

**SOUTH DAKOTA OFFICE OF EMERGENCY MANAGEMENT
2016 HMEP TERMS & CONDITIONS**

A. ACCEPTANCE OF GRANT SUBAWARD AND TERMS & CONDITIONS

Before you incur costs or receive any federal grant funds awarded to you, the Grant Subaward Agreement must be signed by an authorized signer from your agency and the HMEP Grant Administrator of the South Dakota Office of Emergency Management.

B. DEFINITIONS

1. State. Refers to the State of South Dakota.
2. SDOEM. Refers to the South Dakota Office of Emergency Management.
3. PHMSA. Refers to the federal Pipeline and Hazardous Materials Safety Administration.
4. USDOT. Refers to the United States Department of Transportation.
5. HMEP. Refers to the federal Hazardous Materials Emergency Preparedness grant.
6. Subaward. Refers to an award provided by a pass-through entity (SDOEM) to a subrecipient.
7. Subrecipient. Refers to a non-Federal entity that receives a subaward from a pass-through entity (SDOEM).
8. Grant Subaward Agreement. The signatory document that commits grant funds to the subrecipient and acknowledges subaward terms and conditions.

C. LEGAL PROVISIONS

1. **Funding Out Clause.** This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
2. **Insurance Provision.** Subrecipient agrees, at their sole cost and expense, to maintain general liability, worker's compensation, professional liability, and automobile liability insurance during the subaward period as specified in the award.
3. **Indemnification.** The Subrecipient agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the subrecipients to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.
4. **Governing Law & Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
5. **Severability & Non-Waiver.** In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof. Failure by the State to strictly enforce any provision of this Agreement shall not operate as a waiver of any provision, right or responsibility contained herein.

6. **No Sub-Granting or Assigning.** This Agreement may not be assigned, nor the funds given to a new or additional sub-grantee, without the express prior written consent of the SDOEM. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto. Any assignees, sub-grantees, or successors in interest must agree to be bound by all the terms contained within this Agreement and shall be bound hereby to all these terms.
7. **No Third Parties.** This Agreement is intended only to govern the rights and interests of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

D. GRANT PROVISIONS

1. **Purpose.** The HMEP grant is furnished by the PHMSA through the USDOT. Funds from this grant are used for planning, training, and exercise projects related to hazardous materials transportation in the State of South Dakota.
2. **Scope of Work.** The HMEP grant SDOEM applies for annually is used for hazardous materials transportation training, planning, exercise, and commodity flow studies. Objectives to be accomplished and projects to be produced by the HMEP grant funds are specified in the HMEP Expenditures and HMEP Best Practices documents provided by HMEPGrants.gov. 75% of the funds are to be passed through to the local responder agencies and the Local Emergency Planning Committees (LEPCs).
3. **Period of Performance.** The period of performance for this agreement shall be from September 30, 2016 to September 30, 2019.
4. **Match Provision.** Per 49 U.S.C § 5116 (e) The subrecipient must provide 20 percent of the allowable direct and indirect planning and training costs of activities covered under this award. Subrecipients may either use cash (hard match), in-kind (soft-match) contributions, or a combination of both to meet this requirement. The types of contributions allowed are listed in 49 CFR § 110.60. This documentation will be submitted with all other documentation when requesting reimbursement.
5. **Costs, Award Amounts, and Payments.**
 - a) The State shall not be liable under this Agreement for any amount greater than the amount awarded through their grant subaward agreement.
 - b) No costs eligible under this Agreement shall be incurred before October 1, 2016.
6. **Reporting Requirements.** The subrecipient progress reports are due the first three federal quarters throughout the grant cycle. The first three federal quarter dates are January 1, April 1, and July 1.
 - a) Failure to submit the quarterly progress report will result in a reminder.
 - b) Failure to submit reports within one week of receiving the reminder will result in a letter of non-performance to the authorized recipient.
 - c) Failure to comply with the reporting requirements of this agreement may result in loss of program funding.
7. **Non-Performance.** Failure to comply with the terms of this agreement, without justification and acceptance by the State, may subject the subrecipient to the withholding of any funds, from whatever source, provided under this agreement.

E. REIMBURSEMENTS

HMEP grants are paid on a reimbursement basis; if you are awarded a grant, you must pay for the equipment or services and you will be reimbursed up to the amount of your subaward. You are responsible for any difference in cost. All expenses must have prior approval through the Grant Subaward Agreement or they will not be reimbursed. Projects must be completed by the subaward end date noted on the Grant Subaward Agreement.

1. Reimbursement requests must be submitted to SDOEM as soon as possible after the project is completed and no later than the subaward end date.
2. Equipment and/or services must be received and the vendor paid prior to requesting reimbursement.
3. Travel. Reimbursement for meals, lodging, mileage, and other expenses will follow State policy, except where non-state employees are unable to obtain state lodging rates.
 - a) In-state per diem rates can be found at: <http://legis.sd.gov/Rules/DisplayRule.aspx?Rule=05:01:02:14>
 - b) Out-of-state per diem rates can be found at: <http://legis.sd.gov/Rules/DisplayRule.aspx?Rule=05:01:02:11>
 - c) Mileage rates can be found at: <http://legis.sd.gov/rules/DisplayRule.aspx?Rule=05:01:02:01>
 - d) When non-state employees are unable to obtain state rates, they are expected to obtain reasonable lodging rates with prior approval from the SDOEM HMEP grant administrator.
 - e) Unallowable travel costs include entertainment charges, tobacco, alcohol or bar charges, laundry charges, visa or passport charges, tips, phone calls, personal hygiene items, in-room movies, magazines, personal transportation (other than to program activities), travel insurance, and credit card fees.
4. Documentation: Reimbursement requests must include the following documentation
 - a) Itemized invoices. If the invoice is not itemized, then submit the related proposal or quote.
 - b) Proof of payment. Proof of payment should be in the form of a front-and-back copy of the canceled check or a copy of electronic transfer documentation showing payment has been made to the vendor.
 - c) Travel and training information.
 - d) Costs must be itemized separately for each traveler (departure and return times, destinations, airfare, lodging; meals, ground transportation to program activities, and other allowable expenses).
 - e) Copy of the agenda or registration form.
 - f) Meals will be reimbursed based on departure and return times; receipts for meals are not required.
 - g) If the subgrantee does not have an agency required form to summarize travel costs for grant activity participants, the subgrantee may request and be provided a travel detail worksheet.
 - h) Rosters for all *hosted* trainings and exercises.
 - i) Copies of certificates for each participant if the course provides them.

F. GRANT REGULATIONS AND GUIDANCE

Subrecipients must comply with applicable requirements of all state and federal laws, executive orders, regulations, and policies governing this program.

Administration of this award by SDOEM and the Subrecipient will be based on the following Federal statutory and regulatory requirements:

1. The authorizing language of 49 U.S.C. 5101 et seq.
2. The regulations outlined at 49 CFR part 110, Hazardous Materials Public Sector Training and Planning Grants.
3. Uniform administrative requirements, cost principles, and audit requirements for Federal awards at 2 CFR part 200.
4. Any other applicable Federal statutes and regulations, including, but not limited to the following:
 - The Subrecipient must comply with 49 CFR part 20, "New Restrictions on Lobbying." 49 CFR part 20 is incorporated by reference in this award. 49 CFR part 20 is available at www.gpoaccess.gov/ecfr/ by clicking on Title 49 CFR part 20.
 - The Subrecipient must comply with Title VI of the Civil Right Act of 1964, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.
 - The Subrecipient must comply with 49 CFR part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation— Effectuation of Title VI of the Civil Rights Act of 1964." 49 CFR part 21 is incorporated by reference into this award. 49 CFR part 21 is available at: www.gpoaccess.gov/ecfr/ by clicking on Title 49 CFR part 21.
 - The Subrecipient must comply with 49 CFR part 32, "Government wide Requirements for Drug-Free Workplace (Financial Assistance)," which implements the requirements of Public Law 100-690, Title Subtitle D, "Drug-Free Workplace Act of 1988." 49 CFR part 32 is incorporated by reference in this award. 49 CFR part 32 is available at: www.gpoaccess.gov/ecfr/ by clicking on Title 49 CFR part 32.

APPENDIX 1 – ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS

Subrecipients are required to follow all CFR requirements found in 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The below sections have been included to draw special attention to some of the requirements. Additional SDOEM requirements have been included where applicable.

Please refer to the full text of the CFR for complete information: http://www.ecfr.gov/cgi-bin/text-idx?SID=c576f6aeed9b656b8eaeed9f7ad58c3b&node=pt2.1.200&rgn=div5#se2.1.200_1324.

- CFR Administrative Requirements: 2 CFR Part 200 Subpart D (2 CFR 200.300 through 2 CFR 200.345)
- CFR Cost Principles: 2 CFR Part 200 Subpart E (2 CFR 200.400 through 2 CFR 200.475)
- CFR Audit Requirements: 2 CFR Part 200 Subpart F (2 CFR 200.500 through 2 CFR 200.521)

1. Personnel (2 CFR 200.430(i))

Subrecipients must maintain detailed timekeeping and payroll records for all positions funded by this grant. Records must meet the requirements defined in 2 CFR 200.420(i) *Standards for Documentation of Personnel Expenses*. See the Code of Federal Regulations for the full text.

2. Procurement (2 CFR 200.317 through 2 CFR 200.326)

- a. General Requirement. Subrecipients will follow all federal provisions under 2 CFR 200.318 through 2 CFR 200.326.
- b. Procurement Procedures. 2 CFR 200.318(a). The subrecipient must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards found in 2 CFR 300.318. **It is not sufficient to follow the subrecipient's own policies and procedures if they do not meet the federal requirements referenced in section 3.a above.**
- c. Conflict of Interest. 2 CFR 200.318(c)(1). The subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
- d. Competition. 2 CFR 200.319(a). All procurement transactions must be conducted in a manner providing full and open competition.
- e. Methods of Procurement to be Followed. 2 CFR 200.320.
 1. Micro-purchases, which are aggregate purchase amounts not exceeding \$3,000, may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable.
 2. Price or rate quotations **must be** obtained from an adequate number of qualified sources for all purchases with aggregate purchase amounts exceeding \$3,000. A minimum of two quotes or bids are to be obtained. The subrecipient must maintain documentation of quotes in their grant files and be able to justify that an adequate number of quotations were received.
 - a. No further bid solicitation is necessary for purchases made under State of South Dakota contracts or GSA contracts.

3. In addition to the above federal requirements, subrecipients must adhere to all provisions of their own procurement procedures when they are more restrictive than federal requirements.
- f. Procurement by Non-Competitive Sources (Sole Source). 2 CFR.320(f). **Sole source purchases are not allowed without prior approval from SDOEM.**
 1. Complete a Request for Sole Source Purchase Form and submit it to SDOEM prior to entering into a purchase commitment.
 - a. The Request for Sole Source Purchase Form will be furnished upon request.
 2. The approved form must be attached to the subrecipient's reimbursement request.
- 3. Record Retention (2 CFR 200.333)**
- a. Grant records must be retained for three years after the grant is closed.
 - b. Equipment records must be retained for the life of the equipment and for three years after final disposition of the equipment.
 - c. Subrecipients must maintain organized grant files containing the following information:
 1. Copy of the project application and signed subaward agreement.
 2. Copy of revisions to the original agreement, if any.
 3. Copies of all reimbursement requests.
 4. Copies of monitoring reports completed by the South Dakota Department of Public Safety.
 5. Copies of completed audits which are relative to the grant project.
- 4. Federal Funding Accountability and Transparency Act (FFATA) (2 CFR 200.331(b))**
- To provide the public access to information on Federal spending through USASpending.gov, the State, as a prime awardee of Federal grant funds, is required to report on all subawards issued for \$25,000 or more.
- This reporting is not a subrecipient requirement. It is a requirement of the State. Be aware that if a subrecipient receives a subaward of \$25,000 or more, the following information will be reported on USASpending.gov:
- Entity Information
 - DUNS Number
 - Date of Subaward
 - Amount of Subaward
- 5. Access to Records (2 CFR 200.336)**
- a. FEMA, the Inspectors General, the Comptroller General of the United States, and the State, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the subrecipient which are pertinent to the Federal subaward.
- 6. Allowable costs**
- The allowability of costs incurred by the Recipient will be determined using the OMB cost principles located at 2 CFR Part 200 – Subpart E.
- a. Pre-Award Costs. In accordance with 2 CFR § 200.308, Recipients may incur project costs within 90 calendar days before the Federal award. Expenses more than 90 calendar days

pre-award require prior approval of the Federal awarding agency. All costs incurred before SDOEM makes the award are at the subrecipient's risk (i.e., SDOEM is under no obligation to reimburse such costs if for any reason the subrecipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs).

- b. Flow-Down of Requirements under Subawards. The requirements of this award that apply to the recipient also apply to subrecipients, i.e., entities that are carrying out part of the substantive programmatic activity, unless an exception is specified. In making subawards under the award, the subrecipient must apply the Federal cost principles applicable to the particular type of organization concerned.