SOUTH DAKOTA
DEPARTMENT
OF PUBLIC SAFETY
prevention ~ protection ~ enforcement
HOMELAND SECURITY

State Homeland Security Grant Program
Reimbursement Terms and Conditions

A. General Terms

1. Award Information

   The CFDA number for is 97.067.

2. Match

   There is no match requirement under this agreement.

3. Amendment Provision

   Any amendments to awards under must be in writing.

4. Termination Provision

   The South Dakota Office of Homeland Security retains the right to terminate awards through the State Homeland Security Grant program for cause at any time.

5. Insurance Provision

   Recipients agree, at their sole cost and expense, to maintain adequate general liability, worker's compensation, professional liability, and automobile liability insurance during the award period.

6. Default Provision

   This agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

B. Recipient Responsibilities:

1. Recipient will adhere to the Homeland Security Grant Administrative Manual (Manual) issued by the SD Office of Homeland Security.

   The manual is available at http://dps.sd.gov/homeland_security/homeland_security_grants.aspx or upon request from the State.

2. NIMS Compliant

   All Recipients of Homeland Security grant funds must be NIMS compliant, i.e., follow the National Incident Management System standards.

3. Projects that may have an environmental impact require programmatic approval from the SD Office of Homeland Security and Environmental and Historic Preservation (EHP) program; please see the federal EHP policy at: http://www.fema.gov/plan/ehp . EHP approval is required for projects that disturb ground, require installation, or have other environmental, historic, or cultural impact.

4. Recipients agree with the recommendation of the Senior Advisory Committee to use local pass-through funding for four statewide projects: Fusion Center, SWAT training, Regional Response Team expenses, and Homeland Security Conference.

5. Recipients must submit reimbursement requests summarized on the Payment Request Form provided by the State with invoices, receipts, and other documentation as needed to support the reimbursement request. The Payment Request Form must be signed, affirming that the items or services have been received.

6. Recipients agree to only purchase equipment listed in the FEMA *Authorized Equipment List*. To access the FEMA *Authorized Equipment List,* see www.rkb.us .

7. Recipients will retain title of any equipment purchased with funding through the SD Office of Homeland Security, safeguarding all such property, and assure that it is used solely for authorized purposes unless otherwise transferred to another agency as per the SD Office of Homeland Security policy. Equipment valued at $5,000 or above must be inventoried according to the local capital asset policy. If no local policy exists, the State capital asset policy will be followed. Equipment can be transferred to another agency or disposed of only with the written permission of the Office of Homeland Security and documented on the Equipment Transfer Form or an equivalent form approved by the State.

8. Recipients of federal funded equipment are responsible for providing proper training and technical support to those that are assigned to use any equipment purchased through this program.

9. Food, beverages, and mileage or fuel may be reimbursed according to State policy for approved Homeland Security work-related activities.

10. Recipients must use reimbursement forms developed by the SD Office of Homeland Security (or equivalent county forms approved by the State) and provide other documentation as requested.

11. No employee, officer, or agent of the Recipient shall participate in selection, award, or administration of a contract supported by Federal funds if a conflict of interest would be involved. For more information, refer to 44 CFR Part 13.36 link: http://149.168.212.15/mitigation/Library/44_CFR-Part_13.pdf .

12. Federal law prohibits the SD Office of Homeland Security from paying vendors listed on the General Services Administration's list of Parties Excluded from Federal Procurement Programs. This policy prohibits contracts, purchases, or business relationships with any individual or business entity that is listed by a federal agency as debarred, suspended, or proposed for debarment for projects $25,000 or more. To check on a vendor's status, please see www.epls.gov .

13. Supplanting is not allowed. The recipient agrees that funds will be used to supplement existing funding for program activities and not to replace those funds, which have been appropriated for the same purpose.

14. Recipients will follow their local purchasing policy or, if there is no local policy, recipients must follow the State purchasing policy; please see the Homeland Security Administrative Manual for more information.

15. Recipients must obtain written approval from the State prior to execution of contracts funded with Homeland Security Grant funds.

16. Recipients agree that when grant funds are used to harden/secure a critical infrastructure, an Automated Critical Asset Management System (ACAMS) security assessment of the critical infrastructure will be performed.

17. Recipients agree to provide the Comptroller General of the United States and the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. In addition, recipients must establish a proper accounting system in accordance with generally acceptable accounting principles.

18. Recipients agree to maintain all records and other information relevant to Homeland Security Grant Program awards for a period of three (3) years after final payment is made. If an audit, litigation or other action involving the records is started before the end of the three-year period, the records will be retained until all issues arising out of the action are resolved.

19. Recipients must comply and require each of its subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, OMB circulars, and terms and conditions of the award (see http://www.fema.gov/government/grant/hsgp).

A non-exclusive list of regulations applicable to DHS grants is shown below.

Standard Financial Requirements.

A. Administrative Requirements
   a. 44 CFR Part 13, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*
   b. 2 CFR Part 215, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* (formerly OMB Circular A-110)

B. Cost Principles
   a. 2 CFR Part 225, *Cost Principles for State, Local, and Indian tribal Governments* (formerly OMB Circular A-87)
   b. 2 CFR Part 220, *Cost Principles for Educational Institutions* (formerly OMB Circular A-21)
   c. 2 CFR Part 230, *Cost Principles for Non-Profit Organizations* (formerly OMB Circular A-122)
   d. Federal Acquisition Regulations (FAR), Part 31.2 *Contract Cost Principles and Procedures, Contracts with Commercial Organizations*

C. Audit Requirements
   a. OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*

D. Duplication of Benefits
   a. There may not be a duplication of any Federal assistance, per 2 CFR part 225, Basic Guidelines Section C.3 (c). Non-governmental entities are also subject to this prohibition per 2 CFR Parts 220 and 230 and FAR Part 31.2.

Federal Funding Accountability and Transparency Act (FFATA)

A. Direct recipients and subaward recipients must comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by section 6202(a) of the Government Funding Transparency Act of 2008 (Public Law 110-252).

B. FFATA requires disclosure to the public of federal spending through a single searchable database, www.USAspending.gov .

C. New federal awards of $25,000 or more as of October 1, 2010, are subject to FFATA requirements.

   a. Subawards greater than $25,000 must provide name of awardee, amount, funding agency, CFDA federal grant number, descriptive award title, location of awardee, Dun & Bradstreet DUNS number of awardee, and

   b. Compensation and name of top five executives if 1) 80% of more of annual gross revenues are from federal awards and $25,000,000 or more in annual gross revenues are from federal awards, and 2) compensation information is not already available through reporting to the Securities and Exchange Commission.

c. Classified information is exempt as are contracts with individuals.

d. Recipients of SD Office of Homeland Security reimbursement agreements are required to provide to the State all information required by FFATA.

Certifications and Assurances.

A. *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.

B. *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.

C. *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 verify that contractors or subrecipients are not excluded from receiving federal support by searching on the Excluded Parties List database at www.epls.gov . It is recommended that the Recipient print and retain a copy of the search results in their grant file to document compliance with this requirement.

D. *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. (OMB Circular A-129) (Refer to SF 424, item number 17) 58

E. *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.

Compliance with Federal Civil Rights Laws and Regulations.

A. *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.)

B. 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, 57 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.

C. Title VIII of the Civil Rights Act of 1968 (42 E.S.C. 3601 et seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination previsions in the specific statue(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply.

D. Equal Employment Opportunity. Compliance is required 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".

E. *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.

F. *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.

G. *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.

H. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

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), and 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. 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. Any projects that have been initiated prior to EHP approval will result in a non-compliance finding and will not be eligible for funding. Please see the Manual for more information.

Royalty-free License

Recipients are advised that FEMA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (a) the copyright in any work developed under an award or sub-award; and (b) any rights of copyright to which an award recipient or sub-recipient purchases ownership with Federal support. Award recipients must agree to consult with FEMA regarding the allocation of any patent rights that arise from, or are purchased with, this funding.

FEMA GPD Publications Statement

Recipients are advised that all publications created with funding under any grant award shall prominently contain the following statement: "This document was prepared under a grant from the Federal Emergency Management Agency's Grant Programs Directorate (FEMA/GPD) within the U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA/GPD or the U.S. Department of Homeland Security."

Equipment Marking

Recipients and subrecipients will mark equipment purchased with funding from the SD Office of Homeland Security with a U.S. Department of Homeland Security identifier to the extent possible. Please see Manual for more information.

Disadvantaged Business Requirement.

Recipients are advised that, to the extent that recipients of a grant use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

National Preparedness Reporting Compliance.

The *Government Performance and Results Act of 1993* (Public Law 103-62) requires that the Department of Homeland Security collect and report performance information on all programs. Award recipients must agree to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within their grant agreement. This includes any assessments, audits, or investigations conducted by DHS, the Office of the Inspector General, or the Government Accountability Office (GAO).

28 CFR Part 23 Guidance.

FEMA requires that any information technology system funded or supported by these funds comply with 28 CFR Part 23, *Criminal Intelligence Systems Operating Policies*, if this regulation is determined to be applicable.

Freedom of Information Act (FOIA).

FEMA recognizes that much of the information submitted in the course of applying for funding under this program or provided in the course of its grant management activities may be considered law enforcement sensitive or otherwise important to national security interests. While this information under Federal control is subject to requests made pursuant to the *Freedom of Information Act* (FOIA), 5 U.S.C. §552, all determinations concerning the release of information of this nature are made on a case-by-case basis by the FEMA FOIA Office, and may likely fall within one or more of the available exemptions under the Act. The recipient is encouraged to consult its own State and local laws and regulations regarding the release of information, which should be considered when reporting sensitive matters in the grant application, needs assessment, and strategic planning process. The grantee should be familiar with the regulations governing Sensitive Security Information (49 CFR Part 1520), as it may provide additional protection to certain classes of homeland security information.

Protected Critical Infrastructure Information (PCII).

The PCII Program, established pursuant to the *Critical Infrastructure Act of 2002* (Public Law 107-296) (CII Act), created a framework which enables members of the private sector, States, local jurisdictions, and tribal nations to voluntarily submit sensitive information regarding critical infrastructure to DHS. The Act provides statutory protection from public disclosure and civil litigation for CII that is validated as PCII. When validated as PCII, the information can only be shared with

government employees who complete the training requirement, who have homeland security duties, and a need to know. For additional information about PCII or the accreditation process, please contact the DHS PCII Program Office at pcii-info@dhs.gov .