



CENTERS FOR INDEPENDENT LIVING  
COMPLIANCE REVIEW REPORT

Utah Independent Living Center

Grant Award Number: H132A930811

Salt Lake City, Utah

**REVIEW DATES:** September 16-18, 2013

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Final Report: December 4, 2014

**REHABILITATION SERVICES ADMINISTRATION**

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## **I. PURPOSE OF THE ON-SITE MONITORING REVIEW**

Sections 706(c) and 722 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) mandate that the Rehabilitation Services Administration (RSA) conduct on-site reviews of centers for independent living (CILs) funded under Title VII, Part C, Section 722. The objectives of on-site reviews are to:

- assess compliance with the requirements of Section 725(b) and (c)(3) of the Rehabilitation Act and 34 CFR 366.60-366.63;
- study program operations, organizational structure and administration of the CIL under Section 725(c)(1), (2), (5) and (6) of the Rehabilitation Act and 34 CFR 366.2 and 366.50;
- review documentation sufficient to verify the accuracy of the information submitted in the most recent 704 Annual Performance Report;
- verify that the CIL is managed in accordance with federal requirements in the Education Department General Administrative Regulations (EDGAR);
- assess CIL conformance with its work plan, developed in accordance with Section 725(c)(4) of the Rehabilitation Act and 34 CFR 366.50(d)(2), conditions of the CIL's approved application, and consistency with the State Plan for Independent Living (SPIL);
- identify areas of suggested or necessary improvements in the CIL's programmatic and fiscal operation and provide technical assistance resources available on the local, state, regional and national level;
- identify areas of exemplary work, projects and coordination efforts and make this information available to the larger CIL community; and
- provide an opportunity to share information with experienced nonfederal individuals involved in the operations of CILs and make available technical assistance to enhance CIL operations or to minimize or to eliminate problem areas.

## **II. METHODOLOGY**

The on-site review of the Utah Independent Living Center (UILC) was conducted September 16-18, 2013. The program review covered the independent living (IL) operations and activities and the financial review examined the center's participation in Title VII, Part C, of the Rehabilitation Act. RSA used the On-Site Review Guide (ORG) to conduct the on-site review. During the review, interviews were conducted with the center's management, staff, consumers, and members of the board of directors. In addition to the interviews, program and financial documents were reviewed in accordance with the protocol required by RSA's ORG, including written policies and procedures, a sample of consumer service records (CSRs), and other documents that verified compliance with standards and indicators. CSRs were selected for review on a random basis. The review team conducted an exit conference at the conclusion of the review to provide initial feedback from the review.

Review team participants included:

- Timothy Beatty, RSA IL unit chief;
- Corinna Stiles, RSA IL program specialist;
- Megan Stegemiller, RSA sign language interpreter;

- Dan Kessler, nonfederal reviewer;
- R. Thomas England, IL coordinator, designated State unit;
- Kris Fawson, representative, Statewide Independent Living Council; and
- Brooke Wilson, representative, Statewide Independent Living Council.

### III. MISSION AND DESCRIPTION

UILC's mission is to assist persons with disabilities achieve greater independence by providing services and activities that enhance independent living skills and promote the public's understanding, accommodation and acceptance of their rights, needs and abilities. UILC developed the following goals for FY 2013:

- increase opportunities for individuals with significant disabilities to function independently in their community by developing appropriate community options and increasing public awareness through individual and systems advocacy;
- increase individual and community knowledge concerning public and private resources and services available to individuals with significant disabilities promoting equal access by people with disabilities; and
- increase or maintain the level of independence of 940 individuals from cross-disability groups, youth age 14-22, people living in care facilities, and others served by the UILC, including minority communities, by providing IL living services and developing peer relationships.

UILC serves Salt Lake, Summit and Tooele counties. UILC was established in 1981 and awarded a grant under Title VII, of the Rehabilitation Act, in 1982.

### IV. SPECIALIZED SERVICES AND PROGRAMS PROVIDED

In addition to the required four core services, UILC provides the specialized services and programs described below.

- **Loan Bank Program:** Through this program, UILC loans assistive equipment to increase the independence of individuals with disabilities who have a temporary need for or require this equipment while they wait for funding for their own equipment.
- **Assistive Technology Program:** This program provides assistive technology-related services to increase personal independence of people with disabilities at home and in the community and helps consumers access resources to purchase customized assistive equipment they need to be more independent.
- **Community Integration Program:** This program provides opportunities for persons with disabilities to participate in recreational and leisure activities in the community. Trips are organized to community activities and events in order for persons with disabilities to interact with people in their community while learning how to use and access community resources.

## V. OBSERVATIONS AND RECOMMENDATIONS

During its review activities, RSA identified the observations below and made recommendations that UILC may consider to improve its operations and performance.

### 1. Board members

**Observation:** As disclosed through board and executive director interviews, UILC does not have a board development and training plan and does not currently apply term limits to its board members. Without a board development and training plan, UILC cannot ensure its board receives the necessary training related to ongoing consumer control and sound fiscal management. A development and training plan can provide guidelines to ensure the board receives the necessary training to develop and implement a written process for identifying and recruiting new board members; providing new member orientation (i.e., center programs and services, IL philosophy and history); providing ongoing board training (i.e., board roles and responsibilities, nonprofit governance, fundraising and resource development); and developing and implementing term limits for board members.

**Recommendation:** RSA recommends that UILC:

- develop and implement a board member training plan;
- develop and implement a written process for identifying and recruiting new board members;
- develop and implement board member term limits; and
- utilize the training and technical assistance resources offered by ILRU and IL-NET to address this observation and recommendations.

### 2. Building Accessibility

**Observation:** UILC is located in its own building which was designed with consideration for individuals with disabilities, including accessible parking, ramps, accessible doorways, wide walkways and halls, kitchen facilities, and TTYs and videophones. However, there are areas that could be improved. Specifically, not all offices and meeting rooms are clearly marked with appropriate signage, including Braille, to assist consumers and visitors to readily locate their destinations within the center. In addition, UILC does not have a policy addressing individuals with environmental illness and multiple chemical sensitivity (e.g., no-fragrance policy or use of “green” cleaners).

**Recommendation:** RSA recommends that UILC:

- increase signage throughout the center, including Braille or raised lettering, to assist consumers and visitors in locating their destinations within the center; and
- develop and adopt written policies and procedures addressing individuals with environmental illness and multiple chemical sensitivity, including a no-fragrance policy or use of “green” cleaners within the center.

### 3. Fiscal Management

**Observation:** UILC does not provide a direct deposit option for its employee payroll checks. Because employees do not have a payroll direct deposit option, employees must identify individuals who are “authorized” to receive a payroll check when the employee is unable to receive his or her payroll check on payday. A review of personnel records indicated this has included up to five different “authorized” individuals for one employee. An independent audit for the year ended September 30, 2012 cites, “...during control testing it was noted that some employee checks are not cashed for months.” Fiscal and management staff acknowledge this has resulted in payroll checks being difficult to track and difficult to reconcile. This can contribute to a lack of effective control over and accountability for funds.

**Recommendation:** RSA recommends that UILC:

- develop and offer a payroll direct deposit option to its employees to remove the burden on center staff to have multiple valid authorizations for picking up paychecks, and to ensure paychecks are cashed and reconciled within a timely manner.

## **VI. FINDINGS AND CORRECTIVE ACTIONS**

RSA identified the compliance findings below. Within 30 days of receipt of the final report, UCIL must submit a corrective action plan (CAP) to RSA for review and approval. The CAP should include: (1) the specific corrective actions that the CIL will undertake in response to each finding; (2) the methodology that the CIL will utilize to evaluate if each corrective action has been effective; and (3) the timetable for the implementation and evaluation of the corrective action.

RSA reserves the right to pursue enforcement action related to these findings as it deems appropriate, including the recovery of funds, draw down restrictions, funds withholding, or grant terminations, pursuant to 34 CFR 74.60 and 34 CFR 74.62 of the Education Department General Administrative Regulations (EDGAR).

### **Finding 1: Procurement**

#### **Legal Requirements:**

- 34 CFR 74.21 Standards for financial management systems
- 34 CFR 74.40 Purpose of procurement standards
- 34 CFR 74.41 Recipient responsibilities
- 34 CFR 74.42 Codes of conduct
- 34 CFR 74.43 Competition
- 34 CFR 74.44 Procurement Procedures
- 34 CFR 74.45 Cost and price analysis
- 34 CFR 74.46 Procurement records
- 34 CFR 74.47 Contract administration
- 34 CFR 74.48 Contract provisions

**Finding:** UILC is not in compliance with 34 CFR 74.21 and 34 CFR 74.40-74.48 that require recipients to adequately safeguard all assets and assure they are used solely for authorized

purposes and sets forth the standards in establishing procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with Federal funds. A review of the policy manual and interviews with fiscal and management staff indicate UILC does not have a written procurement procedure. Federal regulations require UILC to have written procurement procedures complying with EDGAR 34 CFR 74.44.

**Corrective Action 1:** UILC must:

1.1 develop and implement board-approved procurement procedures that give adequate consideration to costs, quality, delivery, competitive bidding, inspection and acceptance, as well as reasonableness, allocability and allowability of costs; written contract administration and codes of conduct; open and free competitions; cost and price analysis; records and files; and contractor conformance/performance.

**UILC Response:**

The UILC is always conscientious about purchases made through any grant source. As outlined in our procurement policy in our Financial Procedures, a purchase requisition is used for all purchases \$20.00 or more. A purchase requisition and check copy that lists disbursement by grant source is attached to the purchase requisition. The amount of federal funds used for any purchase can always be identified. All purchases over \$1,000.00 must have at least two bids which are carefully reviewed, before a selection is made. All checks over \$300.00 are countersigned requiring the signature of the Executive Director and Board Chair. Careful consideration to costs, quality and fairness is always given to every purchase.

Draft policy language containing greater detail has been added to our procurement policy that will be voted on this month.

**RSA Response:** RSA stands on this finding. Please provide the board approved changes to the procurement policy and evidence that it has been implemented to support the corrective action has been completed.

**Finding 2: Property**

**Legal Requirements:**

- 34 CFR 74.34(f) and (g) Equipment
- 34 CFR 74.44(a) Procurement Procedures

**Finding:** UILC is not in compliance with 34 CFR 74.34(f) and (g) and 34 CFR 74.44(a) which set forth property management standards for equipment acquired with Federal funds, standards for the disposition of equipment and requires an inventory of property at least once every two years. Based on a review of the inventory, UILC has not updated its inventory every two years consistent with requirements, and items lack appropriate property labels. In addition, UILC's policy manual does not contain written procedures regarding authorization of adjustments to inventory and disposition of property. Finally, interviews with staff confirmed that the inventory is not maintained in accordance with Federal requirements.

**Corrective Action 2:** UILC must:

2.1 develop and maintain written current and complete records of all property purchased with grant funds that includes a system for controlling inventory such as records that contain: equipment description and identification; source of equipment and award number; where title vests; information from which federal participation can be calculated; location and condition of the equipment, date information was reported; and equipment disposal.

**UILC Response:** The UILC can, at any time, produce records that show property purchased with grant funds that include equipment description and identification, source of equipment location, and information from which federal participation can be calculated. All equipment valued over \$3,000.00 is labeled and depreciated yearly. The Executive Director makes all decisions about disposition of property to make certain it is done in accordance with conditions cited by funding sources.

The UILC has developed policies for controlling inventory, that identify and classify inventory content, that designate who authorizes adjustment of inventory and who decides disposition of property. These policies will go before the full Board this month. In addition the UILC will label all property in the UILC and Tooele offices that has a value of \$500.00 or more.

**RSA Response:** RSA stands on this finding. Please provide the board approved changes to the inventory policies and evidence that it has been implemented to support the corrective action has been completed.

**Finding 3: Fiscal Management**

**Legal Requirements:**

- 34 CFR 74.21(b)(3); 34 CFR 74.21(b)(5) – (b)(6) Standards for financial management systems

**Finding:** UILC is not in compliance with 34 CFR 74.21(b)(3) which requires effective control over and accountability for all funds, property and other assets and assures assets are used solely for authorized purposes because employees do not have a payroll direct deposit option. Because employees do not have a payroll direct deposit option, employees must identify individuals who are “authorized” to receive a payroll check when the employee is unable to receive his or her payroll check on payday. A review of personnel records indicated this has included up to five different “authorized” individuals for one employee. In addition, an independent audit for the year ended September 30, 2012 cites, “...during control testing it was noted that some employee checks are not cashed for months.” Fiscal and management staff acknowledge this has resulted in payroll checks being difficult to track and difficult to reconcile.

In addition, financial procedures and practices allow employees to make requests and receive payroll advances. These procedures and practices result in funds not being used solely for authorized purposes.

**Corrective Action 3:** UILC must:

3.2 cease the practice of allowing payroll advances to employees and remove any policies or procedures associated with this practice. In implementing corrective action, UILC should provide official notification to staff of the discontinuance of this practice and can do so through a board-approved memo or directive.

**UILC Response:**

3.1 Each staff member completes a timesheet for the period worked that contains time spent working under each grant source, activities performed reflecting an after the fact determination of each activity, and a description of activities. Time sheets are signed by the employee and initialed by their supervisor to ensure accuracy. Time sheets are then compared to the sign in/sign out logs to further verify accuracy. UILC employees have without exception received their paycheck on the day they should be paid.

We would like to challenge how not having a direct deposit option rises to the level of a finding that make us not in compliance with this requirement. Although we have been unable to locate any Federal law requiring direct deposit of pay checks, we do plan to implement procedures that would give employees a direct deposit option. However, we feel giving staff their pay check meets our responsibility to make sure people are paid. It is not our business what they do with their pay checks. We disagree that this should be a finding and feel strongly that it should be changed to an observation.

3.2 Payroll advances preceded any of us in our current positions and we will discontinue the practice. Although, it is unclear to us how this makes us out of compliance with Personnel Activity Reports as repayment is done by payroll deductions that are proportional to funding sources and an advance was always secured, in writing by the employee, using vacation accrual incase that person left.

**RSA Response:** RSA agrees to move the issue regarding direct deposit to an observation (SEE Observation 3). RSA stands on the finding regarding payroll advances. Please begin the corrective action listed above for 3.2 or provide evidence to support the corrective action for 3.2 has been completed.

**Finding 4: Fiscal Management**

**Legal Requirements:**

- 34 CFR 74.21(b)(3); 34 CFR 74.21(b)(5) – (b)(6) Standards for financial management systems

**Finding:** UILC is not in compliance with 34 CFR 74.21(b)(5), which requires written procedures that minimize the time between the transfer of funds and the disbursement of funds by the recipient. UILC demonstrates good practices to ensure the time between the transfer of funds and the disbursement of funds is minimized. However, there are no written procedures to ensure the practice is currently in place and ensure consistency in the future should staff change.

**Corrective Action 4:** UILC must:

4.1 develop and implement board-approved written procedures that ensure the time between the transfer of funds and the disbursement of funds is minimized; and

**UILC Response:** We draw down funds for reimbursement of money we have already expended. The UILC Policy Committee has drafted a policy that reflects, should the need ever arise, the drawdown of funds in advance of actual expenditures. These policies specify procedures that minimize the time between the transfer of Federal money and the disbursement. This policy will be presented for approval to the full Board on July 17, 2014.

**RSA Response:** RSA stands on this finding. Please provide the board approved changes to the drawdown policy and evidence that it has been implemented to support the corrective action has been completed.

### **Finding 5: Fiscal Management**

#### **Legal Requirements:**

- 34 CFR 74.21(b)(3); 34 CFR 74.21(b)(5) – (b)(6) Standards for financial management systems

**Finding:** UILC is not in compliance with 34 CFR 74.21(b)(6) which requires written procedures for determining the reasonableness, allocability and allowability of costs. UILC demonstrates an informal practice to ensure the reasonableness and allowability of costs. The informal practice results in multiple people as decision makers on reasonableness and allowability of costs. Inherently this results in different standards being applied.

**Corrective Action 5:** UILC must:

5.1 develop and implement board approved written procedures for determining reasonableness, allocability and allowability of costs.

**UILC Response:** The reference to informal practices that may result in multiple people as decision makers is not accurate. The Executive Director makes all final decisions that are within the Board approved budget. The only exception to this would be if the Executive Director were absent for an extended period then the Board would designate someone else. Written records are created to document Executive Director approval.

The Policy Committee has drafted a policy that covers reasonableness, allocability and allowability of all Center costs that will be considered at the next Board meeting.

**RSA Response:** RSA stands on this finding. Please begin the corrective action listed above or provide evidence to support the corrective action has been completed.

### **Finding 6: Ongoing Drug-free Workplace Program**

#### **Legal Requirement:**

- EDGAR 84.215 What must I include in my drug-free awareness program?

**Finding:** UILC is not in compliance with EDGAR 84.215 because it does not have on-going drug-free workplace awareness program. UILC provides one-time information to all staff about the requirements to have a drug-free workplace when the individual is hired. However, the CIL does not have any ongoing drug-free awareness program to promote the requirements. UILC did not indicate any problems with staff in this area.

**Corrective Action 6:** UILC must:

6.1 develop and implement an ongoing drug-free awareness program that addresses the requirements in EDGAR 34 CFR 84.215.

**UILC Response:** The UILC has staff members sign the Drug-free workplace policy annually not just when hired. Drug-free workplace posters are posted in locations throughout the Center. We have conducted a drug-free work place presentation and handed out a resource list to staff. We will continue to do so annually.

**RSA Response:** Please begin the corrective action listed above or provide evidence to support the corrective action has been completed.

## VII. TECHNICAL ASSISTANCE

During the review process, RSA provided technical assistance to UILC in the areas described below.

- **Consumer Service Records:** UILC does not have board-approved written CSR management policies or procedures for the staff to follow. As a result, sound record management and documentation, accuracy and consistency cannot be ensured. The review team recommended that UILC develop and implement board-approved written CSR management policies and procedures.
- **Affirmative Action:** UILC demonstrated through staff interviews and the number of staff with disabilities that in practice, affirmative action to employ qualified individuals with significant disabilities is in place. However, UILC's written affirmative action plan, last revised in October 1986, does not specifically demonstrate the assurance. The review team recommended that UILC develop and adopt a board approved written affirmative action plan that demonstrates an assurance that UILC will employ and advance in employment qualified individuals with significant disabilities.
- **Prohibition Against Lobbying:** Although UILC has a signed and dated copy of the required Certification of Lobbying form ED-80-0013 and the board and staff appears to understand the lobbying restrictions, UILC does not incorporate applicable provisions in its written policies and procedures and training for the board and staff. The review team recommended that UILC develop and adopt written policies and procedures safeguarding against lobbying and provide training to all of the board and staff.
- **Inventory:** The review team recommended that UILC conduct an updated formal inventory. There was documentation of equipment and other items in the files but there was not a recent formal inventory.

- **Voter Registration:** There is evidence that consumers are provided information and opportunities to register to vote but no documentation of this activity in CSRs. The review team encouraged some form of documentation to show that consumers were provided the information and opportunities.

## **Appendix A: Legal Requirements**

This Appendix contains the full text of each legal requirement cited in Section VI of this report.

### **Rehabilitation Act of 1973, as amended**

#### **IL Program Regulations**

##### **34 CFR 74.21 Standards for financial management systems.**

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current, and complete disclosure of the financial results of each federally-sponsored project in accordance with the reporting requirements established in Sec. 74.52. If the Secretary requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to awards, authorizations, obligations, unobligated balances, assets, outlays, income, and interest.

(3) Effective control over and accountability for all funds, property, and other assets. Recipients shall adequately safeguard all assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR Part 205--Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.

(6) Written procedures for determining the reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Secretary may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Secretary may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required under paragraphs (a) and (b) of this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223-- Surety Companies Doing Business with the United States.

### **34 CFR 74.34 Equipment.**

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates ED for its share.

(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.

(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Secretary.

(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards:

(1) For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to ED or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.

(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Secretary. The Secretary shall determine whether the equipment can be used to meet ED requirements. If no requirement exists within ED, the availability of the equipment shall be reported to the General Services Administration by the Secretary to determine whether a requirement for the equipment exists in other Federal agencies. The Secretary issues instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures govern:

(i) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse ED an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(ii) If the recipient is instructed to ship the equipment elsewhere, the recipient is reimbursed by ED by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(iii) If the recipient is instructed to otherwise dispose of the equipment, the recipient is reimbursed by ED for costs incurred in its disposition.

(iv) The Secretary may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when the third party is otherwise eligible under existing statutes. This transfer shall be subject to the following standards:

(A) The equipment must be appropriately identified in the award or otherwise known to the recipient in writing.

(B) The Secretary issues disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and federally-owned equipment. If the Secretary does not issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(C) When the Secretary exercises the right to take title, the equipment is subject to the provisions for federally-owned equipment.

### **34 CFR 74.40 Purpose of procurement standards.**

EDGAR Sections 74.41 through 74.48 contain 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 designed to ensure that these materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders.

### **34 CFR 74.41 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 Secretary, 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 Federal, State or local authority that may have proper jurisdiction.

### **34 CFR 74.42 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. 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 sub-agreements. 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 these standards by officers, employees, or agents of the recipient.

### **34 CFR 74.43 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 or requests for proposals shall be excluded from competing for procurements. Awards must 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 establish 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.

### **34 CFR 74.44 Procurement Procedures.**

- (a) All recipients shall establish written procurement procedures. These procedures must provide for, at a minimum, that--
- (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; or
  - (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, 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 these 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 organizations such 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 must 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 must not be used.

d) Contracts are made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.

Consideration is given to 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 E.O. 12549 (implemented by the Secretary in 34 CFR Part 85) and E.O. 12689--Debarment and Suspension.

(e) Recipients shall, on request, make available for the Secretary, 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 this part.

(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.

### **34 CFR 74.45 Cost and price analysis.**

Some form of cost or price analysis must 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.

### **34 CFR 74.46 Procurement records.**

Procurement records and files for purchases in excess of the small purchase threshold must 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;
- (c) Basis for award cost or price.

### **34 CFR 74.47 Contract administration.**

A system for contract administration must 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.

### **34 CFR 74.48 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 must 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 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, contracts must 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 must 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 Secretary may accept the bonding policy and requirements of the recipient, provided the Secretary has made a determination that the Federal Government's interest is adequately protected. If a determination has not been made, the minimum requirements are as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must 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 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 a 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, the bonds must 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 must include a provision to the effect that the recipient, ED, the Comptroller General of the United States, or any of their duly authorized representatives, must 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 must contain the procurement provisions of appendix A to this part, as applicable.

### **34 CFR 364.24 What assurances are required for staff development?**

The State plan must assure that the service provider establishes and maintains a program of staff development for all classes of positions involved in providing IL services and, if appropriate, in administering the CIL program. The staff development program must emphasize improving the skills of staff directly responsible for the provision of IL services, including knowledge of and practice in the IL philosophy.

### **34 CFR 366.50(l) What assurances shall a center provide and comply with?**

To be eligible for assistance under this part, an eligible agency shall provide satisfactory assurances that—

(l) Staff at centers will receive training on how to serve unserved and underserved populations, including minority groups and urban and rural populations.

## **Education Department General Administrative Regulations (EDGAR)**

**EDGAR 84.215 What must I include in my drug-free awareness program?**

You must establish an ongoing drug-free awareness program to inform employees about--

- (a) The dangers of drug abuse in the workplace;
- (b) Your policy of maintaining a drug-free workplace;
- (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.