



INSTITUTE *of*
Museum and Library
SERVICES

General Terms and Conditions For IMLS Native American Library Services Basic Awards

The General Terms and Conditions for IMLS Native American Library Services Basic Awards are based on the administrative requirements in 45 CFR § 1183, the IMLS administrative requirements for grants and cooperative agreements to State, local, and Indian tribal governments. The above administrative requirements apply to the majority of IMLS Native American Library Services Basic Awards. Tribes that receive grants are subject to these General Terms and Conditions must be familiar with this document and comply with its requirements.

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Glossary of Terms

Authorizing Official – The authorizing official of the applicant institution has the authority to apply for federal support of the institution’s activities and to enter into legal agreements in the name of the institution.

Cash Contributions - The grantee's cash outlay for budgeted project activities, including the outlay of money contributed to the grantee by third parties.

Cost Sharing - The portion of the costs of a project not charged to IMLS funds. This would include cash contributions (as defined above) as well as the value of grantee contributions of services and property that are valued in accordance with the applicable cost principles and the value of third-party in-kind contributions.

Debarment - The ineligibility of a grantee to receive any assistance or benefits from the federal government, either indefinitely or for a specified period of time, based on legal proceedings taken pursuant to agency regulations implementing Executive Order 12549.

Equipment - Tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost which equals or exceeds per unit the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000.

Grant - A legal instrument that provides financial assistance in the form of money or property to an eligible recipient. The term includes cooperative agreements but it does not apply to technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. The term does not include fellowships or other lump sum awards, for which the recipient is not required to provide a financial accounting.

Grant Period - The period established in the grant award during which IMLS sponsored activities and project expenditures are to occur.

Grantee - The organization to which a grant is awarded and which is accountable for the use of the funds provided.

Indian Tribe - The term means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation [as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.)], which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In-Kind Contributions - The value of non-cash contributions provided by third parties. In-kind contributions may be in the form of charges for real property and equipment or the value of goods and services directly benefiting and specifically identifiable to the project.

Intangible Property - Includes, but is not limited to, trademarks; copyrights; patents and patent applications.

Local Government - A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of government, any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligation - The amounts of orders placed, contracts and grants awarded, goods and services received, and similar transactions during the grant period that will require payment.

Program Officer - The IMLS program staff member designated in the cover letter to the official grant award notice as the IMLS staff member who is responsible for the oversight of the programmatic aspects of the grant.

Program Income - Money that is earned or received by a grantee or a subrecipient from the activities supported by grant funds or from products resulting from grant activities. It includes, but is not limited to, income from fees for services performed and from the sale of items fabricated under a grant; usage or rental fees for equipment or property acquired under a grant; admission fees; broadcast or distribution rights; and royalties on patents and copyrights.

Project Funds - Both the federal and non-federal funds that are used to cover the cost of budgeted project activities.

Simplified Acquisition Threshold - This term replaces "small purchase threshold," and the threshold is currently set at \$100,000 [41 U.S.C. 403 (11)]. (See "Contract Provisions" in the Appendix to these terms and conditions.)

State – Each of the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or any agency or instrumentality of a state exclusive of local governments, institutions of higher education, and hospitals.

Subgrant - An award of financial assistance in the form of money or property, made under a grant by a grantee to an eligible subrecipient or by a subrecipient to a lower-tier subrecipient. The term does not include the procurement of goods and services.

Supplies - All personal property excluding equipment and intangible property, as defined in this glossary.

Suspension – This term applies to an action on the part of a federal funding agency that either affects a grant agreement or the eligibility of an individual or organization to apply for funding from the Federal Government.

The suspension of a **grant** is the temporary withdrawal of federal sponsorship. This includes the withdrawal of authority to incur expenditures against grant funds, pending corrective action or a decision to terminate the grant.

The suspension of an **individual or organization** causes that party to be temporarily ineligible to receive any assistance and benefits from the federal government pending completion of investigation and legal proceedings as prescribed under agency regulations implementing Executive Order 12549. Such actions may lead to debarment of the grantee.

Termination - Cancellation of federal sponsorship of a project, including the withdrawal of authority to incur expenditures against previously awarded grant funds before that authority would otherwise expire.

1. Applicability of General Terms and Conditions

The General Terms and Conditions for IMLS Native American Library Services Basic Awards apply to grants that the Office of Library Services issue to Federally recognized Indian tribal governments.

2. Grantee Responsibilities

The grantee has full responsibility for the conduct of project activities under an IMLS award, for adherence to the award conditions, and for informing the appropriate IMLS program office and the Grants Administration Office during the course of the grant of any significant programmatic, administrative, or financial problems that have arisen.

The requirements that apply to a grant award are contained in these *General Terms and Conditions for IMLS Native American Library Services Basic Awards*, the special conditions that may be included in the grant award, and the applicable federal uniform administrative requirements (see Article 3). Should there be any inconsistency between the special conditions of an award and the General Terms and Conditions or the federal uniform administrative requirements, the special conditions will govern.

In accepting a grant, the grantee assumes the legal responsibility of administering the grant in accordance with these requirements and of maintaining documentation, which is subject to audit, of all actions/expenditures affecting the grant. Failure to comply with the requirements of this award could result in suspension or termination of the grant and IMLS recovery of grant funds.

3. Uniform Administrative Requirements

Grants issued to state, local, and federally recognized Indian tribal governments are subject to 45 CFR § 1183, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The standards set forth herein and in the instructions for the submission of performance and financial reports are consistent with these administrative requirements.

4. Allowable Costs

Allowable costs and cost allocation methods for work performed under an IMLS Native American Library Services Basic Award shall be determined in accordance with OMB Circular A-87 (relocated to 2 CFR, Part 225), which applies to State, Local, and Indian Tribal Governments. **Grant funds may not be used for indirect costs, construction, contributions to endowments, social activities, ceremonies, entertainment, or pre-grant costs.**

Copies of the cost principles may be obtained from www.omb.gov or the IMLS website www.imls.gov/recipients/references.shtm or by writing to the IMLS Grants Administration.

5. Grant Period and Extensions

The grant period is the span of time designated in the grant award, or an amendment thereto, during which the grantee has the authority to obligate grant funds and undertake project activities. The grant period of one year for IMLS Native American Library Services Basic Awards will not be extended. Funds must be obligated by the end of the grant period and expended within 90 days following the grant period. Any remaining funds must be returned to IMLS.

6. Changes in Project Scope

Any project that is carried out under a grant must be consistent with the scope of the proposal that is approved for funding by IMLS. The scope of a project encompasses the purpose for which the grant is undertaken, the subject matter, the treatment of the subject matter, the historical time frame of the project, the volume of material that will be studied/treated, and the products that are expected to result from grant activities. No changes may be made in the scope of a project without written approval from IMLS.

All requests for a change in the scope of a grant shall be signed by the authorizing official and submitted to the appropriate IMLS program officer.

7. Changes in Key Project Personnel

The replacement of the project director or the co-director or a substantial reduction in the level of their effort, e.g., their unanticipated absence for more than three months, or a 25 percent reduction in the time devoted to the project, requires prior written approval from IMLS. When it is specifically required as a condition of a grant, written approval will also be needed for the replacement or the substantial reduction in the level of effort of other personnel whose work is deemed by IMLS to be critical to the project's successful completion.

All requests for approval of changes in key project personnel shall be signed by the authorizing official and submitted to the appropriate IMLS program officer. Evidence of the qualifications for replacement personnel (such as a résumé) shall be included.

8. Budget Revisions

The project budget is the schedule of anticipated project expenditures that is approved by IMLS for carrying out the purposes of the grant. To meet unanticipated needs, funds may be reallocated among existing cost categories without prior IMLS approval as long as funds are used for activities listed in the spending plan approved by IMLS.

The grantee shall obtain prior written approval from the IMLS program officer whenever a budget revision is necessary because of

- a. a change in the scope or objectives of the project (see Article 6)
- b. the transfer to a third party (by contracting, or other means) of any work under a grant;¹
- c. the addition of costs that are specifically disallowed by the terms and conditions of the grant award or for which the applicable cost principles require prior approval, e.g. the purchase of equipment, participant support costs, publication and printing costs, foreign travel;
- d. the transfer of funds among direct costs categories, or, if applicable, among separately budgeted programs, projects, functions or activities, when the federal share of project costs exceeds \$100,000 and the cumulative amount transferred exceeds 10 percent of the current approved budget; or
- e. the transfer of funds from stipends or training allowances to other budget categories.

All requests for budget revisions shall be signed by the authorizing official and submitted to the IMLS program officer.

Within 30 calendar days from the date of receipt of the request for budget revision, IMLS will review the request and notify the grantee whether or not the budget revision has been approved. If the budget revision is still under consideration at the end of 30 calendar days, IMLS will inform the grantee in writing of the date by which the grantee may expect a decision.

9. Payments and Interest

Funds will be deposited electronically by direct deposit into the applicant tribe's bank account. The tribe must submit an ACH Payment Enrollment Form (SF 3881) to set-up the deposit process. Payments are requested using the Request for Advance or Reimbursement Form (SF 270). Both forms are available on IMLS' website at <http://www.imls.gov/recipients/administration.shtm>.

The SF 3881 ACH form should be emailed in PDF format to IMLS Grants Administration at grantsadmin@imls.gov. If the grantee does not have the capability to email PDF documents, the ACH form may be mailed to:

Institute of Museum and Library Services
Attn. Grants Administration
1800 M Street, NW / 9th Floor
Washington, DC 20036-5802

The ACH form should not be faxed to IMLS.

¹ IMLS approval is not required for third-party transfers that were described in the approved project plan, or for the purchase of supplies, materials, or general support services

To expedite payment, grantees should email the SF 270 form in PDF format to IMLS Grants Administration at grantsadmin@imls.gov. If the grantee does not have the capability to email PDF documents, the SF 270 form may be faxed to 202-653-4604 or mailed to:

Institute of Museum and Library Services
Attn. Grants Administration
1800 M Street, NW / 9th Floor
Washington, DC 20036-5802

Unless it is stated otherwise in the special terms and conditions of an award notification, grantees will be authorized to be paid on an advance basis and payment will be effected through electronic funds transfer provided that the following conditions exist:

1. Funds for the project period have been obligated in the form of a signed Award Notification;
2. The grantee maintains or demonstrates the willingness to maintain written procedures that will minimize the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement by the grantee; and
3. The grantee's financial management system meets the standards for fund control and accountability prescribed in 45 CFR Part 1183.20.

Grant funds that have been paid to the grantee but are unspent at the end of the grant period must be returned to IMLS Grants Administration.

Grantees are also encouraged to use women-owned and minority-owned banks (banks that are owned at least 50 percent by women or minority group members).

Frequency of Requests. Grantees may submit payment request whenever grant funds are needed. Requests for advance payment should be submitted no earlier than fifteen working days prior to the beginning of the period for which the funds are requested. Grantees that email payment request to IMLS can expect payment via electronic transfer within ten workdays. Faxed and mailed payment requests may take longer to process.

Interest on Advances. All grantees, except states (see definition in Glossary of Terms), are required to maintain advances of federal funds in interest-bearing accounts unless the grantee receives less than \$120,000 per year in advances of grant funds or the most reasonably available interest-bearing account would not earn more than \$100 per year on the federal cash balance, or would entail bank services charges in excess of the interest earned.

Excess interest in excess of \$100 a year that is earned on advanced payments shall be remitted annually to the Institute of Museum and Library Services. Grantees shall send a check identified as interest earned on advances of IMLS funds, and mail it to the Institute of Museum and Library Services, Attn. Grants Administration, 1800 M Street, NW, 9th Floor, Washington, DC 20036-5802.

10. Reporting Requirements

The grantee is responsible for submitting final performance and financial reports. The final performance and financial reports shall be submitted to IMLS Grants Administration within 90 days after the completion date of the grant period. The due date final reports will be found on the last page of the grant award.

Reporting forms and instructions are available on IMLS' website www.imls.gov/recipients/administration.shtm.

Failure to submit reports on a timely basis may result in delayed payments and the suspension of action on pending applications from the grantee organization.

It should be noted that when a signed report is faxed or emailed to IMLS, the grantee is required to retain the original report in accordance with the standards set forth in Article 13 (Record Retention) of these General Terms and Conditions for IMLS Discretionary Awards.

11. Financial Management Standards

The financial management systems of grantee organizations and their subrecipients must meet the following standards:

Accounting System. Grantee organizations and their subrecipients must have an accounting system that provides accurate, current, and complete disclosure of all financial transactions related to each federally sponsored project. Accounting records must contain information pertaining to federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income. These records must be maintained on a current basis and balanced at least quarterly.

Cash contributions to the project from third parties must be accounted for in the general ledger with other grant funds. Third party in-kind (non-cash) contributions are not required to be recorded in the general ledger, but must be under accounting control, possibly through the use of a memorandum ledger.

Source Documentation. Accounting records must be supported by such source documentation as canceled checks, bank statements, invoices, paid bills, donor letters, time and attendance records, activity reports, travel reports, contractual and consultant agreements, and subaward documentation. All supporting documentation should be clearly identified with the grant and general ledger accounts which are to be charged or credited.

The documentation required for salary charges to grants is prescribed by the cost principles applicable to the grantee organization (see Article 4).

For grantees subject to OMB Circular A-87 (relocated to 2 CFR, Part 225), “Cost Principles for State, Local, and Indian Tribal Governments,” documentation for salary charges shall be based on a system of personnel activity reports unless an employee is working solely on a single federal award. In this case, the charge for salary will be supported by a certification signed by the employee or the supervisor.

Personnel activity reports shall account on an after-the-fact basis for one hundred percent of the employee's actual time, separately indicating the time spent on the IMLS grant, other grants or projects, vacation or sick leave, and administrative time, if applicable. The reports must be signed by the employee, approved by the appropriate official, and coincide with a pay period. These time records should be used to record the distribution of salary costs to the appropriate accounts no less frequently than quarterly.

Formal agreements with independent contractors, such as consultants, must include a description of the services to be performed, the period of performance, the fee and method of payment, an itemization of travel and other costs which are chargeable to the agreement, and the signatures of both the contractor and an appropriate official of the grantee organization.

Internal Control. Effective control and accountability must be maintained for all cash, real and personal property, and other assets. Grantees must adequately safeguard all such property and must provide assurance that it is used solely for authorized purposes. Grantees must also have systems in place that ensure compliance with the terms and conditions of each grant award.

Budget Control. Records of expenditures must be maintained for each grant project by the cost categories of the approved budget (including indirect costs that are charged to the project), and actual expenditures are to be compared with budgeted amounts no less frequently than quarterly. IMLS approval is required for certain budget revisions (see Article 8)

Allowable Costs. The applicable OMB cost principles, the *General Terms and Conditions for IMLS Native American Library Services Basic Awards*, and any special conditions of the grant award shall govern the determination of the reasonableness, allowability, and allocability of project costs.

Cash Management. Grantees must also have written procedures to minimize the time elapsing between the receipt and the disbursement of grant funds to avoid having excessive federal funds on hand. Requests for advance payment shall follow the guidelines set forth in Article 10.

Grantees must insure that all grant funds are obligated during the grant period and paid no later than 90 days after the end of the grant period.

12. Audit Requirements

A grantee or a subrecipient must obtain an audit, as required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), and comply with the requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," if it expends in the aggregate of \$500,000 or more in federal funds on financial assistance awards or cost-reimbursement contracts in any fiscal year ending after December 31, 2003². Copies of A-133 may be obtained from www.omb.gov or the IMLS website (www.imls.gov/recipients/references.shtm) or by contacting IMLS Grants Administration.

13. Record Retention

Financial records, supporting documentation, statistical records, and all other records pertinent to the grant shall be retained by the grantee for three years from the date of submission of the final Financial Status Report. When the conditions of a grant award require the grantee to report program income, records relating to program income shall be retained for three years from the date of submission of the last required income report.

If the three-year retention period is extended because of audits, appeals, litigation, or the settlement of claims arising out of the performance of the project, the records shall be retained until such audits, appeals, litigation, or claims are resolved. Unless court action or audit proceedings have been initiated, the grantee may substitute microfilm copies of original records.

IMLS, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the grantee and its subrecipients to make audits, examinations, excerpts, transcripts, and copies. Further, any contract in excess of the simplified acquisition threshold (currently \$100,000) that is negotiated by the grantee for the purposes of carrying out the grant project shall include a provision to the effect that the grantee, IMLS, the Comptroller General, or any of their duly authorized representatives shall have access for similar purposes to any records of the contractor that are directly pertinent to the project.

14. Equipment

For the purpose of this Article, equipment is defined as tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. The purchase of equipment not included in the approved project budget is allowable only if it is specifically approved by IMLS and there is documentation to support that the purchase is necessary and reasonable to carry out project activities.

² For fiscal years ending before December 31, 2003, the requirements of OMB Circular A-133 applied whenever the grantee expended \$300,000 or more in federal funds within a fiscal year.

Equipment records must be maintained that include the description of the equipment, the serial number or other identification number, the source of equipment, the title holder, the acquisition date, the cost of the equipment, the location, use, and condition of the equipment, and any ultimate disposition data including the date of disposal and the sale price of the equipment. A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years.

15. Title to Equipment

Title to equipment purchased or fabricated with IMLS funds shall be vested in the grantee organization with the understanding that the equipment will be used for the project for which it was obtained. IMLS may reserve the right to request the transfer of title to the federal government or to a third party when the current per unit fair market value of the equipment is \$5,000 or more and the equipment is no longer needed to carry out the purposes of the project or other projects funded by government agencies.

16. Supplies

Title to supplies and other expendable property shall vest in the grantee upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project and the supplies are not needed for any other federally-sponsored project or program, the grantee shall retain the supplies for use on non-federal sponsored activities or sell them, but shall in either case compensate the federal government for its share.

17. Travel Costs

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by those who are on official business attributable to work under a grant.

Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the grantee in its regular operation, as set forth in its written travel policy.

Airfare costs in excess of the lowest available commercial discount or customary standard (coach) airfare are unallowable unless such accommodations are not reasonably available to accomplish the purpose of travel.

18. Foreign Travel

For the purposes of these provisions, foreign travel is defined as any travel outside the United States, its territories and possessions, and Canada. Each separate foreign trip must be itemized in the budget approved by IMLS. Foreign travel that is not included in the

approved project budget must be specifically approved in writing by the appropriate IMLS program officer.

All air transportation of persons or property that is paid in whole or in part with IMLS funds must be performed on a U.S. flag air carrier or under a code sharing arrangement with a U.S. flag carrier. The airline tickets (or the documentation for electronic tickets) must identify the U.S. flag air carrier's designator code and flight number.

(See Item 3 in the Appendix for an explanation of when the use of a foreign-flag air carrier would be justified.)

19. Dissemination of Project Results

Grantees are expected to publish or otherwise make publicly available the results of work conducted under a grant. Unless otherwise specified in the award documents, three (3) copies of any published material resulting from grant activities should be forwarded to the appropriate IMLS program officer as soon as it becomes available. This material should be labeled with the identifying IMLS grant number.

All publication and distribution agreements shall include provisions giving the government a royalty-free, worldwide, nonexclusive and irrevocable right to reproduce, publish or otherwise use the material for Federal purposes and requiring the acknowledgment of IMLS support. The publication shall also include the disclaimer contained in Article 21 of these General Grant Provisions for Organizations.

20. Acknowledgment of Support and Disclaimer

Grantees must prominently acknowledge support from IMLS in all materials and announcements of the grant activities. This includes printed items such as invitations, brochures, and signage; audio/video programming for radio, television, or Web broadcast; and electronic items such as Web sites and E-mail announcements.

Unless advised to the contrary, all materials publicizing or resulting from grant activities should contain an acknowledgement of IMLS support. The acknowledgment shall also include the following statement: "Any views, findings, conclusions or recommendations expressed in this (publication) (program) (exhibition) (website) do not necessarily represent those of the Institute of Museum and Library Services."

The type of recognition will vary according to the type of activity. Grantees should use the following guidelines for acknowledgement:

- Include a credit line indicating IMLS as a source of support, such as "This project was supported in part by a grant from the Institute of Museum and Library Services."

- Graphic items such as posters or brochures should include the IMLS logo (available at www.imls.gov/recipients/logos.shtm), displayed in accordance with the Logo Standards Guide.
- Electronic items should link to the IMLS Web site, www.imls.gov.
- Audio/video broadcasts should include the tagline, "This project was supported in part by a grant from the Institute of Museum and Library Services, creating strong libraries and museums that connect people to information and ideas." Video broadcasts should display the IMLS logo.

21. Intangible Property

- a. The grantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under the grant. IMLS reserves a royalty-free, worldwide, nonexclusive, and irrevocable right to reproduce, publish or otherwise use these materials for Federal purposes and to authorize others to do so (see 45 CFR § 1183.34 Copyrights).
- b. Grantees that are awarded funds for experimental, developmental, or research work are subject to the regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
- c. In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a grant that were used by the Federal Government in developing an agency action that has the force and effect of law, IMLS shall request, and the grantee shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

22. Data Collection

Data collection activities performed under a grant are the responsibility of the grantee, and IMLS support of the project does not constitute approval of the survey design, questionnaire content, or data collection procedures. The grantee shall not represent to respondents that such data are being collected for, or in association with, IMLS or any other government agency without the specific written approval of the data collection plan or device by IMLS. However, this requirement is not intended to preclude mention of IMLS support of the project in response to an inquiry or acknowledgment of such support in any publication of this data.

IMLS has the right to (1) obtain, reproduce, publish or otherwise use the data first produced under a grant; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

23. Program Income

Program income is money that is earned or received by a grantee or a subrecipient from the activities supported by grant funds or from products resulting from grant activities. It includes, but is not limited to, income from fees for services performed and from the sale of items fabricated under a grant; usage or rental fees for equipment or property acquired under a grant; admission fees; broadcast or distribution rights; and license fees and royalties on patents and copyrights. The federal share of program income is determined by the percentage of total project costs that are supported by IMLS.

a. Income Earned During the Grant Period

The federal share of program income earned during the grant period shall be retained by the grantee and, unless the grant award specifies how such income will be used, the grantee must use it in one or more of the following ways:

- (1) It may be added to the existing project funds and used to further eligible project objectives;
- (2) It may be used to meet the grantee's cost-sharing requirement; or
- (3) It may be deducted from the total allowable costs to determine the net allowable project costs that may be charged to the IMLS grant.

A report of program income earned during the grant period must be submitted with the final Financial Status Report whenever program income is actually earned during the grant period or when the special conditions of the grant award specifically require such a report. The report shall indicate the total amount of program income that was earned and how it was used. As long as the costs that are incidental to the generation of program income are not charged to the grant or included in the grantee's cost sharing, they may be deducted from gross program income to determine the amount of program income that is subject to the requirements of this Article.

b. Income Earned After the Grant Period

Unless otherwise stated in the grant award, the grantee shall have no obligation to the federal government regarding program income earned after the end of the grant period.

24. Nondiscrimination

IMLS grants and cooperative agreements are subject to the provisions of:

- (a) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000 et seq.), which prohibits discrimination on the basis of race, color, or national origin;
- (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 701 et seq.), which prohibits discrimination on the basis of disability;
- (c) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-83, 1685-86), which prohibits discrimination on the basis of sex in education programs; and
- (d) the Age Discrimination in Employment Act of 1975, as amended (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age.

25. Debarment, Suspension, and Other Responsibility Matters

At the time of application, the authorizing official is to certify, on behalf of the applicant, that to the best of his or her knowledge and belief that the applicant and its principals:

- (a) are not presently excluded or disqualified;
- (b) have not been convicted within the preceding three years of any of the offenses listed in 45 CFR 1185.800(a) or had a civil judgment rendered against the applicant or its principals for one of those offenses within that time period;
- (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in 45 CFR 1185.800(a); and
- (d) have not had one or more public transactions (Federal, State or local) terminated within the preceding three years for cause or default.

Note: IMLS Debarment and Suspension (Nonprocurement) regulations will shortly be relocated from 45 CFR Part 1185 to 2 CFR Part 180.

26. Drug-Free Workplace Requirements

When an application is submitted to IMLS, the authorizing official is to certify, on behalf of the applicant, that the applicant will or will continue to provide a drug-free workplace by complying with the requirements in Subpart B of 45 CFR Part 1186:

This includes: making a good faith effort, on a continuing basis, to maintain a drug-free workplace; publishing a drug-free workplace statement; establishing a drug-free awareness program for its employees; taking actions concerning employees who are convicted of violating drug statutes in the workplace; and identifying (either with the application or upon award, or in documents kept on file in the applicant's office) all known workplaces under the award.

27. Lobbying Activities

When applying for more than \$100,000 in federal funding, the authorizing official must certify, to the best of his or her knowledge and belief that:

- (a) no federal appropriated funds have been paid or will be paid, by or on behalf of the authorizing official, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of a federal grant, the making of a federal loan, the entering into of a cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement;

(b) if any funds other than appropriated federal funds have been paid or will be paid to any person (other than a regularly employed officer or employee of the applicant) for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan or cooperative agreement, the authorizing official shall request, complete, and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions; and
(c) the authorizing official shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

IMLS is required by the provisions of its appropriations act to include the following text in all of its grant and contract documents.

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designated to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

28. Indebtedness to the Federal Government

The authorizing official, on behalf of the applicant, is to certify to the best of his or her knowledge and belief that the applicant is not delinquent in the repayment of any federal debt.

29. Research Misconduct

Research misconduct is defined as the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. The grantee institution bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with its own institution.

If an allegation of research misconduct is first made to the grantee institution, the grantee institution will notify IMLS Grants Administration Office if the allegation meets the definition of research misconduct given above and the grantee institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation. At any time during an inquiry or investigation, the grantee will immediately notify the Institute if

- IMLS resources or interests are threatened,
- public health or safety is at risk;
- research activities should be suspended;
- there is a reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the investigation;
- the grantee believes the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved; or
- the research community or public should be informed.

IMLS will make a finding of misconduct or take action on such a finding only after careful inquiry and investigation by a grantee institution, by another Federal agency, or by IMLS. In the event of a finding of research misconduct, IMLS will determine what administrative actions are appropriate.

The *IMLS Research Misconduct Policy* is available upon request from the IMLS program staff or the Grants Administration Office and is also available on the IMLS website. Possible misconduct in activities funded by IMLS should be reported to the IMLS Grants Administration Office.

30. Trafficking in Persons

- 1) Provisions applicable to a recipient that is a private entity
 - a) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii) Procure a commercial sex act during the period of time that the award is in effect; or
 - iii) Use forced labor in the performance of the award or subawards under the award.
 - b) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
 - i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - (1) Associated with performance under this award; or

- (2) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 45 CFR Part 1145 (to be relocated shortly to 2 CFR Part 180).
- 2) Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--
- a) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - b) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either--
 - i) Associated with performance under this award; or
 - ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 45 CFR Part 1185 (to be relocated shortly to 2 CFR Part 180).
- 3) Provisions applicable to any recipient.
- a) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - b) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
 - c) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- 4) Definitions. For purposes of this award term:
- a) “Employee” means either:
 - i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - b) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - c) “Private entity”:
 - i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii) Includes:
 - (1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

- (2) A for-profit organization.
- d) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

31. Termination

Grants may be terminated in whole or in part

- a. by IMLS, if a grantee materially fails to comply with the terms and conditions of an award;
- b. by the IMLS with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion of the project to be terminated; or
- c. by the grantee upon sending to IMLS written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion of the project to be terminated. However, if IMLS determines that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety either unilaterally or with the consent of the grantee.

When IMLS determines that a grantee has failed to comply with the terms of the grant award, IMLS may suspend or terminate the grant for cause. Normally, this action will be taken only after the grantee has been notified of the deficiency and given sufficient time to correct it, but this does not preclude immediate suspension or termination when such action is required to protect the interests of the government.

In the event that a grant is suspended and corrective action is not taken within 90 days of the effective date, IMLS may issue a notice of termination. No costs that are incurred during the suspension period or after the effective date of termination will be allowable except those that are specifically authorized by the suspension or termination notice or those that, in the opinion of IMLS, could not have been reasonably avoided.

Within 30 days of the termination date, the grantee shall furnish to IMLS a summary of progress achieved under the grant, an itemized accounting of charges incurred against grant funds and cost sharing prior to the effective date of the suspension or termination, and a separate accounting and justification for any costs that may have been incurred after this date.

32. Termination Review Procedures

A grantee who has received a notice of termination may request IMLS review of the termination action. The request must be postmarked no later than 30 days after the date of the termination notice and should be addressed to the Director, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, D.C. 20036-5802.

The request for review must contain a full statement of the grantee's position and the pertinent facts and reasons that support such a position. The Director will promptly acknowledge the request for review and appoint a review committee of at least three staff members. Pending the resolution of the review, the notice of termination will remain in effect.

None of the review committee members may be from the IMLS program or administrative staff that recommended termination or was responsible for monitoring the programmatic or administrative aspects of the grant. The committee will have full access to all relevant IMLS background materials. The committee may also request the submission of additional information from the grantee or IMLS staff and, at its discretion, may meet with representatives of both groups to discuss the pertinent issues. All review activities will be fully documented by the committee. Based on its review, the committee will present its written recommendation to the Director, who will advise the parties concerned of the final decision.

33. Resolution of Conflicting Conditions

Should there be any inconsistency between these general terms and conditions and the special terms of the grant or cooperative agreement, the latter shall govern.

Appendix

1. Procurement Standards

NOTE: The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to IMLS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant or other agreement. Matters concerning the violation of a statute are to be referred to such federal, state, or local authority as may have proper jurisdiction.

When procuring property or services under a grant, the grantee's procurement policies must adhere to the standards set forth below. Subrecipients of grant funds are subject to the same policies and procedures as the grantee.

a. The grantee will maintain a system for contract administration that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Grantees shall evaluate contractor performance and document, as appropriate, whether or not contractors have met the terms, conditions, and specifications of the contract.

b. A written standard of conduct for awarding and administering contracts shall be maintained by the grantee. No employee, officer, or agent of the grantee shall participate in the selection, or in the awarding or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for a contract: the employee, officer, or agent; any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the preceding.

The officers, employees, and agents of the grantee will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, the grantee may set standards governing when the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the grantee.

c. All procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to insure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee, price, quality, and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror

must fulfill in order for the bid/offer to be evaluated by the grantee. When it is in the grantee's interest to do so, any bid/offer may be rejected.

d. All grantees shall establish written procurement procedures that meet the requirements set forth in the Appendix to these general grant provisions.

The following section also contains the provisions that **must be included in procurement contracts** when applicable.

2. Contract Provisions

a. Grantee contracts in excess of the simplified acquisition threshold (currently \$100,000) must provide for:

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and such remedial actions as may be appropriate.

(2) Termination for cause and for convenience by the grantee, including the manner by which it will be effected and the basis for settlement. In addition, these contracts shall also contain a description of the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Access by the grantee, IMLS, the Comptroller General of the United States, or any other duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

b. All contracts, including small purchases, shall contain the following provisions as applicable:

(1) Equal Employment Opportunity

All contracts awarded by grantees and their contractors and subrecipients having a value of more than \$10,000 must contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).

(2) Rights to Inventions and Materials Generated Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any implementing regulations issued by the awarding agency.

(3) Clean Air Act of 1970 (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as Amended

Contracts of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal sponsoring agency and the Regional Office of the Environmental Protection Agency (EPA).

(4) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors who apply or bid for an award of \$100,000 or more must file a certification with the grantee stating that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, cooperative agreement, loan, or any other award covered by 31 U.S.C. 1352. Such contractors must also disclose to the grantee any lobbying that takes place in connection with obtaining any Federal award.

(5) Debarment and Suspension (E.O. 12549 and 12689)

No contracts shall be made to parties listed on the General Services Administration's Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689. These lists contain the names of contractors debarred, suspended, or proposed for debarment by agencies, and contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549.

Grantees are required to obtain a certification regarding debarment and suspension from all subrecipients and from all parties with whom they contract for goods or services when (1) the amount of the contract is \$100,000 or more, or (2) when, regardless of the amount of the contract, the contractor will have a critical influence or substantive control over the covered transaction. Such persons would be project directors and providers of federally-required audit services.

3. Use of Foreign-Flag Air Carriers

The fact that comparable service provided by a foreign-flag carrier is less expensive, more convenient, or can be paid for with excess foreign currency is not sufficient justification for using a foreign flag carrier that does not have a code-sharing arrangement with a U.S. flag air carrier.

The following **general rules** apply unless their application would result in the first or last leg of travel from or to the U.S. being performed by a foreign-flag air carrier:

- (a) a U.S.-flag air carrier shall be used to destination or, in the absence of direct or through service, to the farthest interchange point on a usually traveled route.
- (b) if a U.S.-flag air carrier does not serve an origin or interchange point, a foreign-flag air carrier shall be used only to the nearest interchange point on a usually traveled route to connect with a U.S. flag air carrier.

(c) a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

Use of Foreign-Flag Air Carriers.

1. Travel To and From the U.S.

Use of a foreign-flag air carrier is permissible if:

(a) the airport abroad is the traveler's origin or destination airport, and use of U.S.-flag air carrier service would extend the time in a travel status by at least 24 hours more than travel by a foreign-flag air carrier; or

(b) the airport abroad is an interchange point, and use of U.S.-flag air carrier service would increase the number of aircraft changes the traveler must make outside of the U.S. by 2 or more, would require the traveler to wait four hours or more to make connections at that point, or would extend the time in a travel status by at least six hours more than travel by a foreign-flag air carrier.

2. Travel Between Points Outside the U.S.

Use of a foreign-flag air carrier is permissible if:

(a) travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;

(b) travel by a U.S.-flag air carrier would require a connecting time of four hours or more at an overseas interchange point; or

(c) the travel is not part of the trip to or from the U.S., and use of a U.S.-flag air carrier would extend the time in a travel status by at least six hours more than travel by a foreign-flag air carrier.

3. Short Distance Travel.

For all short distance travel, regardless of origin and destination, use of a foreign-flag air carrier is permissible if the elapsed travel time on a scheduled flight from origin to destination airport by a foreign-flag air carrier is three hours or less and service by a U.S.-flag air carrier would double the travel time.