.g., costs incurred to establish, maintain, expand, or enhance the program, including the acquisition and use of research plot land or grazing land, are deemed to lie outside the scope of the project);
4. Salaries and wages of grantee personnel engaged in the following activities or services:
  - a. All activities occurring prior to the schematic design phase, including liaison and coordination, meetings, site analyses, studies, program planning, development of long-range institutional plans, surveys, development of inventories, and the like;
  - b. Administrative or project oversight, including participation in or supervision of bid, negotiation, or contract administration processes;
  - c. All services provided by programmatic, administrative, or financial personnel; and
  - d. Services of a secretarial or clerical nature.
5. Contracts or other subtier agreements entered into for the purpose of providing programmatic, administrative or financial services;
6. Costs associated with public hearings, arbitration proceedings, or legal actions arising out of project performance;
7. Costs for travel and training of grantee personnel;

8. Overhead costs (section 1447(e) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA)(7 U.S.C. § 3222b(e));
9. Indirect costs incurred by the grantee, including fringe benefits where it is normal grantee policy or practice to include these charges as an indirect cost to a grant project;
10. Construction of "shelled space" designed for completion at a later date;
11. Construction of residences, and passenger vehicle storage and service areas;
12. Passenger vehicles (i.e., vehicle whose sole purpose is the transport of individuals (e.g., bus, van, sport utility vehicle, car));
13. Costs incurred for day-to-day operating or maintenance expenses associated with the running or upkeep of equipment, including warranties and service contracts, and the facility or surrounding areas;
14. The amount paid for real property in excess of just compensation and any amount over the appraisal value of said property;
15. Bonus or penalty payments to contractors;
16. Design details requiring expensive building techniques or architectural features that cost more than reasonable alternatives and that neither enhance the functioning or appearance of the facility nor reflect local architectural tradition, unless such design details are required by state law or regulation to preserve the facility's historical, architectural, or similar character;
17. Costs associated with abandoned designs;
18. Costs resulting from direct mismanagement, oversight, or negligence, or from vicarious liability for the improper action of others, including costs of A/E or other services necessary to correct defects in facility plans, design drawings, specifications, or other construction-related documents;
19. Compensation for injuries or death to people or animals or damage to property arising out of project performance;
20. Prorated costs of *existing* central utility plant and distribution systems that are intended to service the completed facility;
21. Costs associated with moving grantee personnel into a new facility constructed with project funds (however, the temporary relocation of grantee personnel from an existing facility that is scheduled to be remodeled with project funds is an allowable cost where such relocation is necessary for the safety and health of grantee personnel);
22. Hypothetical losses such as foregone opportunity costs;
23. Consulting services or other fees that lie outside the scope of this project, such as hiring an individual or firm to consult about issues relating to the program to be housed in the completed building;
24. Costs of library materials such as books or periodicals and other reference materials;
25. Printers, desk-top and lap-top computers and other similar use technology (iPads) designated for administrative use;
26. Feasibility studies and the development of master plans;



27. Software unless part of a systems operation. (No stand-alone software);
28. General repairs or maintenance to buildings and facilities including but not limited to repairs to plumbing, roofing, doors, and HVAC systems; and
29. Participant support costs.

## 7. PRIOR APPROVALS

Prior approvals are addressed in 2 CFR 200.407. To assist with prior approvals required for awards under these award terms, a **Prior Approval Matrix is included below**. Following the matrix are some situations that describe, in most cases, information that must be submitted to the ADO when requesting prior approval. All requests must be signed or countersigned by the AR and, unless otherwise noted herein, should be submitted at least 45 days, in advance of the required action date. *Requests that are received without the AR's signature will be returned to the grantee to obtain the required institutional approval.* Prior approvals must be obtained from the ADO.

	<b>Reference</b>	<b>Prior Approval Required or Waived</b>
<b>Prior Written Approval (prior approval).</b>	<b><u>200.407</u></b>	
<b>Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts</b>	<b><u>200.407(a)</u></b>	
Changes in principal investigator (PI), project leader, project partner, or scope of effort.	<u>200.201(b)(5)</u>	Required
<b>Cost sharing or matching</b>	<b><u>200.407(b)</u></b>	
Use of unrecovered indirect costs, including indirect costs on cost sharing or matching.	<u>200.306(c)</u>	Unallowed
Use of current fair market value to determine the value of non-Federal entity donations of services and property for the purposes of cost sharing or matching.	<u>200.306(d)(2)</u>	Waived
Costs of the fair market value of equipment or other capital assets and fair rental charges for land when the Federal award supports activities that require use of equipment, buildings or land.	<u>200.306(h)(2)</u>	Required
<b>Program Income</b>	<b><u>200.407(c)</u></b>	
Use of program income during the period of performance (additive method).	<u>200.307(e)(2)</u>	Waived
<b>Revision of budget and program plans</b>	<b><u>200.407(d)</u></b>	
Change in the scope or the objective of the project or program.	<u>200.308(c)(1)(i)</u>	Required
Change in a key person specified in the application or Federal award.	<u>200.308(c)(1)(ii)</u>	Required
Disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project by the approved PI/PD.	<u>200.308(c)(1)(iii)</u>	Required
Inclusion, unless waived, of costs that require prior approval in accordance with Subpart E -- Cost Principles.	<u>200.308(c)(1)(iv)</u>	Required
Transfer of funds budgeted for participant support costs to other categories of expense.	<u>200.308(c)(1)(v)</u>	Unallowed
Subawarding, transferring or contracting out any work under a Federal award. This provision does not apply to the acquisition of supplies, material, equipment or general purpose services.	<u>200.308(c)(1)(vi)</u>	Required

	<b>Reference</b>	<b>Prior Approval Required or Waived</b>
Changes in the approved cost-sharing or matching provided by the non-Federal entity.	<u>200.308(c)(1)(vii)</u>	Required
Need for additional Federal funding to complete the project.	<u>200.308(c)(1)(viii)</u>	Required
Incur project costs 90 calendar days before the Federal awarding agency makes the award.	<u>200.308(d)(1)</u>	Required
Incur project costs more than 90 calendar days pre-award.	<u>200.308(d)(1)</u>	Required
Initiate a one-time extension of the period of performance by up to 12 months.	<u>200.308(d)(2)</u>	Waived
Subsequent no-cost extension or extension of more than 12 months.	<u>200.308(d)(2)</u>	Required
Carry-forward of unexpended balances to subsequent funding periods.	<u>200.308(d)(3)</u>	Waived
Transfer amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.	<u>200.308(d)(4)</u>	Waived
Rebudgeting among direct cost categories for Federal awards in which the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the approved budget.	<u>200.308(e)</u>	Required
Transfer of funds between construction and non-construction activities.	<u>200.308(g)(5)</u>	Required
<b>Real Property</b>	<b><u>200.407(e)</u></b>	
Encumber real property acquired with Federal funds.	<u>200.311(b)</u>	Required
Transfer of title to the Federal awarding agency or to a third party.	<u>200.311(c)(3)</u>	Required
Special arrangements and alterations costs incurred specifically for a Federal award.	<u>200.462(a)</u>	Required
<b>Equipment</b>	<b><u>200.407(f)</u></b>	
Encumber equipment acquired with Federal funds.	<u>200.313(c)(1)</u>	Required
<b>Fixed amount subawards</b>	<b><u>200.407(g)</u></b>	
Subawards based on fixed amounts at any dollar amount, provided the subawards meet the requirements for fixed amount awards in 200.201.	<u>200.332</u>	Required
<b>Direct Costs</b>	<b><u>200.407(h)</u></b>	
Direct charge the salaries of administrative and clerical staff if all conditions in 200.413 are met, excluding 200.413(c)(3).	<u>200.413(c)</u>	Required
<b>Compensation -- personal services, paragraph (h)</b>	<b><u>200.407(i)</u></b>	

	<b>Reference</b>	<b>Prior Approval Required or Waived</b>
Directly charge payments of incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary).	<u>200.430(h)(1)(ii)</u>	Required
Force account labor	<u>200.430(h)(1)</u>	Required
Faculty salary in excess of Institutional Base Salary (IBS).	<u>200.430(h)(2)</u>	Required
Intra-IHE faculty consulting on a Federal award that exceed a faculty member's base salary.	<u>200.430(h)(3)</u>	Required
<b>Compensation -- fringe benefits</b>	<b><u>200.407(j)</u></b>	
Severance payments to foreign nationals employed by the non-Federal entity outside the US that exceed the amounts customary in the US.	<u>200.431(i)(4)</u>	Required
Severance payments to foreign nationals employed by the non-Federal entity outside the US due to termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country.	<u>200.431(i)(5)</u>	Required
<b>Entertainment costs</b>	<b><u>200.407(k)</u></b>	
Inclusion of costs of entertainment, including amusement, diversion, and social activities and any associated costs that have a programmatic purpose.	<u>200.438</u>	Required
<b>Equipment and other capital expenditures</b>	<b><u>200.407(l)</u></b>	
Direct charge capital expenditures for general purpose equipment.	<u>200.439(b)(1)</u>	Required
Direct charge capital expenditures for buildings and land use.	<u>200.439(b)(1)</u>	Required
Direct charge capital expenditures for special purpose equipment over \$5,000.	<u>200.439(b)(2)</u>	Required
Capital expenditures for improvements to land or buildings which materially increase their value or useful life.	<u>200.439(b)(3)</u>	Required
<b>Exchange rates</b>	<b><u>200.407(m)</u></b>	
Exchange rate fluctuations that result in the need for additional Federal funding, or a reduction in the scope of the project.	<u>200.440(a)</u>	Required
<b>Fines, penalties, damages and other settlements</b>	<b><u>200.407(n)</u></b>	

	<b>Reference</b>	<b>Prior Approval Required or Waived</b>
Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, State, tribal, local or foreign laws and regulations.	<u>200.441</u>	Required
<b>Fund raising and investment management costs</b>	<b><u>200.407(o)</u></b>	
Costs of organized fund raising for the purposes of meeting the Federal program objectives.	<u>200.442(a)</u>	Required
<b>Goods or services for personal use</b>	<b><u>200.407(p)</u></b>	
Costs of housing (e.g. depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses.	<u>200.445(b)</u>	Required
<b>Insurance and indemnification</b>	<b><u>200.407(q)</u></b>	
Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property.	<u>200.447(b)(2)</u>	Required
<b>Memberships, subscriptions, and professional activity costs, paragraph (c)</b>	<b><u>200.407(r)</u></b>	
Costs of membership in any civic or community organization.	<u>200.454(c)</u>	Required
<b>Organization costs</b>	<b><u>200.407(s)</u></b>	
Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization.	<u>200.455</u>	Required
<b>Participant support costs</b>	<b><u>200.407(t)</u></b>	
Inclusion of participant support costs.	<u>200.456</u>	Unallowed
Transfer of funds budgeted for participant support costs to other categories of expense.	<u>200.308(c)(1)(v)</u>	Unallowed
<b>Pre-award costs</b>	<b><u>200.407(u)</u></b>	
Inclusion of allowable pre-award costs.	<u>200.458</u>	Waived
Incur project costs 90 calendar days before the Federal awarding agency makes the award.	<u>200.308(d)(1)</u>	Waived
Incur project costs more than 90 calendar days pre-award.	<u>200.308(d)(1)</u>	Required
<b>Rearrangement and reconversion costs</b>	<b><u>200.407(v)</u></b>	

	<b>Reference</b>	<b>Prior Approval Required or Waived</b>
Direct charge special arrangements and alterations costs incurred specifically for a Federal award.	<u>200.462(a)</u>	Required
<b>Selling and marketing costs</b>	<b><u>200.407(w)</u></b>	
Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under §200.421 Advertising and public relations).	<u>200.467</u>	Required
<b>Taxes (including Value Added Tax)</b>	<b><u>200.407(x)</u></b>	
Use of foreign tax reimbursement for approved activities under the Federal award.	<u>200.470(c)</u>	Required
<b>Travel costs</b>	<b><u>200.407(y)</u></b>	
Inclusion of travel costs for officials covered by 200.444 General costs of government.	<u>200.474(a)</u>	Required
Travel costs for dependents for travel of duration of six months or more.	<u>200.474(c)(2)</u>	Required

**A. Change in Project Scope or Objectives.** Any change in the scope or objectives (including the Five-Year Plan of Work and Annual Proposals) identified in the approved grant award, requires prior approval.

In general, the final scope and objectives of your project will be determined prior to the award of the initial grant, and any change in the scope or objectives identified in the grant requires prior approval from the ADO.

Requested changes must clearly be delineated/described and a justification of why the objectives are being changed from the initial proposed submission. The justification is to identify the objectives and how each is to be affected from the change (i.e., changed, added or deleted). Changes to the objectives or project scope should clearly demonstrate how they are linked in supporting the institutional strategic plan and to strengthening Food and Agricultural Sciences education, research, and or extension at the institution.

**B. Project Leadership.** As noted in 2 CFR 200.308, any replacement or significant change in responsibilities or level of effort for the approved project director requires notification and prior approval. If a replacement PD is necessary, the grantee's notification must include the name and signature of a proposed replacement PD and, if not provided in the approved grant application, brief biographical information for that person (not to exceed two pages, including publications). If changes in responsibility or level of effort are proposed, the notification must include an explanation of expected project impacts if such action is taken. *The project may not continue for more than 30 days without an identified PD.*

**C. Transfer of Substantive Work.** Transferring to a third party, by contracting or other means, actual performance of A/E, construction, or inspection work as outlined in the approved grant application must receive prior approval.

**NOTE:** Due to limitations on the period for which bidders will guarantee prices, the 45-day advance notification requirement does not apply to the award of contracts for A/E, construction, or inspection services. However, the grantee is urged to submit these requests as soon as possible to protect prices and avoid start-up delays.

To obtain prior approval, the grantee must submit the following written information regarding each contract to the ADO as soon as the contractor has been selected:

1. A description of the process used by the grantee to select its contractors (required on a one-time only basis under this award, not for each contract);
2. A listing of newspapers, trade journals, or other media in which public notices soliciting bids for contracts on this project appear;
3. The name of the selected contractor, a description of all work to be performed, and the amount of compensation to be paid;
4. A bidder's list if the procurement is accomplished using the formal advertising method (e.g., sealed bid or competitive negotiation methods);

5. A justification if the procurement involves the proposed award of a contract based on noncompetitive negotiation (i.e., sole source selection);
6. State if contractor chosen is the lowest bidder. If the contractor chosen is not the lowest bidder, the grantee must submit a justification for selecting the contractor chosen at a higher cost. (Exception: This requirement does not pertain to A/E costs).
7. A breakdown of the amount of Federal (and non-Federal funds if applicable) to be used to pay each contractor. This should include cost details on all aspects of the work to be done (e.g., A/E services, Contingency costs, Equipment costs, and other associated costs); and
8. A certification from the grantee that the provisions outlined in this Article under "Bid Documents and Contract Clauses") are included, as appropriate, in bid documents and any resulting contracts.

**NOTE:** Neither the "cost-plus-a-percentage-of-cost" method nor the "percentage-of-construction-cost" method will be approved for the procurement of goods or services under this grant.

**Requests for approval submitted after the work has been completed will not be approved. The grantee will be responsible for paying the costs associated with the work performed in the absence of NIFA approval,**

**D. No-cost Extensions of Time.**

1. **Before the Award Expires.** The grantee is expected to complete work under this grant within the project period specified in the grant award. However, if the grantee needs additional time to complete approved activities, NIFA will consider a request to extend the expiration date of award. Project periods, including extensions, are not normally to exceed 10 years. The request must contain, at a minimum, the following information:
  - a. The length of time for which the extension is being requested and a justification for the extension;
  - b. A summary of progress to date as described in Article 12, including information on the type and percentage of work remaining to be completed;
  - c. The amount of project funds expected to remain unobligated on the scheduled expiration date of award; and
  - d. A projected timetable to complete the portion of the project for which the extension is being requested.
  - e. An annual progress report.

The fact that funds are expected to remain unobligated on the award expiration date is not in itself sufficient justification to receive an extension of time. The decision by the ADO to approve or disapprove a request to extend the expiration date of award must be based solely upon whether or not sufficient progress is being made and additional time is necessary to achieve approved project goals. Multiple extensions will receive further scrutiny by NIFA; NIFA may consider Remedies for Noncompliance (see 2 CFR 200.338).



2. **After the Award Expires.** NIFA may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be considered only situations where there is an extenuating circumstances as determined by NIFA. The awardee's AR must submit the requirements identified above (a. through e. under Before the Award Expires) as well as an “extenuating circumstance” justification and a description of the actions taken to minimize these late requests in the future.

**E. Real Property.** Capital expenditures for the acquisition or lease of real property or the encumbrance or disposition of real property requires approval prior to the grantee's irreversibly committing itself to such a course of action. All acquisitions of real property under this grant award (including lease or rental), will be approved by the ADO *prior to entering into or making a firm commitment to enter into the transaction*. If such acquisition is authorized under this grant, the approved budget will so state. Where acquisition of real property becomes necessary subsequent to the effective date of grant award, the grantee must request prior approval in a post-award action as specified in Article 20.

For title and disposition information see 2 CFR 200.311; see 2 CFR 200.310 for insurance coverage; and see 2 CFR 200.306 for information about valuing donated items for in-kind matching contributions.

In the case where the appraised value of the property results in a lower amount than the negotiated or selling price, NIFA will approve the acquisition of the property only at the appraised value. The grantee will be responsible for the balance of funds between the selling price and the appraised price.

**F. Purchase of Equipment.** Prior approval is required. When requesting prior approval to purchase equipment, provide a listing of the equipment, the cost of each item, and information on where the equipment will be housed and how it will be used.

**G. Change Orders.** In general, the grantee is responsible for reviewing requests from its contractors and for granting or denying approval. However, the grantee may not approve any action which is inconsistent with the purpose of this grant award or its requirements, including these terms and conditions. If a request from a contractor will result in an expansion of project scope; the acquisition, disposition, or encumbrance of real property; or more than a 60-day delay in the attainment of benchmarks, the grantee must obtain prior approval from the ADO before approving the contractor's request.

To obtain approval for change orders, provide the following documentation:

- A description of the change and a justification for the necessity signed by the AR of the grantee institution;
- Contractor documentation providing information on the additional work to be done; and
- A break-down of the additional costs.

**H. Extension to Submit a Final Federal Financial Report, Form SF-425.**

1. **Request submitted PRIOR to the end of the 90-day period following the award expiration date.** The request should include a provisional report (showing unliquidated obligations), justification for not submitting a final by the initial due date, and the anticipated date for submission of a final report. Note that any extension of time is subject to statutory or agency

policy limitations. Funds will remain available for drawdown during an approved extension of time.

2. **Request submitted FOLLOWING the end of the 90-day period following the award expiration date.** Such requests will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report (showing unliquidated obligations) as well as an anticipated submission date for the final report, a justification for the late submission, and a justification for the extenuating circumstances. Note that any extension of time is subject to statutory or agency policy limitations.

## 8. PAYMENTS

NIFA designates the Automated Standard Applications for Payment System (ASAP), operated by the Department of Treasury's Bureau of the Fiscal Service, as the payment system for SBIR award funds. For more information see <https://nifa.usda.gov/tool/asap>.

Requests for payment should be in accordance with ASAP instructions. All questions relating to payments should be submitted to:

Financial Management Division  
Office of Grants and Financial Management  
National Institute of Food and Agriculture  
U.S. Department of Agriculture  
6501 Beacon Drive  
Kansas City, MO 64133  
[ASAPCustomerService@usda.gov](mailto:ASAPCustomerService@usda.gov)

**Payments to Contractors.** The method of payment between the grantee and its contractors must be in accordance with the policies and procedures established by the grantee, except that contractors may not use the ASAP method to request payments. If the grantee makes advance payments to contractors, it must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds (usually 30 days). *Do not send payment requests for contractors to NIFA for review or approval.*

## 9. FINANCIAL REPORTING

All questions relating to financial reports should be submitted to:

Awards Management Division  
Office of Grants and Financial Management, NIFA  
U.S. Department of Agriculture  
6501 Beacon Drive  
Kansas City, MO 64133  
Email: [awards@usda.gov](mailto:awards@usda.gov) (preferred method)

A “Federal Financial Report,” Form SF-425, is due on an annual **basis no later than 90 days following the end of each reporting period. A final “Federal Financial Report,” Form SF-425, is due 90 days after the expiration date of this award.** The report must be submitted to the Awards Management Division (AMD). The preferred method of submission is as a portable document format (PDF) attachment to an email sent to the email address noted above.

- (1) All drawdowns must be made within 90 days after the expiration date of the award and before the final SF-425 is submitted.
- (2) The report must be completed on a single award basis.
- (3) Both cash management information (lines 10(a) through 10(c)) and financial status information (lines 10(d) through 10(o)) on the form are to be completed.
- (4) The awardee must report program outlays and program income on the same accounting basis (i.e., cash or accrual) that it uses in its normal accounting system.
- (5) When submitting a financial report, the total matching contribution, if required, should be shown in Item 12. Remarks.
- (6) Final Financial Report - The final SF-425 report must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the SF-425 is due, it must request an extension of time to submit the report. See Article 2. Further, when a final report is overdue (beyond the 90-day period following the award expiration date and not covered by an approved extension of the due date for submission of the report), the award will be placed on “manual review,” which restricts the awardee's ability to draw funds. If any remaining funding is needed by the awardee, the awardee must contact AMD and request a draw providing AMD with justification and documentation to support the draw. Such draw requests will only be approved in extenuating circumstances, as determined by NIFA.

## **10. PERFORMANCE MONITORING AND REPORTING**

**A. General.** The grantee is responsible for monitoring day-to-day project performance to ensure that project goals and performance schedules are met, for containing costs, and for ensuring that progress is reported to NIFA in a timely manner. Changes in plans that are seen as materially accelerating or delaying established performance schedules or resulting in cost deviations must be reported immediately to the ADO. **Failure to provide notification of problems that could impact schedules or costs or failure to report performance in a timely manner will be considered performance deficiencies.**

**B. Benchmarks and Costs.** The benchmark schedule submitted as part of the grantee's approved proposal will serve as a foundation for NIFA' compliance monitoring. If at any time during project performance the grantee fails to meet an approved benchmark or anticipates that it will fail to meet such a benchmark, the grantee must immediately provide the ADO with a written assessment of the impact that this failure is expected to have on the completion of all subsequent benchmarks. Where the adjustment reveals that any benchmark will be postponed by 60 days or more, the assessment must include an explanation for the delay and a revised completion schedule.

The grantee must provide immediate notification to the ADO whenever events occur that could impact total project costs by five percent (5%) or more. The notification must include an identification of the condition or situation and the amount and direction of the change in costs (i.e., cost overruns or cost

savings). Where cost overruns are expected, the grantee must provide an explanation of actions taken to reduce these costs.

**C. Annual Performance Reports.** To satisfy formal reporting requirements, an annual performance report is due in NIFA 90 days after completion of the first 12 months of the initial grant award and annually thereafter during the project period. Each report must cover work performed during the previous 12-month period, including any funded or unfunded time extensions. If this project is supported in annual funding increments, the performance report required as part of the grantee's annual follow-on grant proposal must satisfy this reporting requirement through the grantee's final application for funds. Thereafter these annual performance reports must be submitted to the ADO. Performance reports should not exceed *two pages* in length, should contain appropriate identifying data (the grantee's name as specified in Block 13 of the Award Face Sheet (Form NIFA-2009), the name of the designated PD, the grant number assigned to the project by NIFA, and the title of the project) and must provide the following information:

1. A comparison of actual accomplishments with the goals or objectives established for the program during the reporting period, including percentage-of-completion data and a computation of square footage costs for all projects undertaken;
2. The reasons for slippage if approved goals were not met;
3. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or unexpectedly high unit costs. Identify any issues, favorable or adverse conditions, changes, or situations which are expected to impact the scope, size, cost, or completion schedule for the project, along with a discussion of proposed or actual actions taken by your institution to resolve any problems encountered;
4. If the proposed represents any change to your approved five-year plan, please provide a description of, and justification for, the change;
5. A summary of activities to be undertaken during the ensuing 12-month period;
6. A listing of A/E, and construction contracts entered into **during this reporting period only** for each program component in the following format; and

<b>Program Component</b>	<b>Name of Contractor</b>	<b>Proposed Amount</b>	<b>Date Approved by NIFA</b>
<b>a.</b>			
<b>b.</b>			
<b>c.</b>			

7. A detailed breakdown of all project costs incurred to date (cumulative), in the following format:

<b>Cost Item</b>	<b>Federal Share</b>	<b>Non-Federal Share (if applicable)</b>

The submission of annual performance reports does not relieve the grantee of responsibility for notifying the ADO immediately whenever events occur that could materially impact the attainment of approved project goals or for reporting changes in completion schedules (i.e., benchmarks) or anticipated project

costs as they occur. Requirements relating to submission of the final performance report are covered in Article 20.

**NOTE:** All available news articles, announcements, press releases, and the like, that discusses or describe this project should be submitted electronically to the ADO for recordkeeping purposes.

REReport Reporting. In addition to the Annual Performance report described above, the grantee is required to submit an annual progress report in REReport.

#### **D. REReport Grant Reporting**

All grant reporting must be completed using the Research, Education, and Extension project online reporting tool (REReport). Initial reporting (item a. below) for this grant is to be submitted through the REReport system. Annual progress and final reporting (items b. and c. below) on this grant also is to be done through the REReport system. Information on REReport can be found on NIFA's web site at <https://nifa.usda.gov/tool/reepreport> and the REReport software can be found at <http://portal.nifa.usda.gov>.

**Review the following guidance closely regarding reporting requirements.**

##### **a. Initial Documentation in the REReport Database--**

##### **Research, Education, and Extension project online reporting tool (REReport)**

All projects **must** be documented in REReport. The NIFA contact for all REReport documentation is:

REReport  
National Institute of Food and Agriculture  
U.S. Department of Agriculture  
6501 Beacon Drive  
Kansas City, MO 64133  
E-mail: [electronic@usda.gov](mailto:electronic@usda.gov)

**NIFA WILL NOT RELEASE FUNDS FOR THIS PROJECT UNTIL THE REQUIRED INFORMATION HAS BEEN RECEIVED ELECTRONICALLY BY REReport OR OTHER DESIGNATED FORMAT BY NIFA.**

Information collected in the REReport Project Initiation is required upon project initiation for all **NEW** awards in REReport. This information is requested by the appropriate NIFA Program Manager.

Awardees are requested to submit data electronically. To submit forms electronically, the REReport web site can be accessed through the NIFA Reporting Portal at: <http://portal.nifa.usda.gov>.

Technical questions regarding the online completion of the reports should be directed to NIFA at [electronic@usda.gov](mailto:electronic@usda.gov).

Questions regarding report content should be directed to the programmatic contact person identified in Block 14 of the Award Face Sheet (Form NIFA-2009).

## **b. Annual Progress Reports.**

All projects **must** report annually into REEport. Annual progress reports should be submitted to REEport. The NIFA contact for REEport is identified in a. above.

The annual Progress Report follows the format of the government-wide Research Performance Progress Report (RPPR) and includes a summary of participants, target audiences, products (outputs), accomplishments (outcomes/impacts), and changes/problems.

Each year the award is active, the **REEport** system will notify the awardee or designated contact electronically of upcoming reporting requirements. An annual Progress Report must be completed in accordance with instructions accompanying the request and/or those provided on the **REEport** data entry website referenced in item d. Reports must be submitted electronically utilizing access information (e.g., login information) provided in the **REEport** request for a progress report.

An annual Progress Report is due 90 calendar days after the award's anniversary date (i.e., one year following the month and day of which the project period begins and each year thereafter up until a final report is required). An annual Progress Report covers the most recent one-year period. **The following information, when applicable, must be included in the Changes/Problems section of the annual Progress Report.**

- (1) A comparison of actual accomplishments with the goals established for the reporting period (where the output of the project can be expressed readily in numbers, a computation of the cost per unit of output should be submitted if the information is considered useful);
- (2) The reasons for slippage if established goals were not met; and
- (3) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or unexpectedly high unit costs.

***Failure to submit an annual Progress Report within 90 calendar days after the award's anniversary date may result in grant funds being withheld until the report has been submitted as specified.***

## **c. Final Report**

In the month that an award is due to expire, a request notification for the Final Report will be sent electronically to the award contact designated in REEport. The Final Report is required within 90 calendar days after the expiration or termination of the award. The Final Report covers the entire period of performance of the award and must describe progress made during the entire timeframe of the project instead of covering accomplishments made only during the final reporting segment of the project. In addition to supplying the information required under item b. of this article, the final report must include the following when applicable:

Identify equipment purchased with any Federal funds under the award and indicate subsequent use of such equipment.

***Failure to submit an acceptable Final Report within 90 calendar days after the award's anniversary date may result in funds being withheld for other active NIFA grants for which the Project Director(s) under this award are also named as well as prevent the award of future NIFA grants until the required report has been received in the REEport system and approved by NIFA.***

#### **d. Use of Reported Information**

Please note the vital importance of preparing well written progress and technical reports. Information reported into REEport is used extensively by NIFA for describing the work NIFA funds, in planning and defending its budget, assessing its programs, and communicating project results. This depends on quality reports written in lay terms. Reported information is also used by State scientists and administrators and is available to the public on the worldwide web. The reported project information is available via the NIFA Data Gateway web site at: <https://nifa.usda.gov/data>.

## **11. BID GUARANTEES AND BONDING**

See 2 CFR 200.325 for bonding requirements. Bonds may be obtained from companies holding certificates of authority as acceptable sureties. A listing of these companies is published annually by the U. S. Department of Treasury (see <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>).

## **12. CONTRACTS**

**A. General.** The grantee is authorized to use institutional policies and procedures to procure goods and services under this grant, provided that these policies and procedures are consistently applied, regardless of funding source, and at least comply with the standards set forth in 2 CFR part 200 (however, see the "Prior Approval Requirements" outlined below). Practices that unduly restrict competition (such as giving preferential treatment to local or in-state bidders or imposing unnecessary qualification requirements on bidders or contractors) are prohibited unless mandated by state or local statute. To further eliminate unfair competitive advantage and ensure objective performance, contractors or potential contractors who develop or assist in developing statements of work, bid or solicitation packages, specifications, systems drawings, or other project documents may not compete for that contract.

*The grantee must obtain prior approval from the ADO for equipment purchases or when entering into contractual arrangements for A/E, construction, construction supervision, or other services under this project when using Federal funds or a combined use of Federal and non-Federal funds. This prior approval requirement does not apply when the grantee is using only non-Federal funds. However, the following information concerning contracts issued with non-Federal funds should be submitted to NIFA since the use of non-Federal funds and its related costs incurred by the grantee is pertinent to the approved project activities under this grant award: (1) the name of the contractor, (2) amount of contract, and (3) a description of the work to be performed.*

*See subsections entitled, "Prior Approval Requirements" and "Bid Documents and Contract Clauses."*

**B. Contracting Methods.** One of the following methods is normally used by grantees to procure A/E, construction, or inspection services:

1. **Formal Advertising.** This method involves the issuance of a public notice inviting bids, the submission and public opening of sealed bids, and the award of a contract to the lowest responsive, responsible bidder. A responsible bidder is one that has the financial and other resources, technical qualifications, and experience to complete the project within the required schedule, or a demonstrated ability to obtain them; a satisfactory record of performance over a sufficient period of time that the grantee is able to make an informed judgment; an adequate recordkeeping system; and a demonstrated compliance or willingness to comply with civil rights, equal employment opportunity, and other public policy requirements.

2. **Competitive Negotiation.** This method involves the issuance of a public notice inviting bids; the technical and financial evaluation of bids; negotiation with the most highly qualified bidders; and the award of a contract to the best value bidder or offeror, price, bidder experience and other qualifications, nature of the work to be performed, and other factors considered.

3. **Noncompetitive Negotiation.** This procurement method entails the solicitation of a bid from only one source or the solicitation of bids from a number of sources that results in inadequate response. Noncompetitive negotiation will be approved **only** if a legitimate emergency exists that precludes the use of competitive procurement or if it can be demonstrated that readvertising will not produce a satisfactory pool of bidders. The fact that a contractor is already on site and is performing well or that previous experience with a contractor was satisfactory is not in themselves sufficient justification to bypass competitive procedures.

**C. Public Notice.** All public notices should be placed in newspapers, trade journals, or other media with at least a regional circulation. For projects whose construction costs are expected to exceed \$10 million, the notice should be placed in publications with a nationwide distribution. In addition to a clear and accurate description of all technical requirements to be provided, all public notices must state clearly the time, date, and location for the receipt of bids, and provide information on pre-qualification procedures (if applicable) and contain the required acknowledgment of support (see <https://nifa.usda.gov/acknowledgment-usda-support-nifa>).

Public notices may request alternates to base bids as long as these alternates are keyed to specific changes aimed at achieving economy, e.g., the incorporation of value engineering techniques in bid documents for construction over \$10 million or the substitution of materials. Alternate bids also may be used when the amount of the low bid is expected to exceed the amount of funds available to award the contract, and the grantee must make downward adjustments in the scope of the project to reduce costs. If all bids exceed the funds available after taking these steps, the grantee may reject all bids and issue a revised public notice containing reduced specifications or may negotiate an acceptable price with the best offeror.

**D. Pre-qualification of Bidders.** If authorized by state law, the grantee may use a pre-qualified list of contractors provided that the following conditions are met:

1. The pre-qualified list is routinely updated at least yearly;



2. Any request from a bidder or potential bidder for inclusion on the list is considered and acted upon if the request is received at least 30 days before bid opening;
3. Adequate public notice of the pre-qualification procedure is provided; and
4. The procedure does not unduly restrict competition.

**E. Prior Approval Requirement.** The grantee must obtain approval from the ADO *prior to using Federal funds to enter into each contractual arrangement.* See Article 7., for further information.

**F. Bid Documents and Contract Clauses.** In addition to minimum provisions that define a sound and complete bid document or contract (including the nature and scope of work to be undertaken, performance period, total cost, and payment provisions), all solicitations, bids, contracts, and/or other subtier arrangements must include provisions that are consistent with applicable statutes and Federal regulations, including, but not necessarily limited to those in Appendix II of 2 CFR part 200, and the following:

1. ***Copeland "Anti-Kickback" Act.*** (18 U.S.C. 874 and 40 U.S.C. 3145). All contracts and subgrants in excess of \$2,000 for construction or repair awarded by the grantee and its subrecipients must include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874), as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee will be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which the person is otherwise entitled. The grantee must notify the ADO of all reported or suspected violations.

2. ***Maintenance of and Access to Records.*** All negotiated contracts over \$10,000 must include a provision requiring the contractor to maintain books, records, documents, and other evidence pertinent to performance under the contract in accordance with generally accepted accounting principles and practices, consistently applied. In addition, they must provide for access to these records by NIFA, the Comptroller General of the United States, the grantee, or their duly authorized representatives, for the purpose of inspection, audit, and copying during normal business hours. Retention periods for contractor records are the same as those required for the grantee.

3. ***Clean Air Act and Federal Water Pollution Control Act.*** Contracts and subgrants in excess of \$100,000 must contain provisions that require compliance with applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C., Chapter 85, Subchapter I), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended. In addition, such provisions must state that no part of the work may be carried out in any facility listed on the EPA List of Violating Facilities and must require that contractors and subrecipients report violations to the grantee. The grantee must report violations to the ADO and to the appropriate EPA regional office.

4. ***Acknowledgment of Support.*** All requests for proposals and bid solicitations must contain an acknowledgment of Federal support (see <https://nifa.usda.gov/acknowledgment-usda-support-nifa>). Certifications, of these terms and conditions. In addition, all contracts (except those issued to Federal

employees for consulting purposes) must clearly state that neither the United States nor any of its departments, agencies, or employees is, or will be, a party to the contract.

5. **Contingent Fees.** All bid solicitations and contracts must contain a provision that no person or selling agency has been retained or employed to solicit or secure the contract for a commission, percentage, brokerage, or contingent fee except employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. Provision will be made for the discretionary annulment of the contract or recovery of such fees in the event of breach or violation.

6. **Liability Insurance.** All contracts must contain a provision requiring the contractor to obtain and maintain sufficient comprehensive liability insurance to protect the parties to the contract from claims for bodily injury, death, or property damage arising from project performance.

7. **Design Responsibilities.** All contracts for A/E services must include provisions affirming the contractor's responsibility for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services to be furnished under the contract. In addition, it must require the A/E contractor to correct any errors, omissions, or other deficiencies in designs, drawings, specifications, reports, or other services without payment of additional compensation.

8. **Construction Responsibilities.** All contracts for construction must provide for all work to be performed in accordance with approved designs, drawings, and specifications. They also must provide for a normal guarantee period (usually one year from the date of substantial completion) and will set forth action required of the contractor to effect necessary repairs or to correct defects in workmanship.

9. **Value Engineering.** All contracts for A/E services in excess of \$10 million must include value engineering provisions.

This listing is not exhaustive, nor does it provide exact wording that is required in some instances. The grantee is encouraged to review actual copies of legal and regulatory language and to ensure that accurate and sufficient provisions are made a part of its subtier awards. Certifications that are obtained from subtier recipients must be retained by the grantee and included with other project-related records. The grantee will not furnish to NIFA or USDA copies of subtier certifications.

### **13. PERFORMANCE BY FORCE ACCOUNT**

**NIFA approval is required prior to using Force Account Labor. NIFA will not approve Force Account labor after the fact.**

If performance by force account is authorized (see 2 CFR 200.430) under this grant award, the approved project budget will so indicate. Where approval has been granted for this type of performance, the authorization was based upon clear demonstration that the proposed work can be accomplished more economically and with equal competence by the use of this method compared with the use of competitive procurement, that *bona fide* emergency circumstances dictate its use, and that necessary personnel and/or equipment do not have to be hired or purchased to carry out the work proposed. If circumstances upon which this authorization was based change during project performance so that this

approval is rendered invalid, the grantee must notify the ADO immediately. Such notification must be signed or countersigned by the AR.

Complete, accurate, and current records must be maintained for all force account work, including receipts for the purchase of materials and certified pay records for the employees involved. These records are subject to audit and, upon reasonable notice, must be made available to NIFA or its representatives for inspection as stated in Article 16.

#### **14. PROGRAM AND INTEREST INCOME**

Program income is defined in 2 CFR 200.80 and is to be handled following the “addition” method in accordance with 2 CFR 200.307(e)(2).

**Interest Income.** *Interest income earned on advances of Federal funds is not general program income.* Grantees other than state agencies must maintain advances of Federal funds in interest-bearing accounts. Interest earned on these advances must be remitted promptly by check made payable to NIFA.

#### **15. FACILITY COMPLETION**

The grantee is responsible for ensuring that the facility is completed within a reasonable time after project commencement. The facility will be considered substantially complete when, at the final inspection, it is determined that:

- All but minor components of the project (e.g., spackling or touch up painting) have been completed in accordance with approved plans and specifications or approved modifications thereto;
- All major building systems (e.g., HVAC, water, sewer) have been installed, tested, balanced, certified, and are operating properly so that the building is capable of functioning as designed;
- All major safety systems (e.g., fire alarms, showers, pollution control devices) have been satisfactorily installed, tested, balanced, certified, and are operating properly; and
- All specialized fixed equipment (e.g., cage washers, laboratory casework and connections, built-in sterilizers) have been satisfactorily installed, tested, balanced, certified, and are functioning properly.

Prior to facility occupancy, the grantee must forward to the ADO evidence that final building inspection has been completed by responsible officials of the local jurisdiction in which the facility is located or provide written evidence that an occupancy permit (or similar document indicating compliance with building permit requirements) has been issued. A document, signed by the grantee's AR and Architectural Engineer attesting to building completion and final building inspection may be submitted to satisfy this requirement.

#### **16. SITE VISITS AND PROJECT RECORDS**

Work performed under this grant is subject to inspection and evaluation at all times by officials of NIFA, or by any of their duly authorized representatives through such mechanisms as the review of

performance reports and site visits. To the extent possible, all site visits will be made at mutually acceptable intervals and will be timed to avoid disruption to the construction work and to grantee programs and personnel.

NIFA and the Comptroller General of the United States, or any of their duly authorized representatives, must have the right of access to any books, documents, papers, or other project-related records of the grantee and its contractors under this grant for examination and audit purposes and to obtain excerpts and transcripts. Microfilm, microfiche, photographs, etc., may be substituted for original records.

**Financial records, supporting documents, statistical records, and other records pertinent to this grant award must be retained by the grantee and its contractors for a period of three years after submission and acceptance of the final SF-425, "Federal Financial Report."** Records relating to audits, appeals, litigation, or the settlement of claims arising out of project performance must be retained until such audits, appeals, litigation, or claims have been settled. Additional information may be obtained by calling or writing to the administrative contact person identified in Block 14 of the Award Face Sheet (Form NIFA-2009) or by referring to 2 CFR 200.333-337, Record Retention Access.

Per 2 CFR 200.333, records should be accessible for up to three years after award close-out. If it has been determined by site review or audit that those records are no longer available, those costs may be determined to be unallowable and will be subject to being paid back.

## 17. NONCOMPLIANCE

If it is determined by NIFA that the grantee has not complied with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 2 CFR 200.207, Specific conditions. If NIFA imposes requirements on you, the ADO will provide the grantee with written notification of noncompliance, corrective action(s) that must be taken by the grantee to come into compliance, and the date by which such action(s) must be taken or evidence provided that required corrective action has been initiated satisfactorily. If you cannot satisfactorily meet the additional conditions or if NIFA determines that noncompliance cannot be remedied by imposing additional conditions, NIFA may take one or more action identified in 2 CFR 200.338.

One of the options under 2 CFR 200.338 is to terminate performance under the grant in whole or in part. Where there is agreement between the grantee and NIFA that continuation of the project would not produce results commensurate with the further expenditure of project funds, the project may be terminated by mutual agreement. The inability of the grantee to continue performance under this project (or to continue at the level of effort necessary to accomplish approved project objectives) also is grounds for termination; therefore, the ADO must be notified immediately whenever it becomes known that the grantee will be unable to continue with the project.

Costs incurred during a period of suspension or after the effective date of termination will be considered unallowable, except those otherwise allowable costs which, in the opinion of NIFA, the grantee could not reasonably avoid, or which were specifically authorized in the notice of suspension or termination. In addition, the grantee will be required to cancel as many outstanding financial obligations as possible during a period of suspension or after the effective date of termination. Legitimate obligations incurred prior to the effective date of the suspension or termination will be honored and may be liquidated during or after the period of suspension or termination.

## 18. RELEASE OF INFORMATION

**A. General.** The Freedom of Information Act of 1966 (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552a), as implemented by USDA's regulation at 7 CFR part 1.1 and supplemented by NIFA regulations at 7 CFR Part 3404, will govern the release or withholding of information to the public in connection with this award. The release of information under these laws and regulations applies only to records held by NIFA and imposes no requirement on the grantee or on third parties to permit or deny access to their records.

**B. Policy.** The consideration by NIFA of a request for information concerning any individual, made by a party other than the subject individual, will take into account both the right of the requester to be given such information (under the Freedom of Information Act) and the right to privacy of the individual to whom the record pertains (under the Privacy Act). In general, however, it is the NIFA policy that records relating to approved grant applications will be made available to members of the general public if requested in writing, while pending or disapproved applications will not be made available. A fee may be attached to the release of any documents.

This policy will not affect retention period for project-related records or rights of access to such records or documents by NIFA, the Comptroller General, or their authorized representatives as stated in 2 CFR 200.336.

**Address.** Requests for records or inquiries about the release of information relating to this grant should be directed to:

Departmental FOIA Officer  
1400 Independence Avenue, SW  
South Building  
Room 4104  
Washington, DC 20250-0706  
Email: [USDAFOIA@ocio.usda.gov](mailto:USDAFOIA@ocio.usda.gov)

## 19. MAXIMUM OBLIGATION OF NIFA

The maximum financial obligation of NIFA under this grant award is the amount of funds *authorized* for the project, including any incrementally funded award (e.g., renewal or follow-on award). This amount is stated on the Award Face Sheet (Form NIFA-2009); however, in the event that an erroneous amount is stated on Form NIFA-2009, the approved budget, or any supporting document relating to this grant award, NIFA will have the unilateral right to make the correction and to make an appropriate adjustment in the NIFA share of the award to align with the Federal amount authorized.

## 20. GRANT CLOSEOUT

**A. General.** Grant closeout is defined in 2 CFR 200.16 with the closeout steps identified in 2 CFR 200.343 and further supplemented in this article. This grant and any subawards hereunder, regardless of tier, must be closed out as soon as possible after the expiration date of award. While the grantee may use its own policies and procedures in closing out awards made to its recipients, the provisions contained in this article will govern the closeout of this grant award.

**B. Final Performance Report.** A final performance report is due 90 days after the award expiration date and must be forwarded to the ADO. The report should not exceed *four pages* in length and must contain the following information:

- Grantee institution name, grant number, project title, name(s) of PD(s); and signature of the AR;
- A summary (or bulleted listing) of all activities performed under the grant, including the date each activity was completed;
- Date of project completion, date of actual or projected occupancy, and date of actual or expected facility dedication;
- A print of the completed facility;
- A breakdown of final project costs in the same format as specified for interim performance reports in Article 10; and
- Facility completion documents (see Article 15).

**C. REEport Project Financial Report**

A Project Financial Report must be submitted through the REEport system for each year the project is active. It is due on an annual basis by February 1 of the fiscal year following the fiscal year of expenditures being reported.

- (1) Expenditures reported on the Project Financial Report are not auditable by NIFA.
- (2) When submitting the financial report, make sure to include all appropriate non-federally employee staff support applied toward the project in terms of Scientist, Professional, Technical, and Clerical support.
- (3) The final REEport Project Financial Report covers only the last, most recent period of performance of the project; unlike the Final Report, it does not cover the life of the project from start to end date.

The Request for Applications contains applicable reporting requirements. All questions relating to the REEport Project Financial should be submitted to REEport (see contact info in excerpt on previous page of these award terms).

**D. Final Financial Status Report.** See Article 9.

**E. Unused Balance of Funds.** Any unencumbered balance of funds advanced to the grantee, including any interest or investment income earned on fund advances that was not remitted previously, must be refunded to NIFA as soon as possible after the expiration date of award. See 2 CFR 200.305(b)(9).

**F. Disposition of Real Property.** All real property, as defined in 2 CFR 200.85, must follow the property standards contained in 2 CFR 200.310. This includes requesting disposition instructions in the event the facility is no longer needed for the originally authorized purposes, as detailed in 2 CFR 200.311.

**G. Continuing Responsibilities.** Continuing responsibilities are addressed in 2 CFR 200.344 (a).