

MASTER GRANT AGREEMENT 2013-2014

EXHIBIT C

SPECIAL PROVISIONS

1. Procurement.

Except as specifically provided in this Agreement, OHCS *does not* waive or herein provide a waiver of any regulations, requirements and/or procedures applicable to use of Grant funds. For example, the OMB circulars require an entity's procurement procedures must require that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the OHCS award *does not* provide the justification or basis to sole-source the procurement, i.e., avoid competition.

If allowable under the specific grant program from which funds will be expended and approved or pre-approved as necessary or required by OHCS:

a. **Contracts for Goods and Services.**

1. Subgrantee may contract for services purchased in whole or in part with funds provided under this Agreement, but only when the specialized skills, knowledge and resources to be provided by a vendor are not available within Subgrantee's organization or if the work required by this Agreement cannot be performed in a reasonable time with Subgrantee's staff.
2. This vendor must be of recognized professional expertise, certification, license, registration, or stature in a field. Vendor shall further be registered to do business in the State of Oregon, http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.login.
3. Subgrantee shall develop and maintain policies and procedures for procuring, by purchase, rental or otherwise, any equipment, supplies, or other goods and services in a manner consistent with 2 CFR, Part 215 – Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Learning, Hospitals, and other Non-profit Organizations; and/or 2 CFR, Part 230 – Cost Principles for Non-profit Organizations, Office of Budget and Management Circular A-102, and any applicable federal agency codifications of The Grants Management Common Rule and the following guidelines for selection of contractors:
 - a. For Small Procurements of **\$5,000 or less**:
 - i. Encourage competition to the extent possible;
 - ii. Document the process as described in subsection (b)(iii) below; and
 - iii. Use best efforts to select small businesses, minority-owned firms, and women's business enterprises whenever possible consistent with section 2.
 - iv. As these procurements involve such small expenditures that they do not justify a significant investment of public resources in a more formal procurement process, therefore Subgrantee is prohibited from artificially dividing or fragmenting a procurement to bring the procurement amount below the \$5,000 threshold. To comply with this provision, Subgrantee should base the sizing of its procurements on the Subgrantee's realistic purchasing requirements or rational business practices.
 - b. For Procurements of **more than \$5,000**;

- i. Solicit a minimum of 3 responses;
 - ii. Every prospective bidder must be notified in the same way and receive the same information;
 - iii. Document the process – name of firm and person contacted, when, how, responses or bids, and name of person making contact. This documentation must be kept with the resulting contract; and
 - iv. Use best efforts to select small businesses, minority-owned firms, and women’s business enterprises whenever possible.
4. Subgrantee shall obtain written approval from OHCS prior to entering into any sole source contract or contract where only one bid or proposal is received when the contract is expected to be more than \$5,000 in the aggregate.
5. In addition, to guidelines set out above, when Subgrantee purchases any vehicle, regardless of cost, or any equipment or other property costing more than \$5,000 per unit with funds provided in whole or in part under this Agreement, Subgrantee shall:
- a. Obtain prior written approval from OHCS and any other required approval specific to the source of funds that will be expended.
 - b. Solicit (and retain documentation of) a minimum of three (3) bids.
 - c. Comply with Exhibit B, Section 33, Fixed Assets.

b. Construction Contracts.

1. Subgrantee shall comply with, and OHCS’ performance hereunder is conditioned upon Subgrantee’s compliance with, the terms of this Agreement, including without limitation the provisions of Oregon Revised Statute Chapters, as amended from time to time:
- a. 279B.220 Conditions concerning payment, contributions, liens, withholding;
 - b. 279B.235 Condition concerning hours of labor;
 - c. 279B.270 State contracting agencies to use recovered resources and recycled materials; notice to prospective contractors;
 - d. 279C.505 Conditions concerning payment, contributions, liens, withholding, drug testing; and
 - e. 279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.
2. All Construction Contractors must be currently licensed and bonded through the State of Oregon Construction Contractors Board, https://ccbed.ccb.state.or.us/ccb_frames/consumer_info/ccb_index.htm.

c. Debarment and Suspension.

No contract shall be awarded to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs, <https://www.epls.gov/eplsearch.do>, in accordance with E.O.s 12549 and 12689, “Debarment and Suspension”.

Nor shall any contract be awarded to parties listed on the State of Oregon Bureau of Labor and Industries Ineligible Contractors list, http://www.oregon.gov/BOLI/WHD/PWR/W_PWR_Handbooksandseminars.shtml.

2. Wage Determinations.

Subgrantee shall, and shall cause and require its subrecipients, contractors, and subcontracts, to fully comply with, on projects where DBA prevailing wage requirements must be paid, the requirements set out in the DOL regulations at 29 CFR Parts 1, 3, and 5 are applicable. In accordance with 29 CFR Part 1, federal agencies directly contracting for weatherization projects or providing assistance under the ARRA to other entities for such projects must include the standard DBA contract clauses found in 29 CFR 5.5(a) in their bid solicitations, assistance agreements, and the resulting contracts and grants, and must require that those requirements flow down to any contracts or subcontracts for the performance of the work. See also Exhibit E, Davis-Bacon And Related Acts Provisions And Procedures; www.wdol.gov; and 29 CFR 5.5 - Contract provisions and related matters.

3. Emerging Small, Minority, Women-Owned Business Objectives.

It is an important business objective of OHCS to promote the economic enhancement of small businesses (SBE), minority businesses (MBE), and women-owned businesses (WBE). The success of OHCS to track the amount of business received by SBE, MBE, and WBE firms (whether as a prime contractor or a subcontractor) is dependent upon the business community partnering with us in this important endeavor. If Subgrantee subcontracts to any of these businesses in the performance under this opportunity, Subgrantee shall document the total dollars for each business classification or reasons why such firms are not utilized under the resulting contract.

4. Subrecipient Agreements (Subawards).

Subgrantee shall not enter into any agreement or renewal with subrecipients without prior written approval of OHCS as outlined in Exhibit B, Section 40. OHCS' approval of any subrecipient shall not relieve Subgrantee of any of its duties or obligations under this Agreement.

Subgrantee shall require and cause its subrecipients to comply with all applicable provisions of this Agreement between OHCS and Subgrantee, each of which must be specifically incorporated into the subrecipient agreements in a manner satisfactory to OHCS. OHCS reserves the right to request that any subrecipient agreement be submitted to it for review and approval by OHCS within 10 business days from the date of written notification.

Subgrantee shall require and cause that all of its subrecipient agreements related to this Agreement must include language specifying that such agreements are subject to termination upon such a directive to Subgrantee by OHCS and that OHCS shall not be liable to any of the parties of that agreement or to other persons for directing that such agreement be terminated.

Subgrantee shall have a written agreement with each subrecipient that is consistent with this Agreement, including without limitation, relevant Exhibits and Work Plans that identify:

- a. The services or benefits that the subrecipient must provide when delivering the program.
- b. The laws and regulations with which the subrecipient must comply under the terms of the agreement (including but not limited to program specific requirements such as eligibility criteria and matching obligations, public policy for protecting civil rights and the environment, written procedures for appeal by clients of subrecipient determinations, government-wide administrative mandates affecting the subrecipient's accounting and record keeping systems, and local laws imposed by Subgrantee).
- c. The Subgrantee's and OHCS' monitoring rights and responsibilities and the methods used by Subgrantee for monitoring.
- d. A provision to certify that the subrecipient is an independent contractor and not an agent of OHCS or of Subgrantee.

5. Subgrant or Contractual Determination.

A subrecipient is a state or local government, nonprofit organization, or for-profit organization that expends subawarded funds received by Subgrantee from OHCS under this Agreement to carry out a program.

The guidance in paragraphs (a) through (c) of this section will be considered and reasonably applied by Subgrantee in determining whether relevant payments made or to be made by it in furtherance of this Agreement constitute an award under a subgrant received by a subrecipient or a payment for goods and services under a procurement contract received by a vendor or contractor.

a. Subgrant.

Characteristics indicative of an award received by a subrecipient are when the receiving organization:

- 1) Determines who is eligible to receive what financial assistance;
- 2) Has its performance measured against whether the objectives of the program are met;
- 3) Has responsibility for programmatic decision making;
- 4) Has responsibility for adherence to applicable program compliance requirements; and
- 5) Uses the funds to carry out a program of the receiving organization as compared to providing goods or services for a program of OHCS.

b. Contract.

Characteristics indicative of the procurement for goods and services received by Subgrantee are when the Vendor or Contractor:

- 1) Provides the goods and services within normal business operations;
- 2) Provides similar goods or services to many different purchasers;
- 3) Operates in a competitive environment;
- 4) Provides goods or services that are ancillary to the operation of the program; and
- 5) Is not subject to compliance requirements of the grant program.

c. Use of Judgment in Making Determination.

There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subgrant or contractual relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be uniformly present. Accordingly, prudent judgment shall be exercised by Subgrantee should be used in determining whether an entity with which it contracts to accomplish its performance under this Agreement is a subrecipient or vendor.

d. Applicability to For-profit Subrecipients.

Since subsections (a) through (c) do not necessarily apply to for-profit subrecipients, Subgrantee (as the pass-through entity) shall establish reasonable requirements, as necessary, to ensure compliance by for-profit subrecipients. Consequently, Subgrantee should describe in any agreements with for-profit subrecipients the applicable compliance requirements and the for-profit subrecipient's compliance responsibilities. Methods to

ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract and post-award audits.

e. Compliance Responsibility for Vendors.

In most cases, the Subgrantee's or other auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt and payment for goods and services comply with laws, regulations and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the Subgrantee or other auditee shall be responsible for ensuring compliance for vendor transactions that are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations and the provisions of contracts or grant agreements.

Regardless of whether goods or services are provided by a subrecipient or vendor, Subgrantee is still responsible for ensuring compliance with all grant requirements including but not limited to tracking and reporting requirements by the Agreement.

6. Responsibility for Work.

Subgrantee shall timely perform all Work identified in this Agreement consistent with its terms and conditions, including without limitation, the Work required with respect to the Grant Program Work Plans and NOA's. OHCS may add additional Work Plans to Exhibit A of this Agreement from time to time with the written approval of Subgrantee.

7. Non-assignment of Ultimate Responsibility for Work

Subgrantee shall retain ultimate responsible for timely performance of all Work regardless of any approvals received under this Agreement relating to subrecipients or subcontractors.

8. Work Plan(s) and Budget(s).

Each Grant Program Work Plan is unique to the Subgrantee. It must reflect the purpose of the related Grant Program and the methods proposed by the Subgrantee and its subrecipients, in detail acceptable to OHCS, to administer and/or deliver the Work associated with the requirements of that Grant Program. Work Plan Budgets must reflect the manner, in detail acceptable to OHCS that related Grant funds will be employed to accomplish the corresponding Work.

Subgrantee must request and receive prior written approval from OHCS for amendments to or deviations from its approved Work Plans and Budgets. OHCS may give or withhold such approval at its sole discretion. OHCS may allow the combining of applicable Work Plans and/or Budgets at its sole discretion.

Subgrantee shall perform all Work in accordance with the terms and conditions of this Agreement and specific Grant Program requirements in a manner satisfactory to OHCS.

9. Maintenance of Programmatic Capacity.

Subgrantee shall provide for and maintain the capacity for administration and performance of all Work required under this Agreement so as to result in a timely usage of Grant funds.

OHCS remedies for Subgrantee non-compliance with any Work requirements or for untimely usage of Grant funds may include, *inter alia*, the withholding of requested Grant funds or the reduction and redistribution of current or future funding allocations.

If the rate of request for any expenditure category is substantially different than in approved Budgets, OHCS may reduce and redistribute any or all Grant funds under this Agreement. OHCS Program Coordinators shall at their sole and absolute

discretion decide when a rate is to be considered “substantially different”. This remedy is in addition to any other allowed under this Agreement.

10. Financial Integrity.

Subgrantee shall be responsible for financial integrity of accounting records and compliance with the following requirements in addition to those required by regulation:

- a. Subgrantee shall, and shall cause its subrecipients (including by contract) to, prepare and maintain accurate financial records documenting all expenditures made from funds provided under this Agreement. These records shall include financial and audit reports for the applicable accounting period for the program, including adjustments to reconcile the accounting records.
- b. Subgrantee shall reimburse expenditures of subrecipients under this Agreement only if they are:
 - 1) In payment of eligible activities or services performed under this Agreement.
 - 2) In payment of services performed or supplies delivered during the applicable program period;
 - 3) In the aggregate not in excess of 100% of the funds provided to the respective applicable grant program under this Agreement; and
 - 4) Not for duplicate payment for the same activities or services under both this Agreement and any other contract or agreement with subrecipients.
- c. Subgrantee shall pay its subrecipients within thirty (30) days of the date of requests for payment.
- d. Subgrantee shall maintain documentation of its monitoring of subrecipients. The documentation shall include, but not be limited to:
 - 1) An agreement that complies with the requirements of this Agreement.
 - 2) Documentation of the non-profit status of the subrecipient; and
 - 3) Copies of all of the subrecipients OMB Circular A-133 audits if the subrecipient is required to have such an audit.
 - 4) Documentation of other methods used by Subgrantee for monitoring subrecipient activities.
- e. Subgrantee shall maintain an Accounting System which conforms with the following requirements:
 - 1) Expenditures shall be segregated by line item category within the accounting system of Subgrantee or subrecipient, as the case may be, and reported on the required fiscal reports.
 - 2) Funds received together with any income that is attributable to funds provided thereby shall be identified and segregated for expenditures relating to the program(s) for which the original funds were provided. Any allocation methodology shall comply with any requirements applicable to that entity or program.

OHCS may, in its sole discretion, reduce Subgrantee funding and redistribute such Grant funding to other Subgrantees. Adjustments pursuant to this subsection may be implemented by means of the Notices of Allocation (NOA) described in this Agreement. This remedy is in addition to any other remedy allowed OHCS under this Agreement.

11. Programmatic Integrity

Subgrantee shall be responsible for programmatic integrity and compliance with the programmatic intent including but not limited to the following requirements:

Subgrantee shall provide and maintain adequate resources necessary to ensure that all staff, Subgrantee and subrecipient, are adequately trained to perform under this Agreement including, but not limited to the training in processing of eligibility determinations and authorizations or other programmatic requirements.

Subgrantee shall comply with programmatic regulations and guidelines as listed on Exhibit E, Grant Programs and Compliance Requirements.

Subgrantee shall have a written procedure for the handling of client appeal of determinations.

12. Reporting

In addition to specific reporting requirements addressed elsewhere in this Agreement and its Exhibits and Attachments, Subgrantee shall:

Subgrantee shall, and shall cause its subrecipients (including by contract) to, submit the required reports so that they are received by OHCS on or before the due dates specified herein this Agreement, as outlined in the applicable Work Plan, as newly required by any provider of funding under this Agreement, or as otherwise required by OHCS. Subgrantee shall require its subrecipients (including by contract) to submit the required reports to Subgrantee in sufficient time to allow Subgrantee to fulfill its reporting obligations to OHCS.

All reports shall be timely, complete, accurate and satisfactory to OHCS as well as in the format required by OHCS.

Reports must agree with the accounting records maintained by Subgrantee and/or its subrecipients and be certified by the chief executive officer of Subgrantee or its subrecipients, as the case may be.

All final reports shall be submitted by Subgrantee so as to be received by OHCS on or before the 60th day following the last day of the grant program period for that program, or the date that all activities funded by this Agreement for that grant program are completed, whichever is earlier.

If Subgrantee fails to produce or timely submit reports satisfactory to OHCS, OHCS may withhold any or all requests for funds of Subgrantee under this Agreement or any other contract or agreement in effect between OHCS and Subgrantee except as expressly limited by law. OHCS also may reduce, suspend, terminate and/or redistribute any or all Grant funds due to Subgrantee failure to produce or timely submit reports satisfactory to OHCS.

13. Eligibility Determination.

Subgrantee shall make eligibility determinations for its respective Grant Program funds in a form and manner prescribed or authorized by OHCS. The Center for Medicare and Medicaid Services regulations prohibit Subgrantee from accessing the Department of Human Services state information systems and screens containing eligibility by entities, agencies, or organizations who are not responsible for administering Medicaid programs.