

CONTRACT PROVISIONS

Contract Provisions Policy & Operational Procedure

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Last Revised: May 2014

Responsible Officer

Administrative Vice President

Policy Statement

It is the policy of the Aspen Center for Physics (ACP or the Center) to conform in a manner consistent with Office of Management & Budget (OMB) Circular A-110, A-122, and A-133 contract policies, and award terms and conditions. This Policy and Operational Procedure ensures that ACP's practices for contracts charged to sponsored projects maintain compliance with the Federal regulations.

Reason for Policy

As a recipient of Federal funding, ACP is subject to numerous financial accounting and reporting obligations, including but not limited to those set forth in OMB Circular A-122. Failure to adhere to the provisions of this Policy and Operational Procedure may result in the Center's sponsors, or other government agencies, disallowing costs or imposing other sanctions.

Who Should Know This Policy

- Principal Investigators
- Administrative Staff
- Winter Conference/Summer Workshop Organizers
- Officers
- Trustees



- General Members
 - Other: _____
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Contacts

Subject	Contact
Policy Questions	Corporate Secretary
Contract Procedure Questions	Administrative Vice President

Applicable ACP Policies

- Allowable Costs on Sponsored Projects: Policy & Operational Procedure
 - Procurement Standards
 - Property Management Standards
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Contracting Operations at ACP

Introduction and Definition:

This Policy and Operational Procedure defines how ACP adheres to Federal guidelines for entering into contracts. For purposes of this Policy and Operational Procedure, ACP defines contracts as written instruments for services provided by a business or other purveyor between that business and ACP.

Procurement Standards:

When a new need is identified that requires research into finding a new contractor, it is the policy, when possible, for the Center to acquire three bids. Due to the remote location of the Center it is sometimes not possible to find three purveyors of the same service or product. The Administrative Vice President reviews the bids and chooses the most appropriate, which might not be the least expensive due to several factors which might include:

1. Some bidders not entering all costs.
2. Trying to win the bid by adding provisions for cost extras.
3. Suitability of the contractor by virtue of travel time or other unusual circumstances.
4. Other reasons which the Administrative Vice President will note.



See the ACP Procurement Standard Policy for further discussion of this policy.

Adherence to Federal Acts Governing Contracts:

Because the Aspen Center for Physics pays for capital improvements and repairs with its own general fund and not with Federal funds, these provisions are not required to be written into non-Federal contracts entered into by the Center. However, the Center complies with the spirit of each act where possible and is cognizant of the existence of these acts should the circumstance arise requiring adherence to any of these policies. In the final section of this policy are more details of the source of each act.

Equal Employment Opportunity: Should the Aspen Center for Physics enter into a contract with the Federal government, it will comply with Executive Order #11246 which lists provisions that should be included in the contract indicating the contractor is an equal opportunity employer. In its staff hiring and participant selection, ACP does not discriminate based on race, color, religion, sex, national origin or sexual orientation.

Copeland “Anti-Kickback” Act: Although this act does not apply to the ACP because it does not manage any public buildings or works, the Center does not allow contractors to induce employees to give up compensation to which they are entitled.

Davis-Bacon Act: It is the policy of the Aspen Center for Physics to pay for capital projects with its own general funds, and not with Federal funds, so this act does not apply.

Contract Work Hours and Safety Standards Act: This act applies to contracts in excess of \$2000 and construction contracts in excess of \$2500 that are paid for with Federal funds. It provides for overtime and working conditions.

Rights to Inventions Made Under a Contract or Agreement: The Aspen Center for Physics does encourage exit reports which track research topics discussed at the Center. There is rarely, if ever, a specific invention that can be traced in its entirety to work at ACP. It is the nature of theoretical physics that research results in mutually shared and non-proprietary knowledge. Should there be a specific invention, ACP will adhere to 37 CFR part 401.

Clean Air Act and the Federal Water Pollution Control Act: This applies to contracts and subgrants in excess of \$100,000 into which ACP might enter. It requires compliance with applicable standards, orders or regulations issued under either act.

Byrd Anti-Lobbying Amendment: Although this provision applies to contracts over \$100,000, ACP does not use Federal or general funds to lobby or attempt to influence government elected officials or staff.

Debarment and Suspension: Should ACP enter into a contract using Federal funds, it is important to consult the GSA Suspension list for contractors disallowed from engaging in work involving Federal funds. It is accessed at www.sam.gov. Select Data Access/Exclusion Interfaces and scroll down to download a current Excel spreadsheet.



Roles & Responsibilities

Principal Investigator: Responsible for understanding sponsor and ACP regulations and to ensure that contracts comply with Federal guidelines.

Administrative Staff: Responsible for documenting transactions in compliance with this policy and for retaining documentation, justification and back-up for contracts. Serve as a resource for the PI and Trustees.

Designated Officers and Trustees: Responsible for supervising the Administrative Staff and reviewing and approving contracts in compliance with sponsor regulations and ACP policy.

Appendix: Applicable Federal Regulations & Criteria

ACP policies regarding contract policies adhere to the guidelines in the NSF's AAG and to OMB Circular A-110, Appendix A as noted below:

Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. Equal Employment Opportunity - All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) - When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than



\$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

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

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress,



officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

