Internal Audit Department
NeighborWorks® America

OMB Circular A-110 Compliance

Project Number: NFMC.0412
Audit Review of the OMB Circular A-110 Compliance
Internal Audit Department Project # NFMC.0412

Table of Contents

Project Completion Letter .................................................................................................. 2
Function Responsibility and Internal Control Assessment .............................................. 3
Executive Summary of Observations, Recommendations and Management
Responses .......................................................................................................................... 4
OBJECTIVE .......................................................................................................................... 7
SCOPE ................................................................................................................................. 8
METHODOLOGY .................................................................................................................. 8
SAMPLE SELECTION .......................................................................................................... 8
OBSERVATIONS AND RECOMMENDATIONS ........................................................................ 9
CONCLUSION .................................................................................................................... 10
Appendix A ........................................................................................................................ 11
Appendix B ........................................................................................................................ 12
To: NeighborWorks America Audit Committee

Subject: Audit Review of NMFC - OMB Circular A-110 Compliance
Internal Audit Department Project NFMC.0412

The Internal Audit Department conducted a review of *NFMC Program OMB Circular A-110 Compliance* activity as part of the 2012 Audit Plan. Enclosed is a copy of the recently concluded review of the overall processes in place to ensure compliance with Circular OMB A-110.

Please review and let me know if you have any comments or questions.

Frederick Udochi
Director of Internal Audit

Attachment

cc: E. Fitzgerald
    M. Forster
    C. Wehrwein
    J. Bryson
    J. Fekade-Sellassie
    T. Sims
    N. Harmon
    S. LeGrand
    F. Mattos
Function Responsibility and Internal Control Assessment
Audit Review of the OMB Circular A-110 Compliance

<table>
<thead>
<tr>
<th>Business Function Responsibility</th>
<th>Report Date</th>
<th>Period Covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Foreclosure Mitigation Counseling Program (NFMC)</td>
<td>June 25, 2012</td>
<td>April 16, 2010 to March 18, 2012 (Rounds 4 &amp; 5)</td>
</tr>
</tbody>
</table>

Assessment of Internal Control Structure

<table>
<thead>
<tr>
<th>Effectiveness and Efficiency of Operations</th>
<th>Generally Effective¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reliability of Financial Reporting</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Compliance with Applicable Laws and Regulations</td>
<td>Generally Effective</td>
</tr>
</tbody>
</table>

This report was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

¹ Legend for Assessment of Internal Control Structure: 1. Generally Effective: The level and quality of the process is satisfactory. Some areas still need improvement. 2. Inadequate: Level and quality of the process is insufficient for the processes or functions examined, and require improvement in several areas. 3. Significant Weakness: Level and quality of internal controls for the processes and functions reviewed are very low. Significant internal control improvements need to be made.
<table>
<thead>
<tr>
<th>Summarized Observation; Risk Rating</th>
<th>Management Agreement with Observation (Yes/ No)</th>
<th>Internal Audit Recommendation Summary</th>
<th>Accept IA Recommendation (Yes/ No)</th>
<th>Management’s Response to IA Recommendation</th>
<th>Estimated Date of Implementation</th>
<th>Internal Audit Comments on Management Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observation No. 1</td>
<td>Yes</td>
<td>Recommendation No1: Change Agreed Upon Procedures threshold from $100,000 to $25,000 to be consistent with Federal regulation requirements. Also, perform an assessment to identify grantees with procurement in excess of $25,000 in order to determine future sample sizes.</td>
<td>Yes</td>
<td>NFMC requires all grantees to adhere to OMB Circular A-110, including the procurement procedures for all contracts over $25,000. NFMC’s compliance procedures currently are to sample 100% of contracts over $100,000 to determine adherence to A-110 procurement requirements. This was decided because of budget constraints and materiality. Rather than review all contracts over $100,000, NFMC will change its Agreed-Upon</td>
<td>This change will occur with the next AUP for NFMC which will incorporate Rounds 6 and 7 and is anticipated to commence January 2014 at the latest.</td>
<td>Internal Audit accepts management’s response. However, it should be noted that the materiality threshold of $25,000 is already set by Circular OMB A-110.</td>
</tr>
</tbody>
</table>

**Observation No. 1**

NFMC has set a threshold for procurements contract to be reviewed during its compliance audits as $100,000 while OMB A-110 requirements are for contracts that exceed $ 25,000.

**Risk Rating:**

| 2 |

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Executive Summary of Observations, Recommendations and Management Responses
<table>
<thead>
<tr>
<th>Summarized Observation; Risk Rating</th>
<th>Management Agreement with Observation (Yes/ No)</th>
<th>Internal Audit Recommendation Summary</th>
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<th>Estimated Date of Implementation</th>
<th>Internal Audit Comments on Management Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures to include a sampling of all contracts over $25,000. Instead of a separate assessment or survey of NFMC grantees asking how many contracts each has over $25,000, NFMC will assess the number of contracts over $25,000 during the Round 6-7 reviews and, based on the number, will determine sample size. We will develop a guide for the auditors to use which would say, for example, if there are 0-3 contracts over $25,000, sample 100%. If there are 4-10 contracts, sample 30%, if there are more than 10 contracts, sample 3.</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Risk Rating Legend:

**Risk Rating: HIGH**
A serious weakness which significantly impacts the Corporation from achieving its corporate objectives, financial results, statutory obligations or that may otherwise impair the Corporation’s reputation.

**Risk Rating: Moderate**
A control weakness which could potentially undermine the effectiveness of the existing system of internal controls and/or operational efficiency, integrity of reporting and should therefore be addressed.

**Risk Rating: Low**
A weakness identified which does not seriously detract from the system of internal control and or operational effectiveness/efficiency, integrity of reporting but which should nonetheless be addressed by management.

<table>
<thead>
<tr>
<th># Of Responses</th>
<th>Response</th>
<th>Recommendation #</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Agreement with the recommendation(s)</td>
<td>1</td>
</tr>
<tr>
<td>N/A</td>
<td>Disagreement with the recommendation(s)</td>
<td>N/A</td>
</tr>
</tbody>
</table>
BACKGROUND

The United States Congress has appropriated approximately $620 million (across six Rounds) to help reduce and eliminate the default and foreclosure of mortgages through the National Foreclosure Mitigation Counseling (NFMC) Program. NeighborWorks America was selected as the NFMC Grant Administrator. As Administrator, NeighborWorks has the responsibility of awarding grants, disbursing funds to selected Grantees and (indirectly) to Sub-Grantees, and of monitoring Grantee Compliance with program requirements.

The NFMC Program, its Grantees, and Sub-Grantees are required to comply with Office of Management and Budget (OMB) Circular A-110. OMB A-110 explains administrative requirements for colleges, universities, hospitals, and other non-profit organizations with federally funded grants and agreements. Purchases funded by federal grant funds must adhere to regulations found in OMB Circular A-110. OMB circular A-110 sections .40 -.48 outline required procurement standards which are among the main objectives of this review. According to OMB A-110, recipients of federal funds must adhere to the following:

- Maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts;
- Ensure all procurement transactions shall be conducted in a manner to provide the maximum extent practical, open, and free competition;
- Establish written procurement procedures that should include avoiding purchasing unnecessary items, an analysis of lease vs. purchase (when applicable);
- Create clear and accurate description of the requirements of the materials, products, and/or services to be provided and requirements to be used in evaluating the bids;
- Make positive efforts to use small, minority-owned, and women-owned businesses whenever possible;
- Ensure the contractor/business selected are not an organization restricted from doing business with the federal Government (i.e., listed as Debarred or Suspended) and
- Make available to the awarding Agency (i.e., NFMC Program Management) pre-award review and procurement documents including but not limited to request for proposals, invitations to bid, independent cost estimates when specific criteria is met.

OBJECTIVE

The purpose of the review is to identify and assess processes that ensure that Grantees are in compliance with OMB Circular A-110 procurement provisions and requirements. In addition, the objective is to evaluate implementation and

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2 See Appendix B for extract of OMB Circular A-110.
effectiveness of processes and assess corrective actions taken in cases with exceptions noted.

SCOPE
Assessment of processes and procedures in place, including supporting documentation, for Rounds 4 and 5 to ensure compliance with the procurement section on OMB Circular A-110 which includes review of the following documentation among others:

- Solicitation materials;
- Evidence of inquiries by prospective bidders and responses provided to them;
- Documentation to confirm that there are no obvious measures to restrict or eliminate competition;
- Evidence of price and cost analysis of various offers and final contract amount; and
- Justification letter for lack of competition when competitive bids or offers are not obtained.

METHODOLOGY
The audit engagement commenced with an introductory meeting on January 11, 2012 to discuss the audit objectives, audit scope, timeline, and also to gain an overall understanding of the processes in place to ensure compliance with Circular OMB A-110. Based on the introductory meeting discussion and documentation provided by NFMC, Internal Audit decided it would be cost effective and time efficient to conduct the OMB A-110 compliance assessment concurrently with the NFMC quality control and compliance reviews conducted by the 3rd party CPA firm. As a result Internal Audit accompanied on several NFMC Grantee/Sub Grantee site visits between February and May 2012. During the site visits Internal Audit inquired with the Grantees/Sub-Grantees to assess whether or not the organization had contracted out any amounts in excess of $25,000 with a specific vendor. If a Grantee/Sub-Grantee had, Internal Audit would then request documentation supporting procurement procedures applied and compare them against OMB A-110 requirements.

SAMPLE SELECTION
Internal Audit judgmentally selected a sample of thirteen grantees and sub grantees based on grant size and program type, who were either in the NFMC or Emergency
Home Loan Program (EHLP). The sample was selected from a list of all site visitations, provided by NFMC, to be performed by [blacked out] during FY 2012. See complete list of selected grantees on appendix A. Internal Audit determined that only two sites out of the thirteen selected had contracted out any services in excess of $25,000, approximately 15% of the sample selected.

OBSERVATIONS AND RECOMMENDATIONS

Observation No. 1: Small Award Threshold
NeighborWorks America has established agreed upon procedures (AUP) to be performed by the 3rd Party CPA firm [blacked out] was engaged to conduct an evaluation of NFMC/EHLP compliance with program requirements. The AUP included procedures to assess Grantee/Sub-Grantee compliance with OMB Circular A-110. Per OMB A-110 Section 44 paragraph: “Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.(1)... (2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.”

Internal Audit notes that NFMC Management adopted a $100,000 and greater threshold as part of the AUP provided to [blacked out] to assess Grantee/Sub-Grantee compliance with OMB A-110 during Rounds 4 and 5. The OMB Circular A-110 threshold is currently set at $25,000. Management rationale for setting the threshold at a higher limit was based on budgetary constraints. NFMC still expects grantees to adhere to the procurement requirements of A-110 for all contracts over $25,000.

However, establishing a less conservative threshold above the Federal regulation requirement significantly increases the risk exposure of Grantees/Sub Grantees engaging in procurement and purchasing practices that may potentially not be in compliance with OMB Circular A-110. In addition, there was insufficient information to actually determine or assess the potential number of contracts that might meet the threshold requirement in the entire population selected for visitation. Nonetheless, based on the sample selected by Internal Audit only 2 out of the sample size of 13 had contracted services in excess of $25,000 approximately 15%. Applying 15% to the entire population of 143 grantees receiving on site visits would result in approximately 21 grantees that could have potentially contracted out services. Furthermore, NFMC/EHLP could choose to select a sample out of the total population of 21 grantees to perform their testing for compliance with OMB A-110 and still maintain the fixed threshold of $25,000.

3 OMB A-110 Circular sets forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations (see appendix B).
The increased exposure of raising the threshold limit is further evidenced by the Internal Audit observation with one of the Grantee’s site visitation. While conducting site visitations, Internal Audit identified one Grantee that had entered into a contract with a vendor in February 2010 to prepare and mail client counseling summaries and letters. Internal Audit determined that the vendor was used for several services offered by the Grantee; noting that over $25,000 had been contracted out for housing counseling services. Internal Audit requested the procurement policies of the organization to obtain assurance that the policy contained language to support compliance with OMB A-110. The grantee was unable to provide the requested documentation to support the procurement/selection process.

**Recommendation No. 1**

Internal Audit recommends that NFMC revise future agreed upon procedures with [3rd Party CPA firm selected to perform quality control and compliance reviews] to include the assessment of grantees that have contracted out program related support at a threshold that is in line with OMB Circular A-110, currently set at $25,000. Internal Audit also recommends that NFMC performs an assessment of the number of grantees that have contracted out services in excess of 25K and based on the assessment decide on a sample selection size. Based on our experience this number will be potentially low and should not be a major impact on the budget.

**CONCLUSION**

The National Foreclosure Mitigation Counseling has designed a process to assess grantees compliance with OMB Circular A-110. The overall process designed appears to be adequate and generally effective based on the scope of this assessment. However, the threshold limits need to be realigned with OMB Circular A-110 in order to conduct future reviews to be in full compliance.
## Appendix A

**Sample Selection:**

<table>
<thead>
<tr>
<th>Type</th>
<th>Organization</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>NFMC</td>
<td>Housing Partnership Network</td>
<td>Boston, MA</td>
</tr>
<tr>
<td>NFMC</td>
<td>Metropolitan Boston Housing Partnership, Inc.</td>
<td>Boston, MA</td>
</tr>
<tr>
<td>EHLP</td>
<td>Long Island Housing Services</td>
<td>Bohemia, NY</td>
</tr>
<tr>
<td>NFMC</td>
<td>Chaya CDC</td>
<td>Jackson, Heights</td>
</tr>
<tr>
<td>NFMC\EHLP</td>
<td>Minnesota Housing</td>
<td>St. Paul, MN</td>
</tr>
<tr>
<td>EHLP</td>
<td>Community Action Partnership of Suburban Hennepin</td>
<td>St. Louis Park</td>
</tr>
<tr>
<td>NFMC</td>
<td>Real Estate Education and Community Housing, Inc.</td>
<td>Palm Beach Gardens, FL</td>
</tr>
<tr>
<td>NFMC</td>
<td>Vision to Victory Destination H.O.M.E</td>
<td>North Miami</td>
</tr>
<tr>
<td>NFMC\EHLP</td>
<td>Credibility</td>
<td>Atlanta, GA</td>
</tr>
<tr>
<td>EHLP</td>
<td>Neighborhood Housing Services of new Orleans</td>
<td>New Orleans</td>
</tr>
<tr>
<td>EHLP</td>
<td>New Orleans Neighborhood Development Foundation</td>
<td>New Orleans</td>
</tr>
<tr>
<td>EHLP</td>
<td>CCCS of Puerto Rico</td>
<td>San Juan PR</td>
</tr>
<tr>
<td>EHLP</td>
<td>San Juan Neighborhood Housing Services, Inc.</td>
<td>San Juan, PR</td>
</tr>
</tbody>
</table>
Appendix B
Circular OMB A-110 extract

Procurement Standards

___40 Purpose of procurement standards. Sections ___41 through ___48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

___41 Recipient responsibilities. The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

___42 Codes of conduct. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

___43 Competition. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

___44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that (1), (2) and (3) apply.
(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

   (i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

   (ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

   (iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

   (iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

   (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

   (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this Circular.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.
45 Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

46 Procurement records. Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

47 Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

48 Contract provisions. The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government'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 shall, 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 statute of all persons supplying labor and material in the execution of the work provided for in the contract.

   (4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this Circular, as applicable.