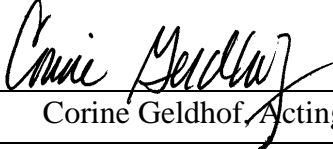


State of Alaska Department of Labor and Workforce Development

Division: Business Partnerships	Policy: 210.00 <i>Final</i>
Subject: Property Management	Pages: 9
References: 29 Code of Federal Regulations (CFR) Part 95.29(11); Part 95 Sections 30 – 37; Part 97.25(e); Part 97.31 – 34; 37 CFR Part 401; Americans with Disabilities Act of 1990; Rehabilitation Act of 1973; Office of Management and Budget (OMB) Circulars A-87, Attachment B, Item 15; A-102; A-110; A-122	Effective: 7/01/05
	Revised:
Approved:  Corine Geldhof, Acting Director	October 31, 2005 Date

1) Parties Affected

Any recipient of Workforce Investment Act (WIA) funds from the Division of Business Partnerships (DBP).

2) Purpose

This policy provides guidance on the treatment of real and personal property acquired, in whole or in part, with WIA funds. This policy also provides guidance on the ownership and the ultimate disposition of such property.

3) Definitions

- a) *Intangible Personal Property* is an item of value that is not physical, such as patents, trademarks, copyrights that are produced or acquired, in whole or in part, through the use of WIA funds from DBP.
- b) *Inventory List* is a continually maintained compilation of non-expendable and expendable tangible personal property, as described in this policy, owned by a recipient and which is updated when new property is received or when property is no longer available for use by the recipient.
- c) *Non-governmental Entities* are organizations that are not associated with or a part of a government and may include non-profit organizations and commercial organizations.

- d) *Other Governmental Entities* are governmental entities other than the Division of Business Partnerships and may include other state agencies, local governments, and tribal governments.
- e) *Physical Inventory* is a process of physically checking the continued availability of items of value by verifying the various items on an inventory list are physically present at a specified location and are in operable condition.
- f) *Prior Approval* is documentation evidencing consent prior to incurring a specific cost.
- g) *Real Property* is a physical item of value that has a long-term useful life, such as land, buildings and improvements, excluding movable machinery and equipment.
- h) *Recipient* is any person or entity that receives WIA funds from DBP.
- i) *Tangible Personal Property* is a physical item of value that is either non-expendable equipment, or expendable supplies.

4) **Policy**

Recipients of WIA funds from DBP will comply with the property management requirements set forth in this policy.

5) **Requirements**

a) General Property Requirements

- i) The U.S. Department of Labor (USDOL) has codified Office of Management and Budget's Circular A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* at 29 Code of Federal Regulations (CFR) Part 97. These regulations, in part, address property requirements for governmental entities at Sections 97.31 (Real Property), 97.32 (Equipment), 97.33 (Supplies), and 97.34 (Copyrights). Other governmental agencies receiving WIA grants from DBP are required to be familiar and comply with these property requirements.
- ii) USDOL has codified Office of Management and Budget's Circular A-110, *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations* at 29 CFR Part 95. In these regulations, property standards are found in Sections 95.30 through 95.37. Non-governmental entities receiving WIA grants from DBP are required to be familiar and comply with these property requirements.

b) Real Property Requirements

- i) With limited exceptions, the purchase or construction of real property is prohibited for the WIA programs, unless certain conditions are met and the expense is specifically authorized by USDOL Employment and Training Administration (ETA). These exceptions are:

- (1) Requirements for physical and programmatic accessibility and reasonable accommodation required by the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, as amended.
 - (2) To fund repairs, alterations, and capital improvements of State Employment Service Agency (SESA)-owned real property or Job Training Partnership Act property transferred to the WIA program.
 - (3) Job Corps facilities.
 - (4) To fund disaster relief employment projects.
- ii) The purchase or construction of real property through the use of WIA funds from DBP requires the prior written approval of the Division Director.
 - iii) Certain WIA funded training activities may involve the construction of temporary or permanent buildings or facilities as a result of those training activities. Any such training conducted with WIA funds must have the prior approval of the DBP Director before such training activities can begin. Failure to obtain this prior approval may result in any such training costs not being allowed and subject to repayment to the DBP.
- c) Non-Expendable Tangible Personal Property – Equipment
- i) Characteristics
 - (1) Equipment is defined in the USDOL property regulations as tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, including all costs related to the property's final intended use.
 - ii) Other Governmental Entities
 - (1) Other governmental entities receiving WIA funds from DBP must obtain the prior written approval of the Division Director before using those funds to purchase equipment.
 - (2) Title to any property purchased through WIA funds from DBP vests to the acquirer upon purchase, subject to the conditions of this policy.
 - (3) The recipient may use the equipment for the intended purposes as long as it is needed for the project or activities, even after the end of the grant.
 - (4) The recipient may make the equipment available to other projects or activities supported by federal funds provided that use does not interfere with the intended use of the equipment for the activities for which it was procured. First priority for the use of the equipment for other activities shall go to other grants from DBP and then other projects funded by the USDOL. The recipient may charge user fees related to the equipment and any amounts so generated must be reported as program income during the life of the grant under which the equipment was purchased.
 - (5) The recipient may not use the equipment in a manner that unfairly competes with private companies.

- (6) If equipment purchased with WIA funds is no longer needed for its intended purposes or for other activities supported by DBP or a federal grant, the following two requirements apply:
 - (a) If the equipment has a current per-unit fair market value of \$5,000 or more, it may be retained or sold. If the equipment is sold, DBP must be compensated for its share of the proceeds from the sale. This share is determined by multiplying the current market value or the proceeds by DBP original share of the cost of the equipment. DBP may take title or dispose of the equipment if the recipient does not take appropriate action.
 - (b) If the equipment has a current per-unit fair market value of less than \$5,000, the recipient may keep, sell or dispose of the equipment with no obligation to DBP.
 - (7) Recipients must maintain appropriate documentation that verifies the value of the equipment at the time it is no longer needed for grant related purposes.
 - (8) DBP retains the right to take title to equipment purchased with WIA funds or to direct the transfer of title to a third party. If DBP requires transfer of the equipment to itself or another entity, DBP will reimburse the recipient for the reasonable costs of completing the transfer.
- iii) Non-governmental Entities
- (1) For these entities, the equipment must have been charged directly to the WIA funds from DBP for the provisions of this policy to apply. These provisions also do not apply if the cost of the equipment was not charged to the WIA funds at the time of acquisition, but a depreciation expense is being charged over the useful life of the equipment or a use allowance is being charged.
 - (2) When purchased with WIA funds, title to the equipment vests with the recipient, with the conditions set forth in this policy.
 - (3) The recipient has the right to use the equipment in the activities for which it was acquired as long as it is needed, whether or not the activities continue to be supported by WIA funds from DBP. When no longer needed for the original activities, the recipient shall use the equipment in support of other activities funded by DBP or in other federally supported activities.
 - (4) While equipment is being used for the activities for which it was originally acquired, the recipient shall make the equipment available for other uses that do not interfere with those activities. First preference will be given to ETA sponsored activities, with second preference to other activities supported by DBP. Any user charges should be treated as program income during the life of the grant under which the equipment was purchased.

- (5) The recipient shall not use equipment acquired with WIA funds to provide services to other organizations for a fee that is less than what private companies charge for equivalent services for as long as DBP retains an interest in the equipment.
 - (6) If equipment purchased with WIA funds is no longer needed for its intended purposes or other activities supported by DBP or a federal grant, the following two requirements apply:
 - (a) If the equipment has a current per-unit fair market value of \$5,000 or more, it may be retained or sold. If the equipment is retained, DBP must be compensated for its fair share of the equipment. This fair share is determined by multiplying the current market value of the equipment by DBP share of the original purchase costs. If the equipment is sold, DBP must be compensated for its share of the proceeds from the sale. This share is determined by multiplying the current market value or the proceeds by DBP original share of the cost of the equipment. DBP may take title or dispose of the equipment if the recipient does not take appropriate action.
 - (b) If the equipment has a current per-unit fair market value of less than \$5,000, the recipient may keep, sell or dispose of the equipment with no obligation to DBP.
 - (7) Recipients must maintain appropriate documentation that verifies the value of the equipment at the time it is no longer needed.
 - (8) DBP retains the right to take title to equipment purchased with WIA funds or to direct the transfer of title to a third party. If DBP requires transfer of the equipment to itself or another entity, DBP will reimburse the recipient for the reasonable costs of completing the transfer.
- iv) Equipment Management Requirements
- (1) Other governmental and non-governmental entities that have purchased equipment with WIA funds from DBP must comply with the following management standards.
 - (2) Equipment records must be maintained that include the following data on the equipment: description; identification number; funding sources and amounts; title holder; acquisition date; percentage of federal participation in the cost; location; condition; last inventory date; acquisition cost; and, ultimate disposition data including date of disposal and sale price or current market value including the method used to determine the value.
 - (3) A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years. The recipient must verify the existence, use and need for the equipment.
 - (4) The recipient must develop a control system to ensure adequate safeguards exist to prevent loss, damage, or theft of the equipment. The recipient will investigate any loss, damage or theft of equipment.

- (5) The recipient must establish adequate maintenance procedures to keep the equipment in good condition.
 - (6) If the equipment is sold, the recipient must establish proper sales procedures that provide for competition to the extent practical and that result in the highest possible return. When acquiring replacement equipment, the recipient must obtain the prior written approval of the DBP Director before the old equipment can be used as a trade-in or the sale proceeds are used to offset the cost of the replacement equipment.
- d) Expendable, Tangible Personal Property – Supplies
- i) Other Governmental Entities
 - (1) Per 29 CFR 97.3, supplies are defined as all tangible personal property other than equipment. This definition applies to other governmental entities. For the purposes of this policy, supplies may include expendable tangible personal property with a per unit value of less than \$5,000, and can include such items as personal computers, printers, other office equipment and furniture, as well as business and training supplies.
 - (2) Upon acquisition, title vests with the recipient for supplies purchased with WIA funds from DBP subject to the conditions set forth in this policy.
 - (3) The recipient shall maintain an inventory listing of all supplies with a per unit value of \$100 or more that are purchased with WIA funds from DBP.
 - (4) The recipient shall compensate DBP for its share of the residual inventory of unused supplies if the inventory exceeds \$5,000 or more in aggregate fair market value at the end of the activities for which the supplies were purchased and if the supplies are not needed for any other federally sponsored programs or projects. Aggregate value is the total value of all remaining supplies.
 - (5) Supplies are not to be used to provide services to non-federal outside organizations for a fee that is less than that charged by private companies for equivalent services.
 - ii) Non-Governmental Entities
 - (1) The federal regulations at 29 CFR 95.29(11), which applies to non-governmental entities, defines supplies as all personal property, excluding equipment, and intangible property. For the purposes of this policy, supplies include expendable tangible personal property with a per unit value of less than \$5,000, and can include such items as personal computers, printers, other office equipment and furniture, as well as business and training supplies.
 - (2) Upon acquisition, title vests with the recipient for supplies purchased with WIA funds from DBP subject to the conditions set forth in this policy.
 - (3) The recipient shall maintain an inventory listing of all supplies with a per unit value of \$100 or more purchased with WIA funds from DBP.

- (4) The recipient shall not use supplies purchased with WIA funds from DBP to provide services to non-federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by federal statute for as long as DBP retains an interest in the supplies.
 - (5) The recipient must maintain sufficient records to determine the fair market value of unused supplies on hand at the completion of the activities for which it was purchased. The recipient must compensate DBP for its share of the residual inventory:
 - (a) If the inventory is \$5,000 or more in aggregate value upon the completion of the activities; and
 - (b) If the supplies are not needed for any other federally sponsored programs or projects.
- e) Intangible Personal Property
- i) Copyrights
 - (1) For other governmental agencies, the regulations at 29 CFR 97.34 state that the federal awarding agency reserves a royalty-free, non-exclusive and irrevocable right to reproduce, publish, and otherwise use and authorize others to use, for federal government purposes:
 - (a) The copyright in any work developed under a grant, sub-grant, or contract under a grant/sub-grant; and
 - (b) Any rights of copyright bought with grant funds by a recipient, sub-recipient, or contractor.
 - (2) The federal right in this instance does not “pass through” to contractors.
 - (3) For non-governmental entities, 29 CFR 95.36 specifies that the sub-recipient may copyright work developed or for which ownership was purchased under an award. USDOL has a royalty-free, non-exclusive and irrevocable right to reproduce, publish and otherwise use and authorize others to use the work for federal purposes.
 - (4) When such property is developed with the use of WIA funds, it is to be made available to any other entity requesting to use copyrighted materials in a federally funded program without a licensing fee. Incidental costs of packaging, shipping, handling, etc., may be charged. If the materials will be used for other federally funded activities, the developing organization may charge a license fee. The income realized from the sale or licensing of copyrighted materials is not considered program income unless specified in the DBP grant agreement, as provided in 29 CFR 97.25(e).
 - (5) For the purposes of this policy, DBP maintains a royalty-free, non-exclusive and irrevocable right to reproduce, publish and otherwise use and authorize others to use for state or federal purposes any copyrighted work produced or purchased, in whole or in part, with WIA funds from DBP.

- ii) Inventions and Patents
 - (1) Regulations applicable to non-profits and small businesses are issued by the Department of Commerce at 37 CFR Part 401. Property requirements for inventions and patents are specifically treated in 29 CFR Part 95. The ETA and DBP do not anticipate that any patents or inventions will be associated with the WIA funds.
- iii) Data
 - (1) Under 29 CFR 95.36(c), the USDOL has the right to obtain, reproduce, publish, or otherwise use data first produced by a non-governmental entity under an award and to authorize others to do the same for federal purposes. For the purpose of this policy, DBP has the right to obtain, reproduce, publish or otherwise use data first produced with WIA funds from DBP and to authorize others to do the same for state or federal purposes.
- iv) Title, Use and Disposition
 - (1) For non-governmental entities, title to intangible property vests in the recipient upon acquisition. Use is restricted to the originally authorized purpose, and the recipient must follow the provisions of 29 CFR 95.34(g) for disposition and compensation to DBP. There is no similar provision for other governmental entities.
- f) General Guidance on Leasing
 - i) WIA recipients of DBP should use considerations of economy for making decisions to buy or rent real or personal property. Considerations may differ by property type and according to market conditions.
 - ii) As described previously in this policy, the construction or purchase of real property is not allowed under the WIA program, except in limited circumstances. Permissible leases of real property are limited to operating leases. Capital leases are arrangements that result in the ownership of property and, therefore, are treated by the OMB circulars as purchases. As such, WIA funds may not be used for lease payments for capital leases involving real property.
 - iii) Recipients may not charge fair market rent or lease rates to the WIA funds for their own real or personal property used in the program. Recipients also may not lease from other activities in which they have a vested interest or which has interest vested to them. Recipients may only recover these costs through charging depreciation expense or use allowance to the grant.

- iv) Office of Management and Budget Circular A-87, *Cost Principles for State and Local Governments*, and Circular A-122, *Cost Principles for Non-Profit Organizations*, contain specific requirements used to establish use allowances or depreciation allowances, based on a variety of factors including useful life of facilities and any previous depreciation borne by the federal government. These provisions are found in OMB Circular A-87, Attachment B, Item 15, and in Circular A-122, Attachment B, Item 11. In addition, Circular A-122 addresses capital leases and less-than-arm's length agreements in Attachment B, Item 46, Rental Costs. Similar provisions are found in Circular A-87, Attachment B, Item 38.
- v) A less-than-arm's length lease is one in which one party to the lease is able to control or substantially influence the actions of the other. Less-than-arm's length are allowable up to the amount that would be allowed had title vested in the organization as described in OMB Circular A-122, Attachment B, Item 46(c).
- vi) Recipients are urged to carefully review any lease agreement to ensure the lease is in compliance with the applicable requirements.

6) Responsibilities

- a) As delegated by the Governor and the Commissioner of the Alaska Department of Labor and Workforce Development, the Director of DBP is responsible for approving any purchase of property where prior approval is required and is responsible for approving the disposition of any property purchased or developed, in whole or in part, with WIA funds.
- b) Recipients are responsible for:
 - i) Obtaining prior written approval for the purchase of property in accordance with the requirements of this policy;
 - ii) Obtaining written approval for the disposition of property purchased, in whole or in part, with WIA funds in accordance with the requirements of this policy.