



MONTANA SECRETARY OF STATE'S OFFICE



HAVA FUNDING SUBGRANT RECIPIENT AGREEMENT

Terms and Conditions

By signing this agreement, the subgrantee agrees to use any subgrant funding for the purposes approved by the Secretary of State. Further, the subgrantee is required to effectively control the use of cash in compliance with State and Federal requirements. Failure to comply with State and Federal requirements may result in the loss of funds and may be considered grounds for the suspension or termination of the ability to receive grant funding provided by the HAVA (Help America Vote Act) Election Security Grant. It is required that the subgrantee permit the Office of the Secretary of State and auditors to have access to the subrecipient's records and financial statements as necessary for the Office of the Secretary of State to meet the requirements of 2CFR§200.331.

The regulations at 2 CFR 200 and the requirements under the HAVA must be followed.

Applicable Requirements:

- OMB Guidance: Allowability of salaries and other project activities. (2 CFR § 200.403, 2 CFR § 200.404, 2 CFR § 200.405).
- Allowability of costs not normally chargeable to awards. (2 CFR § 200.403, 2 CFR § 200.404).
- Exemption of certain procurement requirements. (2 CFR § 200.319(b), 2 CFR § 200.321).
- Section 101(c)(1)&(2) of HAVA, funds will be used in a manner that is consistent with the laws described in Section 906 of HAVA and that funds will not be used in a manner that is inconsistent with the requirements of Title III of HAVA.
- Requirements of section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C § 1704).
- Requirements of the FY19 National Defense Authorization Act Section 889 and subsequent regulation 2CFR § 200.216.
- Rights and remedies established in 41 U.S.C 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013.
- Requirements of the Drug-Free Workplace guidance per 2 C.F.R § 182.200
- Guidance of debarment & suspension (nonprocurement) set forth in subpart C of 2 C.F.R. Part 180, including lower tier covered transactions.
- Prohibition of text messaging and emailing while driving during official federal grant business under Executive Order 13513.
- Cost Principles in 2 CFR §200.400, Advance payments made to subgrants must be deposited in an interest-bearing account.

As an authorized representative, I acknowledge that the subgrantee is aware of and will manage funds according to the requirements imposed by Federal and State statute and regulation.

Name of subgrantee/organization

Signing Authority

Signature

Date

HAVA Terms and Conditions – Subgrant Applicable Requirements

I. Certification Regarding Lobbying for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

II. Certification Regarding Trafficking in Persons

The undersigned certifies to his or her understanding that this grant is subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) as follows:

- I. Provisions applicable to a recipient that is a private entity.
 - A. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not:
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect; or
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under the award.
 - B. We as the federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:

1. Violates a prohibition in paragraph A of this award term; or
 2. Has an employee who violates a prohibition in paragraph A of this award term through conduct that is either:
 - a. Associated with performance under this award; or
 - b. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)".
- II. Provisions applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is not a private entity–
- A. Is determined to have violated an applicable prohibition of paragraph I.A of this award term; or
 - B. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph I.A of this award term through conduct that is –
 1. Associated with performance under this award; or
 2. Imputed to you using the standards and due process for imputing conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB 12 Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 2200.
- III. Provisions applicable to any recipient.
- A. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph I A of this award term.
 - B. Our right to terminate unilaterally that is described in paragraph (1) and (2) of this section:
 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 2. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - C. You must include the requirements of paragraph I A of this award term in any subaward you make to a private entity.
- IV. Definitions. For purposes of this award term:
- A. "Employee" means either:
 1. An individual employed by you or a subrecipient who is engaged in the performance of

the project or program under this award; or

2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose service are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- B. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- C. “Private entity”:
1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR §175.25.
 2. Includes:
 - a. A nonprofit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
 - b. A for-profit organization. d. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102)

III. Certification Regarding the FY19 National Defense Authorization Act (NDAA) Section 889 and subsequent regulation 2 CFR §200.216

The undersigned certifies, to the best of his or her knowledge and belief, that:

The prohibited telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Additionally, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) that is used for the purpose of public safety, security of 16 government facilities, physical security surveillance of critical infrastructure, and other national security purposes is covered equipment under Section 889.

IV. Certification Regarding the Whistleblower Protection Act

The undersigned certifies, to the best of his or her knowledge and belief, that:

This award and employees working on this award will be subject to the whistleblower rights and remedies within established 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) as found here: <https://www.law.cornell.edu/uscode/text/41/4712>

An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross

mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

V. Certification Regarding the Drug-Free Workplace Requirement

The undersigned certifies, to the best of his or her knowledge and belief, that:

Grantee must establish drug-free workplace policies and procedures consistent with the guidance per 2 C.F.R. § 182.200.

VI. Certification Regarding Debarment & Suspension (Nonprocurement)

The undersigned certifies, to the best of his or her knowledge and belief, that:

Grantee must establish and abide by the guidance set forth in subpart C of 2 C.F.R. Part 180, including lower tier covered transactions.

VII. Certification Regarding the Prohibition of Text Messaging and Emailing While Driving During Official Federal Grant Business

The undersigned certifies, to the best of his or her knowledge and belief, that:

Grantees, sub recipients, and their grant personnel are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email when driving. This compliance is mandatory under the Executive Order 13513, "Federal Leadership on Reducing Text messaging While Driving" October 1, 2009.

2 CFR §200 Requirements:

Award recipients and sub-recipients must adhere to all applicable federal requirements including Office of Management and Budget (OMB) guidance: Title 2 C.F.R. Subtitle A, Chapter II, Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR §200). Section 209 of HAVA states that the EAC does not have the authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any state except to the extent permitted under a specific section of the National Voter Registration Act. The regulations at 2 C.F.R. 200 are government-wide regulations for federal grants. They are not regulations issued or promulgated by the EAC. The EAC and its grantees are subject to these and other government-wide regulations.

Federal and EAC Grants Policy Related to Subgrants:

Subgrants are allowable when determined as necessary, appropriate, and allocable expenses for HAVA awards. Federal grantees are responsible for ensuring that their subgrantees follow the requirements of their grants. It is incumbent upon the state to make determinations of allowability following the purposes of HAVA and the Cost Principles in 2 CFR §200.400. The grantee must ensure that no payments at the prime or subrecipient level are made that are improper. Grantees must provide the statutory definition of improper payment to subgrantees. The grantee is required to review subgrantee submitted reports for determining their accuracy, propriety, and appropriate use of grant funds. The monitoring of subgrantee compliance with grant program requirements and OMB cost principles is the grantee's responsibility. Advance payments made to subgrants must be deposited in an interest-bearing account. That interest will be reported to the EAC in the FFR and used for HAVA activities. Grantees must also comply with rules set forth in FFATA for reporting on subgrantees.

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also [§ 200.306\(b\)](#).
- (g) Be adequately documented. See also [§§ 200.300](#) through [200.309 of this part](#).
- (h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to [§ 200.308\(e\)\(3\)](#).

§ 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services for the geographic area.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

§ 200.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

- (1) Is incurred specifically for the Federal award;
- (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
- (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles: If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding [paragraph \(c\)](#) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also [§§ 200.310 through 200.316](#) and [200.439](#).

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

SEC. 101. PAYMENTS TO STATES FOR ACTIVITIES TO IMPROVE ADMINISTRATION OF ELECTIONS.

(c) USE OF FUNDS TO BE CONSISTENT WITH OTHER LAWS AND REQUIREMENTS.—In order to receive a payment under the program under this section, the State shall provide the Administrator with certifications that— (1) the State will use the funds provided under the payment in a manner that is consistent with each of the laws described in section 906, as such laws relate to the provisions of this Act; and (2) the proposed uses of the funds are not inconsistent with the requirements of title III.