### 3.1.4 Relationships Implied by Funding Instruments

### Grantee/Subcontractor Relationships

### State of Arizona agencies as grantees often subcontract work to be completed within a grant or cooperative agreement. It is the responsibility of the federal awarding agency to make a preliminary review and determination of the proposed financial relationships between State of Arizona applicants and proposed sub-recipients if they are for-profit organizations that will receive a substantial portion of the total award (generally, 50 percent or more). The Federal Government generally reviews less-than-arms-length transactions during the course of its financial review. For example, less-than-arms-length transactions include, but are not limited to, transactions when the recipient is a non-profit organization and the grantee sub-awards funds to its for-profit arm. The relationships proposed must accurately reflect true programmatic relationships and not ones designed to avoid statutory eligibility restrictions or federal prohibitions on management fees or profit factors.

### Absent extraordinary circumstances, a for-profit organization that is ineligible to receive a direct award under a specific appropriation or program should not be named as a sole source contractor in a grant application by an eligible State of Arizona agency applying for a federal funding opportunity. The state agency may indicate that a competitive process will occur in which a contractor will be selected, but a specific contractor should not normally be named without competition. Under certain circumstances, however; this sole source rule can be waived such as if the applicant can document that there is only one contractor qualified or available to perform the function. Criteria that meet this threshold should be discussed with the federal awarding agency.

### Federal law requires that competition should be encouraged, when appropriate, in the award of grants and cooperative agreements. To foster competition in the award of special types of grants or cooperative agreements, for-profit organizations are made eligible, if allowed by statute, as indicated in OMB final guidance on the implementation of the Act, to receive these awards. The expansion of the eligibility to include for-profit organizations is to increase the number of possible applicants to compete for the funding opportunity. A for-profit organization is excluded from bidding or submitting a proposal to compete for an award for additional funds when the original award for evaluation or technical assistance gives the organization an unfair competitive advantage that may result in the restriction or elimination of future competition. The federal awarding agency makes this exclusion known to the for-profit organization, prior to award, by including it in the program announcement or solicitation and including it as a condition of the award.

**Criteria for Awards to For-Profit Organizations**

An award to a for-profit organization cannot be used to support the normal commercial operations of the organization. Awards to for-profit organizations may be made under one or more of the following circumstances:

* The for-profit organization is an eligible recipient under the authorizing legislation and the fund source can be used for awards to for-profit organizations;
* A competition has been publicly announced and both for-profit and non-profit organizational expertise is believed to be necessary to obtain the best possible product;
* The proposed project is of a research, evaluation, or technical assistance nature; and
* The applicant will adhere to a set of special conditions.

There are at least seven special conditions which must be included for awards to for-profit organizations, in addition to the standard civil rights conditions and other financial conditions. They address the following:

* Profit - Recipient agrees not to make a profit or to charge a management fee;
* Financial and procedural administration of the award – Uniform administrative requirements for grants and agreements with Institutions of higher education, hospitals, and other non-profit organizations will apply;
* Contract Cost Principles – Recipient agrees to comply with the contract cost principles;
* May Not Compete – Recipient agrees that it will not compete or accept any procurement or award supported by awarding agency funds which may have resulted or been derived from the original award. This restriction is not intended to restrict a for-profit organization from competing or being awarded a continuation (supplemental) or further phase award;
* Termination for Convenience – Recipient agrees that this award may be terminated for cause. In case of such a termination, however, no profit will be paid;
* Lobbying – The recipient agrees to comply with the organizational audit requirements of [the](http://www.whitehouse.gov/omb/circulars/a133/a133.html) OMB Uniform Guidance; and
* Financial and compliance audits.