Council Meeting of
September 13, 2011

SUPPLEMENTAL MATERIAL #2

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Supplemental Material #2 to City Council Agenda Item 8M/11A
Expenditure: N/A.

BACKGROUND

The City of Torrance has received two protest letters regarding this agenda item. One of the protests is from Williams USA, Inc. and one of the protests is from RELM Wireless. Staff will respond to each of the protests letters below in the Analysis section.

ANALYSIS

(1) Williams USA Inc.

On September 12, 2011 at 3:36 pm, we received a protest bid letter from Williams USA Inc stating that he believes that the bid should be awarded to Williams USA as the lowest and most compliant bidder. A copy of the letter is attached as Attachment F.

The Fire Department, along with Communications and Information Technology Department continue to recommend that Williams USA Inc be found to be Non-Responsive.

1) The following requirements were not met by Williams USA Inc and made them Non-Responsive:
   - The Bid requested for 1000 channel capable radio, Williams USA is only able to provide 512
   - The Bid requested 15 Full Keypad UHF portable radios, Williams USA Inc solution was limited keypads
   - The Bid requested yellow cases, Williams USA Inc is unable to provide this feature
   - The Bid Requested MDC 1200 signaling, Williams USA Inc does not offer this feature at this time

- The Bid requested single head and dual head mobile radios, Williams USA Inc only offered single head function

Further CFR Title 28 Judicial Administration, 66.36 Procurement (c) Competition (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 66.36. Some situations considered to be restrictive of competition include but not limited to: (vi) specifying only a "brand name" product instead of allowing "an equal" product name to be offered and described the performance of other relevant requirements of procurement.

2) The grant that the Fire Department has been approved to accept funding is the '08 UASI (Urban Areas Security Initiative Grant), which as a deadline of October 31, 2011. Mr. Williams is referencing FEMA Homeland Security and Firefighters grant.

3) The Fire Department currently has the Motorola Radios in service. These radios were used as a baseline reference point when the bid specifications were written. We used these radios as a baseline to develop radio specifications due to the fact we these radios daily. This also gave us a foundation to determine what features and functions we needed for firefighter safety.

4) The grant that we are and have applied for is 08 UASI (Urban Areas Security Initiative Grant), which as a deadline of October 31, 2011. Mr. Williams is referencing FEMA Homeland Security and Firefighters Grant. As per the City of Torrance Municipal Code Section 22.1.3 Definitions, d) For the purpose of this Chapter, the term "responsible bid" shall mean an offer submitted by a responsible bidder to furnish property and /or services in conformity with the specifications, delivery times, conditions and other requirements included in the invitation for bids."

Further, a follow-up email regarding an earlier conversation was sent to Mr. Williams on August 23, 2011, that stated that if he wishes to file a protest, he would need to submit that letter to the City Clerk's office. The protest letter would be submitted for City Council review along with staff's recommendation. This email was sent to Mr. Williams by Felice Fromm the Purchasing Manager

(2) RELM Wireless

On September 12, 2011, at 5:38 pm, the Fire Department received an email/letter from a Jim Holthaus from RELM Wireless. A copy of the letter is attached as Attachment G. The email/letter was sent after the City found RELM Non-responsive to bid B2011-32. With this letter, RELM requested to revise their proposal changing the delivery date for the MDS-1200 "from 120 days ARO to 21 October, 2011" and they asked if their revised bid will be accepted.

Staff continues to recommend that RELM be found non responsive. The change to RELM's delivery date is a material change to their bid. A bid cannot be changed after a bid has been opened. Although it appears that RELM would be able to meet the

delivery deadline and bid specifications with the revision made to their bid yesterday, Staff maintains serious concerns whether RELM can meet all the requirements of the bid specifications. When the bids were submitted and evaluated Staff recognized that RELM was not going to be able to meet the delivery deadline listed in the bid specifications. It was determined that RELM's was non-responsive and no further evaluation of the radio equipment was performed.

The Fire Department and CIT Department continue to request that RELM's bid be found to be non-responsive. Due to the time constants of the UASI grant, both the Fire Department and CIT Department feel that Staff will not have adequate time to fully evaluate RELM's product to determine that it meets all of the requirements of the bid specifications. What Staff does know of this product is that it used in more wild land operations, rather than in an urban setting as Torrance. Also, Staff made several phone calls to other local agencies and found that RELM's product was only used for mutual aid communications.

NOTE: This item was inadvertently placed under Consent Calendar as 8M; it should be considered under Public Safety as 11A.

Respectfully submitted,

WILLIAM RACOWSCHI
Fire Chief

Richard Shigaki
Information Technology Director

CONCUR:

LeRoy J. Jackson
City Manager

Attachments: F) Protest from Williams USA, Inc. (Limited distribution for the attachments to Williams protest letter)
G) Protest from RELM

Sullivan, Patrick

From: City Clerk
Sent: Tuesday, September 13, 2011 9:38 AM
To: Serna, Martin; Gallo, Ernest; Sullivan, Patrick; Fromm, Felice
Subject: FW: Item 8M in your agenda for September 13, 2011

More on Item 8M/11A for September 13, 2011 agenda.
Sue

Sue Herbers
City Clerk
City of Torrance | 3031 Torrance Blvd. | Torrance CA 90503 |
310.618.2864 voice | 310.618.2931 fax | SHerbers@TorranceCA.gov | www.TorranceCA.gov

From: Larry G. Weber [mailto:larry@thesalesgroup.com]
Sent: Monday, September 12, 2011 5:53 PM
To: Citygram; City Clerk
Cc: 'Jim Holthaus'; David Storey; Tim Vitou
Subject: Item 8M in your agenda for September 13, 2011

Dear City Manager Jackson and City Clerk Herbers,

I will be attending your Council Meeting tomorrow evening. I would like to address the Council on Agenda Item 8M, and respectfully ask that the attached letter be added to the Council's packets.

Thank you,
Larry Weber

Larry G. Weber, MBA, CPMR
The Sales Group, Inc.
23942 Craftsman Road
Calabasas, CA 91302
office: 818-222-0880
cell: 818-512-1888

12 September 2011

Martin A. Serna
Assistant Chief/Administration Division/Fire Department City of Torrance
1701 Crenshaw Blvd
Torrance CA 90501
mserna@TorranceCA.Gov

Bid B2011-32 – for UHF and VHF Mobile and Portable Radios for the Torrance Fire Department

Chief Serna,

Thank you for your letter responding to the proposal that RELM Wireless submitted for Bid B2011-32. At the time of bid preparation, RELM wireless chose to proceed with an abundance of caution when responding to the requirement for MDC-1200 feature sets. As such, RELM's proposal was drafted to provide radio hardware so that the City of Torrance could proceed with installation of equipment and then RELM would provide a software update to include MDC-1200 functionality.

RELM Wireless has made substantial progress on implementation of MDC-1200 feature sets and is now prepared to revise our original delivery estimate from 120 days ARO to 21 October, 2011. This delivery date is predicated on the City of Torrance notifying RELM not later than 17 September, 2011 of the intent to award the contract to RELM. Per this revised proposal, RELM is prepared to delivery radios and MDC-1200 capable firmware by 21 October, 2011.

Please review this revised delivery date and let RELM know of your willingness to accept this revision. I look forward to hearing from you.

RELM requests that Larry Weber be allowed to present this revised delivery date during the upcoming City Council meeting on September 13, 2011.

Sincerely

Jim Holthaus
Director Product Development
RELM Wireless
jholthaus@relm.com
402-990-1551

ATTACHMENT F

Sullivan, Patrick

From: Herbers, Sue
Sent: Tuesday, September 13, 2011 5:56 PM
To: Sullivan, Patrick
Subject: FW: Bid Protest to bid #B2011-32

Sue Herbers
City Clerk
City of Torrance | 3031 Torrance Blvd. | Torrance CA 90503 |
310.618.2864 voice | 310.618.2931 fax | SHerbers@TorranceCA.gov | www.TorranceCA.gov

---

From: Herbers, Sue
Sent: Monday, September 12, 2011 3:36 PM
To: Serna, Martin; Sullivan, Patrick; Gallo, Ernest
Cc: Jackson, LeRoy; Giordano, Mary; Poirier, Rebecca
Subject: FW: Bid Protest to bid #B2011-32

A protest has been received on the award of B2011-32 - Item 8M on the City Council agenda of September 13, 2011.
Sue Herbers

Sue Herbers
City Clerk
City of Torrance | 3031 Torrance Blvd. | Torrance CA 90503 |
310.618.2864 voice | 310.618.2931 fax | SHerbers@TorranceCA.gov | www.TorranceCA.gov

---

From: Philip Williams [mailto:n8972@williamscom.com]
Sent: Monday, September 12, 2011 3:10 PM
To: Herbers, Sue
Cc: Fellows, John; Fromm, Felice
Subject: Bid Protest to bid #B2011-32

Williams USA Inc. would like to submit our protest to this bid. This email(s) and any attachments constitutes Williams USA's official protest.

I am protesting this bid on the following;

1. *The bid specifications are proprietary and restrictive to one vendor, Motorola and not free and open to competition. (This is also documented and evidenced in other bids submitted by Bassett Sales and Relm Wireless.) This is a violation for Federal Regulations, 44 CFR, 13.36*

(c) Competition.
(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with
the standards of section 13.36. Some of the situations considered to be restrictive of competition include but are
not limited to: (i) Placing unreasonable requirements on firms in order for them to qualify

to do business, (vi) Specifying only a " brand name' product instead of allowing " an equal' product to be offered and descthe performance of other relevant requirements of the procurement, and (vii) Any arbitrary action in the procurement process.
(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
(4) Grantees and subgrantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation.

2. *Limiting and restrictive competition regulations as documented in the April 2010, FEMA, Homeland Security and Firefighters Grants "Guidance & Application Kit"; Page ii & iii (attached)*

Competition: All procurement transactions shall be conducted in a manner that provides, to the maximum extent practical, open and free competition.
Specifications: Specifications developed for solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by the recipient. However, those specifications may not be so narrowly constructed or contain features which unduly limit, restrict, or eliminate competition unnecessarily.
Grantees may, when developing their solicitations, list factors that will be used in their evaluation of proposals that are submitted, as long as those evaluation factors are not found to limit competition. Finally, grantees cannot impose in-State or local geographical preferences in the evaluation of bids or proposals. Applicants and grantees are encouraged to obtain product information from vendors in order to be more informed about the items they plan to purchase. However, grantees may not use specifications obtained from vendors for any solicitation with Federal grant funds if the specifications would be found to be restrictive. It is the grantee's responsibility to assure that vendor specifications are not used in a manner which would result in restricting or limiting competition from other vendors of similar products.

3. *It is obvious that a Motorola direct or indirect dealer, vendor or manufacture helped write this specification in order to restrict competition.*

Additionally, if a vendor or manufacturer drafts, writes, edits, critiques, or provides any direct consultation on a grant application, that vendor or manufacturer cannot submit a bid for that purchase. Likewise, if a vendor or manufacturer drafts, writes, edits, critiques, or provides any direct consultation on a specification to be used for the solicitation for the purchase of a specific product, that vendor or manufacturer cannot submit a bid for that purchase. *See* Conflicts of Interest.

4. *This is also a violation of the Homeland Defense, FEMA and FireFighters Grant Applications Kit, ii Procurement Integrity and iii Restrictive competition.*

The city of Torrance has no written or documented protest procedures. When I called purchasing for this information I was told by Felice Fromm, the person in charge of this bid, that the City has no protest procedures written or otherwise. She stated that no one has ever protested a bid with the city before.

See; 13.36, C, b, (12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency Reviews of protests by the Federal agency will be limited to: (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and (ii) Violations of the grantee or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

I am asking that this bid be awarded to Williams USA as the lowest cost and most compliant bidder to the specifications over the restrictive Motorola bid. If this is not acceptable, then the bid should be cancelled and rebid with un-restrictive specifications.

Please contact me with your decision. I will be on vacation from September 14th. to 23rd.

Philip E. Williams
President
Williams USA Inc.
Ph/Fax: 866-828-6763
Cell: 707-974-8972
n8972@williamscom.com
www.williamscom.com
DVBE, SB, SDVOSB
Green Certified

PART 13— UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A— General Section
13.1 Purpose and scope of this part.
13.2 Scope of subpart.
13.3 Definitions.
13.4 Applicability.
13.5 Effect on other issuances.
13.6 Additions and exceptions.

Subpart B— Pre- Award Requirements
13.10 Forms for applying for grants.
13.11 State plans.
13.12 Special grant or subgrant conditions for " high- risk' grantees.

Subpart C— Post- Award Requirements
FINANCIAL ADMINISTRATION
13.20 Standards for financial management systems.
13.21 Payment.
13.22 Allowable costs.
13.23 Period of availability of funds.
13.24 Matching or cost sharing.
13.25 Program income.
13.26 Non-Federal audit.
CHANGES, PROPERTY, AND SUBAWARDS
13.30 Changes.
13.31 Real property.
13.32 Equipment.
13.33 Supplies.
13.34 Copyrights.
13.35 Subawards to debarred and suspended parties.
13.36 Procurement.
13.37 Subgrants.
REPORTS, RECORDS RETENTION, AND ENFORCEMENT
13.40 Monitoring and reporting program performance.
13.41 Financial reporting.
13.42 Retention and access requirements for records.
13.43 Enforcement.
13.44 Termination for convenience.

Subpart D— After- the- Grant Requirements
13.50 Closeout.
13.51 Later disallowances and adjustments.
13.52 Collection of amounts due.

Subpart E— Entitlement [Reserved]

AUTHORITY: Reorganization Plan No. 3 of 1978; 43 FR 41943,3 CFR, 1978 Comp, p. 329; E. O. 12148, 44 FR 43239,3 CFR, 1979 Comp, p. 412.

SOURCE: 53 FR 8078, 8087, Mar. 11, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984; 52 FR 20178, May 29, 1987; and 53 FR 8028, Mar. 11, 1988.

Subpart A— General

§ 13.1 Purpose and scope of this part.
This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 13.2 Scope of subpart.
This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 13.3 Definitions.
As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in- transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from " programmatic' requirements, which concern matters that can be treated only on a program- by- program or grant- by- grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for grant and subgrant in this section and except where qualified by Federal) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in- kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost- type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF– 269 " Financial Status Report' (or other equivalent report; (2) for construction grants, the SF– 271 " Outlay Report and Request for Reimbursement' (or other equivalent report.

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include 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. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same ora future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in- kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted— not the value of third- party in- kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded

from the definition of grant in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than equipment as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee ora decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E. O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. " Termination' does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in- kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non- Federal third parties without charge to the grantee, or a cost- type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 13.4 Applicability.

(a) General. Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of section 13.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low- Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, Chapter 2, Section 583— the Secretary's discretionary grant program) and titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of title V, Mental Health Service for the Homeless Block Grant.

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a) 19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act;

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act;

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI– AABD of the Act; and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),
(ii) Commodity Assistance (section 6 of the Act),
(iii) Special Meal Assistance (section 11 of the Act,
(iv) Summer Food Service for Children (section 13 of the Act), and
(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:
(i) Special Milk (section 3 of the Act), and
(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412 (e) of the Immigration and Nationality Act (8 U. S. C. 1522(e) and subsection 501(a) of the Refugee Education Assistance Act of 1980) (Pub. L. 96– 422, 94 Stat. 1809, for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U. S. C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program, except for 20 U. S. C. 238(d(2(c) and 240(f) (Entitlement Increase for Handicapped Children; and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U. S. C. 641(a)).

(b) Entitlement programs. Entitlement programs enumerated above in § 13.4(a)(3) through (8) are subject to subpart E.

§ 13.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 13.6.

§ 13.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case- by- case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B— Pre- Award Requirements

§ 13.10 Forms for applying for grants.

(a) Scope.

(1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) Authorized forms and instructions for governmental organizations.

(1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of pre-applications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF– 424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 13.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations

implementing Executive Order 12372, " Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b*) Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(c) *Amendments.* A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or

(2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 13.12 Special grant or subgrant conditions for" high- risk' grantees.

(a) A grantee or subgrantee may be considered " high risk' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C— Post- Award Requirements

FINANCIAL ADMINISTRATION

§ 13.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1*) Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and

application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4*) Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5*) Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7*) Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U. S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transaction reports to the awarding agency. When advances are made by letter of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(d) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 13.21 Payment.

(a) Scope. This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) Reimbursement. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) Working capital advances. If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(e) Effect of program income, refunds, and audit recoveries on payment.

(1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(f) Withholding payments.

(1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 13.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(g) Cash depositories.

(1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(h) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U. S. C. 6501 et seq.) and the Indian Self-Determination Act (23 U. S. C. 450, grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 13.22 Allowable costs.

(a) Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost- type contractors, including allowable costs in the form of payments to fixed- price contractors; and

(2) Reasonable fees or profit to cost type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a— State, local or Indian tribal government. Use the principles in—OMB Circular A– 87.

For the costs of a— Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular. Use the principles in—OBM Circular A–122.

For the costs of a—Educational institutions. Use the principles in— OMB Circular A– 21.

For the costs of a—For- profit organization other than a hospital and an organization named in OBM Circular A– 122 as not subject to that circular. Use the principles in—48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 13.23 Period of availability of funds.

(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period(or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report(SF– 269). The Federal agency may extend this deadline at the request of the grantee.

§ 13.24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost- type contractor under the assistance agreement. This includes allowable costs borne by non- Federal grants or by others cash donations from non- Federal third parties.

(2) The value of third party in- kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) Qualifications and exceptions

(1)Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs- sharing requirements. Neither costs nor the values of third party in- kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in § 13.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 13.25 (g).

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost- type contractors. These records must show how the value placed on third party in- kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in kind contributions.

(i) Third party in kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in- kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in- kind contribution to a fixed- price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in- kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services

(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost- type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph(c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs

(e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non- Federal share of the property may be counted as cost sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in- kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 13.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/ acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 13.25 Program income.

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. During the grant period is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 13.34)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 13.31 and 13.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives.) In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(i) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i. e, until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 13.26 Non- Federal audit.

(a) Basic rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U. S. C. 7501– 7507) and revised OMB Circular A– 133, " Audits of States, Local Governments, and Non- Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, " Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non- Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for- profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A– 110, or through other means (e. g, program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) Auditor selection. In arranging for audit services, § 13.36 shall be followed.

[53 FR 8079, 887, Mar. 11, 1988, as amended at 62 FR 45939, 45945, Aug. 29, 1997]

CHANGES, PROPERTY, AND SUBAWARDS

§ 13.30 Changes.

(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post- award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see § 13.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes

(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i. e, from direct payments to trainees to other expense categories.)

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the

awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval.)

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 13.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) Requesting prior approval.

(1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 13.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 13.31 Real property.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency

will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing- up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the awarding agency or to a third party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 13.32 Equipment.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) Use.

(1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 13.25 (a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade- in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) Management requirements. Procedures for managing equipment (including replacement equipment, whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per- unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar- day period the grantee shall follow § 13.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 13.33 Supplies.

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.
(b) Disposition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 13.34 Copyrights.
The Federal awarding agency reserves a royalty- free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 13.35 Subawards to debarred and suspended parties.
Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, " Debarment and Suspension."

§ 13.36 Procurement.
(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.
(b) Procurement standards.
(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
(i) The employee, officer or agent,
(ii) Any member of his immediate family,
(iii) His or her partner, or
(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.
(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters

as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section 13.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a " brand name' product instead of allowing " an equal' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in- State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/ E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a " brand name or equal' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation

period.

(d) Methods of procurement to be followed

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U. S. C. 403(11) (currently set at $100,000.) If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising.) Bids are publicly solicited and a firm- fixed- price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 13.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed- price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed- price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications- based procurement of architectural/ engineering (A/ E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i. e, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre- award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
(2) Affirmative steps shall include:
(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price.
(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e. g, under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 13.22.) Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.
(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
(2) Grantees and subgrantees must on request make available for awarding agency pre- award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a " brand name' product; or
(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
(3) A grantee or subgrantee will be exempt from the pre- award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.
(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these

reviews shall occur where there is a continuous high- dollar funding, and third party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self- certification shall not limit the awarding agency's right to survey the system. Under a self- certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc, as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The " bid guarantee' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A " performance bond' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A " payment bond' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000.)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled " Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60.) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees.)

(4) Compliance with the Copeland " Anti- Kickback' Act (18 U. S. C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3.) (All contracts and subgrants for construction or repair.)

(5) Compliance with the Davis- Bacon Act (40 U. S. C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5.) (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation.)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U. S. C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5.) (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers.)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their 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.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U. S. C. 1857(h)), section 508 of the Clean Water Act (33 U. S. C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15.) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94– 163, 89 Stat. 871.)

[53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995]

§ 13.37 Subgrants.

(a) States. States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 13.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) All other grantees. All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) Exceptions. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 13.10;

(2) Section 13.11;

(3) The letter- of- credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 13.21; and

(4) Section 13.50.

REPORTS, RECORDS RETENTION, AND ENFORCEMENT

§ 13.40 Monitoring and reporting program performance.

(a) Monitoring by grantees. Grantees are responsible for managing the day to day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) Nonconstruction performance reports. The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi- annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs

(3) Grantees will not be required to submit more than the original and two copies of performance reports

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) Construction performance reports. For the most part, on-site technical inspections and certified percentage of completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) Waivers, extensions.

(1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 13.41 Financial reporting.

(a) General.

(1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decision-making purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report

(1) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) Frequency. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) Due date. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) Federal Cash Transactions Report—

(1) Form.

(i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain

disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be required in the "Remarks' section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement

(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in paragraph (b)(3) of this section.

(e) Outlay report and request for reimbursement for construction programs.

(1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in paragraph (d) of this section, instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in paragraph (b)(3) of this section.

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by paragraphs (b) (3) and (4) of this section.

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in paragraph (d) of this section.

(iii) The Federal agency may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by paragraph (b)(2) of this section.

§ 13.42 Retention and access requirements for records.

(a) Applicability.

(1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 13.36(i)(10).

(b) Length of retention period.

(1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph(c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3- year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3- year period, whichever is later.

(3) To avoid duplicate record-keeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the

records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period

(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3- year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records

(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(3) Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The Federal Freedom of Information Act (5 U. S. C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 13.43 Enforcement.

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are non-cancelable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to " Debarment and Suspension' under E. O. 12549 (see § 13.35.)

§ 13.44 Termination for convenience.

Except as provided in § 13.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee 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 to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 13.43 or paragraph (a) of this section.

Subpart D— After- The- Grant Requirements

§ 13.50 Closeout.

(a) General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF– 271) (as applicable)

(3) Final request for payment (SF– 270) (if applicable.)

(4) Invention disclosure (if applicable.

(4) Federally- owned property report: In accordance with § 13.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) Cash adjustments.

(1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 13.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 13.42;

(d) Property management requirements in §§ 13.31 and 13.32; and

(e) Audit requirements in § 13.26

§ 13.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Chapter II.) The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E— Entitlement [Reserved]

FISCAL YEAR 2010

Assistance to Firefighters Grants

GUIDANCE AND APPLICATION KIT

APRIL 2010

U.S. DEPARTMENT OF HOMELAND SECURITY

Title of Opportunity: Assistance to Firefighters Grants

Federal Agency Name: Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA)

Announcement Type: Initial

Dates: Completed applications may be submitted as early as Monday, April 26, 2010, but must be submitted **no later than 5:00 p.m., Eastern Time on Friday, May 28, 2010.**

Additional overview information: The Fiscal Year (FY) 2010 Assistance to Firefighters Grants (AFG) remains largely unchanged from the previous year's program. In FY 2010, the program will remain focused on firefighter life and safety as well as the safety of the public the firefighters serve. Applicants who demonstrate that their request will have a direct effect on life and safety will receive the highest consideration.

Procurement Integrity

Through audits conducted by the Department of Homeland Security's Office of Inspector General (OIG) and through the Assistance to Firefighters Program Office grant monitoring, it has become apparent that some Assistance to Firefighters Grant (AFG) recipients have not adhered, or are not totally adhering, to the proper procurement requirements when spending grant funds. Anything less than full compliance with Federal procurement policies jeopardizes the integrity of the grant as well as the grant program. Below, we have reiterated the Federal procurement requirements for fire departments and emergency medical service (EMS) organizations grantees when buying goods and services with Federal grant funds. DHS will include a review of grantees' procurement practices as part of the normal monitoring activities.

Competition: All procurement transactions shall be conducted in a manner that provides, to the maximum extent practical, open and free competition. Grantees are expected to promote competition and ensure advantageous pricing by soliciting bids from multiple vendors. Purchases shall be made from the vendor whose bid is responsive to the solicitation and is most advantageous to the grantee when price, quality, and other factors are considered. Grantees may use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal laws and standards. Grantees who fail to adhere to their own procurement policy, or otherwise fail to fully "compete" any purchase involving Federal funds, may find that their expenditures will be questioned and subsequently disallowed.

Documentation: Grantees are required to maintain and retain backup documentation such as bids, quotes, and cost/price analyses on file for review by Federal personnel. The required documentation for federally funded purchases should include specifications, solicitations, competitive quotes or proposals, basis for selection decisions, purchase orders or contracts, invoices, and cancelled checks. Grantees who fail to fully document their purchases may find that their expenditures will be questioned and subsequently disallowed.

Specifications: Specifications developed for solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by the recipient. However, those specifications may not be so narrowly constructed or contain features which unduly limit, restrict, or eliminate competition unnecessarily. Grantees may, when developing their solicitations, list factors that will be used in their evaluation of proposals that are submitted, as long as those evaluation factors are not found to limit competition. Finally, grantees cannot impose in-State or local geographical preferences in the evaluation of bids or proposals.

Applicants and grantees are encouraged to obtain product information from vendors in order to be more informed about the items they plan to purchase. However, grantees may not use specifications obtained from vendors for any solicitation with Federal grant funds if the specifications would be found to be restrictive. It is the grantee's

responsibility to assure that vendor specifications are not used in a manner which would result in restricting or limiting competition from other vendors of similar products. Additionally, if a vendor or manufacturer drafts, writes, edits, critiques, or provides any direct consultation on a grant application, that vendor or manufacturer cannot submit a bid for that purchase. Likewise, if a vendor or manufacturer drafts, writes, edits, critiques, or provides any direct consultation on a specification to be used for the solicitation for the purchase of a specific product, that vendor or manufacturer cannot submit a bid for that purchase. *See* Conflicts of Interest below.

Grantees shall, on request, make available to DHS pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, *etc.*, if 1) the purchase specifies a "brand name" product or 2) the proposed award is to be awarded to other than the apparent low bidder under a sealed bid process. Grantees found to be using proprietary, or otherwise limiting specifications, may find their expenditures questioned and subsequently disallowed.

Personal and Organizational Conflicts of interest: In order to ensure objective vendor performance and eliminate a real or apparent unfair competitive advantage, vendors who develop or write bid specifications, requirements, statements of work (including the grant application), and/or requests for proposals (RFP) shall be excluded from competing for such procurements. Vendors may provide product information to grantees for consideration and use during the grantees' product evaluation and drafting of solicitation specifications. However, it is the grantees' responsibility to assure that the specifications used are not proprietary or unduly limit competition. Additionally, no employee, officer, or agent of the grantee shall participate in the selection, award, or administration of a procurement supported by Federal funds if a real or an apparent conflict of interest would be involved. A conflict of interest could arise when any of the following conditions exists:

a) An officer, employee, or agent of the grantee has a financial or other interest in the vendor selected for the procurement.
b) Any member of the grantee's officers', employees', or agents' immediate family has a financial or other interest in the vendor selected for the procurement.
c) An organization which employs a grantee's officer, employee, or agent is a vendor or has a financial or other interest in the vendor selected for the procurement.

For the purposes of this program, we consider volunteers of an organization and grant writers to be employees, officers, and/or agents of the grantee. As such, no volunteer or member of an organization or anyone involved in the application for funding can participate in, or benefit from, the procurement if Federal funds are involved. Grantees that purchase items with grant funds from vendors who employ any of their volunteers/members will have to document how they avoided a conflict of interest during the procurement process (*i.e.,* specific details regarding how the members/volunteers removed themselves, or how they were prevented from participating in the process). Grantees who fail to fully document their purchases may find that their expenditures will be questioned and subsequently disallowed.

CONTENTS

Overview.....i

Procurement Integrity.....ii

Contents.....1

Part I. FUNDING OPPORTUNITY DESCRIPTION.....3
- A. Federal Strategy.....3
- B. Priority Development Process.....4
- C. Funding Priorities.....5
  - 1. Fire Department Priorities.....5
  - 2. Nonaffiliated EMS Organization Priorities.....15

Part II. AWARD INFORMATION.....24
- A. Award Period of Performance.....24
- B. Available Funding.....24
- C. Specific Funding Parameters.....24
- D. Awards.....26

Part III. ELIGIBILITY INFORMATION.....28
- A. Eligible Applicants.....28
- B. Ineligible Applicants.....288
- C. Cost Sharing.....289
- D. Allowable Expenses and Cost Restrictions for Fire Departments.....30
- E. Allowable Expenses and Cost Restrictions for Nonaffiliated EMS Organizations.....36
- F. Other Allowable Costs.....40
- G. Reasonableness of a Request.....43

Part IV. APPLICATION AND SUBMISSION INFORMATION.....45
- A. Automated Grant Application.....44
- B. Application Process.....45
- C. DUNS Number.....45
- D. Project Period.....46
- E. Application Details.....46
- F. Project Development.....47
  - 1. Fire Department.....47
  - 2. Nonaffiliated EMS Organization.....49

3. Regional Projects 50

Part V. APPLICATION REVIEW INFORMATION 53
A. Prescreening Process 54
B. Peer Review Process 53
C. State Strategy and Communications Technical Review 56
D. Anticipated Announcement and Award Dates 56

Part VI. AWARD ADMINISTRATION INFORMATION 57
A. Award Procedure 56
B. Grantee Responsibility 57
C. Monitoring 61
D. Grant Closeout Process 61
E. Financial Reporting Requirements 61

Part VII. FEMA CONTACTS 63

Part VIII. OTHER INFORMATION – Excess Funds 71

PART I.
FUNDING OPPORTUNITY DESCRIPTION

Assistance to Firefighters Grants (AFG) provide financial assistance directly to fire departments and nonaffiliated EMS organizations to enhance their capabilities with respect to fire and fire-related hazards. The authority for AFG is derived from the *Federal Fire Prevention and Control Act of 1974* (15 U.S.C. §§ 2229 *et seq.*), as amended. Congress appropriated a total of $390 million for the FY 2010 AFG (Public Law 110-329). Our primary goal is to help fire departments and nonaffiliated EMS organizations meet their firefighting and emergency response needs. AFG seeks to support organizations that lack the tools and resources necessary to more effectively protect the life and safety of the public and their emergency response personnel with respect to fire and all other hazards.

The purpose of this package is to provide an overview of the AFG, the formal grant guidance, and the application materials needed to apply for funding under this program. Also included is an explanation of DHS requirements for implementation of a successful application. Our job at DHS is to provide clear guidance and application tools to assist applicants. Our customers are entitled to effective assistance during the application process and transparent, disciplined management controls to support grant awards. We intend to be good stewards of Federal resources and common-sense partners with our first responder colleagues.

A. Federal Strategy

The AFG Program is an important part of the Administration's larger, coordinated effort to strengthen homeland security preparedness. Of particular significance are the National Preparedness Guidelines and their associated work products. The National Preparedness Guidelines are an all-hazards vision regarding the Nation's four core preparedness objectives: prevent, protect, respond and recover from both terrorist attacks and catastrophic natural disasters.

The National Preparedness Guidelines define a vision of what to accomplish and a set of tools to forge a unified national consensus about what to do and how to work together at all levels of government to effectively respond to all hazards. First responder participation is integral to the Guidelines' success. DHS expects its first responder partners to be familiar with these national preparedness guidelines and to consider these guidelines when assessing their needs and developing their grant requests.

B. Priority Development Process

Each year, DHS brings together a panel of fire service professionals representing nine major fire service organizations to recommend funding priorities and other implementation criteria for AFG. This criteria development panel is charged with making recommendations to DHS regarding the creation and/or modification of previously established funding priorities, as well as developing criteria for awarding grants. The nine organizations are:

- Congressional Fire Services Institute (CFSI);
- International Association of Arson Investigators (IAAI);
- International Association of Fire Chiefs (IAFC);
- International Association of Fire Fighters (IAFF);
- International Society of Fire Service Instructors (ISFSI);
- National Association of State Fire Marshals (NASFM);
- National Fire Protection Association (NFPA);
- National Volunteer Fire Council (NVFC); and
- North American Fire Training Directors (NAFTD).

The Department considers each recommendation made to it by the criteria development panel and this document reflects the Department's implementation of those recommendations with respect to the priorities, direction, and criteria for awarding grants. All of the funding priorities for the FY 2010 AFG are designed to address the following: first responder safety, enhancing national capabilities, risk, and/or interoperability.

The specific criteria for our highest priorities for each of the funding areas are set forth in *Part I. Section C. Funding Priorities* of this guidance. No one funding area is considered a priority over the others; therefore, the lists are not in any particular order.

C. Funding Priorities

AFG funding priorities differ for fire departments and nonaffiliated EMS organizations. Please read the guidance document with this in mind, and make sure that you are researching the appropriate sections for your organization.

1. Fire Department Priorities

The AFG governing legislation requires DHS to take into account the benefit to be derived from the costs of the grant activity when considering each application for award. DHS has determined that a risk-based focus achieves this cost-benefit consideration and that an applicant's probable frequency of need and use (of the items or materials being requested) as well as the level of population protected by the applicant are both measures of risk as well as indicators of the benefit that could be derived from an award. Therefore, for each activity below, DHS will provide a higher level of consideration to

applicants with significant levels of incidents and to applicants who protect large populations relative to other applicants, regardless of the type of community served.

The criteria development panel has recommended that DHS make a distinction between "new missions" and "new risks." A department or organization takes on a "new mission" when it expands services into areas not previously offered such as a fire department seeking funding to provide emergency medical services for the first time. A "new risk" presents itself when a department or organization must address risks that have materialized in the department's area of responsibility, for example, the construction of a chemical plant. A department or organization taking on "new risks" will be afforded higher consideration than departments or organizations taking on a "new mission."

The criteria development panel recommended that the AFG continue to emphasize the importance of training in the FY 2010 program with respect to fire departments. As such, the FY 2010 application for fire departments will contain questions regarding the applicant's current training level and interest in attaining higher levels of proficiency. The questions will not affect the preliminary screening of an application (the screening process is discussed fully under Part V of this guidance) for the FY 2010 program, but the questions and answers will be available for consideration by the peer review panelists in their evaluation of the application.

Requests for Chemical, Biological, Radiological, Nuclear, and Explosive (CBRNE) equipment and/or training will be evaluated by the peer review panelists relative to the critical infrastructure the applicant protects. Critical infrastructure includes any system or asset that, if attacked, would result in catastrophic loss of life or catastrophic economic loss. Critical infrastructure includes the following: public water and power systems, major business centers, chemical facilities, nuclear power plants, major rail and highway bridges, petroleum and/or natural gas transmission pipelines and storage facilities, telecommunications facilities, and facilities that support large public gatherings, such as sporting events or concerts.

Additionally, training, equipment, or other initiatives that would have an immediate impact on the life and safety of firefighters and the public will be provided higher consideration than initiatives whose benefits will not be realized in the near-term. Specific rating criteria and funding priorities for the FY 2010 AFG Grant activities are provided below following the descriptions of this year's eligible program areas. The rating criteria, in conjunction with the program area description, will provide you with an understanding of what information we are seeking about your proposed projects.

a. Fire Operations and Firefighter Safety

Five different fundable activities are included in this program area: firefighter training, firefighting equipment acquisition, firefighter Personal Protective Equipment (PPE), firefighter wellness and fitness, and modifications to fire stations and facilities. You may apply for as many of the activities within this program area as you deem necessary. There are no bonuses or penalties for applying for only one activity or for multiple

activities; however, applicants requesting multitude activities may have a more difficult time providing a succinct justification for all the projects. Among other considerations iterated below, all applications submitted under Fire Operations and Firefighter Safety will be assessed based on the frequency of use (call volume), the effect on the community (population protected), and the effect on firefighter safety. Applicants that demonstrate that their requests will have an immediate effect on life and safety of the firefighters or the community will receive the highest consideration.

All fire department activities must be applied for under the Fire Operations and Firefighter Safety program area, including fire-based EMS training or equipment. Fire-based EMS training and equipment are eligible under the appropriate activity, *e.g.*, firefighter training, firefighter equipment, *etc.* – NOT under EMS.

Equipment requested under AFG must meet all mandatory regulatory requirements, as well as any national and/or DHS-adopted standards, in order to be eligible for purchase with grant funds. The Responder Knowledge Base (RKB), which can be accessed at http://www.rkb.us, includes relevant information on first responder standards and allows "guest users" to ask any questions they may have on applicable standards.

Equipment/technology requests should have the goal of achieving compliance with nationally applicable standards and of solving interoperability or compatibility problems. Therefore, applicants should describe in their narrative sections how the purchase of equipment would comply with standards and/or facilitate solving interoperability or compatibility problems.

i. Firefighter Training

Assistance to Firefighter Grants (AFG) are available to train firefighting personnel. Examples of training activities include, but are not limited to the following: Firefighter I and II certifications; First Responder EMS; driver/operator; fire officer; HAZMAT (hazardous materials) response; alternative fuel firefighting; incident command; supervision and safety; CBRNE awareness, performance, planning and management; or train-the-trainer courses in any of these areas.

In implementing the fire service's recommendations concerning AFG, DHS has determined that the most benefit is derived from training that is instructor-led and hands-on and that leads to a nationally sanctioned or State certification. Therefore, applications focused on national or State certification training, including train-the-trainer initiatives, will receive a higher competitive rating. Training that involves instructors, that requires the students to demonstrate their grasp of knowledge of the training material via testing, and that is integral to a certification, will receive a high competitive rating. Instructor-led training that does not lead to a certification and any self-taught courses are of lower benefit and, therefore, will not be a high priority.

A high competitive advantage is provided to proposed training projects that benefit the highest percentage of applicable personnel (such as the hazardous materials handling

team) within a fire department or that will be open to other departments in the region. Large departments with a high number of active firefighters will receive additional consideration when applying under the Firefighter Training Activity. Training designated to enhance multi-jurisdictional capabilities will receive a higher rating.

Training that brings the department into statutory or Occupational Safety and Health Administration (OSHA) compliance or compliance with federally mandated initiatives (such as knowledge and understanding of the National Incident Management System (NIMS) and/or Incident Command Systems (ICS)) or training that would bring an applicant into compliance with national standards would provide the highest benefit relative to training that is not required. Therefore, requests to meet federally mandated or national standard compliance would receive the highest consideration. Training that is meant to address a local risk is secondary to training that leads to departments meeting statutory compliance or compliance with national standards. Training that does not have statutory compliance or does not meet a national standard will receive a low competitive rating.

Due to the inherent differences among urban, suburban, and rural firefighting conventions, there are different priorities under the Training Activity for departments servicing the different types of communities. However, CBRNE awareness training and Improvised Explosive Device (IED) response awareness training have a high benefit and will receive the highest consideration regardless of the type of community served.

For departments serving rural communities, requests for basic operational-level firefighting training; safety officer training; operational-level rescue; driver training; or first responder EMS, Emergency Medical Technician-Basic (EMT-B), and Emergency Medical Technician-Intermediate (EMT-I) (*i.e.*, training in basic firefighting or EMS duties) has greater benefit than funding officer training, airport rescue and firefighting (ARFF), or other specialized training. In rural communities, after basic training, officer training and ARFF training will receive a lower cost-benefit rating. The lowest consideration will be provided to departments that serve rural communities but are seeking assistance for other specialized types of training, such as mass-casualty, HAZMAT, advance rescue and EMT, or inspector training.

With respect to AFG training priorities for departments serving urban or suburban communities, the criteria development panel recommended that any training requested by an urban or suburban department should be given the highest level of consideration. When considering the relative merit of applications for training from departments serving urban and suburban communities, DHS will give higher priority to training proposals that improve coordination capabilities across first responder disciplines (fire, EMS, and law enforcement) and jurisdictions (local, State, and Federal). Training such as NIMS and ICS related to coordinated incident response (*e.g.*, weapons of mass destruction (WMD) awareness and incident operations, chemical or biological operations, or bomb threats), tactical emergency communications procedures, or similar types of inter-disciplinary, inter-jurisdictional training will receive the highest competitive rating.

ii. Firefighting Equipment Acquisition

AFG funds are available for equipment to enhance the safety or effectiveness of firefighting, rescue, and fire-based EMS functions. Grants also are available for equipment necessary for response to CBRNE incidents.

DHS has determined that the greatest benefits of AFG funding will be achieved by enabling fire departments to purchase firefighting equipment (including rescue, EMS, and CBRNE) that supports a department's existing mission or that replaces used or obsolete firefighting equipment. Our second priority will be to fund departments seeking to expand their functional capabilities within their existing mission areas or to appropriately equip themselves to meet a new risk. The lowest priority is funding equipment to increase a department's reserve supply or to expand a department's services into new mission areas. For departments replacing old or damaged equipment, departments with the oldest equipment will receive the highest priority, and departments with the newest equipment will receive a low priority.

For the FY 2010 AFG, the purchase of equipment that brings the department into compliance with nationally recommended standards (such as the NFPA) or statutory compliance (such as OSHA) will provide the highest benefit to the applicant and, therefore, will receive the highest consideration. The purchase of equipment that brings a department into voluntary compliance with OSHA standards will also receive a high competitive rating but secondary to equipment that leads to a department's statutory compliance. Equipment that brings a department up to a State or local standard or that does not have an effect on statutory compliance or voluntary compliance with a national standard will receive a lower competitive rating. Applicants should designate which compliance standards would be achieved with this activity.

Training is of critical importance to any first responder organization. DHS believes that equipment is of no use if the operator is not trained to use it. As such, applicants must demonstrate that users of equipment purchased with the grant either are, or will be, sufficiently trained to use the equipment. Inability to demonstrate and fulfill this training requirement will result in ineligibility for equipment funding.

AFG's purpose is to protect the life and safety of the public and firefighters from fire and fire-related hazards; therefore, equipment that has a direct effect on firefighters' lives and safety will receive a higher competitive rating over equipment that has no such effect. Equipment promoting interoperability with neighboring jurisdictions will receive additional consideration in the cost-benefit assessment.

iii. Firefighter Personal Protective Equipment (PPE)

AFG funds are available to acquire primarily OSHA-required PPE for firefighting personnel. The primary purpose of AFG is to protect the life and safety of the public and

of firefighters. To achieve this goal and maximize the benefit to the firefighting community, the FY 2010 AFG will give higher priority to funding applicants who need to purchase PPE for the first time (*i.e.*, for new firefighters) over departments replacing old, obsolete, or substandard equipment (*e.g.*, equipment not meeting current NFPA and OSHA standards). In applications that request funding to replace equipment, the age and condition of the PPE that is to be replaced will be the primary consideration with the replacement of older or worn-out equipment receiving higher consideration than requests for replacement of newer equipment.

For departments replacing equipment such as "turnout gear," the condition of the equipment to be replaced will be factored into the score with a higher priority given to replacing equipment that is damaged, torn, or contaminated over equipment that is worn but usable. For departments replacing old or damaged equipment, departments with the oldest equipment will receive the highest priority, and departments with the newest equipment will receive a low priority.

For departments replacing Self Contained Breathing Apparatus (SCBA), the specific Edition of NFPA 1981 (*Standard on Open-Circuit Self-Contained Breathing Apparatus for Emergency Services*) to which the existing equipment is compliant (2007 Edition, 2002 Edition, 1997 Edition, *etc.*) will be factored into the score with a higher priority given to replacing equipment that is older. For departments replacing old or damaged equipment, departments with the oldest or most worn-out equipment will receive the highest priority, and departments with the newest, most functional equipment will receive a low priority.

The criteria development panel recommended that DHS only consider replacing old, inoperable SCBA and/or upgrading older SCBAs to the new standard within a region if proper justification was provided. Specifically, they recommended that DHS not consider replacement of SCBA that is compliant to the 1997 Edition of NFPA 1981 or the 2002 Edition of NFPA 1981. The criteria development panel also recommended, and DHS agreed, that due to the limited funding available for grants and the recent change in SCBA standards (the 2007 Edition of NFPA 1981), DHS will not consider requests for regional projects that involve wholesale replacement of SCBA within a region.

In concurrence with the recommendations of the criteria development panel, large departments with a high number of firefighters will receive additional consideration. We will also give a high competitive rating to departments that want to purchase enough PPE to bring their compliance up to 100 percent. If the request is for SCBA, the percentage of compliance should be determined from the number of seated positions rather than the number of firefighters. Departments seeking to purchase PPE for a new mission will receive a low rating. Departments seeking to purchase PPE to have for an extra reserve supply will receive the lowest priority.

DHS believes that training is of critical importance to any first responder organization. Applicants who are not, or will not be, sufficiently trained to use the equipment requested under this activity will be ineligible for funding.

iv. Firefighter Wellness and Fitness

For the FY 2010 AFG, fire department wellness/fitness activities must offer periodic health screenings, entry physical examinations, and immunizations. Applicants for grants in this activity must currently offer, or plan to use grant funds to provide ***all three benefits*** in order to receive consideration for funding for any other initiatives under this activity.

In accordance with the recommendations of the criteria development panel, the greatest benefit will be realized by supporting applications for new wellness/fitness programs. Therefore, higher competitive ratings will be given to applicants who lack wellness/ fitness programs. Applicants who already provide the three requisite benefits and wish to expand their wellness/fitness program will receive lower consideration than departments who are seeking to initiate a wellness/fitness activity. Because participation is critical to achieving any benefits from a wellness/fitness activity, we will give higher competitive ratings to departments whose wellness/fitness activities mandate participation and are open to all personnel.

After the provision of the three requisite benefits, the criteria development panel recommended providing the highest consideration to candidate physical agility evaluations. Lower priority is given to formal fitness and injury prevention projects, behavioral health management, injury/illness rehabilitation, and employee assistance.

v. Modifications to Fire Stations and Facilities

The American Recovery and Reinvestment Act of 2009 (Public Law 111-5) provided $210 million in funding to DHS to construct new fire stations or modify existing fire stations. The construction of fire stations is ***NOT*** eligible under AFG. Additionally, modifications to fire stations not specifically listed in this section as eligible (*see list below*) are ***NOT*** eligible under AFG.

FY 2010 AFG Grants may be used to modify fire stations and other facilities to protect the life and safety of firefighting personnel. Eligible projects under this activity must have a direct effect on the life and safety of firefighters. Therefore, we will ***NOT*** fund any requests for modifications other than those listed below:

1) Installation of sprinkler systems;
2) Installation of smoke and fire alarm notification systems;
3) Installation of vehicle exhaust evacuation systems;
4) Installation of vehicle mounted exhaust filtration systems;
5) Installation of air improvement systems; and/or
6) Installation of emergency power generators.

From the list of eligible activities above, the highest priority has been assigned to sprinkler systems and fire/smoke alarm systems. DHS does not distinguish between the many

technologies for vehicle exhaust extraction systems. Source capture exhaust extraction systems (vehicle mounted and hose-connected systems) are afforded the same consideration as air quality improvement systems or any other vehicle exhaust extraction system under the 2010 grant opportunity.

Grant funds are to be used only to retrofit existing structures that do not have the eligible safety features or to upgrade facilities whose features are outdated. Grant funds under this funding opportunity may not be used for new construction including new additions to existing structures. When requesting funds for modifications to facilities, older structures will receive the highest consideration for funding.

More benefit would be derived from modifying fire stations than from modifying dispatch centers, fire training facilities, or other fire department facilities. The frequency of use would have a direct bearing on the benefits to be derived from grant funds. In addition, the frequency and duration of a facility's occupancy have a direct relationship to the benefits to be realized from awards made under this activity. As such, facilities occupied or otherwise in use, 24-hours-per-day and 7-days-per-week will receive the highest competitive rating. Requests involving facilities that have sleeping quarters will receive a higher competitive rating. Facilities that do not have sleeping quarters and facilities that are used less than full time will receive lower consideration. Facilities used only occasionally, or on an irregular or part-time basis, will receive the lowest consideration.

Activities involving modifications to facilities are subject to all applicable environmental and historic preservation requirements. Applicants seeking assistance to modify their facilities may undergo additional screening. DHS is required to ascertain to what degree the proposed modifications to fire stations or facilities might affect an applicant's structures relative to the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and, any other applicable laws and Executive Orders. No project can proceed – except for project planning – prior to formal DHS approval. Noncompliance with this provision may jeopardize an applicant's award and subsequent funding.

b. Firefighting Vehicle Acquisition

AFG provides grants for new firefighting vehicles, used fire apparatus originally designed for firefighting, or refurbished apparatus originally designed for firefighting. Funds may also be used to refurbish a vehicle the department currently owns, but only if it is a vehicle originally designed for firefighting. Converted vehicles not originally designed for firefighting are not eligible for refurbishment. New vehicles purchased with AFG funds must be compliant with NFPA 1901 (*Standard for Automotive Apparatus*) or NFPA 1906 (*Standard for Wildland Fire Apparatus*). Used apparatus must be compliant with NFPA 1901 or 1906 for the year the vehicle was manufactured. Refurbished apparatus must meet NFPA 1912 (*Standard for Fire Apparatus Refurbishing*).

In FY 2010, applicants that serve urban or suburban communities may apply for more than one vehicle. However, awards will be limited to only one vehicle per station.

Applicants that serve rural communities are limited to one vehicle per application. If a rural applicant submits an application requesting more than one vehicle, the application will be deemed ineligible. Applicants awarded vehicle grants under AFG in previous years are eligible for another vehicle award this program year.

As required in the two previous grant years, FY 2010 AFG vehicle awardees are required to obtain a prepayment-bond if the grantee advances funds to a manufacturer. Also, the grantee must include in their vehicle purchase contract specific performance requirements and penalties for noncompliance with the requirements. Extensions to a grant's period of performance may not be considered if the requisite prepayment-bond is not obtained and/or if the performance penalties are not included in the purchase contract. Also, extensions to a grant's period of performance will not be considered if the grantee is not diligent in their implementation of the grant activities.

Due to inherent differences among urban, suburban, and rural firefighting conventions, AFG has different priorities in the vehicle program area for departments that serve different types of communities. As stated above, applications from departments that serve urban and suburban communities may submit an application for multiple vehicles. The urban or suburban application may include requests for vehicles from any or all of the three priorities; however, applications that include lower priority vehicles will receive lower consideration. The following table lists the funding priorities for this program area by each type of community.

Firefighting Vehicle Program Priorities			
Priority	**Urban Communities**	**Suburban Communities**	**Rural Communities**
Priority One	Pumper Aerial Quint (Aerial < 76') Quint (Aerial > 76') Rescue	Pumper Aerial Quint (Aerial < 76') Quint (Aerial >76')	Pumper Brush/Attack Tanker/Tender Quint (Aerial < 76')
Priority Two	Command HAZMAT Light/Air Rehab Foam Truck	Command HAZMAT Rescue Tanker/Tender Brush/Attack Foam Truck	HAZMAT Rescue Aerial Quint (Aerial > 76')
Priority Three	ARFFV[1] Brush/Attack Fire Boat Tanker/Tender Ambulance	ARFFV[1] Rehab Light/Air Fire Boat Ambulance	Foam Truck ARFFV[1] Command Rehab Fire Boat Ambulance Light/Air

The vehicles listed in this matrix will appear on a dropdown menu in the automated application. Included in the menu is an option "other" which is to be used if the type of vehicle to be requested is not on the list. All vehicles requested under "other" will receive the lowest priority.

As with any request, DHS reserves the right to reduce any vehicle request for assistance, in whole or in part, that DHS deems to be excessive or otherwise contrary to the best interests of this program. AFG funding is meant to supplement, rather than replace, an organization's funding. Grantees must maintain their level of operating expenditures during the grant period at a level equal to, or greater than, the average of their operating expenditures in the two years preceding the year in which assistance is received. (*See Part VI. Section B. Grantee Responsibilities.*) This means that if an organization has a vehicle replacement program where it purchases three new vehicles every year, and that organization is awarded a vehicle grant, that organization will have to maintain its practice of purchasing three new vehicles in the year of the grant in addition to the vehicle(s) awarded under the grant. The vehicle grantee CANNOT use AFG funding as a substitute for its vehicle replacement budget. In order to assure that this requirement is met, DHS may require detailed documentation regarding an applicant's or grantee's vehicle purchasing practices and policies.

[1] ARFFV is an Airport Rescue Firefighting Vehicle.

As with other eligible AFG activities, the primary goal in the Firefighting Vehicle Acquisition program is firefighter safety. Applicants seeking to replace unsafe vehicles (i.e., open cab engines or converted tankers) will receive higher consideration than applicants seeking to replace vehicles that have these safety features. The highest consideration is provided to applicants wanting to replace vehicles that have been converted for use as firefighting vehicles, but were not originally designed for firefighting. However, replacement of an unsafe vehicle will still have to be justified in the narrative. Converted vehicles not originally used, nor intended to be used, in emergency operations will not be favorably reviewed merely because they are converted. We will give high consideration to applicants with firefighting vehicles that had an "open-cab" configuration in their original design.

Applicants wanting to benefit from this consideration must certify that the unsafe vehicle will be permanently removed from emergency service if awarded a grant. "Permanently removed from emergency service" means that the grantee cannot use the vehicle for emergency service, nor may the grantee sell or otherwise transfer title to any individual or organization that will use the unsafe vehicle for emergency service. The grantee may NOT sell an unsafe vehicle to another fire department under any circumstances. A grantee that certifies that it will remove the unsafe vehicle from service but then sells the unsafe vehicle to another fire department, or otherwise does not remove the unsafe vehicle from service, is considered to be in default of the grant agreement. Acceptable uses of unsafe vehicles include farm or nursery use, scrap metal, salvage, construction, *etc.*

DHS believes that a greater benefit will be derived from funding an additional vehicle(s) to departments that own few vehicles like the type requested. As such, DHS assigns a higher competitive rating in the apparatus category to fire departments that own fewer firefighting vehicles relative to other departments serving similar types of communities (*i.e.*, urban, suburban, and rural). DHS assesses all vehicles with similar functions when assessing the number of vehicles a department possesses within a particular type. For example, the "pumper" category includes: pumpers, engines, pumper/tankers (apparatus that carries a minimum of 300 gallons of water and has a pump with a capacity to pump a minimum of 750 gallons per minute), rescue-pumpers, quints (with aerials less than 76 feet in length), and urban interface vehicles (Type I). Apparatus that has water capacity in excess of 1,000 gallons and a pump with pumping capacity of less than 750 gallons per minute are considered to be a tanker/tender.

DHS will evaluate the marginal value derived from an additional vehicle of any given type on the basis of call volume. As a result, departments with fewer vehicles of a given type than other departments that service comparable call volumes are more likely to score competitively than departments with more vehicles of that type and comparable call volume unless the need for an additional vehicle of similar type is made apparent in the application.

Urban and suburban applicants may submit requests for more than one vehicle; however, application requests are limited to one vehicle per station as well as by the statutory

funding limits. Applicants must supply sufficient justification for each vehicle included in the request. For those applications with multiple vehicles, the panelists will be instructed to evaluate the marginal benefit to be derived from funding the additional vehicle(s) given the potential use and the population protected. DHS anticipates that the panels will only recommend an award for a multiple vehicles application when the cost-benefit justification is adequately compelling.

DHS assigns a higher competitive rating to departments possessing an aged fleet of firefighting vehicles. In evaluating the age of an applicant's fleet, DHS will take into account the oldest vehicle in the class requested as well as the youngest vehicle in the class requested. DHS will also take into account the average age of the applicants' fleet. In each of these instances, applicants with older vehicles or with an aging fleet will receive higher consideration than applicants with relatively younger vehicles.

DHS will also assign a higher competitive rating to departments that respond to a high volume of incidents. DHS will give higher priority to departments that are seeking vehicles to support existing missions. Conversely, a lower priority will be given to departments that are seeking apparatus with the goal of expanding into new mission areas.

No competitive advantage will be given for the purchase of standard model commercial vehicles relative to custom vehicles or the purchase of used vehicles relative to new vehicles in the preliminary evaluation of applications. DHS has noted that given the size of the department and the size of the community that the department serves, the peer review panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

Departments that have formal automatic aid agreements with neighboring departments will receive additional consideration. Departments with formal mutual aid agreements will receive more consideration than departments without formal agreements, but not as much consideration as departments with automatic aid agreements.

Finally, due to the inherent safety benefits to be realized in departments using a comprehensive driver training program meeting NFPA standard 1002 (*Standard for Fire Apparatus Driver/Operator Professional Qualifications*) or its equivalent, we will provide a competitive advantage to requests where the applicant has a comprehensive driver training program. Applicants seeking driver training with their vehicle request will receive a slightly lower competitive rating than departments with a driver training program already in place. Applicants without a comprehensive driver training program that will not implement appropriate driver training in conjunction with their AFG awards or through other resources will ***NOT*** be considered for a vehicle award.

For the FY 2010 program year, vehicle grantees will be required to certify that they have in place, or that they will adopt policies and standard operating procedures (SOPs) that comply with Chapter 6 of NFPA 1500 (*Standard on Fire Department Occupational Safety and Health Program*). Specifically, the SOPs should require at a minimum: 1) all occupants of the grantee's apparatus to use seatbelts or restraints and 2) all drivers of the grantee's apparatus adhere to all traffic signs, signals, and laws.

2. Nonaffiliated EMS Organization Priorities

AFG funding priorities differ for fire departments and nonaffiliated EMS organizations. Please read the guidance document with this in mind and make sure you are researching the appropriate sections for your organization. Equipment requested under AFG must meet all mandatory regulatory requirements, as well as any national and/or DHS-adopted standards in order to be eligible for purchase with grant funds. The RKB, which can be accessed at http://www.rkb.us, includes relevant information on first responder standards and allows "guest users" to ask any questions they may have regarding applicable standards.

AFG may be used to enhance emergency medical services provided by nonaffiliated EMS organizations. EMS funding is limited to no more than 2 percent of the AFG appropriation.

The AFG authorizing legislation requires DHS to take into account the benefit to be derived from the costs of the grant activity when considering each application for award. DHS has determined that the frequency of use and the size of population protected are both a measure of benefit that could be derived from an award. Therefore, for each activity below, DHS will provide a higher level of consideration to organizations with significant levels of incidents and to organizations that protect large populations relative to other applicants, regardless of the type of community served. Organizations with low call volume and/or that serve small communities will receive lower consideration.

The criteria development panel recommended that it is more cost-effective to enhance or expand an existing EMS organization by providing training or equipment than it would be to create a new service. As such, communities that are attempting to initiate EMS services will receive the lowest competitive rating.

Equipment/technology requests should have the goal of solving interoperability or compatibility problems. Therefore, applicants should describe in their narrative sections how the purchase of equipment would comply with standards and/or facilitate solving interoperability or compatibility problems.

Requests for equipment and training to prepare for response to incidents involving CBRNE are available under the applicable equipment and training activities. Applications that include requests for CBRNE equipment or training will be evaluated by the peer review panelists relative to the critical infrastructure the applicant protects. Critical infrastructure includes any system or asset that, if attacked, would result in catastrophic

loss of life or catastrophic economic loss. Critical infrastructure includes the following: public water and power systems, major business centers, chemical facilities, nuclear power plants, major rail and highway bridges, petroleum and/or natural gas transmission pipelines and storage facilities, telecommunications facilities, and facilities that support large public gatherings, such as sporting events or concerts.

Specific rating criteria and funding priorities for AFG FY 2010 grant activities are provided below following the descriptions of eligible program areas. The rating criteria, in conjunction with the program area description, will provide you with an understanding of what information we are seeking about your proposed projects.

a. EMS Operations and Safety

Five different activities are available for funding under this program area: EMS training, EMS equipment acquisition, EMS PPE, EMS wellness and fitness, and modifications to EMS stations and facilities. You may apply for as many of the activities within this program area as you deem necessary. There are no bonuses or penalties for applying for only one activity or for multiple activities; however, we believe that applicants requesting multiple activities have a more difficult time providing a succinct justification for all the projects. Among the other considerations iterated below, all applications submitted under EMS Operations and Safety will be assessed based on the frequency of use (call volume), the affect on the community (population protected), and the affect on the safety of the first-responders. Applicants that demonstrate that their requests will have an immediate effect on life and safety of the first-responders or the community will receive the highest consideration.

If you are a fire-based EMS, you are ***NOT*** eligible to apply as a nonaffiliated EMS organization.

Applicants should ensure that all projects applied for under the grant program are consistent with national standards and address the goals of interoperable communications and equipment compatibility.

i. EMS Training

AFG provides grants to train EMS personnel. Examples of training activities include, but are not limited to, first responder, basic life support, advanced life support, Paramedic, HAZMAT Operations, or Rescue Operations.

Because training is a prerequisite to the effective use of EMS equipment, organizations whose requests are more focused on training activities will receive a higher competitive rating than organizations whose requests are more focused on equipment. A higher competitive rating will be given to nonaffiliated EMS organizations that are planning to upgrade services to ALS level of response. Specifically, organizations that are seeking to elevate their response level from EMT-B to EMT-I will receive the highest priority and organizations that are seeking to elevate their response level from EMT-I to Emergency

Medical Technician-Paramedic (EMT-P) will receive a high priority. Our second priority is to elevate emergency responders' capabilities from first responder to a BLS level of response (*i.e.* EMT-B). Due to the time and cost, upgrading an organization's response level from EMT-B to EMT-P is a lower priority. Organizations seeking training in rescue or HAZMAT operations will receive lower consideration than organizations seeking training for medical services. Our lowest priority is to fund first responder training. Organizations that are seeking to train a high percentage of their active first responders will receive additional consideration when applying under the EMS Training Activity.

ii. EMS Equipment Acquisition

Because training is a prerequisite to the effective use of EMS equipment, organizations whose requests are more focused on training activities will receive a higher competitive rating than organizations whose requests are more focused on equipment. Training is of critical importance to any first responder organization. DHS believes that equipment is of no use if the operator is not trained to use it. As such, applicants must demonstrate that users of equipment purchased with the grant either are, or will be, sufficiently trained to use the equipment. Inability to demonstrate and fulfill this training requirement will result in ineligibility for equipment funding.

Organizations that are seeking ALS-level capability are the AFG's highest priority. However, organizations that request ALS-support equipment but that are not trained to the ALS level or are not requesting training to the ALS level of response will receive a low priority. Requests seeking assistance to purchase equipment to support BLS level of response are a secondary priority. Organizations seeking equipment for rescue or HAZMAT operations will receive lower consideration than organizations seeking equipment used to provide medical services. Our lowest priority is to fund first responder training.

DHS makes a distinction between "new missions" and "new risks." According to the criteria development panel, an organization takes on a "new mission" when it expands services into areas not previously offered, such as an EMS organization seeking funding to provide water rescue capability for the first time. A "new risk" is when an organization is forced to address risks that have materialized in the organization's area of responsibility; for example, construction of a chemical plant could constitute a "new risk."

Organizations upgrading their equipment for existing services will receive the highest consideration. Organizations taking on "new risks" will be considered the second priority. Organizations taking on a "new mission" will receive a lower priority, due to the risk that an applicant will not be able to financially support and sustain the "new mission" beyond the grant performance period. Organizations that are replacing used or obsolete equipment will receive lower consideration compared to organizations that are upgrading their equipment for existing services. This is because the criteria development group believes that an organization that is merely replacing equipment is not improving their services when compared to organizations that are upgrading their equipment. The lowest priority is funding equipment to increase an applicant's available supply (reserve equipment) or to expand an applicant's services into new mission areas. Finally,

equipment that will bring an organization into compliance with State or Federal regulations will receive higher consideration than equipment that has no statutory basis.

iii. EMS Personal Protective Equipment

AFG allows grant funds to be used to acquire PPE for active EMS first responder personnel, particularly PPE required by OSHA. One of AFG's goals is to protect the life and safety of the public and first responders. To achieve this goal and to maximize the benefit to the EMS community, in FY 2010 AFG will prioritize funding for organizations needing to purchase PPE for the first time. We also will give very high consideration to organizations replacing obsolete or substandard equipment. In these cases, the condition of the equipment to be replaced will be factored into the score, with a higher priority given to replacing equipment that is damaged, torn, or contaminated over equipment that is worn but usable. For organizations replacing old or damaged equipment, those organizations with the oldest equipment will receive the highest priority, and organizations with the newest equipment will receive the lowest priority. In addition, we will give a high competitive rating to EMS organizations with a large percentage of active staff without compliant EMS PPE. However, large organizations with a high number of first responders will receive additional consideration irrespective of their percentage of noncompliant PPE. We will also give a high competitive rating to organizations that want to purchase enough PPE to bring their compliance up to 100 percent. Organizations seeking to purchase PPE for a new mission or to have equipment for a reserve supply will receive the lowest funding priority.

DHS believes that training is of critical importance to any first responder organization, and that equipment is of no use if the operator is not trained to use it. As such, applicants who are not, or will not be, sufficiently trained to use the equipment requested under this activity will not be eligible for funding.

iv. EMS Wellness and Fitness

For the FY 2010 AFG, effective EMS wellness/fitness activities must offer periodic health screenings, entry-level physical examinations, and immunizations. Applicants for grants in this activity must currently offer, or plan to use grant funds to provide ***all three benefits*** in order to receive consideration and funding for any other initiatives under this activity.

After the provision of the three requisite benefits, the criteria development panel recommended providing the highest consideration to candidate physical agility evaluations. Lower priority is given to formal fitness and injury prevention projects, behavioral health management, injury/illness rehabilitation, and employee assistance.

We will afford higher competitive ratings to applicants lacking wellness/fitness programs over applicants who already employ a wellness/fitness program. Applicants already providing the three requisite benefits that wish to expand their wellness/fitness program will receive a slightly lower consideration than applicants seeking to initiate a

wellness/fitness program. Finally, since participation is critical to achieving any benefits from a wellness/fitness program, we will give higher competitive ratings to organizations whose wellness/fitness programs mandate participation and are open to all personnel.

v. Modifications to EMS Stations and Facilities

The American Recovery and Reinvestment Act of 2009 (Public Law 111-5) provided $210 million in funding to DHS to construct new fire stations or modify existing fire stations. The construction of EMS stations or facilities is ***NOT*** eligible under AFG. Additionally, modifications to EMS stations or facilities not specifically listed in this section as eligible (*see list below*) are ***NOT*** eligible under AFG.

FY 2010 AFG Grants may be used to modify EMS stations and other facilities to protect the life and safety of first responder personnel. Eligible projects under this activity must have a direct effect on the life and safety of first-responders. Therefore, we will ***NOT*** fund any requests for modifications other than the initiatives listed below:

1) Installation of sprinkler systems;
2) Installation of smoke and fire alarm notification systems;
3) Installation of vehicle exhaust evacuation systems;
4) Installation of vehicle mounted exhaust filtration systems;
5) Installation of air improvement systems; and/or
6) Installation of emergency power generators.

From the list of eligible activities above, the highest priority has been assigned to sprinkler systems and fire/smoke alarm systems. DHS does not distinguish between the many technologies for vehicle exhaust extraction systems. Source capture exhaust extraction systems (vehicle mounted and hose-connected systems) are afforded the same consideration as air quality improvement systems or any other vehicle exhaust extraction system under the 2010 grant opportunity.

Grant funds are to be used only to retrofit existing structures that do not have the eligible safety features or to upgrade facilities whose features are outdated. Grant funds under this funding opportunity may not be used for new construction including new additions to existing structures. When requesting funds for modifications to facilities, older structures will receive the highest consideration for funding.

More benefit would be derived from modifying EMS stations than from modifying dispatch centers, training facilities, or other EMS facilities. The frequency of use would have a direct bearing on the benefits to be derived from grant funds. In addition, the frequency and duration of a facility's occupancy have a direct relationship to the benefits to be realized from awards made under this activity. As such, facilities occupied or otherwise in use 24-hours-per-day and 7-days-per-week will receive the highest competitive rating. Requests involving facilities that have sleeping quarters will receive a higher competitive rating. Facilities that do not have sleeping quarters and facilities that are used less than

full time will receive lower consideration. Facilities used only occasionally, or on an irregular or part-time basis, will receive the lowest consideration.

Activities involving modifications to facilities are subject to all applicable environmental and historic preservation requirements. Applicants seeking assistance to modify their facilities may undergo additional screening. DHS is required to ascertain to what degree the proposed modifications to stations or facilities might affect an applicant's structures relative to the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and Executive Orders. No project can proceed – except for project planning – prior to formal DHS approval. Noncompliance with this provision may jeopardize an applicant's award and subsequent funding.

b. EMS Vehicle Acquisition

FY 2010 AFG may be used to acquire new, used, or refurbished EMS vehicles. Funds may also be used to refurbish a vehicle the organization currently owns. New vehicles purchased with AFG funds must be compliant with current General Services Administration standards, specifically KKK-A-1822E (*Guide for Emergency Medical Services and Systems*), found at http://apps.fss.gsa.gov/vehiclestandards/assocDocs.cfm#.

Used apparatus must be compliant with Federal or industry standards for the year the vehicle was manufactured. Refurbished apparatus must also meet applicable standards.

In FY 2010, applicants who serve urban or suburban communities may apply for more than one vehicle. However, awards will be limited to only one vehicle per station. Applicants serving rural communities are limited to one vehicle per application. If a rural applicant submits an application requesting more than one vehicle, we will deem the application ineligible. Applicants awarded vehicle grants under AFG in previous years are eligible for another vehicle award this program year.

Due to the inherent benefits of an ambulance, or any transport vehicle, to an EMS service provider, these types of vehicles are the highest priority compared to non-transport vehicles. Due to the costs associated with obtaining and outfitting non- transport rescue vehicles, non-transport rescue vehicles will receive a lower competitive rating than transport vehicles. Because of the very limited funding for EMS vehicle awards, we anticipate that this program will be very competitive. Therefore, it is unlikely we would fund any vehicles not listed as a "Priority One" this year. Priorities in this year's EMS vehicle program are the same for all communities. The following chart lists priorities in this program area.

EMS Vehicle Program Priorities		
Priority One	**Priority Two**	**Priority Three**
• Ambulances or transport units to support EMS functions	• First responder non-transport vehicles • Operations vehicles (HAZMAT, rescue)	• Command vehicles • Hovercraft • Other specialty vehicles

As with any request, DHS reserves the right to reduce any vehicle request for assistance, in whole or in part, that DHS deems to be excessive or otherwise contrary to the best interests of this program. AFG funding is meant to supplement, rather than replace, an organization's funding. Grantees must maintain their level of operating expenditures during the grant period at a level equal to, or greater than, the average of their operating expenditures in the two years preceding the year in which assistance is received. (*See Part VI. Section B. Grantee Responsibilities.*) This means that if an organization has a vehicle replacement program where it purchases three new vehicles every year, and that organization is awarded a vehicle grant, that organization will have to maintain its practice of purchasing three new vehicles in the year of the grant in addition to the vehicle(s) awarded under the grant. The vehicle grantee CANNOT use AFG funding as a substitute for its vehicle replacement budget. In order to assure that this requirement is met, DHS may require detailed documentation regarding an applicant's or grantee's vehicle purchasing practices and policies.

As with other eligible AFG activities, one priority of the vehicle acquisition program is the safety of first responders. Therefore, we will give the highest consideration to applicants wanting to replace vehicles that have been converted to use as EMS vehicles, but were not originally designed for EMS and to replace vehicles that did not include seatbelts in their original design. Applicants with these unsafe vehicle characteristics will receive higher consideration over applicants seeking to replace vehicles having these safety features.

Applicants wanting to benefit from this consideration must certify that the unsafe vehicle will be permanently removed from emergency service if awarded a grant. By "permanently removed from emergency service," we mean that the grantee cannot use the vehicle for emergency service, nor may the grantee sell or otherwise transfer title to any individual or organization that will use the unsafe vehicle for emergency service. The grantee may NOT sell an unsafe vehicle to another first responder organization under any

circumstances. A grantee that certifies that it will remove the unsafe vehicle from service but then sells the unsafe vehicle to another response organization or otherwise does not remove the unsafe vehicle from service, is considered to be in default of the grant agreement. Acceptable uses of unsafe vehicles include farm or nursery use, scrap metal, salvage, construction, *etc.*

In addition, more benefit will be realized by funding applicants owning few or no vehicles of the type they are seeking than there would be by providing vehicle funding to an organization with numerous vehicles of the type they are seeking. In assessing the number of vehicles an organization has within a particular class, we will include all vehicles with similar functions. For example, we will include transport vehicles in the same class as ambulances. We will also give a higher competitive rating to applicants who have an aged fleet of emergency vehicles. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

This grant program will achieve the greatest benefits if we provide vehicles to EMS organizations purchasing basic response vehicles (categorized above in priority order) to meet their existing missions. The highest consideration will be given to EMS organizations that have never owned the vehicles they are requesting or to organizations seeking to replace used or obsolete vehicles. A secondary priority will be to fund EMS organizations seeking to add more vehicles to their existing fleets within their existing mission areas. The lowest priority is funding new apparatus to expand an applicant's services into "new mission" areas. An organization takes on a "new mission" when it expands its services into areas not previously offered, such as an EMS organization seeking funding to create a HAZMAT response team for the first time.

A higher competitive rating will be given to an EMS organization owning few or no response vehicles relative to other organizations serving similar types of communities. A higher competitive rating is also given to organizations that have an aged fleet of vehicles and to organizations with high-mileage vehicles. Organizations with a newer fleet of vehicles, or with vehicles that are not driven extensively, will receive lower consideration. EMS organizations that have formal automatic aid agreements with neighboring departments will receive additional consideration. Organizations with formal mutual aid agreements will receive more consideration than organizations without such arrangements, but not as much consideration as organizations with automatic aid agreements.

Finally, due to the inherent safety benefits to be realized in organizations that utilize a comprehensive driver training program meeting NFPA 1002 or equivalent, we provide a high competitive advantage for applicants who have an established comprehensive driver training program. Applicants seeking driver training with their vehicle request will receive a slightly lower competitive rating. Applicants without a comprehensive driver training program who are not seeking funding for driver training in this application or through other resources will ***NOT*** be considered for a vehicle award.

No competitive advantage has been assigned to the purchase of standard model commercial vehicles versus custom vehicles, or the purchase of used vehicles versus new vehicles in the preliminary evaluation of applications. The peer review panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. We also reserve the right to impose funding limits on requests for vehicles whose costs we deem excessive or otherwise not in the best interest of the program.

PART II.
AWARD INFORMATION

This section identifies the award period of performance and the total amount of funding available under the FY 2010 Assistance to Firefighters Grants (AFG). It also describes the basic distribution method used to determine final grants awards, and identifies all eligible applicants for FY 2010 funding.

Authorizing Statutes

The authority for AFG is derived from the *Federal Fire Prevention and Control Act of 1974* (15 U.S.C. §§ 2229 *et seq.*), as amended.

Period of Performance

The period of performance of an AFG award is 12 months from the date of award. Extensions to the period of performance will be considered only through formal requests to FEMA with specific and compelling justifications as to why an extension is required. Extensions will be considered on a case-by-case basis.

Available Funding

Congress appropriated a total of $390 million for the FY 2010 AFG. From this amount, $339.4 million will be made available for AFG grants. We have allocated $35 million for Fire Prevention and Safety and $15.6 million for administrative costs. Funds appropriated for the FY 2010 AFG (via P.L. 111-83) are available for obligation and award until September 30, 2011. DHS anticipates that between 20,000 and 22,000 applications for assistance will be received during the FY 2010 AFG application period. DHS also anticipates that it will receive over $3.0 billion in requests. Finally, DHS anticipates that it will award approximately 4,000 grants with the funding available for grants.

Specific Funding Parameters

This section describes departments and organizations that are eligible to apply for funding under the FY 2010 AFG, the total available funding in FY 2010, and how those funds are allocated. Congress appropriated a total of $390 million to carry out the activities of the FY 2010 AFG Program. Congress directed DHS to administer these funds as indicated below:

- Up to 5 percent of appropriated funds may be used for program administration; however, FEMA will use only 4 percent of the funds for administration of the grant program ($15.6 million).

- Up to 2 percent of appropriated funds ($7.8 million) may be used for awards to nonaffiliated EMS organizations.

- No more than 25 percent of appropriated funds ($97.5 million) may be used for vehicle awards.

- No less than 3.5 percent of appropriated funds ($13.65 million) must be awarded for equipment and training grants for both fire-based EMS and nonaffiliated EMS.

- No less than 5 percent of appropriated funds ($19.5 million) must be made available to make grants that support the conduct of eligible fire prevention activities (Fire Prevention and Safety (FP&S) Grants) and the conduct of research and development activities that improve firefighter safety. However, due to the importance of mitigation activities, the FY 2010 FP&S will be allocated $35 million for grants. The FP&S program is not part of this AFG solicitation. The FP&S program's application period is expected to commence in the fall of 2010.

When making awards, FEMA must assure that the combined percentage of awards to combination and volunteer departments is equal to, or greater than, the percentage of the Nation's population that these types of departments serve. The National Fire Protection Association has reported (*U.S. Department Profile Through 2008*, issued October 2009[2]) that combination departments protect 33 percent of the Nation's population and volunteer departments protect 22 percent. As such,

- No more than 45 percent of the $339.4 million available for AFG awards ($152,730,000) may be granted to career organizations and departments.

- No less than 33 percent of the $339.4 million available for AFG awards ($112,002,000) must be granted to combination organizations (organizations and departments with both paid career and volunteer active duty members).

- No less than 22 percent of the $339.4 million available for AFG awards ($74,668, 000) must be granted to all-volunteer organizations (organizations and departments with no active duty paid career members).

Awards will be limited based on population protected by the applicant, as indicated below.

- Applicants who serve a jurisdiction with a population of 500,000 people or less may not receive grant funds in excess of $1,000,000 for any fiscal year.

[2] At the time of this writing, the 2009 figures were not available from NFPA.

- Applicants who serve a jurisdiction with more than 500,000, but not more than 1,000,000, people may not receive grant funds in excess of $1,750,000 for any fiscal year.

- Applicants who serve a jurisdiction of more than 1,000,000 people may not receive grant funds in excess of $2,750,000 for any fiscal year.

The cumulative total of the Federal share of awards in Operations and Safety, Vehicle Acquisition, and Fire Prevention and Safety will be factored when assessing award amounts and any limitations thereto. Applicants may request funding up to the statutory limit on each of their applications (*i.e.*, an applicant that serves a population of less than 500,000 may request up to $1,000,000 on their Operations and Safety application and up to $1,000,000 on their vehicle request); however, the applicant would have to choose which application to accept, if the cumulative value of both applications would exceed the statutory limits if awarded.

For the purposes of this program, applications for regional projects will not be included in the host applicant's funding limitations detailed above. Regional applications will be considered independent of, and unrelated to, any other applications that the host applicant may submit and thus will not be included when assessing the host applicant's Federal funding limits. Regional applications, however, will be subject to their own limitation based on the total population that the regional project will serve. For example, a regional project that serves a population of fewer than 500,000 people will be limited to $1,000,000.

DHS will also continue to separate FP&S Grants from AFG, and will have a separate application period devoted solely to FP&S Grants. The FP&S application period is planned for fall 2010.

PART III.
ELIGIBILITY INFORMATION

This section provides information and summaries on the eligibility of applicants, the cost sharing requirements that are connected with each grant award, and the eligible costs under each activity funded by the grants

A. Eligible Applicants

Eligible applicants for AFG are limited to fire departments and nonaffiliated EMS organizations. Fire departments or nonaffiliated EMS organizations operating in any of the 50 States plus the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, and Puerto Rico are eligible for funding.

A "fire department" is defined as an agency or organization that has a formally recognized arrangement with a State, territory, local, or tribal authority (city, county, parish, fire district, township, town, or other governing body) to provide fire suppression to a population within a fixed geographical area on a first-due basis.

A "nonaffiliated EMS organization" is defined as a public or private nonprofit emergency medical services organization that provides direct emergency medical services, including medical transport, to a specific geographic area on a first-due basis but is not affiliated with a hospital and does not serve a geographic area where emergency medical services are adequately provided by a fire department.

In making the determination regarding "adequately provided," DHS will conclude that any nonaffiliated EMS organization would be eligible if it is "adequately providing" direct emergency medical services at the time of application submission and is in good standing with the community, (*i.e.*, licensed and/or chartered to provide EMS services to the community). Rescue squads that provide direct emergency medical services, including medical transport, to the community they serve are eligible to apply as a nonaffiliated EMS organization.

By "affiliated" we mean an EMS organization that is receiving any kind of direct support from a hospital in the form of funding, facilities, staff, equipment, or apparatus. Contracting with a hospital on a fee-for-service basis would not constitute an "affiliation" in the context of AFG. Also, for the purpose of these grants, a "hospital" is defined as an organization, clinic, medical center, medical college or university, infirmary, surgery center, or any other institution, association, or foundation that provides medical, surgical, or psychiatric care and/or treatment for the sick or injured.

A municipality (such as a fire district) may submit an application on behalf of a fire or EMS organization when the organization, defined as a fire department or nonaffiliated EMS organization, lacks the legal status to do so, *e.g.*, when the organization falls within the auspices of the municipality or district. The Alaska Village Initiative, a nonprofit organization incorporated in the State of Alaska, will also be considered eligible for purposes of receiving assistance under this program on behalf of any Alaskan Native village.

For the FY 2010 program year, each eligible applicant may submit one application for each of the program areas, (*i.e.*, one application for the Vehicle Acquisition program area, one application for Operations and Safety program area, and one application for a regional project). However, if an eligible applicant submits multiple applications in a single program area (for example two regional project applications for which they are a host or two Operations and Safety applications) we will deem all of the applications in that same program area to be ineligible.

For the purposes of these grants, we consider two or more separate fire departments or nonaffiliated EMS organizations that share facilities as being one organization. This determination is designed to avoid duplication of benefits. For example, it would not be cost-beneficial to purchase two firefighting vehicles for two fire departments that share a facility to serve the same community when so many other communities need new apparatus; nor would it be cost-beneficial to buy two sets of equipment for the same firefighters. We believe that two or more organizations that share facilities should be able to satisfy all of their operational needs with one program area application. Thus, if two or more organizations that share facilities each submit an application in the same program area, we will deem all of those program area applications as ineligible.

A fire department can apply for assistance for its EMS unit, provided the unit falls organizationally under the auspices of the fire department. Fire departments may NOT apply for assistance as a "nonaffiliated EMS organization" under the AFG Program. Fire departments that apply as a nonaffiliated EMS organization will have their application deemed ineligible. Likewise, a nonaffiliated EMS organization may NOT apply for assistance as a fire department. If a nonaffiliated EMS organization submits an application as a fire department, we will deem that application to be ineligible.

Non-Federal airport and/or port authority fire or EMS organizations are eligible only if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression or emergency medical services on a first-due basis outside the confines of the airport or port facilities. Airport or port authority fire and EMS organizations whose sole responsibility is suppression of fires or EMS response on the airport grounds or port facilities are not eligible for funding under AFG.

B. Ineligible Applicants

- Fire departments that are Federal, or contracted by the Federal Government, and are solely responsible under a formally recognized agreement for suppression of fires on Federal installations or land are ineligible for funding.

- Fire stations that are not independent entities, but are part of, controlled by, or under the day-to-day operational direction of a larger fire department or agency are not eligible for funding.

- Fire departments that are for-profit departments (*i.e.*, do not have specific nonprofit status or are not municipally based) are not eligible for funding.

- Auxiliaries, fire service organizations or associations, and State/local agencies such as a forest service, fire marshals, hospitals, and training offices are not eligible for funding.

- Dive teams and search and rescue teams, or any similar organizations that do not provide medical transport, are not eligible for assistance as nonaffiliated EMS organizations.

C. Cost Sharing

Cost sharing under AFG is based on the population protected by the grantee. The cost-share breakdown is as follows:

- Fire departments and nonaffiliated EMS organizations serving populations of over 50,000 or more must match the Federal grant funds with an amount of non-Federal funds equal to 20 percent of the total project cost.

- Fire departments and nonaffiliated EMS organizations serving populations between 20,000 and 50,000 must agree to match the Federal grant funds with an amount of non-Federal funds equal to 10 percent of the total project cost.

- Fire departments and nonaffiliated EMS organizations serving areas with a population of 20,000 or fewer must match the Federal grant funds with an amount of non-Federal funds equal to 5 percent of the total project cost.

Regional projects' cost-share will be based on the total population and demographics of the entire region – not the population of the host applicant. All non-Federal match funds must be in cash; in-kind contributions are not acceptable. No waivers of this requirement will be granted except for applicants located in Insular Areas as provided for in 48 U.S.C. § 1469a (which limits the waiver to grants under $200,000).

The grantee is not required to have the cash match in hand at the time of application, nor at the time of award. But, before a grant is awarded, DHS will contact potential awardees

to determine whether the grantee has the funding in hand or if the grantee has a viable plan to obtain the funding necessary to fulfill the matching requirement.

FEMA administers cost sharing requirements in accordance with 44 CFR §13.24. To meet matching requirements, the grantee contributions must be reasonable, allowable, allocable and necessary under the grant program and must comply with all Federal requirements and regulations.

D. Allowable Expenses and Cost Restrictions for Fire Departments

1. Firefighter Training

For FY 2010, eligible uses of training funds include, but are not limited to, tuition, exam and course fees, certification and/or recertification expenses, purchase of training curricula, training equipment (including training trailers and other mobile simulators), training props, and training services (such as instructors). Tow-vehicles may be eligible as an expense under this activity if adequately justified; however, we will limit such expenses to $6,000 per year per application. Compensation to volunteer firefighters for wages lost due to attending training under this activity is an eligible expense if reasonable and justified in the narrative. Overtime expenses paid to career firefighters to attend training, or overtime expenses paid to career firefighters to cover for colleagues who are in training, are eligible expenses if reasonable and justified in the narrative. Although compensation and overtime/backfill expenses are eligible, proposals that contain these costs may be scored less favorably than similar proposals without compensation expenses, due to the cost-benefit element in the evaluation process. Applicants are encouraged to take this into account when formulating their application budget, as it may be better to have a more competitive application than to cover every last expense.

Ineligible activities in this area include the following:

- Construction of facilities, such as classrooms, buildings, towers *etc.*;
- Video-conferencing equipment;
- Firefighting equipment or PPE such as SCBA (for use in training exercises);
- Modular training units that are not trailer-mounted or are otherwise immobile;
- Site preparation to accommodate any training activity, facility, or prop;
- Purchase or lease of real estate; or
- Remodeling that is not directly related to other grant activities.

The necessary remodeling or renovation of an existing facility to accomplish training activities is allowable, if the remodeling or renovation is minor in nature (*e.g.*, limited to minor interior alterations costing less than $10,000), justified in the narrative, and integral to the completion of the training activities funded by the grant. Remodeling or renovation expenses should be included in the application as an "Other" line-item expense and clearly explained in the narrative.

DHS funds the direct delivery of a variety of classes that can be requested through the State to meet first responders' training needs. These classes are listed in the course catalog found at http://www.firstrespondertraining.gov/odp_webforms.

2. Firefighting Equipment Acquisition

Eligible expenses include expenses necessary to acquire, assemble, and install the requested equipment. Foam and associated equipment used to fight conventional fuel and alternative fuel fires are eligible. Hazardous materials response equipment is eligible. The cost of training department personnel on the use of the new equipment is eligible, but should be requested under the Training Activity. Compressor systems, cascade systems, or similar SCBA refill systems are eligible expenditures in this area. Remodeling or renovation to an existing facility to accommodate equipment purchased with grant funds are allowable if justified in the narrative, and if the remodeling or renovation is minor in nature (*i.e.*, limited to minor interior alterations costing less than $10,000). Remodeling that is not directly related to other grant activities is not eligible. Traffic signal preemption systems are eligible. The costs of shipping equipment purchased under this program and applicable sales taxes are also eligible expenses.

Individual communications equipment (portable radios) and mobile communications equipment (including mobile repeaters) are eligible, but telephones and cell phones are not eligible. Under the AFG, DHS will limit funding for portable radios to the number of seated positions based on the applicant's firefighting vehicle fleet unless otherwise justified in the narrative, and will only fund the number of mobile radios required to equip the vehicle inventory listed in the application. We will not fund mobile radios for personally owned vehicles, with the exception of the chief fire officer's personal vehicle if adequately justified in the application. Mobile data systems (MDTs) are eligible. Integrated communications systems such as base stations, computer-aided dispatch, fixed-site repeaters, and wireless and broadband mobile data systems are eligible under this activity.

The purchase of any communications systems or equipment under this activity should have the intent or goal of solving interoperability problems, as applicable. Each State will have the opportunity to review requests for communications equipment, with respect to conformity with the State Communications Interoperability Plan (SCIP). The State representative will certify that such requests are consistent with the State Homeland Security Strategy and do not duplicate or conflict with assistance already provided or imminent. If a State representative determines that an application is either inconsistent with the State strategy or duplicates the State's assistance, that portion of the AFG application will not be funded. Further, applicants within States that have not submitted their SCIP to DHS for review and approval will not be eligible for interoperable communications funding. Any applicant seeking funding for eligible equipment should provide details in the narrative section of the application regarding their local plan to enable or enhance interoperable communications within their jurisdiction as well as their efforts to ensure consistency with their State's interoperability plan.

Equipment used in response to CBRNE incidents is also eligible. Equipment exclusively designed for use in CBRNE incidents is eligible this year and includes special monitoring equipment (biological, radioactive, *etc.*) and CBRNE-related pharmaceuticals for first responders, such as auto-injectors.

Requests for EMS equipment are eligible under this Equipment Acquisition Activity. Eligible expenses for EMS equipment in this activity may include, but are not limited to, defibrillators, basic and advanced life support equipment, universal precaution supplies (*i.e.*, personal protective equipment), computers, and infectious disease control and decontamination systems.

Items NOT eligible for funding under Firefighter Equipment Acquisition include the following:

- Construction of facilities, such as buildings, sheds to house communications, towers, or other equipment;
- Repeaters that will not be installed or attached to existing infrastructure;
- Sirens or other outdoor warning devices;
- Signage of any kind;
- Telephones, satellite phones, and cell phones;
- Video-conferencing equipment;
- Bomb disposal equipment and robots;
- Vehicles;
- Vehicle exhaust extraction systems (These systems are only eligible when applied for under Modifications to Fire Stations and Facilities below.);
- ATVs;
- Boats that do not have firefighting capability;
- Personal watercraft;
- Medication, and disposable or otherwise expendable supplies (such as gloves, syringes, and cervical collars); or
- PPE, including clothing for structural and wildland fire suppression, such as "turnout gear" or "bunker gear" (including boots, pants, coats, gloves, hoods, goggles, vests, helmets, coveralls, and fire shelters), SCBAs, spare cylinders, and Personal Alert Safety Systems (PASS).

The purchase of PPE is not eligible under Firefighting Equipment Acquisition. The purchase of Personal Protective Equipment is an eligible grant expense, but only when requested under the Personal Protective Equipment Activity. *See* below.

3. Firefighter Personal Protective Equipment

Application requests for PASS devices will only be considered if the equipment requested meets current national standards, *i.e.*, integrated and/or automatic or auto-on PASS. This is because of the safety benefits automated PASS devices provide firefighters. Eligible PPE includes clothing for structural or wildland fire suppression, such as "turnout gear" or "bunker gear" (including boots, pants, coats, gloves, hoods, goggles, retro-reflective

highway apparel, vests, helmets, coveralls, and fire shelters), SCBAs, spare cylinders, and PASS (within the limits noted above).

If awarded, SCBA replacement will be based on the number of seated positions in the applicant's fleet (unless the applicant can adequately justify more than one ensemble per seat) and the age of the applicant's SCBA inventory. Specifically, the criteria development panel recommended that DHS not consider replacement of SCBA that is compliant to the 1997 Edition of NFPA 1981 nor the 2002 Edition of NFPA 1981. Applicants requesting replacement of newer SCBA will have to provide justification for such a request. If awarded, DHS will limit the number of spare cylinders funded to one spare cylinder for each SCBA requested, unless the applicant can adequately justify more than one spare per unit.

In addition to "turnout gear" and SCBA, protective clothing for response to hazardous materials incidents and other specialized incidents is eligible under this activity. Protective clothing designed for EMS activities or for response to CBRNE incidents is also eligible in this activity. Eligible PPE for EMS activities includes PPE ensembles (coats and trousers) that afford universal precautions against exposure to infectious diseases, *etc.*

Ineligible expenditures under the PPE Activity include the following:

- Three-quarter length rubber boots;
- Bomb disposal suits;
- Uniforms (formal/parade or station/duty) and uniform items (hats, badges, *etc.*); or
- Firefighting equipment or personal communications equipment such as radios, cell phones, and pagers (*See* Firefighting Equipment Acquisition above).

4. Firefighter Wellness and Fitness

Eligible expenditures in the Firefighter Wellness and Fitness Activity include the following:

- Procurement of medical services from trained medical professionals (MDs or RNs); to ensure the firefighting personnel are physically able to carry out their duties
- Medical examinations that meet NFPA 1582 (*Standard on Comprehensive Occupational Medical Program for Fire Departments*) as adopted by DHS or that meet the IAFC/IAFF wellness and fitness initiative;
- Implementation of IAFC/IAFF peer fitness trainer programs; or
- Costs for personnel, medical physicals, physical fitness equipment (including shipping charges and sales tax as applicable), and supplies directly related to performance of physicals or physical fitness activities.

Ineligible expenditures include the following:

- Transportation expenses;

- Contractual services with anyone other than medical professionals listed above (*e.g.*, health-care consultants, trainers, and nutritionists);
- Fitness club memberships for firefighters or their families;
- Cash incentives;
- Non-cash incentives (t-shirts or hats of nominal value, vouchers to local businesses, or time-off);
- Purchase of medical equipment;
- Purchase of medical examinations that do not meet NFPA 1582 requirements or the IAFC/IAFF wellness and fitness initiative;
- Construction of facilities to house a fitness activity, such as exercise or fitness rooms, showers, *etc.*; or
- Purchase of real estate.

Minor remodeling or renovation to an existing facility are allowable if justified in the narrative, if minor in nature (*i.e.*, limited to minor interior alterations costing less than $10,000), and integral to the completion of the Wellness and Fitness Activity (*See Part III, Section F. Other Allowable Costs* for more details). Remodeling that is not directly related to other grant activities is not eligible. Remodeling expenses should be included in the budget as an "Other" line-item expense and explained in the narrative.

5. Modifications to Fire Stations and Facilities

Grant funds are to be used only to retrofit existing structures that do not have the eligible safety features or to upgrade facilities whose features are outdated. Under no circumstances may grant funds be used to supplement new construction. Additionally, no modification may change the footprint or the profile of a structure.

When requesting funds for modifications to facilities, older structures will receive the highest consideration for funding. NFPA 1500, *Standard on Fire Department Occupational Safety and Health Program,* was first adopted in 1987. In the 2002 Edition of NFPA 1500 (1500 §§ A.9.1.6), NFPA provided extensive guidance concerning exposures to potential carcinogens. Therefore, it is the position of the criteria development panel that fire departments should have taken the standard into consideration when planning the construction of new facilities; as such they recommend that requests to upgrade any structures that were built subsequent to 2003 receive the lowest consideration. Under no circumstances may grant funds be used to supplement new construction.

When requesting funding for emergency power generators, it is the AFG Program's expectation that departments will request generators sufficient to provide power for ***only*** those functions that are operationally imperative (*i.e.*, bay doors, communications equipment, emergency lighting, heat, *etc.*) and no more (*i.e.*, banquet facilities).

There are no monetary limits on the individual initiatives under this activity, but no applicant can request more than $100,000 per fire station under its authority. Applicants may request funding for modifications for each station if they have multiple stations, up to

the $100,000 per station limit, as long as the entire request does not exceed the Federal share limit (*see* Part II Section C).

The necessary remodeling or renovation of an existing facility to accomplish modification activities is allowable if the remodeling or renovation is minor in nature (*i.e.*, limited to minor interior alterations costing less than $10,000 and/or requisite activities associated with installation of equipment when 1) occurring immediately adjacent to the facility and 2) the project area has been previously disturbed), justified in the narrative, and integral to the completion of the requested activities. Remodeling or renovation expenses should be included in the application as an "Other" line-item expense and clearly explained in the narrative. Maintenance expenditures such as cleaning or painting of apparatus bays are not eligible under the AFG. Modifications are also effected by environmental and historic laws and regulations, see page 67 for more information on these requirements.

6. Firefighting Vehicle Acquisition

Eligible expenditures under this program include the cost of the vehicle and associated equipment necessary to conform to applicable national standards (NFPA 1901 or 1906). New, used, or refurbished vehicles are eligible; however, any used or refurbished vehicles must conform to the national standards that were in effect the year the vehicle was manufactured. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

An allowance for transportation to inspect a vehicle under consideration or during a vehicle's production would be eligible if reasonable and justified in the grant narrative. Any additional costs associated with the purchase and installation of a vehicle-mounted exhaust filtration system for any vehicle purchased with grant funds would also be eligible. The costs associated with driver-operator training may be eligible for any vehicle award if justified in the narrative.

Applicants will NOT be allowed to modify the scope of work of a vehicle award (*i.e.*, change the type of vehicle to be purchased after the application is submitted). Vehicles contracted for or otherwise purchased prior to the end of the established application period are not eligible for funding. Vehicles contracted for prior to award are not eligible. However, if an applicant is forced, due to unforeseen circumstances, to purchase the same vehicle requested in an application and that vehicle is *placed into service* prior to award, that expense may be eligible if the purchase meets all the conditions of a pre-award expense (*See* the section on Pre-award Costs under "Other Allowable Costs" on page 42 below). ATVs and other specialty access vehicles are eligible, but must be requested as an "other" vehicle in the application's drop-down menu. Aircraft, bulldozers, and construction-related equipment are not eligible for purchase with AFG funds.

E. Allowable Expenses and Cost Restrictions for Nonaffiliated EMS Organizations

1. EMS Training

Eligible uses of EMS training funds include, but are not limited to:

- Tuition, exam, and course fees;
- Certification or recertification expenses;
- Purchase of training curricula, training equipment, training props, and training services (such as instructors); and
- Attendance at formal training forums or conferences that provide continuing-education credits.

Compensation to volunteer emergency responders for wages lost due to attending training under this activity is an eligible expense if reasonable and justified in the grant narrative. Overtime expenses paid to emergency responders to enable them to attend training, or overtime expenses paid to emergency responders to cover for colleagues in training, are eligible expenses if reasonable and justified in the grant narrative. Although compensation and overtime/backfill are eligible expenses, proposals containing this type of compensation expense may be scored less favorably than similar proposals without compensation expenses due to the cost-benefit element in the evaluation process.

Ineligible activities in this area include the following:

- Construction of facilities, such as classrooms, buildings, and towers;
- Site preparation to accommodate any training activity, facility, or prop; or
- Purchase or lease of real estate.

The necessary remodeling or renovation of an existing facility to accomplish training activities funded by the grant is allowable if the remodeling or renovation is minor in nature (*e.g.*, limited to minor interior alterations costing less than $10,000), justified in the narrative, and integral to the completion of the training activities funded by the grant. Remodeling that is not directly related to other grant activities is not eligible under this program (See *Part III, Section F. Other Allowable Costs*). Remodeling expenses should be included in the application as an "Other" line-item expense and clearly explained in the narrative.

DHS funds the direct delivery of a variety of classes that can be requested through the State to meet first responders' training needs. These classes are listed in the course catalog found at http://www.firstrespondertraining.gov/odp_webforms.

2. EMS Equipment Acquisition

Eligible expenses for equipment acquisition include basic and advanced life support equipment (ALS) to support first responders through paramedics, with higher priority given to organizations requesting equipment to support service at the advance life

support level. Examples of eligible items available under this section include, but are not limited to the following:

- Basic life-support equipment;
- Advanced life-support equipment;
- Rescue tools;
- Communications equipment (mobile and portable radios);
- HAZMAT and decontamination equipment;
- Computers;
- Automated external defibrillators; or
- Infectious disease control and decontamination systems.

Items that are eligible for funding, but a lower priority, include tents, shelters, generators, lights, and heating and cooling units.

Protective clothing is NOT eligible under this equipment category, but is eligible under the PPE Activity below.

For FY 2010, individual communications equipment (portable radios) and/or mobile communications equipment (including mobile repeaters) are eligible; but, telephones, cell phones, satellite phones, repeaters that will not be installed or attached to existing infrastructure are not eligible. Sirens or other outdoor warning devices are not eligible. Signage of any kind is not eligible.

We will only fund the number of mobile radios required to equip the vehicle inventory listed in the application. We will not fund mobile radios for personally owned vehicles under EMS. Mobile data systems are eligible. Integrated communications systems such as base stations, computer-aided dispatch, fixed-site repeaters, and wireless and broadband mobile data systems are eligible under this activity. The purchase of any communications systems or equipment under this activity should have the intent or goal of solving interoperability problems. Each State will have the opportunity to review requests for communication systems to ensure compliance with statewide interoperable communications plans and the State Homeland Security Strategy. Applicants seeking funding for EMS equipment should provide details in the application's narrative section regarding their local plan to enable jurisdiction-wide interoperable communications.

Any equipment requested under this section, particularly decontamination and HAZMAT equipment, is fundable to the current level of your capabilities (*i.e.*, we will not fund level-A equipment for organizations only trained to the HAZMAT operations level, unless the application also includes a request for training compatible with the equipment request). The costs of shipping any equipment purchased under this program and applicable sales taxes are also eligible expenses.

Other items that are not eligible under the EMS Equipment Acquisition Activity include: vehicles (such as ambulances), vehicle exhaust extraction systems (these systems are only eligible when applied for under Modifications to Fire Stations and Facilities below), ATVs, boats, personal watercraft, equipment used for firefighting, medications, disposable

or otherwise expendable supplies (such as gloves, syringes, and cervical collars), body armor, uniforms, and new construction such as communications towers or facilities. The purchase of Personal Protective Equipment is not eligible under EMS Equipment Acquisition. The purchase of PPE is an eligible grant expense, but only when requested under the Personal Protective Equipment Activity. *See* below.

3. EMS Personal Protective Equipment

Examples of eligible clothing include EMS "turnout gear," non disposable universal precautionary supplies (*i.e.*, medical PPE), extrication jumpsuits, rescue helmets, gloves, and boots. Protective clothing must meet national standards or local EMS protocols. The purchase of SCBA may also be eligible if the EMS organization has a formally adopted standard operating procedure that requires SCBA availability and adequately justifies the request. If you apply for funding for SCBA, you may be required to submit documentation to support the eligibility of SCBA.

Any equipment requested under this section, particularly decontamination and HAZMAT suits, are fundable to the current level of your training (*i.e.*, we will not fund level-A suits for organizations only trained to the HAZMAT operations level unless the application also includes a request for training compatible with the equipment request). Uniforms (formal/parade or station/duty) and uniform items (hats, badges, *etc.*) are not eligible expenses under this activity. In addition, nonaffiliated EMS organizations may not apply for non-EMS PPE such as body armor, wildland firefighting gear, and firefighting "turnout gear." Personal communications equipment, such as radios and pagers, are not eligible under this activity, but are eligible under the EMS Equipment Acquisition Activity.

4. EMS Wellness and Fitness

Eligible expenditures in the Wellness and Fitness Activity for EMS personnel may include the procurement of medical services from trained medical professionals (MDs or RNs) to ensure that EMS personnel are physically able to carry out their duties. The purchase of medical equipment is not an eligible expenditure under this category. Eligible expenditures to carry out wellness/fitness activities may include costs for personnel physicals, physical fitness equipment (including shipping charges and sales tax, as applicable), and supplies directly related to the performance of physicals or physical fitness activities.

Ineligible expenses include the following:

- Transportation expenses;
- Contractual services with anyone other than medical professionals listed above (*e.g.*, health care consultants, trainers, and nutritionists);
- Fitness club memberships for EMS personnel and their families;
- Cash incentives;
- Non-cash incentives (t-shirts or hats of nominal value, vouchers to local businesses, or time-off);

- Construction of facilities to house a fitness program (exercise or fitness rooms, showers, *etc.*); or
- Purchase of real estate.

Minor remodeling or renovation to an existing facility are allowable if justified in the narrative if the remodeling or renovation is minor in nature (*i.e.*, limited to minor interior alterations costing less than $10,000), and if the remodeling is integral to the completion of the wellness and fitness activities funded by the grant. Remodeling that is not directly related to other grant activities is not eligible. Remodeling expenses should be included in the budget as an "Other" line-item expense and explained in the narrative.

5. Modification to EMS Stations and Facilities

When requesting funding for emergency power generators, it is the AFG Program's expectation that EMS organizations will request generators sufficient to provide power for ***only*** those functions that are operationally imperative (*i.e.*, bay doors, communications equipment, emergency lighting, heat, *etc.*) and no more (*i.e.*, banquet facilities).

There are no monetary limits on individual initiatives under this activity. However, no applicant may request more than $100,000 in modifications per station under its authority. If you have multiple stations, you may request funding for modifications for each station up to this $100,000 per station limit, as long as the entire request does not exceed the Federal share limit.

The necessary remodeling or renovation of an existing facility to accomplish modification activities is allowable, if the remodeling or renovation is minor in nature (*i.e.*, limited to minor interior alterations costing less than $10,000 and/or requisite activities associated with installation of equipment when 1) occurring immediately adjacent to the facility and 2) the project area has been previously disturbed); justified in the narrative; and integral to the completion of the requested activities. Remodeling or renovation expenses should be included in the application as an "Other" line-item expense and clearly explained in the narrative. Maintenance expenditures such as cleaning or painting of apparatus bays are not eligible under the AFG. Modifications are also effected by environmental and historic laws and regulations; see page 67 for more information on these requirements.

6. EMS Vehicle Acquisition

EMS vehicle awardees will be required to obtain a bond if funds are advanced to the manufacturer and include specific performance requirements and penalties for noncompliance with the requirements as part of the contract with the vehicle manufacturer. Extensions to a grant's period of performance may not be considered if the requisite bond is not included in the purchase contract.

Eligible expenses under this program area would include ONLY the cost of the vehicle and requested driver training. We will NOT provide funding for associated equipment. New, used, or refurbished vehicles are eligible; however, all used or refurbished vehicles

must conform to the national standards that were in effect the year the vehicle was manufactured. ATVs, Gators™, and similar equipment are NOT vehicles and are not eligible under this category. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

An allowance for transportation to inspect a vehicle under consideration, or during a vehicle's production, would be eligible if reasonable and justified in the grant narrative. Additionally, operator training may be eligible for any vehicle award if reasonable and justified in the narrative.

Applicants will not be allowed to modify the scope of work of a vehicle award, (*i.e.*, change the type of vehicle requested after award). Vehicles contracted for, or otherwise purchased, prior to the end of the established application period are not eligible for funding. Vehicles contracted for prior to award are not eligible. However, if an applicant is forced, due to unforeseen circumstances, to purchase the same vehicle requested in an application and that vehicle is *placed into service* prior to award, that expense may be eligible if the purchase meets all the conditions of a pre-award expense (*See* the section on Pre-award Costs under "Other Allowable Costs" on page 42 below). Aircraft, bulldozers, and construction-related equipment are not eligible.

F. Other Allowable Costs

This section describes additional costs that may be paid using AFG Grant funds.

1. Administrative Costs: Administrative costs are allowable under any of the program areas listed above in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87) or 2 CFR Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122), as applicable. Applicants may apply for administrative costs if the costs are directly related to the implementation of the program for which they are applying. Administrative costs are identifiable costs directly associated with the implementation and management of the grant and cannot exceed 3 percent of the award.

If you are requesting administrative expenses, you must list the costs under the "Other" category in the budget, and explain the purpose for the administrative costs in your project narrative. Administrative costs should be based on actual expenses, not a percentage of the overall grant. We will reimburse actual expenses only. Examples of eligible administrative costs include shipping, office supplies, and computers associated with the National Fire Incident Reporting System (NFIRS) reporting requirements. Grant funds may not be used for insurance, Internet service provider fees, or any similar monthly service fees. The cost of a grant writer (if specifically listed on your application) is eligible and can be charged to the grant as administrative costs in accordance with the provisions outlined in Item 7. below. We will assess the reasonableness of the

administrative costs requested in each application and determine if they are reasonable and in the best interest of the program.

2. Indirect Costs: Indirect costs are those incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. A cost may not be allocated to an award as an indirect cost, if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost. Typical examples of indirect costs include depreciation or use allowances on buildings and equipment; the costs of operating and maintaining facilities; general administration; and other general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

If you have an approved indirect cost rate, you may charge indirect costs to the grant. If you are charging indirect costs to the grant, you must submit documentation supporting the indirect cost rate to us for review prior to submitting any claims for reimbursement of indirect costs. Appropriate documentation for an approved indirect rate is a federally approved indirect cost rate agreement. We will allow the rate to be applied as long as it is consistent with its established terms. For example, some indirect cost rates may not apply to capital procurements; in these cases, indirect cost rates would not be applicable for an equipment or vehicle grant.

3. Audit Costs: Grantees must comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, which states that recipients of Federal funding that expend more than $500,000 in Federal funds (from all Federal sources) in their fiscal year are required to have a single audit. (For more information about OMB Circulars, go to www.whitehouse.gov/omb/circulars.) If a single audit is required, a portion of the audit cost would be allowable, if included in the application budget. We will allow you to charge a prorated share of the costs of the single audit to the grant. For example, if you expend $100,000 from the AFG and $400,000 from the Forest Service during your fiscal year, we will allow you to charge one-fifth of the audit cost to the AFG Grant. We do not require any other audits; therefore, you cannot charge any other audit expenses to the grant.

4. Remodeling or Renovation Costs: Remodeling or renovation to an existing facility are allowable only if minor in nature *(i.e.*, limited to minor interior alterations costing less than $10,000 and/or requisite activities associated with installation of equipment when 1) occurring immediately adjacent to the facility and 2) the project area has been previously disturbed). To be eligible, the remodeling must be essential to the successful completion of the grant's scope of work. The purchase of real estate and construction costs are not eligible. Construction includes major alterations to a building and/or changes to the profile or footprint of the structure. Enhancements to existing structures such as the installation of apparatus bay ventilation systems and retrofitting fire stations with sprinkler systems are eligible for application under the appropriate fire department or EMS organization Modification to Facilities Activity. *See* page 67 for more information on environmental and historic considerations and requirements.

5. Pre-award Costs: Generally, grantees cannot use grant funds to pay for products and services contracted for or purchased prior to the effective date of the grant. However, expenses incurred after the application deadline, but prior to award, may be eligible for reimbursement if the expenses were justified, unavoidable, consistent with the grant's scope of work, and specifically approved in writing by DHS. We will consider requests for reimbursement for pre-award costs on a case-by-case basis.

6. Pre-application Costs: Expenses, obligations, commitments, or contracts incurred or entered into prior to the application deadline are not eligible to be included as a grant expense with the exception of grant preparation costs [*See* G. below].

7. Grant Writer Fees: Fees for grant writers may be included as a pre-award or pre-application expenditure. Fees payable on a contingency basis are not an eligible expense. For grant writer fees to be eligible as a pre-award expenditure, the fees must be specifically identified and listed in the "Request Details" section of the application. In addition, the fees must have been paid prior to any contact with grants management staff or an award (*i.e.*, paid within 30 days of the end of the application period). Applicants may be required to provide documentation to support these pre-award expenditures.

Hiring a grant writer, or use of any other third party in preparing the application, does not eliminate the applicant's responsibility for ensuring that information contained in the application is true and correct. Applicants who submit false information with their applications, or misrepresent their organizations in any material manner, will have their applications deemed ineligible by the AFG Program Office and referred to DHS OIG for further action, as appropriate.

8. Prepayments: A grantee may not use grant funds to prepay for any products or services in advance of delivery of the products or rendering of services. A down payment for the purchase of a vehicle is allowable if required in the purchase contract, but we will only allow up to 25 percent of the Federal share to be drawn for this purpose. No additional funds beyond the down payment will be provided in advance of the delivery of the vehicle. Any costs over-and-above the 25 percent limit such as the cost of a chassis or any other fees or services must be borne by the grantee or deferred until final payment is drawn. Federal funds may not be used for any other periodic or progress payments, except the final payment, which should not be requested until after the vehicle is received, inspected, and accepted by the grantee.

G. Other Funding Restrictions

DHS grant funds may only be used for the purpose set forth in the grant, and must be consistent with the statutory authority for the award. Grant funds may not be used for matching funds for other Federal grants/cooperative agreements, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal government or any other government entity.

Pre-award costs are allowable only with the written consent of DHS and if they are included in the award agreement.

Federal employees are prohibited from serving in any capacity (paid or unpaid) on any proposal submitted under this program. Federal employees may not receive funds under this award.

H. Reasonableness of a Request

The peer review panelists will review all of the applications in the competitive range and judge each application on its own merits. The panelists will consider all expenses budgeted, including administrative and indirect costs, as part of the cost-benefit determination, and may recommend appropriate adjustments. Regardless of the eligibility of any costs requested, DHS reserves the right to reduce any requests for assistance, in whole or in part, that DHS deems to be excessive or otherwise contrary to the best interests of this program.

Applicants who submit false information with their applications, or misrepresent their organizations in any material manner, will have their applications deemed ineligible by the AFG Program Office and referred to the DHS OIG for further action, as appropriate.

I. National Incident Management System Implementation Compliance

In accordance with Homeland Security Presidential Directive (HSPD)-5, *Management of Domestic Incidents*, the adoption of the National Incident Management System (NIMS) is a requirement to receive Federal assistance, through grants, contracts, and other activities. The NIMS provides a consistent nationwide template to enable all levels of government, tribal nations, nongovernmental organizations, and private sector partners to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity.

Federal FY 2009 NIMS implementation must be considered prior to allocation of any Federal awards in FY 2010. The primary grantee/administrator of FY 2010 AFG award funds is responsible for determining if sub-awardees have demonstrated sufficient progress in NIMS implementation to disburse awards.

PART IV.
APPLICATION AND SUBMISSION INFORMATION

This section summarized the process for applying for the FY 2010 AFG Grant.

A. Automated Grant Application

Applications under the FY 2010 AFG will be accessible at https://portal.fema.gov. The application will also be accessible from the U.S. Fire Administration's (USFA) Website (www.usfa.fema.gov), and grants.gov Website (www.grants.gov). We have designed the automated application with many built-in "help screens" and "drop-down menus" to assist applicants throughout the application process. The application can be saved and retrieved as many times as needed to complete it - up to the application deadline or the submittal of the application.

However, once you have submitted your application, you cannot change it. You will not be allowed to update your application to correct errors discovered after submission or to reflect changes in your organization's circumstances regardless of severity. You will be automatically notified via e-mail once we have received your application.

An applicant tutorial will be available from the program office. The tutorial explains the grant program, helps applicants with the online grant application, provides tips for navigating the application screens, and summarizes FY 2010 program changes. The tutorial also provides a review of lessons learned during previous grant periods.

You may decide to hire or engage a grant writer to assist you in the application process. However, as the applicant, you are responsible not only for the cost associated with using outside assistance but also for all information contained in your application. By submitting the application, you are certifying that all of the information contained therein is true and is an accurate reflection of your organization. Therefore, prior to submission, please review all work produced by grant writers, or other third parties, on your behalf. Applicants who falsify their applications or misrepresent their organizations in any material manner will have their applications deemed ineligible by the AFG Program Office and referred to the DHS OIG for further action, as appropriate.

Paper applications will be accepted, but are discouraged due to the inherent delays associated with processing them. Also, successful applicants who submit paper applications must continue to manage their grants via paper, including payment requests, requests for modifications, reporting, *etc.*; whereas, applicants who apply online can perform all of these functions online. In addition, paper applications do not provide the

built-in help that is available to online applicants. Finally, there is no assurance that your paper application is complete when submitted. If you do not have access to the Internet, contact us at 1-866-274-0960 to request a paper copy of the application via regular mail. We will not send paper applications via overnight delivery, fax, or e-mail.

The only eligible paper application is the application that we send you. Do not use any paper application that you did not receive directly from us. Do not print the screens from this year's online application and submit them as a paper application. Do not use a previous year's application. Any paper application that is not in the correct format will be deemed ineligible.

Applications for the FY 2010 AFG will be accepted starting on or about Monday, April 26, 2010, at 8:00 a.m. Eastern Time. Up-to-date application information will be posted on the AFG and USFA Websites. Completed applications must be received by 5:00 p.m. Eastern Time on Friday, May 28, 2010. Applications submitted by mail must be postmarked by May 26, 2010. Applications not submitted electronically must be mailed to:

Fire Grant Program Technical Assistance Center
U.S. Fire Administration, Room I-207
16825 South Seton Avenue
Emmitsburg, Maryland 21727-8998

We will not be responsible for applications mailed to any address other than the address listed above. Late, incomplete, or faxed applications will NOT be accepted. No electronically submitted applications other than those submitted online via the automated grant application system will be accepted.

B. Content and Form of Application

Eligible applicants apply for AFG funding online via the "e-grants" application. The system will allow an authorized representative of an applicant to log in and create a username and password for the applicant. The selection of the authorized representative is at the discretion of each applicant. If your organization submitted an application in previous years, we advise you to use the same username and password used for previous applications. If your organization is submitting more than one FY 2010 application, you must use the same username and password used for prior year applications, as well as for each FY 2010 application.

When filling out the on-line application, applicants are required to provide general information regarding the applicant and the community they serve. The applicant will provide detailed information regarding the items or activities for which they are seeking funding. The applicant will also have to provide a narrative description of their project including the cost of the project, their financial needs, and the benefits that the project will have on the applicant's operations. Finally, the applicants will have to fill out Standard Form LLL, Disclosure of Lobbying Activities (if the grantee has engaged or intends to

engage in lobbying activities) and FEMA Form 20-16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements.

The program title listed in the CFDA is "*Assistance to Firefighters Grant Program.*" The CFDA number is 97.044.

C. DUNS Number

Effective October 1, 2003, all Federal grant applicants must contain a Dun & Bradstreet Data Universal Numbering System (DUNS) number. The DUNS number helps the Federal Government identify organizations that receive Federal funding and ensures consistent name and address data for electronic grant applications. Additional information about DUNS numbers can be found on the Dun & Bradstreet Website at http://fedgov.dnb.com/webform/displayHomePage.do;jsessionid=B9E740A165.

There is no charge to obtain a DUNS number, and it is the applicant's responsibility to obtain one. Extensions may not be granted for applicants who were unable to obtain a DUNS number prior to the end of the application period. Applicants are encouraged to apply for a DUNS number as soon as possible by calling 1-866-705-5711; as it may take several weeks to obtain the number online. The DUNS number must be entered in a special data field on the AFG application.

D. Project Period

The project period for any award under AFG will be 12 months from the date of the award.

E. Application Details

As in previous years, the AFG application includes general questions about your organization and community, as well as specific questions about the proposed project. The answers to these questions will be used to evaluate your application and to determine whether your organization serves an urban, suburban, or rural community. Characteristics such as population, water supply, land use, number of stations, call volume, and the number of inhabitable structures over four-stories tall in the jurisdiction indicates the type of community served. For the purpose of AFG Grants, a "story" is the habitable or occupiable space between a floor and a ceiling of a structure. We will allow you to self-declare the type of community you serve; however, we will also use these characteristics to assist us in determining the type of community you serve. If your declaration and our determination differ, you will be prompted to justify your declaration in the narrative section of the application.

The designation of community type is important because we have established different funding priorities in some of the activity areas, depending on the type of community served. These funding priorities are delineated in each program area below, if applicable.

The community designation (*i.e.*, urban, suburban, or rural) may also affect the ranking of your application, depending on the program area or activity for which you are applying. This is why you must justify your designation in the narrative of the application if your designation is different from ours.

After completing the general questions, you will be asked a series of activity-specific questions relative to the program area selected and the activities for which you plan to apply. Answer the questions for each of the activities that support your project. Lastly, you will be required to provide a written narrative describing the planned project. The narrative portion of the application should provide details of the activities for which you are seeking funding, including budget details for each activity. The narrative should also describe your organization's financial need and elaborate on the benefits your community and/or organization will gain from the expenditure of the grant funds. Applications should particularly note how the grant would enhance your department's ability to protect critical infrastructure. Finally, the narrative should explain the extent to which the grant would enhance your daily operations and/or how the grant will positively impact your ability to protect life and property.

We recommend that you type your narrative offline in any word processing software, such as Word, Word Perfect, or Notepad. Once the narrative is complete, you can copy it or "cut-and-paste" it from the word processing document into the narrative block of the application. Space for the narrative is limited and cannot exceed five pages. Any narrative beyond the five-page limit will be cut off by the electronic system and will not be a part of your application submission. Do **NOT** type the narrative using only capital letters. For more specific information regarding the application and the narrative section, we advise you to review the applicant tutorial.

F. Project Development

As in previous years, the AFG Program allows applicants to formulate a very comprehensive grant proposal. Depending on the program area for which you apply, your grant proposal may include a number of related "activities" to address all of your needs within a programmatic or functional area. This approach provides you with the opportunity to develop a more comprehensive grant project that addresses a broader range of your organization's needs. Be advised that your application should include only activities that can be completed within a 1-year period of performance.

In FY 2010, ***you may submit one application per application period in each of the program areas***, (*i.e.*, one application under Operations and Safety, one under Vehicle Acquisition, and/or a separate application as a regional host). If multiple applications are submitted on behalf of one organization within one of these program areas, either intentionally or unintentionally, we will deem all of that organization's applications in that program area to be ineligible. For example, if any applicant submits two applications for Operations and Safety, both applications will be deemed ineligible.

When formulating your grant proposal(s), keep in mind the legislative funding limits (*See* Part II.). If an applicant receives awards under both the Operations and Safety and Vehicle Acquisition program areas, the total of both awards cannot exceed the legislatively established funding limit.

1. Fire Department Projects

Fire departments may submit applications for either or both of the following program areas. AFG awards are subject to the statutory funding limitations discussed above. Under Operations and Safety, you may include as many activities within the program area as necessary to meet your needs. The eligible program areas and associated activities for the FY 2010 AFG are listed below.

- ***Firefighter Operations and Safety.*** Eligible activities for fire departments under this program area are limited to training, equipment, PPE, wellness and fitness, and modifications to fire stations and facilities. If an EMS unit falls organizationally under the auspices of a fire department, the fire department may submit requests for EMS training and equipment on behalf of their department's EMS unit under the appropriate functional area (*i.e.*, training or equipment, respectively). However, a fire department CANNOT apply as a nonaffiliated EMS organization, even if its application is solely for EMS equipment or training. Requests for equipment, PPE, and training to prepare for response to incidents involving CBRNE are eligible under the appropriate activities in this program area. Applicants should ensure that all projects applied for under AFG are consistent with national standards and address interoperable communications and equipment compatibility.

- ***Firefighter Vehicle Acquisition.*** Eligible apparatus available to fire departments under this program area include, but are not limited to, pumpers, brush trucks, tankers/tenders, rescue vehicles, ambulances, quints, aerials, foam units, and fire boats. Urban and suburban departments may apply for multiple vehicles on one application; however, urban and suburban applications will be limited to one vehicle per station (at the time of the application). Rural fire departments may apply for only **one** vehicle per year. Applications from fire departments that serve rural communities and are requesting more than one vehicle will be deemed ineligible. For FY 2010, there is no restriction on vehicle requests based on previous AFG vehicle awards. Applicants who received vehicles under prior year AFG awards are eligible to receive a vehicle grant in FY 2010. Activities related to a vehicle grant such as driver/operator training and equipment for a vehicle should be included in the vehicle request, not as part of an Operations and Safety request.

As stated above, for FY 2010 you may submit one application for assistance in each of these two program areas. Within your selected program area (Operations and Safety or Vehicle Acquisition), you may develop a comprehensive project to

address all of your needs by applying for as many of the eligible activities that you determine are necessary. For example, if you determine that your needs are in the Operations and Safety program area, you could apply for any one of the activities under that program area, any combination of activities, or all of the activities listed within that area. If you need a vehicle, you must apply under the Vehicle Acquisition program area. You may not apply for a vehicle under the Operations and Safety program area. Any equipment or training requested in a vehicle application must be specifically relevant to the requested vehicle and consistent with applicable NFPA standards (1002, 1901, 1961, *etc.*).

2. Nonaffiliated EMS Organizations

Nonaffiliated EMS organizations are eligible to apply for assistance during the FY 2010 AFG application period. The nonaffiliated EMS portion of AFG mirrors what is available to fire departments. EMS applicants may apply for assistance under either the Operations and Safety program area or the Vehicle Acquisition program area, or both using separate applications. EMS awards are subject to the statutory funding limitations, as discussed in Part 1 of this guidance. The EMS Operations and Safety program area provides a range of eligible activities that enable applicants to formulate a very comprehensive grant proposal to meet all operational needs. The EMS Vehicle Acquisition area allows applicants to apply for a vehicle to enhance emergency response capabilities and may include operator training, as necessary.

For the FY 2010 application period, you may submit ***one application per program area***; however, you are limited to only **one** application in each of the two program areas listed below. Your application should include only activities that can be completed within the 1-year period of performance. EMS program areas and associated activities eligible under the FY 2010 AFG are listed below.

- ***EMS Operations and Safety.*** Eligible activities available to nonaffiliated EMS organizations under this program area are limited to EMS training, EMS equipment, including PPE, wellness and fitness, and modifications to stations and facilities. Requests for equipment, PPE, and training to prepare for responding to incidents involving CBRNE are eligible for funding under the appropriate activities in this program area. Applicants should ensure that all projects applied for under the grant program are consistent with national standards and address interoperable communications and equipment compatibility.

- ***EMS Vehicle Acquisition.*** Eligible apparatus available to nonaffiliated EMS organizations under this area include, but are not limited to, ambulances, transport units, and rescue squads. Small specialty access equipment such as ATVs, snowmobiles, and Gators™, or other similar vehicles are not eligible under the vehicles acquisition category or under the EMS Operations and Safety program area. Urban and suburban

organizations may apply for multiple EMS vehicles on one application; however, urban and suburban applications will be limited to one vehicle per station in operation (at the time of the application). Rural organizations may apply for only **one** vehicle per year. You may not include equipment for your EMS vehicle in your request; however, your request may include driver/operator training. Applications from EMS organizations that serve rural communities that request more than one vehicle will be deemed ineligible. Previous AFG vehicle grant recipients are eligible to receive a vehicle grant in FY 2010.

3. Regional Projects

Any eligible applicant, whether a fire department or a nonaffiliated EMS organization, may act as a "host applicant" and apply for large-scale or regional projects on behalf of itself and any number of organizations in neighboring jurisdictions. A regional project is one in which multiple organizations serving more than one local jurisdiction benefit directly from the activities implemented with the grant funds. A county fire department applying for a countywide communications system is NOT a regional project because it does not benefit multiple "seats-of-government." Regional projects are designed to facilitate interoperability and efficiency among the participating jurisdictions. As such, the only activities available for application under a regional project are training and equipment acquisition (such as communications equipment) that positively affect interoperability between jurisdictions. Purchase of turnouts, SCBA, wellness and fitness, modification to facilities, and vehicle acquisition activities are not eligible as regional projects.

Regional projects require one eligible applicant to act as the "host" for the project. Regional applications may only include activities that are meant to address the identified regional risk. Regional applications cannot include the purchase of resources or any activities meant solely for the host applicant. As in last year's program, host applicants in FY 2010 may apply for funding to address their own needs beyond the scope of the regional project in a separate application(s). The "host" will be responsible for fulfilling all grant requirements such as reporting to NFIRS, control of and accounting for the funds, and distribution and control of the property. Additionally, the host is responsible for assuring that the cost share is met. The cost share for regional projects is based on the total population and demographics of the entire region.

DHS has the discretion to waive the legislatively established funding limits under AFG. In order to encourage interest and participation in this critical strategy to address interoperability, DHS may exercise that discretion if the funding of a regional application is at risk of exceeding statutory funding caps, (*i.e.*, the funding of the regional request combined with other AFG awards would cause the host applicant to exceed the legislatively established funding limits).

In general, equipment purchased as a result of a regional project will be physically distributed to all the departments that are beneficiaries of the project. This physical distribution of the equipment to other first responder organizations is the single characteristic that distinguishes eligible regional projects from projects that are not regional in nature but may have an impact on a region via mutual aid. For example, a project that would not be considered to have an effect on interoperability (and thus would not be considered a regional project) would be an application for an air compressor or a hazardous materials (HAZMAT) response vehicle. In this example, the assets would be shared with neighboring departments under mutual or automatic aid agreements, but physically located in the awardee's department and not disseminated among the participants; as such, this project would not qualify as a regional project.

Examples of viable regional projects would be a multi-jurisdictional communications system or standardization of training. As stated above, regional projects should be designed to address issues of communications or equipment interoperability among multiple jurisdictions.

In order to apply for a regional project, the host organization must:

1) be an eligible applicant, (*i.e.*, either a fire department or a nonaffiliated EMS organization – a county, county association, city, or an emergency management organization is ***not*** eligible and could not apply for a regional project), and

2) agree, if awarded, to be responsible for all aspects of the grant including, but not limited to, accountability for the assets and all reporting requirements.

In the regional application, the host organization will be required to describe the characteristics of the entire region that will be affected by the project (*i.e.*, the population of the affected region, not the applicant's "first-due" population). The applicant must provide detailed information in the project narrative describing the nature of the project including the project's budget, the effect the project will have on the region, and the need for the project. This includes a detailed description of the following:

- The proposed project and the project budget.
- The financial need for the project.
- The benefits that would result.
- The extent to which the grant would enhance daily operations.
- How the grant will positively impact the regional ability to protect life and property.

In addition, the applicant must include a list of all the participating organizations that will benefit from the regional project, if the project is approved. Fire departments or nonaffiliated EMS organizations that will benefit from a regional project may also apply for funding under AFG, as long as they are not requesting the same items as the host applicant for the regional project. For example, if a host applicant applies for a multi-jurisdictional communications project, a participating organization that will receive some of the communications equipment can apply for other needs as long as it does not apply for duplicative communications equipment. Host applicants MAY NOT apply for items to address other needs beyond the regional project on the regional application; but, as indicated above, a host applicant may submit a request to meet its own, non-regional needs in a separate application.

When evaluating the benefits of any regional project, we will take into account the other partners that will be involved in the project, whether they are other fire departments, nonaffiliated EMS organizations, or other public service organizations. We will also take into consideration the extent to which the non-fire/EMS partners will contribute to the overall costs of the regional project.

PART V.
APPLICATION REVIEW AND EVALUATION PROCESS INFORMATION

This section summarizes the multi-level review and evaluation process used to select applications for AFG funding.

A. Prescreening Process

As explained earlier, funding priorities and criteria for evaluating AFG applications are established based on recommendations from the criteria development panel. We will rank all submitted applications based on the substance of the application relative to the established funding priorities for the type of community served. Answers to the application's activity-specific questions provide information used to determine each application's ranking relative to the stated priorities.

If you apply for more than one activity in your selected project, each activity will be scored separately. Then the scores will be prorated based on each individual activity's funding level, compared to the total requested funding in your application. For example, under the Operations and Safety program area, if you apply for $9,000 in training and $1,000 in equipment, the training portion of the proposal will represent 90 percent of the score and the equipment will represent 10 percent of the score. The number of activities included in the application will not affect the application - negatively or positively.

B. Peer Review Process

Applications that best address the grant funding priorities (as outlined below) will score higher than applications that are inconsistent with the priorities. Applications scoring the highest will be determined to be within the "competitive range" and will undergo further evaluation through a peer review process. It has been DHS practice to review a sufficient number of applications to assure that the AFG Program's goals and objectives will be met. To achieve this, the number of applications reviewed each year is the number of applications whose cumulative requests total 200 percent of the appropriated funding for AFG. As such, with $390 million appropriated for AFG in FY 2010, DHS will consider approximately $800 million in applications to be in the competitive range and reviewed by a panel of peers.

A panel of at least three peer review panelists will evaluate each application in the competitive range using the project narrative, along with answers to the general questions and the activity-specific questions. During the panel review process, panelists will provide a subjective but qualitative judgment on the merits of each request.

Applications that include requests for equipment and/or training will be evaluated by the panelists relative to the critical infrastructure within the applicant's area of first-due

response. Critical infrastructure includes any system or asset that, if attacked or impacted by a hazardous event, would result in catastrophic loss of life or catastrophic economic loss. Critical infrastructure includes the following: public water or power systems, major business centers, chemical facilities, nuclear power plants, major rail and highway bridges, petroleum and natural gas transmission pipelines or storage facilities, telecommunications facilities, or facilities that support large public gatherings, such as sporting events or concerts. Panelists will assess such infrastructure and the hazards confronting the community, as explained in the narrative, to determine the benefits that will be realized from a grant to the applicant.

Panelists will evaluate and score the following project elements:

1) The clarity of your proposed project, including the project's budget detail.

2) The organization's financial need.

3) The benefits that would result from an award relative to the cost.

4) The extent to which the grant would enhance daily operations.

Each of these four elements carries equal weight when factored into the panelists' scores (*i.e.*, one-fourth).

Each application will be judged on its own merits, not compared to other applications. As part of the cost-benefit review, the panelists will consider all expenses budgeted, including the individual costs of the items requested as well as the extraneous costs such as warranties or maintenance costs, administrative costs, and/or indirect costs. Panelists may object to costs that are requested but not fully explained in the application. Panelists will review each application in its entirety and rate the application according to the established evaluation criteria.

Keep in mind that we will use the answers to the activity-specific questions when conducting our initial assessment. The answers to these questions are the primary basis for determining whether an application warrants further evaluation through peer review. Applicants whose answers indicate that their project is consistent with the established priorities (as outlined below) will have a better chance of reaching the competitive range and the second level, *e.g.*, the peer review, than those applicants whose projects do not reflect the established priorities. Applicants who submit false information with their applications or misrepresent their organizations in any material manner will have their applications deemed ineligible by the AFG Program Office and referred to the DHS OIG for further action, as appropriate.

Each application that scores high under the peer review process will be deemed in the fundable range. Applications that are in the fundable range will undergo both a Technical Review by a subject matter specialist as well as a Program Office review prior to being recommended for award. In the Technical Review, the subject matter specialists will

assess the technical feasibility of the application addressing the needs of the applicant. After the Technical Review, the Program Office will conduct an additional review to assess the request with respect to costs and quantities and eligibility prior to recommending the application for award.

C. State Strategy and Communications Technical Review

Each State will provide a representative to the AFG Program Office to conduct a technical review of peer-reviewed applications from the State's perspective. This State review will focus on requests for CBRNE-related equipment or training and/or interoperable communications equipment or training. After the panel review process is complete, the designated State homeland security official will review the application to ensure that requests for communications systems conform to the State's SCIP. The State representative will further certify that such requests are consistent with the State Homeland Security Strategy and do not duplicate or conflict with assistance already provided or imminent. If a State representative determines that an application is either inconsistent with the State strategy or duplicates the State's assistance, that portion of the AFG application will not be funded.

D. Anticipated Announcement and Award Dates

DHS will commence the panel review process within 60 days of the end of the application period. Award decisions for the FY 2010 program will be completed on or before September 30, 2011.

PART VI.
AWARD ADMINISTRATION INFORMATION

This section summarizes the administration of awards including award procedures and grantee responsibilities.

A. Award Procedure

Upon approval of an application, FEMA will provide an award package to the applicant through the automated AFG application system. An email notice of award will also be sent to the applicant's primary point of contact. The grantee should carefully read the award and special condition documents. If there are any questions or concerns, please contact the Help Desk at (866) 274-0960.

Awards will be made using the results of peer-reviewed applications as the primary basis for our decisions, regardless of program. However, there are some exceptions to strictly using the peer review results. For example, the AFG authorizing legislation restricts how the funds may be used. Grant awards for vehicles may not exceed 25 percent of the total appropriated funding, and nonaffiliated EMS organizations may not receive more than 2 percent of appropriated funding. Once we reach these limits, we must deviate from the rank order with respect to the remaining vehicle requests or nonaffiliated EMS requests.

Additionally, career organizations are limited to 45 percent of the available funding and volunteer and combination organizations are required to receive no less than 22 percent and 33 percent of the available funding, respectively. Achieving this delineation may also require deviating from the peer review results.

To fulfill our obligations under the law, we may also make funding decisions using the size and nature of the community served (urban, suburban, or rural), the type of organization (career, combination, or volunteer), and the geographic location of the organization. In these instances where we are making decisions based on geographic location, we will use States as the basic geographic unit. The geographic location of an applicant will be used primarily as a final discriminator, (*e.g.*, in cases where applicants have similar qualifications, we may use the geographic location of the applicants to maximize the diversity of the awardees).

Fire departments that have received funding under the AFG in previous years are eligible to apply for funding in the current year. However, due to our responsibilities under the authorizing statute to assure adequate distribution of awards among certain types of organizations (career, combination, and volunteer) and certain types of communities

(urban, suburban, or rural), we reserve the right to fund or not to fund previous grant recipients under this program in order to fulfill statutory requirements. We may also take into account an applicant's performance on prior grants when making funding decisions on current applications.

As stated earlier, each application will be evaluated based on the answers to the activity-specific questions. The applications that best address the established funding priorities will be deemed to be in the "competitive range" and subject to a second-level review. This second-level review is conducted via a panel of peer reviewers who will assess the application's merits with respect to the detail provided in the narrative on the activity, the applicant's financial need, and the purported benefit to be derived for the cost. The peer reviewers will independently score each application, discuss the merits and shortcomings of the application, and reconcile any major discrepancies, if necessary. A consensus is allowed but not required.

Once every application in the competitive range has been through the panel review, the applications will be ranked according to the average score awarded by the panel. The ranking will be summarized in a Technical Report prepared by the AFG Program Office. The AFG Program Office will then make award recommendations to the grants management specialists in the Grants Management Division of the Grants Programs Directorate. The grants management specialists will then contact the applicant to discuss and/or negotiate the content of the application before making final award decisions.

We will select a sufficient number of awardees from this one application period to obligate all of the FY 2010 funding available. Awards will be announced over several months as decisions are made. Awards will not be made in any specified order, (*i.e.*, not by State, program, or any other characteristic).

Award amounts are limited based on the population of the jurisdiction. Specifically, an applicant that serves a jurisdiction with a population of 500,000 or less may not receive grant funds in excess of $1,000,000 for any fiscal year. An applicant that serves a jurisdiction with more than 500,000, but not more than 1,000,000, people may not receive grant funds in excess of $1,750,000 for any fiscal year. Finally, an applicant that serves a jurisdiction of more than 1,000,000 people may not receive grant funds in excess of $2,750,000 in any fiscal year.

B. Grantee Responsibilities

AFG award recipients (grantees) must agree to:

(1) Perform, within the designated period of performance, all tasks (scope of work) as outlined in the grantee's application and approved by the AFG Program Office in accordance with the Articles of Agreement. Failure to adhere to the policies, terms, and conditions of the award as set forth in this document, as well as the award package and all references, including clarifications provided in the AFG Program's frequently asked questions, may result in loss of the current award as well as future eligibility.

(2) Share in the costs of the projects funded under this grant program. Fire departments and nonaffiliated EMS organizations serving populations of over 50,000 or more must match the Federal grant funds with an amount of non-Federal funds equal to 20 percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving populations between 20,000 and 50,000 must agree to match the Federal grant funds with an amount of non-Federal funds equal to 10 percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving areas with a population of 20,000 or fewer must match the Federal grant funds with an amount of non-Federal funds equal to 5 percent of the total project cost. Regional project cost-share will be based on the total population and demographics of the entire region. All non-Federal match funds must be in cash; in-kind contributions are not acceptable. No waivers of this requirement will be granted except for applicants located in Insular Areas as provided for in 48 U.S.C. § 1469a.

The grantee is not required to have the cash match in hand at the time of application, nor at the time of award. But, before a grant is awarded, DHS will contact potential awardees to determine whether the grantee has the funding in hand or if the grantee has a viable plan to obtain the funding necessary to fulfill the matching requirement.

(3) Maintain operating expenditures for the 1-year grant period of performance in the areas funded by this grant activity at a level equal to, or greater than, the average of their operating expenditures in the 2 years preceding the year in which this assistance is received. This program is meant to supplement rather than replace an organization's funding.

(4) Retain grant files and supporting documentation for 3 years after the conclusion and closeout of the grant or any audit subsequent to closeout.

(5) Ensure all procurement transactions are conducted in a manner to provide, to the maximum extent practical, open and free competition. Grantees are expected to promote competition and ensure advantageous pricing by soliciting bids from multiple vendors and to select the lowest bidder able to meet the requirements. Procurements shall be made from the bidder whose offer is responsive to the solicitation and is most advantageous to the grantee when price, quality, and other factors are considered. The grantee must follow its established procurement processes when purchasing vehicles, equipment, and services with AFG funds. If the grantee has no established procedures, it should obtain at least two quotes/bids for the items being procured and document the process used in the grant files. Sole-source purchasing is not an acceptable procurement method except in unusual circumstances. Grantees who fail to adhere to their own procurement policy or otherwise fail to fully "compete" any transaction involving Federal funds may find that their expenditures will be questioned and subsequently disallowed.

Specifications developed for solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by the recipient. However, those specifications may not be so narrowly constructed or contain features which unduly

limit, restrict, or eliminate competition unnecessarily. *See also* Item 7 below regarding conflicts of interest.

Grantees shall, on request, make available to DHS, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, *etc.*, if a) the procurement specifies a "brand name" product, or b) the proposed award is to be awarded to other than the apparent low bidder under a sealed bid process. Grantees found to be using proprietary specifications may find that their expenditures will be questioned and subsequently disallowed.

(6) Conduct all bidding activities (solicitation, receipt, and evaluation) after award, *i.e.*, during the period of performance. Quotes obtained prior to submittal of the application - for the purposes of applying for this grant - are not considered to be sufficient to satisfy the requirements for competition as outlined at 44 CFR Part 13. Grantees may be jeopardizing their awards if they do not adhere to the requirements set forth herein.

(7) Avoid conflicts of interest in order to ensure objective vendor performance and eliminate a real or an apparent unfair, competitive advantage. Grantees must assure that anyone that develops or drafts specifications, requirements, statements of work *(including the grant application),* invitations for bids and/or requests for proposals are excluded from competing for such procurements. Grantees must assure that no employee, officer, or agent of their organization participates in the selection, award, or administration of any procurement supported by Federal funds if a real or an apparent conflict of interest would be involved. A conflict of interest could arise when any of the following conditions exists:

a) An officer, employee, or agent of the grantee has a financial or other interest in the vendor selected for the procurement.
b) Any member of the grantee's officers', employees', or agents' immediate family has a financial or other interest in the vendor selected for the procurement.
c) An organization which employs a grantee's officer, employee, or agent, is a vendor or has a financial or other interest in the vendor selected for the procurement.
d) An officer, employee, or agent of the grantee is a Federal employee.

For the purposes of this program, we consider volunteers of an organization and grant writers to be employees, officers and/or agents of the grantee. As such, grantees must assure that no volunteer or member of their organizations or anyone involved in the application for funding participates in, or benefits from, the procurement if Federal funds are involved. Grantees who select vendors that employ volunteers or members of the organization will have to document how they avoided a conflict of interest during their procurement process. Grantees who fail to fully document their purchases may find that their expenditures will be questioned and subsequently disallowed. Grantees who have membership who are also Federal employees must take appropriate steps to assure that the Federal employees are not involved in any portion of the grant process and do not benefit from the grant in any fashion.

(8) Submit a performance report to DHS after 6 months as well as a final performance closeout report. If a grant's period of performance is extended for any reason, the grantee must submit performance reports every 6 months until the grant is closed out. At grant closeout, the grantee must report how the grant funding was used and the benefits realized from the award in a detailed final report. An accounting of the funds must also be included. Applicants should be aware that prior performance including timely submission of performance and closeout reports will be taken into consideration in evaluating future awards.

(9) Make grant files, books, and records available, if requested, for inspection to ensure compliance with any requirement of the grant program. Grantees are required to maintain and retain backup documentation such as bids, quotes, and cost/price analyses on file for Federal auditors. The required documentation for federally funded purchases should include specifications, solicitations, purchase orders, invoices, cancelled checks, copies of competitive quotes or proposals, and basis for selection. Grantees who fail to fully document their purchases may find that their expenditures will be questioned and subsequently disallowed.

(10) If the grantee is a fire department, agree to provide information through established reporting channels to the USFA NFIRS for the period covered by the assistance. Nonaffiliated EMS organizations do not have to comply with the NFIRS reporting requirement. If a fire department does not participate in the incident reporting system and does not have the capacity to report at the time of the award, that grantee must agree to provide information to the NFIRS system for a 12-month period commencing as soon as they develop the capacity to report. We expect non-reporting grantees to pursue the capacity to report immediately after notification of award, and for these non-reporting grantees to be actively reporting to NFIRS within the approved period of performance. AFG Program grantees from previous years will not be allowed to closeout their grants until they demonstrate that they are complying with this requirement. Failure to close out previous years' grants may affect the consideration of future awards.

(11) Follow the audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Grantees who expend $500,000 or more in Federal funds during the year they were awarded (from all Federal sources) must have a single audit performed in accordance with the Circular. (For more information about the Circulars, go to www.whitehouse.gov/omb/circulars.)

(12) Comply with Homeland Security Presidential Directive-5 (HSPD-5). Starting October 1, 2004, HSPD-5 requires all recipients of Federal preparedness funding – including recipients of Federal grants and contracts – to adopt NIMS as a condition for receipt of Federal funds. Recipients of FY 2010 AFG funds must comply with this directive. AFG recipients will be considered in compliance with this NIMS requirement if the grantee: 1) has an operational knowledge of ICS; 2) has an understanding of NIMS' principles and policies; and 3) agrees to adopt and/or comply with all directives, ordinances, rules, orders, edicts, *etc.*, passed down by local or State authorities with respect to incident management. Organizations already trained in ICS do not need

retraining if the previous training was consistent with DHS standards. In order for us to document compliance, grantees will be required to certify their recognition of NIMS/ICS as part of the grant closeout process.

(13) Vehicle awardees are required to obtain a prepayment bond if they advance any funding to the vehicle manufacturer. Vehicle awardees may be required to submit documentation regarding their purchase as a condition of receiving payment.

(14) Vehicle awardees are required to include a performance clause in their contract. The clause will specify a delivery date for the vehicle under contract and include a provision for penalty for non-delivery on the specified date. Non-delivery by the contract's guaranteed date will require a penalty for nonperformance that is no less than $100 per day until the date that the vehicle is delivered. Delivery is not acceptable unless the vehicle is operational, functioning, and ready to be placed in service.

C. Monitoring

Grant recipients will be monitored periodically by DHS staff, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and on-site monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each project and will identify areas where technical assistance and other support may be needed.

D. Grant Closeout Process

Within 90 days after the end of the period of performance, grantees must submit a final closeout report detailing all accomplishments throughout the project. The grantee is responsible for returning any funds that have been drawn down but remain as unliquidated in grantee financial records. After the closeout report has been reviewed and approved by DHS, a closeout notice will be completed to close out the grant.

E. Financial Reporting Requirements

Recipients of any AFG grants awarded on or after October 1, 2009, also will be required to submit a semi-annual Federal Financial Report (FFR) via the automated system on the Standard Form 425. The FFR is intended to provide Federal agencies and grant recipients with a standard format and consistent reporting requirements throughout the government. The FFR, to be submitted using the online e-grant system, will be due semi-annually based on the calendar year beginning with the period after the award is made. Grant recipients will be required to submit a FFR throughout the entire period of performance of the grant.

Reporting Periods for the FFR:

January 1 through June 30 (Report due by July 31)
July 1 through December 31 (Report due by January 30)

At the end of the grant's period of performance, all grantees are required to produce a final report on how the grant funding was used and the benefits realized from the award. Grantees must submit a final financial report and a final performance report within 90 days after the end of the period of performance. After these reports have been reviewed and approved by DHS, grantees receive an official notice the closeout has been accepted and completed. Any remaining grant funds are deobligated. The grantee is responsible for returning any funds that have been drawn down but remain unliquidated.

F. Standard Financial Requirements

The grantees must, in addition to the assurances made as part of the application, comply with all applicable statutes, regulations, executive orders, OMB Circulars, terms and conditions of the award, and the approved application.

1. **Standard Financial Requirements.** The grantee shall comply with all applicable laws and regulations. A non-exclusive list of regulations commonly applicable to DHS grants are listed below:

1.1 – Administrative Requirements.

- 44 CFR Part 13, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*
- 2 CFR Part 215, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* (OMB Circular A-110)

1.2 – Cost Principles.

- 2 CFR Part 225, *Cost Principles for State, Local, and Indian tribal Governments* (OMB Circular A-87)
- 2 CFR Part 220, *Cost Principles for Educational Institutions* (OMB Circular A-21)
- 2 CFR Part 230, *Cost Principles for Non-Profit Organizations* (OMB Circular A-122)
- 48 CFR 31.2, Federal Acquisitions Regulations (FAR), *Contracts with Commercial Organizations*

1.3 – Duplication of Benefits. There may not be a duplication of any Federal assistance by governmental entities, per 2 CFR Part 225, Basic Guidelines Section C.3 (c), which states: Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Authority may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program

agreements. Non-governmental entities are also subject to this prohibition per 2 CFR Parts 220 and 230 and 48 CFR 31.2.

2. **Payment.** DHS/FEMA uses the Direct Deposit/Electronic Funds Transfer (DD/EFT) method of payment to Recipients. Requests for payment are submitted via the automated AFG grant system.

   2.1 – Advance Payment. In accordance with Treasury regulations at 31 CFR Part 205, the Recipient shall maintain procedures to minimize the time elapsing between the transfer of funds and the disbursement of said funds (See 44 CFR Part 13.21(i)) regarding payment of interest earned on advances. In order to request an advance, the Recipient must maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds from DHS and expenditure and disbursement by the Recipient. When these requirements are not met, the Recipient will be required to be on a reimbursement for costs incurred method.

   NOTE: FUNDS WILL NOT BE AUTOMATICALLY TRANSFERRED UPON ISSUANCE OF THE GRANT. GRANTEES MUST SUBMIT A REQUEST FOR ADVANCE/REIMBURSEMENT (SF-270) IN ORDER FOR THE FUNDS TO BE TRANSFERRED TO THE GRANTEE'S ACCOUNT.

   2.2 – Cash Management. In accordance with 44CFR13.21(3)(i) grantees and sub-grantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency, except for interest exempt under the Intergovernmental Cooperation Act (31USC 6501 et seq.) and the Indian Self-Determination Act (23 USC 450). The grantee or sub-grantee may keep interest amounts up to $100 per year for administrative expenses.

3. **Non-supplanting Requirement.** Grant funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Applicants or grantees may be required to supply documentation certifying that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.

4. **Administrative Requirements.**

   4.1 – Compliance with Federal civil rights laws and regulations. The grantee is required to comply with Federal civil rights laws and regulations. Specifically, the grantee is required to provide assurances as a condition for receipt of Federal funds that its programs and activities comply with the following:

   - *Title VI of the Civil Rights Act of 1964,* as amended, 42. U.S.C. §2000 et seq. – Provides that no person on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program or activity receiving

Federal financial assistance. Title VI also extends protection to persons with Limited English Proficiency (LEP). (42 U.S.C. §2000d et seq.)

- *Title IX of the Education Amendments of 1972*, as amended, 20 U.S.C. §1681 et seq. – Provides that no person, *on the basis of sex*, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance.

- *Section 504 of the Rehabilitation Act of 1973,* as amended, 29 U.S.C. §794 – Provides that no otherwise qualified individual with a disability in the United States, shall, *solely* by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or subject to discrimination in any program or activity receiving Federal financial assistance.

- *The Age Discrimination Act of 1975,* as amended, 20 U.S.C. §6101 et seq. – Provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

Grantees must comply with all regulations, guidelines, and standards adopted under the above statutes. The grantee is also required to submit information, as required, to the DHS Office for Civil Rights and Civil Liberties concerning its compliance with these laws and their implementing regulations.

4.2 – Services to Limited English Proficient (LEP) persons. Recipients of FEMA financial assistance are required to comply with several Federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended. These laws prohibit discrimination on the basis of race, color, religion, natural origin, and sex in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency. To ensure compliance with Title VI, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The grantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. For additional information, see http://www.lep.gov.

4.3 – Certifications and Assurances. Certifications and assurances regarding the following apply:

- *Lobbying. – 31* U.S.C. §1352*, Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.* – Prohibits the use of Federal funds in lobbying members and employees of Congress, as well as employees of Federal agencies, with respect to the award or amendment of any Federal grant, cooperative agreement, contract, or loan. FEMA and DHS have codified restrictions upon lobbying at 44 CFR Part 18 and 6 CFR Part 9. (Refer to form included in application package.)

- *Drug-free Workplace Act,* as amended, 41 U.S.C. §701 et seq. – Requires the recipient to publish a statement about its drug-free workplace program and give a copy of the statement to each employee (including consultants and temporary personnel) who will be involved in award-supported activities at any site where these activities will be carried out. Also, place(s) where work is being performed under the award (i.e., street address, city, state and zip code) must be maintained on file. The recipient must notify the Grants Officer of any employee convicted of a violation of a criminal drug statute that occurs in the workplace. For additional information, see 44 CFR Part 17.

- *Debarment and Suspension.* – Executive Orders 12549 and 12689 provide protection from fraud, waste, and abuse by debarring or suspending those persons that deal in an irresponsible manner with the Federal government. The recipient must certify that they are not debarred or suspended from receiving Federal assistance. For additional information, see 2 CFR Part 3000.

- *Federal Debt Status.* – The recipient may not be delinquent in the repayment of any Federal debt. Examples of relevant debt include delinquent payroll or other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129) (Refer to SF-424, item number 17.)

- *Hotel and Motel Fire Safety Act of 1990.* – In accordance with section 6 of the *Hotel and Motel Fire Safety Act of 1990*, 15 U.S.C. §2225a, the recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds, complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, 15 U.S.C. §2225.

Grantees must comply with all regulations, guidelines, and standards adopted under the above statutes.

4.4 – Integrating individuals with disabilities into emergency planning. Section 504 of the *Rehabilitation Act of 1973*, as amended, prohibits discrimination against people with disabilities in all aspects of emergency mitigation, planning, response, and recovery by entities receiving financial funding from FEMA. In

addition, Executive Order 13347, *Individuals with Disabilities in Emergency Preparedness* signed in July 2004, requires the Federal government to support safety and security for individuals with disabilities in situations involving disasters, including earthquakes, tornadoes, fires, floods, hurricanes, and acts of terrorism. Executive Order 13347 requires the Federal government to encourage consideration of the needs of individuals with disabilities served by State, local, and tribal governments in emergency preparedness planning.

4.5 – Whistleblower Protection. Each recipient or sub-recipient awarded funds made available under the ARRA shall promptly refer to the FEMA Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds (ARRA Sec. 1553). The DHS Office of Inspector General can be reached at http://www.oig.Department.gov/fraud/hotline/.

4.6 – Environmental Planning and Historic Preservation Compliance. FEMA is required to consider the potential impacts to the human and natural environment of projects proposed for FEMA grant funding. FEMA, through its Environmental Planning and Historic Preservation (EHP) Program, engages in a review process to ensure that FEMA-funded activities comply with various Federal laws including: *National Environmental Policy Act*, *National Historic Preservation Act*, *Endangered Species Act*, the *Clean Water Act*, and Executive Orders on Floodplains (11988), Wetlands (11990), Environmental Justice (12898). The goal of these compliance requirements is to protect our nation's water, air, coastal, wildlife, agricultural, historical, and cultural resources, as well as to minimize potential adverse effects to low-income and minority populations.

The grantee shall provide all relevant information to FEMA to ensure compliance with applicable Federal EHP requirements. Any project with the potential to impact natural or biological resources or historic properties cannot be initiated until FEMA has completed the required EHP review. In addition to a detailed project description that describes what is to be done with the grant funds, how it will be done, and where it will be done, grantees shall provide detailed information about the project (where applicable), including, but not limited to, the following:

- Project location (i.e., exact street address or map coordinates)
- Total extent of ground disturbance and vegetation clearing
- Extent of modification of existing structures
- Construction equipment to be used, staging areas, etc.
- Year that any affected buildings or structures were built
- Natural, biological, and/or cultural resources present within the project area and vicinity, including wetlands, floodplains, geologic resources, threatened or endangered species, or National Register of Historic Places listed or eligible properties, etc.

- Visual documentation such as good quality, color and labeled site and facility photographs, project plans, aerial photos, maps, etc.
- Alternative ways considered to implement the project (not applicable to procurement of mobile and portable equipment)

For projects that have the potential to impact sensitive resources, FEMA must consult with other Federal, State, and tribal agencies such as the U.S. Fish and Wildlife Service, State Historic Preservation Offices, and the U.S. Army Corps of Engineers, as well as other agencies and organizations responsible for the protection and/or management of natural and cultural resources, including Federally-recognized Indian tribes, Tribal Historic Preservation Offices, and the Department of the Interior, Bureau of Indian Affairs. For projects with the potential to have adverse effects on the environment and/or historic properties, FEMA's EHP review process and consultation may result in a substantive agreement between the involved parties outlining how the grantee will avoid the effects, minimize the effects, or, if necessary, compensate for the effects. Grantees who are proposing communication tower projects are encouraged to complete their Federal Communications Commission (FCC) EHP process prior to preparing their EHP review materials for FEMA, and to include their FCC EHP materials with their submission to FEMA. Completing the FCC process first and submitting all relevant EHP documentation to FEMA will help expedite FEMA's review.

Because of the potential for adverse effects to EHP resources or public controversy, some projects may require an additional assessment or report, such as an Environmental Assessment, Biological Assessment, archaeological survey, cultural resources report, wetlands delineation, or other document, as well as a public comment period. Grantees are responsible for the preparation of such documents, as well as for the implementation of any treatment or mitigation measures identified during the EHP review that are necessary to address potential adverse impacts. Grantees may use grant funds toward the costs of preparing such documents. The use of grant funds for mitigation or treatment measures that are not typically allowable expenses will be considered on a case-by-case basis. Failure of the grantee to meet Federal, State, local and territorial EHP requirements, obtain required permits, and comply with any conditions that may be placed on the project as the result of FEMA's EHP review may jeopardize Federal funding.

Recipients shall not undertake any project without the prior approval of FEMA, and must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project description will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the recipient must ensure monitoring of ground disturbance, and if any potential archeological resources are discovered, the recipient will immediately cease construction in that area and notify their FEMA Program Office, and the appropriate State Historic Preservation Office. Any

projects that have been initiated prior to approval will result in a non-compliance finding and will not be eligible for funding.

For more information on FEMA's EHP requirements, Grantees should refer to FEMA's Information Bulletin #329, *Environmental Planning and Historic Preservation Requirements for Grants,* available at http://ojp.usdoj.gov/odp/docs/info329.pdf. Additional information and resources can also be found at http://www.fema.gov/plan/ehp/ehp-applicant-help.shtm.

PART VII.
FEMA CONTACTS

This section describes several resources that may help applicants in completing an AFG Grant application.

AFG Help Desk. AFG staffs a help desk throughout the application period. The help desk can provide assistance with navigation through the automated application as well as provide programmatic assistance with respect to questions of eligibility. The help desk can be contacted at 1-866-274-0960 or via email at firegrants@dhs.gov. The help desk hours of operation during the application period are from 8:00 a.m. to 8:00 p.m., Monday through Friday; and 9:00 a.m. to 4:00 p.m., on Saturday. All times listed are eastern times.

DHS Regional Fire Program Specialists. Each of the DHS Regions has specialists that can assist applicants with the application process. Interested parties may contact the AFG helpdesk for information on the nearest regional specialists.

PART VIII.
OTHER INFORMATION

Excess Funds

Occasionally, due to successful competitive bid processes, some grantees have funds remaining after the completion of the obligations outlined above. Fire department grantees have four options for the use of the excess funds if they complete the approved scope of work prior to the end of the performance period. Requests for use of excess funds must be submitted for consideration prior to the end of the approved period of performance, and any initiatives requested must be completed within the approved period of performance or within a reasonable extension to the period of performance (*e.g.,* 3 to 4 months after the period of performance). The four options are as follows:

(1) Grantees may use the greater of 1 percent of their award amount or $5,000 to continue or expand the activities for which they received the award. For example, if a grantee has funds remaining after completion of the activities listed in their grant agreement, the grantee may use excess funds (subject to the above limitation) to purchase other eligible items without seeking DHS approval.

(2) Grantees may use excess funds to create or expand a fire or injury prevention project. Excess funds above the amounts discussed in paragraph (1) above must be used for fire or injury prevention activities or returned to DHS [*See* option (3) below]. In order to use excess funds for fire or injury prevention activities, a grantee must submit an amendment to their grant. The amendment request should explain the following:

i) Fire or injury prevention efforts currently underway in your organization.

ii) Where the use of excess funds would fit within your existing efforts, if applicable.

iii) What fire or injury problem you are trying to address with these funds.

iv) The target audience for your fire or injury prevention project(s), and how this audience was identified.

v) How you will implement/deliver your project(s).

vi) How you will evaluate the effectiveness of the requested fire or injury prevention project(s).

(3) Grantees may use up to 50 percent of their excess funds for training and/or wellness/fitness activities. In order to implement this option, the grantee must submit

an amendment and explain the proposed project and the timeframe to complete the project.

(4) Grantees may return excess funds to DHS. To exercise this option, a grantee must closeout their grant and state in the final performance report that the remaining funds are not necessary to fulfill grant obligations. The grantee must also indicate that they understand that the funds will be deobligated and unavailable for future expenses. Deobligation of excess funds will decrease the Federal portion of the grant and the amount of the grantee's match.

Fire department grantees that complete the approved scope of work prior to the end of the performance period and still have grant funds available may use the excess funds in a combination of activities from the options above. Nonaffiliated EMS organizations that have excess funds may exercise the same options as a fire department; however, EMS organizations may not expend grant funds for fire prevention activities. Rather, EMS organizations are restricted to uses that only involve injury prevention projects and initiatives.