City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

MEMORANDUM

TO: General Government Awards Committee

FROM: Gregory Pease, Chief Procurement

DATE: May 25, 2018

SUBJECT: **PROTEST – Bid No.: CF-0089-18**
Title: ADA Curb Ramp Improvements Westside- Part 1

The attached bid protest filed by **United Service Connection**, is presented for action by the General Government Awards Committee, on Thursday, May 31, 2018 at 1:00 PM.

The General Government Awards Committee action is as follows:

UPHELD:	**DENIED:**
Dir. Adm. & Finance or Designee	Dir. Adm. & Finance or Designee
General Counsel or Designee	General Counsel or Designee
Director of Public Works or Designee	Director of Public Works or Designee

ACTION OF AWARDING AUTHORITY
Date _____

Approved _____ **Disapproved** _____

Signature of Authentication _____

AUSLEY MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

123 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560
www.ausley.com

May 2, 2018

VIA HAND DELIVERY, EMAIL & FACSIMILE: (904) 255-8837

Ms. Marilyn Laidler
Purchasing Agent
Mr. Gregory Pease
Chief, Procurement Division
214 N. Hogan St., 8th floor
Jacksonville, FL 32202
Email: mlaidler@coj.net
Email: gpease@coj.net

05/02/18 10:51:01
Procurement Division

Re: NOTICE OF PROTEST
ITB No. CF 0089-18, ADA Curb Ramp Improvement, Westside Phase 1

Dear Ms. Laidler and Mr. Pease:

This law firm represents United Service Connection, Inc. ("USC"), located at 12058 San Jose Blvd., Suite 601, Jacksonville, Florida 32223. The telephone number is (904) 838-1015. Pursuant to Section 126.106(e), the City of Jacksonville Procurement Protest Procedures, the purpose of this letter is to provide notice that USC protests the City's Recommendation of Bid Rejection on ITB CF-0089-18, relating to ADA Curb Ramp Improvements.

The form and content of the Notice of Protest is as follows:

(1) To Whom Addressed.

Pursuant to section 126.106(e)(3)(d)(i), Notice of Protest are to be addressed to the Chief. However, in the Notification of Recommended Bid Rejection, protesters were instructed to direct all protest to the perspective buyer/analyst. To fully comply with all requirements, this notice is addressed to both the Chief and the Buyer/Analyst.

(2) Identity of Recommendation Award in Question.

As stated previously, this protest is directed to the City's proposed Recommendation of Bid Rejection relating to ITB CF-0089-18, relating to ADA Curb Ramp Improvements, Westside Phase 1.

(3) Timeliness of Protest.

In accordance with Section 126.106(e)(3)(a) protests are due 48 hours after the posting or written notification of the decision or intended decision, whichever is earlier. The City's intended decision was posted on May 1, 2018. USC received notice of the City's Notification of Recommended Bid Rejection by facsimile on April 30, 2018 at 12:19 p.m EST The Notice of Protest would be due at 12:19 p.m EST May 2, 2018.

(4) Legal Standing to Protest.

USC submitted a timely and responsive bid as required pursuant to the provisions of ITB CF-0089-18. The bid was accepted, reviewed and tabulated by the City's procurement division. Therefore, USC was a qualified bidder. Moreover, it was the lowest, responsive and responsible bidder.

(5) Issues, Material Facts and Legal Authority upon which Protest is Based.

USC states and challenges based on the following:

(a) The City's representation and/or construction of HUD regulations to require bids to be within 10% of the public body estimate and the application of the 10% requirement to bids above and under the estimate provided by the engineer of record.

(b) That the estimate of the engineer of record was faulty in that it did not comply with the pre-solicitation requirements

(i) No cost or price analysis was completed before the bid.

(ii) Does not contain a detailed cost breakdown for the overall estimate providing elements, such as labor and materials, of the total costs.

(iii) The estimate is not dated as required.

(iv) The cost estimates were not contained in the procurement folder

(v) The e-mails and/or written documentation concerning or supporting the costs estimates were not retained in the procurement folder.

(c) That the estimate of the engineer of record is flawed in that it provides the same unit costs for all curb ramps despite the differences in the amount of materials needed to construct each ramp as set out in Table 31.21. This table is developed in accordance with FDOT Index 304.

(d) Rejecting USC's bid would disserve the citizens of Jacksonville and waste tax dollars, by either paying more than necessary for the work in questions or having to initiate another bid process.

(e) For the reasons set forth above and other reasons that may be later disclosed, the intended decision is illegal, arbitrary and dishonest

(6) Request for Extension of Time to Supplement.

In accordance with Section 126.106(e)(4), USC requests an extension of three (3) business days after the date of this Notice of Protest to provide supplemental protest documents.

Attached is a copy of the Notification of Recommended Bid Rejection and other pertinent documents are attached.

If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

/s/Robert N. Clarke, Jr.

Robert N. Clarke, Jr.

RNC/mw

cc: Deborah Minnis
Jennifer Setzer

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Document B	**ITB CF-0089-18 ADA CR Improvements Westside, Part 1**
Document C	**ITB Section 2.8 Basis of Award**
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Document E	**Special Conditions 31.21 FDOT Curb Ramp Table**
Document F	**Bid Rejection Recommendation Letter- April 11, 2018**
Document G	**Bid Rejection Memo- April 12, 2018**
Document H	**Engineer Estimate**
Document I	**Bid Tabulation**

City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

NOTIFICATION OF RECOMMENDED BID REJECTION

April 30, 2018

United Service Connection
12058 San Jose Blvd., Suite 601
Jacksonville, FL 32223

BID# CF-0089-18 **DATE OPENED: 2018-03-21**

TITLE: ADA CURB RAMP IMPROVEMENTS WESTSIDE PART 1

REASON FOR RECOMMENDED REJECTION:
Funds for this project are to be provided by a Community Development Block Grant, which requires that bids be within 10% of the public body estimate provided by the Engineer of Record (EOR). United Service Connection is being rejected because the bid amount of $1,443,750.00 is less than the 10% allowed. All bids are being rejected and project will be re-evaluated and re-bid at later date with revised specs.

IF YOU WISH TO PROTEST THE RECOMMENDED REJECTION OF THIS BID, PLEASE RESPOND IN ACCORDANCE WITH THE CITY OF JACKSONVILLE BID PROTEST PROCEDURES. THIS ACTION IS SCHEDULED FOR THE GENERAL GOVERNMENT AWARDS COMMITTEE MEETING ON THURSDAY, **05/03/18** AT 1:00 PM. DIRECT ALL PROTEST TO THE RESPECTIVE BUYER/ANALYST, FACSIMILE NUMBER (904) 255-8837.

BUYER'S SIGNATURE: Marilyn Laudt

A

ADA CURB RAMP IMPROVEMENTS
WESTSIDE – PART 1

INVITATION TO BID

BID NO.: CF-0089-18

Notice is hereby given that the City of Jacksonville, Florida, will receive sealed Bids in the Office of the Procurement Division, Ed Ball Bldg, Rm 105, 214 N. Hogan Street, Jacksonville, Florida 32202, until 2:00 P.M. on the 21st day of March, 2018 for the **ADA Curb Ramp Improvements Westside - Part 1**, which is[X] is not []classified as capital repair/maintenance work.

At that time Bids will be publicly opened, read aloud, and recorded in the meeting room #110, 1st Floor, Ed Ball Bldg, 214 N. Hogan Street.

SCOPE OF WORK: This contract shall include all labor, equipment and materials necessary to replace non-compliant ADA curb ramps and install/replace detectable warning mats on existing curb ramps within the boundary identified in the construction plans. The work includes, but is not limited to concrete and curbing demolition, curb construction, curb ramp construction, asphalt removal and reconstruction, brick paver removal and reconstruction, minor utility adjustments, grassing, maintenance of traffic, erosion and sediment control, and all other related work as shown on the construction plans.

FEDERAL FUNDING: The Project(s) will be funded partly or in total by the Federal Government. Therefore, Bidders must comply with Title VI of the Civil Rights Act of 1964 (24 CFR, Parts 1 & 2); Title Vill of VIII of the Civil Rights Act of 1968 (24 CFR, Part 115); Federal Labor Standards Provisions (HUD 4010); the Davis-Bacon Act; the Anti-Kickback Act; and the Contract Work Hours and Safety Standards Act. Bidders are advised to refer to the Federal Regulations, of these specifications for more information.

(A) Section 3. The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall,to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons.

(B) Other HUD assistance and other Federal assistance. Recipients, contractors and subcontractors that receive HUD assistanve, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistanve to low-and very low-income persons, and business concerns owned by low and very low-income persons, or which employ low and very low-income persons.

PRE-BID CONFERENCE:

A MANDATORY PRE-BID MEETING WILL BE HELD ON MARCH 2, 2018, AT 10:00 A.M. IN CONFERENCE ROOM 5, 10th FLOOR, ED BALL BUILDING, 214 N. HOGAN STREET, JACKSONVILLE, FLORIDA 32202. PROSPECTIVE BIDDERS MUST ATTEND THIS MEETING TO BE ELIGIBLE TO SUBMIT A SECTION 3 SEALED BID.

PRE-QUALIFICATION:

All bidders on this project must be on the approved Pre-Qualified Bidders List Yes X No ____ (See Pre-Qualifying Procedures) with the City of Jacksonville, Procurement Division, under (Vertical, Horizontal, Mechanical, Marine) Horizontal category prior to bid opening.

Drawings and Specifications may be reviewed and obtained at the Office of the Procurement Division Bid Room, Ed Ball Bldg, Rm 105, 214 N. Hogan Street, Jacksonville FL 32202, or electronically by visiting the City's website at www.coj.net under "Bidding Opportunities". The price per set of Documents is $25.00, or the fees as stated by the 3rd party website as applicable. Payment to the City's Bid Room is required to be paid prior to receipt of the Documents. **PAYMENTS TO THE CITY BID ROOM WILL BE ACCEPTED BY CHECK ONLY.**

B

In accordance with Part 6 of the Purchasing Code and as detailed in the specifications, this procurement has been designated to be under the Encouragement Plan to provide Equal Business Opportunity to certain Jacksonville Small Emerging Business' (JSEB).

In addition to the Drawings and Specifications, the CONTRACTOR will need the two-volume set of City Standard Specifications and City Standard Details with Revisions 1 through 16 as provided in Instruction to Bidders.

Bidders must submit with their sealed bid a completed schedule of subcontractor/sub-consultant participation, Appendix "G" (as applicable), Section 3, Bid Proposal, in accordance with Ordinance 2004-602E.

All Bids must be made on the Proposal Forms provided, properly executed, placed in the envelope provided, marked return receipt requested, and mailed or delivered in accordance with this Notice. **ONE ORIGINAL BID AND REQUIRED DOCUMENTS SHALL BE SUBMITTED. NO DUPLICATES OR COPIES WILL BE CONSIDERED.**

The City of Jacksonville reserves the right to reject any or all Bids, waive informalities, irregularities or technical defects in any Bid, make award in part or whole with or without cause, and to make the award it deems to be in the best interest of the City of Jacksonville.

GREGORY PEASE, CHIEF
Procurement Division

LENNY CURRY, MAYOR
City of Jacksonville

B

2.6.1.5 Where applicable, evidence that the Bidder is legally qualified to contract for and perform the project (see section 20.54, General Conditions).

Required: Yes__X__ No_____

2.6.1.6 Where applicable, evidence that Plumbing, Electrical, Mechanical and other contractor or subcontractor are legally qualified to perform work on the project in specialty trades (See Section 20.55, General Conditions).

2.6.1.7 Work requiring the installation of water, sewer and storm drainage systems shall be performed by contractors licensed as underground utility contractors, in accordance with Chapter 489 Florida Statutes.

Required: Yes__X__ No_____

2.6.1.8 For work requiring the drilling of potable water wells, the Bidder shall certify that the well driller holds a current permit issued by the Division of Environmental Health, State of Florida.

Required: Yes_____ No__X__

2.7 DISQUALIFICATION OF BIDDER FOR MULTIPLE BIDS OF COLLUSION

2.7.1 If more than one Bid is submitted from an individual, firm, partnership, corporation or association under the same or a different name, none of these bids will be considered. "Reasonable grounds" that a Bidder has an interest in more than one Proposal for the same work shall be sufficient cause for rejection of all Proposals in which such Bidder is believed to be interested. If there is reason to believe collusion exists among Bidders, no participants in such collusion will be considered in this work and in future Proposals for the same work.

2.8 BASIS OF AWARD

2.8.1 The award will be made as specified in the Basis of Award Evaluation and Scoring Matrix on pages 3-10 and 3-13 of Section 3.

2.8.2 In the event of mathematical errors in the extension of prices or in the addition total for any base bid, unit prices will prevail. The corrected base bid will be used to determine the low qualified Bidder. The award of this

C

SECTION 3 SELECTION PROCESS

Award of any contract resulting from this solicitation will be made in accordance with Bid Specifications and HUD regulations. The committee will evaluate all responsive proposals received within the deadline specified in this Bid and will use the following procedure to award bids:

A. The Evaluation Committee will consist of a minimum of three persons including, but not limited to, the City's Section 3 Coordinator, Agency representative and other appropriate HCDD program staff.

B. The responsive proposals received within the established deadline, which meet the submission requirements of the Bid, shall be evaluated by the Committee on the basis of the criteria set forth in the Bid. The Committee will evaluate each proposal in a fair and impartial manner, on its own merit.

C. Responsive bids will be priority ranked based on a maximum cumulative points of 100. (50.0 points based on lowest bid ranking, (40) points for Section 3 participation and (10) points for Experience and Past Performance).

SECTION 3 EVALUATION CRITERIA: (40.0 – Points)

- (5) points will be awarded to bidders who submit a Section 3 Economic Opportunities Plan (EOP). Points will be awarded to the Bidder who identifies on company letterhead a specific plan as outlined in the attached Appendix(s) to Part 135 – I. Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents and II. Examples of Efforts to Award Contracts to Section 3 Business Concerns and who commit to start and use such a plan on the Project(s) (**See Contractor Section 3 Economic Opportunities Plan**).

- (5) points will be awarded to Certified Section 3 businesses that provide jobs and or training opportunities for local residents. **(Contractors and or Subcontractors must be certified as a Section 3 Business prior to bid submittal and provide a current Section 3 Certification Letter with their IFB submittal to receive the allowable (5) points.**

- (2) points will be awarded to Section 3 Certified Businesses that provide hiring from partnering agencies or other approved apprenticeship or Training Programs. (Youthbuild, Jacksonville Job Corps, Ready 4Work; CRC Institute, Clara White Mission or FSCJ).

- (10) points will be awarded to bidders providing subcontracting opportunities to Certified Section 3 Businesses; **(Subcontractors must be certified as a Section 3 Business prior to bid submittal and provide a current Section 3 Certification Letter(s) with their IFB submittal to receive the allowable (2) points for (each) Section 3 subcontractor.**

- (10) points will be awarded to bidders providing hiring or training opportunities for Eligible Section 3 Residents new-hires residing within a 5-mile radius of the vicinity project(s) area. Contractors must provide ***"full-time employment for the duration of the project"*** as a direct result of the expenditure of Section 3 covered financial assistance as defined in Title 24, Part 135.5). **Residents New Hire(s)** – (1) Points for each Section 3 new hire identified. (Maximum of (6) hires. (1) Points for each Section 3 trainee identified. Maximum of (4) trainees. (Contractor's must provide the following Section 3 documentation to verify new-hire commitment:
  1. Completed Section 3 Preference Claim Form for the current F.Y.
  2. Identification-Copy of Driver's License or Florida I.D.

- (2) points will be awarded to bidders providing hiring opportunities for Homeless persons in the service area. (Contractors must provide evidence of hiring from identified partnering agencies providing homeless services. **(Contractors must provide a completed Section 3 Preference Claim Form marked HOMELESS to receive the allowable (2) points).**

D

- (4) points will be awarded to bidders providing hiring opportunities for other eligible Section 3 Residents residing outside of the 5-mile radius of the vicinity project(s) area. – (1) point for each new-hire identified for a maximum of (4) points.

- (2) points will be awarded to JSEB Businesses providing a minimum of (1) hiring opportunity for Section 3 residents in the vicinity project service area.

EXPERIENCE and PAST PERFORMANCE: (10.0 – Points)
(10) points will be awarded to bidders providing a List of Project(s) that best illustrate ***Related Construction Experience*** of their firm and current staff that are being assigned to the Project(s); (Residential or Commercial Rehabilitation; New Construction, Demolition, Vertical or Horizontal Concrete Construction, other. (List project, contact and year of project List no more than 5 Project(s); and do not list Project(s) completed more than 5 years.) **Contractor(s) will receive 2.0 points per submittal of experience.**

PRICING: (50.0 – Points)
All bids will be evaluated based on the firm which submits the lowest bid. The lowest Guaranteed Maximum Price - will be awarded fifty (50.0) points.

Each firm who submitted a higher bid (Price proposal – the Guaranteed Maximum Price) than the lowest bid will be awarded a reduced number of points relative to the ratio of the lowest bid to its higher bid multiplied by 50.

Example: If the lowest bid was $10,000.00 and the higher bid was $12,500.00, the firm which submitted the lowest bid would receive 50 points and the firm which submitted the higher bid will be awarded – ($10,000.00/$12,500.00) x 50 = 40 points.

The final score will be evaluated in a fair and impartial manner, on its own merit and rated according to the lowest Guaranteed Maximum Price (GMP), Section 3 compliance, experience and financial capacity to determine the lowest responsive responsible bidder. Each firm will be calculated on the sum of points received from pricing (50), Section 3 awarded points (30), experience (10) and financial capacity (10) for the maximum cumulative points of 100.0 points.

D. The award will be to the **Lowest, Responsive, and Responsible** bidder from among qualified bidders.

E. Notification of award will be issued by the City of Jacksonville to the accepted Bidder by a written Letter of Intent to Contractor.

F. If an executed contract with the selected firm is not completed within 15 calendar days of notification of award then The City of Jacksonville reserves the right to award the Bid to the next lowest responsive, responsible Bidder.

G. Bidders desiring a copy of the tabulation sheet and the award recommendation must include a self-addressed, stamped envelope with their bid. Bid results will not be given by telephone. The successful bidder shall be required to comply with all applicable provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations issued pursuant thereto, as set forth in 24 CFR Part 135 Section 2, and all applicable rules, directives and orders issued by HUD there under. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment generated by a Section 3 covered contract be given to public housing residents and other low income persons residing in the metropolitan area, and subcontracts in connection with such contract be awarded to Section 3 covered business concerns which are located in, or owned in substantial part by persons residing in the areas of the Project(s) (For additional information refer to federal regulations as identified in 24 CFR Part 135).

The Committee will evaluate each proposal in a fair and impartial manner, on its own merit. The bid proposals received shall be evaluated by the Committee on the basis of the following criteria:

D

Evaluation and Scoring Matrix

BASIS OF AWARD	Possible Points
Pricing (Lowest Responsive-Responsible Bid)	**50**
Section 3 Economic Opportunities Plan (EOP). (1-5) points will be awarded to Contractors providing Section 3 designation; new-hire commitments; specifics of plan implementation, completing the required request for information and providing the required signatures.	**5**
Section 3 Contracting and Employment Opportunities (Table A & B)	
Table A - Preference for Section 3 Business Concerns	
▪ **Category 1** – (5) points will be awarded to Certified Section 3 businesses that provide jobs and or training opportunities for local residents. **(Contractors and or Subcontractors must be certified as a Section 3 Business prior to bid submittal and provide a current Section 3 Certification Letter with their IFB submittal to receive the allowable (5) points.**	**5**
▪ **Category 2** – (2) points will be awarded to Section 3 Certified Businesses that provide hiring from partnering agencies or other approved apprenticeship or Training Programs. (Youthbuild, Jacksonville Job Corps, Ready 4Work; CRC Institute, Clara White Mission or FSCJ).	**2**
▪ **Category 3** – Other Certified Section 3 Businesses; **(Subcontractors must be certified as a Section 3 Business prior to bid submittal and provide a current Section 3 Certification Letter(s) with their IFB submittal to receive the allowable (2) points for (each) Section 3 subcontractor.**	**10**
- Table B - Preference for Training and Employment	
Category 1 – Eligible Section 3 Residents are new-hires residing within a 5-mile radius of the vicinity project(s) area. Contractors must provide ***"full-time employment for the duration of the project"*** as a direct result of the expenditure of Section 3 covered financial assistance as defined in Title 24, Part 135.5). **Residents New Hire(s)** – (1) Points for each Section 3 new hire identified. (Contractor's must provide the following Section 3 documentation to verify new-hire commitment: 1. Completed Section 3 Preference Claim Form for the current F.Y. 2. Identification-Copy of Driver's License or Florida I.D. ***Contractors can receive a maximum of 10 points to include a combination of training and or hiring.*** Resident Training – (1) Point for each trainee identified. (Maximum of (4)-points)	**6** **4**
▪ **Category 2** – Homeless persons in the service area. (Contractors must provide evidence of hiring from identified partnering agencies providing homeless services. **(Contractors must provide a completed Section 3 Preference Claim Form marked HOMELESS to receive the allowable (2) points).**	**2**
▪ **Category 3** – Other Section 3 Residents – (1) point for each new-hire identified for a maximum of (4) points. (Residents outside of the determined vicinity/project area)	**4**
▪ **Jacksonville Small and Emerging Business (JSEB) Program** – JSEB Businesses providing a minimum of (1) hiring opportunity for Section 3 residents in the vicinity project service area.	**2**
▪ **Experience and Past Performance** - List the Project(s) that best illustrate ***Related Construction Experience*** of the firm and current staff that are being assigned to the Project(s); (Residential or Commercial Rehabilitation; New Construction, Demolition, Vertical or Horizontal Concrete Construction, other. (List project, contact and year of project List no more than 5 Project(s); and do not list Project(s) completed more than 5 years.) **Contractor(s) will receive 2.0 points per submittal of experience.**	**10**

(Contractors must provide the required Section 3 Preference Claim Form(s) for each new hire or trainee identified).

D

Basis of Award:

All Bids will be reviewed by the City of Jacksonville to determine if all firms meet the qualifications for bidding for the City of Jacksonville and determined responsive. The review process will continue with the Section 3 Review Committee to determine which bidders are Section 3 Business Concerns based on the HUD definition as follows below: (a) 51% or more owned by Section 3 Residents;(b) 30% of permanent Fulltime Workforce of Section 3 Residents; (c) 25% of the dollar award to Section 3 business concerns or who meet the requirements of (a) or (b). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid, if that bid is: (1) within the Guaranteed Maximum Price (GMP), established in the project budget, and (2) not more than "X" higher than the total bid price of the lowest responsible bid. "X" is determined as follows:

Proposed Bid Amounts	
When the lowest responsive bid is less than $100,000.	10% of that bid or $9,000.
At least $100,000, but less than $200,000.	9% of that bid, or $16,000.
At least $200,000, but less than $300,000.	8% of that bid, or $21,000.
At least $300,000, but less than $400,000.	7% of that bid, or $24,000.
At least $400,000, but less than $500,000.	6% of that bid, or $25,000.
At least $500,000, but less than $1million.	5% of that bid, or $40,000.
At least $1 million, but less than $2 million.	4% of that bid, or $60,000.
At least $2 million, but less than $4 million.	3% of that bid, or $80,000.
At least $4 million, but less than $7 million.	2% of that bid, or $105,000.
$7 million or more.	1 ½ % of the lowest responsive bid, with no dollar limit.

If no responsive bid by a Section 3 business concern meets the requirements of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

D

31.20 MOBILIZATION

31.20.1 DESCRIPTION

Perform preparatory work and operations in mobilizing for beginning work at each ramp location, including, but not limited to, those operations necessary for the movement of personnel, equipment, supplies, and incidentals to the project site and for establishment of safety equipment and first aid supplies, and sanitary and other facilities.

Mobilization shall include the costs of bonds and any required insurance and any other preconstruction expense necessary for the start of the work, excluding the cost of construction materials.

31.20.2 PAY REQUEST FOR MAINTENANCE OF TRAFFIC

No separate payment will be made for mobilization. Payment for mobilization will be included in the unit price bid items as seen in the bid proposal.

31.21 FDOT CURB RAMP (Line Item Nos. 1-8)

FDOT curb ramps shall be constructed in accordance with FDOT Index 304 and Sections 131 and 132 of the City Standard Specifications and as shown on the Plans or as directed by the Engineer. The contractor shall construct the curb ramps to be ADA compliant matching the existing surrounding conditions. Transitions shall be constructed beyond the curb ramp and/or landing area to match the existing conditions. Please refer to **Table 31.21** for the estimated quantities of concrete, curb and gutter and detectable warning included in the FDOT curb ramp bid items. These quantities are based on the curb ramps as displayed in FDOT index 304 plus 5 square yards of concrete and 5 linear feet of curb and gutter for transitions into existing conditions. The quantities listed in **Table 31.21** shall also be used for the maximum amount of demolition included in the curb ramp bid items. Any construction or demolition quantities exceeding the quantities listed in **Table 31.21** shall be paid for using the contingency items established in the bid tabulation. Please note that curb and gutter is not present at all ramp locations.

Table 31.21

Ramp Type	Quantities Included In Curb Ramp Bid Items		
	Concrete (SY)	Curb & Gutter (LF)	Detectable Warning (SF)
CR-A	27	23	8
CR-B	25	23	8
CR-C	17	21	8
CR-D	15	23	11
CR-E	9	14	8
CR-F	11	23	14*
CR-G	11	23	14*
CR-H	18	20	8*
CR-K	25	23	8*
CR-L	17	28	13**

* Quantity for a curb radius of 30 ft. See FDOT Index 304 (Sheet 7 of 7) for quantities associated with other curb radii.

** Quantity for a curb radius of 15 ft. See FDOT Index 304 (Sheet 7 of 7) for quantities associated with other curb radii.

E

City of Jacksonville, Florida

Lenny Curry, Mayor

Housing and Community Development Division
Ed Ball Building
214 North Hogan Street, 7th Floor
(904) 255-8200
Jacksonville, FL 32202
www.coj.net

ONE CITY. ONE JACKSONVILLE.

April 11, 2017

John P. Pappas, P.E.
Director
Department of Public Works
214 N. Hogan St., 10th floor
Jacksonville, FL 32202

RE: **Recommendation to reject all bids**
ADA Curb Ramp Improvements Westside Part 1

Bid No.:	**CF-0089-18**
Bid Date:	**March 21, 2018**
Award Amount:	**N/A**
Internal Services Account No.	**PWEN011AD**

The Housing and Community Development Division (HCDD) has reviewed and tabulated the two (2) bids received on the referenced project for accuracy and compliance with the contract documents. Funds will be provided by a Community Development Block Grant, which requires that the bids be within 10% of the public body estimate provided by the engineer of record (EOR), which applies to bids both over and under the estimate. The EOR estimate for this project is $1,659,862.50. The low bid by United Service Connection is in the amount of $1,443,750.00 is less than the 10% allowed below the EOR estimate. The other bid from Jax Utilities Management in the amount of $2,464,150.00 is more than the 10% allowed above the EOR estimate.

HCDD is therefore recommending all bids for CP-0089-18 ADA Curb Ramp Improvements Westside Part 1 be rejected at this time.

If you have any questions do not hesitate to contact me at your earliest convenience. I may be reached at (904) 255-8204.

Sincerely,

Diana Seydlorsky
Chief

cc: Stephanie Burch, Director
Dinah Mason, Manager Special Projects

F

Procurement

Grantees are required to comply with all federal and local procurement and selection regulations in selecting contractors (24 CFR 570.502, 24 CFR 570.610, 24 CFR 85.33).

Federal procurement rules require that Grantees or their subrecipients must: 1) clearly articulate the goods or services being procured; 2) obtain competitive bids; 3) use written agreements; 4) document results; and 5) insure that the procured items good quality. Procurement rules can be broken into the following categories: small purchase procedures, sealed bids, competitive proposals and non-competitive proposals.

Public Body Estimate (PBE)

The PBE must be completed, signed and dated prior to the bid date. The lowest and best bid must be within 10% of the estimate. HCDD utilizes the strictest procedure, be it federal, state or local and complies with 24 CFR PART 85.

Timeliness

HUD determines the amount of each entitlement grant by a statutory dual formula that uses several objective measures of community needs, including the extent of poverty, population size, housing overcrowding, age of housing and population growth lag in relationship to other metropolitan areas.

HUD additionally imposes expenditure deadlines. To insure that funds are expended in a timely manner, HUD imposes a cap on available funds. Available funds include CDBG annual allocations and program income (24 CFR 570.902). At the end of each program year, to be considered timely, the City cannot have more than 1.5 of its entitlement amount unexpended.

The Division Chief, in coordination with the Community Development Manager and HOME Program Managers, is responsible for monitoring and tracking the performance of subrecipients' time of performance to ensure that all funds are expended timely. This procedure is essential in the Division's work to adhere to HUD's Timeliness Test conducted in July of each year. (This process is explained in detail below).

Planning and Administrative Costs/Cap

CDBG funds may be used for planning activities (§ 570.205) and administration activities ((§ 570.206). Spending on planning and administration activities are capped at 20% of the entitlement amount plus 20% of program income as defined in the Annual Action Plan. Examples of planning activities include:

- Comprehensive plans
- Community development plans (including the Consolidated Plan)
- Functional plans (for housing, land use and urban environmental design, economic development, open space and recreation, energy use and conservation, floodplain and wetlands management, transportation, utilities, historic preservation, etc.)

F

City of Jacksonville, Florida

Lenny Curry, Mayor

Department of Public Works
214 N. Hogan St., 10th floor
Jacksonville, FL 32202
(904) 255-8786
www.coj.net

ONE CITY. ONE JACKSONVILLE.

April 12, 2018

TO: Gregory W. Pease
Chief of Procurement

THRU: John P. Pappas, P.E.
Director

FROM: Tom Fallin, P. E., Chief
Engineering and Construction Management Division

Diana Seydlorsky, Chief
Housing and Community Development

SUBJECT: RECOMMENDATION TO REJECT ALL BIDS

RE: ADA Curb Ramp Improvements Westside Part 1

Bid No.:	CF-0089-18
Bid Date:	March 21, 2018
Award Amount:	N/A
Internal Services Account No.	PWEN011AD

The Department of Public Works has reviewed and tabulated the two (2) bids received on the referenced project for accuracy and compliance with the contract documents. Funds will be provided by a Community Development Block Grant, which requires that the bids be within 10% of the public body estimate provided by the engineer of record (EOR), which applies to bids both over and under the estimate. The EOR estimate for this project is $1,659,862.50. The low bid by United Service Connection is in the amount of $1,443,750.00 is less than the 10% allowed below the EOR estimate. The other bid from Jax Utilities Management in the amount of $2,464,150.00 is more than the 10% allowed above the EOR estimate.

We therefore recommend that all bids for CF-0089-18 ADA Curb Ramp Improvements Westside Part 1 be rejected at this time. We will re-evaluate and re-bid the project at a future date.

TF:lw

Attachments

cc: Lori West, Engineering Contract Specialist

ab

G

ADA CURB RAMP IMPROVEMENTS
WESTSIDE - PART 1

ENGINEERS ESTIMATE OF PROBABALE COST

BASE BID

UNIT PRICE SCHEDULE

Bid Item No.	Spec. Section	Description	Unit	Estimated Quantity	Unit Cost	Total Cost
1	31.21	FDOT CR-A CURB RAMP	EA	2	$ 1,250.00	$ 2,500.00
2	31.21	FDOT CR-C CURB RAMP	EA	13	$ 1,250.00	$ 16,250.00
3	31.21	FDOT CR-D CURB RAMP	EA	8	$ 1,250.00	$ 10,000.00
4	31.21	FDOT CR-E CURB RAMP	EA	884	$ 1,250.00	$ 1,105,000.00
5	31.21	FDOT CR-F CURB RAMP	EA	80	$ 1,250.00	$ 100,000.00
6	31.21	FDOT CR-G CURB RAMP	EA	17	$ 1,250.00	$ 21,250.00
7	31.21	FDOT CR-H CURB RAMP	EA	4	$ 1,250.00	$ 5,000.00
8	31.21	FDOT CR-L CURB RAMP	EA	17	$ 1,250.00	$ 21,250.00
9	31.22	DETECTABLE WARNING INSTALLATION ON EXISTING RAMP	SF	1600	$ 30.00	$ 48,000.00
10	31.23	GRIND TRIP HAZARD ON EXISTING RAMP	EA	36	$ 175.00	$ 6,300.00
11	31.24	REMOVE EXISTING CURB RAMP	EA	21	$ 500.00	$ 10,500.00
12	31.25	PAVER CURB RAMP RECONSTRUCTION (UPCHARGE) (CONTINGENCY)	EA	105	$ 250.00	$ 26,250.00
13	31.26	A-3 FILL (CONTINGENCY)	CY	75	$ 15.00	$ 1,125.00
14	31.27	OVEREXCAVATION (CONTINGENCY)	CY	75	$ 12.50	$ 937.50
15	31.28	PAVER DETECTABLE WARNING INSTALLATION (CONTINGENCY)	SF	150	$ 15.00	$ 2,250.00
16	31.29	SIDEWALK REMOVAL (CONTINGENCY)	SY	2250	$ 14.50	$ 32,625.00
17	31.30	SIDEWALK REMOVAL (ADDITIONAL 2" OF THICKNESS) (CONTINGENCY)	SF	750	$ 2.50	$ 1,875.00
18	31.31	SIDEWALK (4" THICK) (CONTINGENCY)	SY	2250	$ 37.50	$ 84,375.00
19	31.32	SIDEWALK (ADDITIONAL 2" OF THICKNESS) (CONTINGENCY)	SF	750	$ 7.50	$ 5,625.00
20	31.33	STAMPED CONCRETE SIDEWALK (CONTINGENCY)	SY	2500	$ 47.50	$ 118,750.00
21	31.34	EXISTING PAVER RECONSTRUCTION (CONTINGENCY)	SF	500	$ 15.00	$ 7,500.00
22	31.35	REMOVE AND REPLACE CURB AND GUTTER (CONTINGENCY)	LF	750	$ 17.50	$ 13,125.00
23	31.36	RELOCATE EXISTING SIGN AND SIGN POST (CONTINGENCY)	EA	10	$ 125.00	$ 1,250.00
24	31.36	NEW SIGN AND SIGN POST (CONTINGENCY)	EA	5	$ 275.00	$ 1,375.00
25	31.37	ASPHALT REPAIR/REPLACEMENT (CONTINGENCY)	TN	75	$ 150.00	$ 11,250.00
26	31.38	ROADWAY STRIPING (PAINTED) (CONTINGENCY)	SF	500	$ 1.00	$ 500.00
27	31.39	LANSCAPING REMOVAL AND REPLACEMENT (CONTINGENCY)	SF	1000	$ 5.00	$ 5,000.00
					CONSTRUCTION TOTAL	$ 1,669,862.50

BASE BID TOTAL (ITEM NOS. 1-27) $ 1,669,862.50

ENGINEER OF RECORD SIGNATURE

H

PRE-QUAL-HORIZONTAL SECTION 3

TITLE: ADA CURB RAMP IMPROVEMENTS-WESTSIDE-PART 1

BID NO. CF-0089-18 (PW)

OPEN DATE: MARCH 21, 2018 @ 2:00PM

BUYER: MARILYN LAIDLER

No. Invited: (8) No. Received (2) No Bids: (0)

ITEM	DESCRIPTION OF WORK	EST.QTY	UNIT	UNITED SERVICE CONNECTION, INC		JAX UTILITIES MANAGEMENTS, INC.	
				UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
1	FDOT CR-A CURB RAMP	2	EA	$ 1,300.00	$ 2,600.00	$ 2,250.00	$ 4,500.00
2	FDOT CR-C CURB RAMP	13	EA	$ 1,300.00	$ 16,900.00	$ 2,250.00	$ 29,250.00
3	FDOT CR-D CURB RAMP	9	EA	$ 1,400.00	$ 12,600.00	$ 2,250.00	$ 20,250.00
4	FDOT CR-E CURB RAMP	884	EA	$ 1,000.00	$ 884,000.00	$ 1,950.00	$ 1,723,800.00
5	FDOT CR-F CURB RAMP	80	EA	$ 1,400.00	$ 112,000.00	$ 2,000.00	$ 160,000.00
6	FDOT CR-G CURB RAMP	17	EA	$ 1,300.00	$ 22,100.00	$ 2,250.00	$ 38,250.00
7	FDOT CR-H CURB RAMP	4	EA	$ 1,500.00	$ 6,000.00	$ 2,250.00	$ 9,000.00
8	FDOT CR-L CURB RAMP	17	EA	$ 1,500.00	$ 25,500.00	$ 2,250.00	$ 38,250.00
9	DETECTABLE WARNING INSTALLATION ON EXISTING RAMP	1600	SF	$ 40.00	$ 64,000.00	$ 28.00	$ 44,800.00
10	GRIND TRIP HAZARD ON EXISTING RAMP	36	EA	$ 100.00	$ 3,600.00	$ 100.00	$ 3,600.00
11	REMOVE EXISTING CURB RAMP	21	EA	$ 200.00	$ 4,200.00	$ 500.00	$ 10,500.00
12	PAVER CURB RAMP RECONSTRUCTION (UPCHARGE) (CONTINGENCY)	105	EA	$ 100.00	$ 10,500.00	$ 200.00	$ 21,000.00
13	A-3 FILL (CONTINGENCY)	75	CY	$ 3.00	$ 225.00	$ 15.00	$ 1,125.00
14	OVEREXCAVATION (CONTINGENCY)	75	CY	$ 2.00	$ 150.00	$ 6.00	$ 450.00
15	PAVER DETECTABLE WARNING INSTALLATION (CONTINGENCY)	150	SF	$ 10.00	$ 1,500.00	$ 25.00	$ 3,750.00
16	SIDEWALK REMOVAL (CONTINGENCY)	2250	SY	$ 22.00	$ 49,500.00	$ 12.00	$ 27,000.00
17	SIDEWALK REMOVAL (ADDITIONAL 2" OF THICKNESS) (UPCHARGE) (CONTINGENCY)	750	SF	$ 15.00	$ 11,250.00	$ 14.00	$ 10,500.00

H

TITLE:	ADA CURB RAMP IMPROVEMENTS- WESTSIDE- PART 1			UNITED SERVICE CONNECTION, INC		JAX UTILITIES MANAGEMENTS, INC.	
BID NO.	CF-0089-18 (PW)						
18	SIDEWALK (4" THICK) (CONTINGENCY)	2250	SY	$ 44.00	$ 99,000.00	$ 39.50	$ 88,875.00
19	SIDEWALK (ADDITIONAL 2" OF THICKNESS) (UPCHARGE) (CONTINGENCY)	750	SF	$ 2.00	$ 1,500.00	$ 41.50	$ 31,125.00
20	STAMPED CONCRETE SIDEWALK (CONTINGENCY)	2500	SY	$ 5.00	$ 12,500.00	$ 50.00	$ 125,000.00
21	EXISTING PAVER RECONSTRUCTION (CONTINGENCY)	500	SF	$ 20.00	$ 10,000.00	$ 12.00	$ 6,000.00
22	REMOVE AND REPLACE CURB AND GUTTER (CONTINGENCY)	750	LF	$ 20.00	$ 15,000.00	$ 26.00	$ 19,500.00
23	RELOCATE EXISTING SIGN AND SIGN POST (CONTINGENCY)	10	EA	$ 50.00	$ 500.00	$ 125.00	$ 1,250.00
24	NEW SIGN AND SIGN POST (CONTINGENCY)	5	EA	$ 125.00	$ 625.00	$ 250.00	$ 1,250.00
25	ASPHALT REPAIR/REPLACEMENT (CONTINGENCY)	75	TN	$ 1,000.00	$ 75,000.00	$ 95.00	$ 7,125.00
26	ROADWAY STRIPING (PAINTED) (CONTINGENCY)	500	SF	$ 2.00	$ 1,000.00	$ 26.00	$ 13,000.00
27	LANDSCAPING REMOVAL AND REPLACEMENT (CONTINGENCY)	1000	SF	$ 2.00	$ 2,000.00	$ 25.00	$ 25,000.00
	TOTAL BASE BID TOTAL (Items 1-27)			$ 1,443,750.00		$ 2,464,150.00	
	CONFLICT OF INTEREST:			YES		YES	
	BID BOND:			YES		YES	
	LICENSED SUBS:			YES		SELF-PERFORM	
	ADDENDUMS ( ) ACKNOWLEDGED:						

AUSLEY MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

123 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560
www.ausley.com

May 7, 2018

VIA EMAIL & FACSIMILE: (904) 255-8837

Ms. Marilyn Laidler
Purchasing Agent
Mr. Gregory Pease
Chief, Procurement Division
214 N. Hogan St., 8th floor
Jacksonville, FL 32202
Email: mlaidler@coj.net
Email: gpease@coj.net

Re: SUPPLEMENT TO NOTICE OF PROTEST
ITB No. CF 0089-18, ADA Curb Ramp Improvement, Westside Phase 1

Dear Ms. Laidler and Mr. Pease:

In accordance with Section 126.106(e)(4) of the City of Jacksonville Procurement Protest Procedures, USC hereby provides supplemental protest information and documents in support of its Notice of Protest relating to the above-referenced project.

1. There appears to be no Legal Authority for the Rejection.

The City's "Notification of Recommended Bid Rejection" dated April 30, 2018, states that the because the project is being funded by a "Community Development Block Grant...bids [must] be within 10% of the public body estimate provided by the Engineer of Record." Exhibit A. Since receiving the written notification, USC has conducted extensive research relating to this issue. USC is not aware, and the research has not revealed, any such requirement relating to the Community Development Block Grant Program. USC has also submitted a public records request to the City and requested legal support for this statement. To date, the City has failed to provide any rule regulation, guidance, or law supporting this requirement. In addition, the City's position that the "10% Rule" applies to a bid 13% below the estimate is illogical and a waste of taxpayer's money.

2. The Attachment to the Notification provides no Support for the Decision.

Instead of citing to a federal rule relating to the Community Block Grant Program, the City attached a single page document purporting to be a "Housing and Community Development

Division Policies and Procedures" manual. Exhibit B. This single page document cites to three federal regulations, 24 CFR 570.502, 24 CFR 570.610, and 24 CFR 85.35. Composite Exhibit C. None of these regulations include any requirement that the lowest bidder be within 10% of the City's estimate. Specifically, 24 CFR 570.502 and 24 CFR 570.610, incorporate and modify portions of 2 CFR 200. Nowhere in 2 CFR 200 is there a procurement requirement that the lowest bidder be within 10% of the City's estimate. 24 CFR 85.35 is now "reserved." However, the version prior to 2014 is still often cited by the Department of Housing and Urban Development. Exhibit D. The pre-2014 version of 24 CFR 85.35 does not include any requirement that the lowest bid be within 10% of the City's estimate.

It should be noted that 24 CFR 85.36(d)(2)(ii)(B) requires that "invitations for bid...will include any specifications and pertinent attachments, [and] shall define the items or services in order for the bidder to properly respond." To the extent that bids must be within 10% of the City's estimate, the invitations to bid should have reflected that requirement. The City's action to now reject bids based on this unknown and unsupported "10% rule," violates 24 CFR 85.36(d)(2)(ii)(B).

3. Improper Use of Estimate.

There appears to be no federal regulations supporting a conclusion that the City can reject all bids because the lowest bid is 10% lower than the estimate. To the contrary, federal guidance suggests that the City should not rely on its estimate in this manner. The Department of Housing and Urban Development's Handbook, 7460.8 Rev 2, Section 10.3.A.1. states that the City "should always compare the prices offered with" the City's initial cost estimate (ICE). Exhibit E. The handbook notes that while "this initial cost estimate may not be sufficient for price reasonableness, it can assist the [City] in determining the extent to which the offerors understood the [City's] requirements." *Id.* Sometimes, "the comparison of prices may point out the need for verification of bids (in sealed procurements) or negotiations (in the competitive proposals method) if the prices of the different offerors vary widely or seem unusually high (or low) compared to the ICE." *Id.*

USC's bid is only 13% lower than the City's estimate. To the extent USC's bid "varies widely or seems unusually low" compared to the City's estimate, the federal guidance suggests that the City's solution is verification of the bid, not a rejection of all bids.

4. The Attachment to the Recommendation to Reject all Bids does not appear to be Valid Authority.

The document cited by the City in support of its "10% rule" does not appear in the City's municipal code or on the City's website. To the extent that the City has any support for the attached document, it would be most helpful if it could be provided without delay. The requirement appears to constitute a "secret" specification, or a modification of the specifications in the invitation. A public entity may not reserve a right to modify the specifications. See for example, *Wester v.*

Bellote, 138 So. 7 21 (1931)); *see also AT & T Corp. v. State, Dept. of Mgmt. Services*, 201 So. 3d 852, 854 (Fla. 1st DCA 2016) (contrasting the ITB and IFB with the invitation to negotiate).

5. The EOR Estimate is Flawed.

The EOR estimate is flawed in several respects. 24 CFR 85.36(f)(1) requires that the City conduct a price analysis before receiving bids and that the "method and degree of analysis is dependent on the facts surrounding a particular procurement situation." In accordance with this requirement, the engineer must engage in an analysis surrounding the particular procurement situation. This was not done. Rather, the EOR estimate used the same round number ($1,250) for each unit in bid items 1-8. (See Engineer's Estimate of Probabale Costs [sic], Exhibit F.) The unit costs and the estimate were the same despite very different material requirements for each bid item as clearly set forth in the bid specifications. In other words, the estimate is internally inconsistent with the bid specifications. Thus, the estimate violates 24 CFR 85.36(f)(1) because it fails to account for the "particular procurement situation."

The EOR estimate is also flawed and violates the foregoing federal regulations for the following reasons: (a) the estimate was not completed before the bid; (b) the estimate does not contain a detailed cost breakdown for the overall estimate providing elements such as labor and materials of the total cost; (c) the estimate is not dated; (d) the estimate was not contained in the procurement folder; and (e) the emails and written documentation concerning or supporting the cost estimates was not contained in the procurement folder.

Once you have had an opportunity to review the enclosed, we would very much appreciate an opportunity to discuss this matter with the Office of General Counsel or other appropriate officials. We look forward to continuing to work with the City in an effort to provide the best resolution of these issues in accordance with the City's procedures.

Sincerely,

/s/Robert N. Clarke, Jr.

Robert N. Clarke, Jr.

RNC/mw

cc: Deborah Minnis
Jennifer Setzer

City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

NOTIFICATION OF RECOMMENDED BID REJECTION

April 30, 2018

United Service Connection
12058 San Jose Blvd., Suite 601
Jacksonville, FL 32223

BID# CF-0089-18 **DATE OPENED: 2018-03-21**

TITLE: ADA CURB RAMP IMPROVEMENTS WESTSIDE PART 1

REASON FOR RECOMMENDED REJECTION:
Funds for this project are to be provided by a Community Development Block Grant, which requires that bids be within 10% of the public body estimate provided by the Engineer of Record (EOR). United Service Connection is being rejected because the bid amount of $1,443,750.00 is less than the 10% allowed. All bids are being rejected and project will be re-evaluated and re-bid at later date with revised specs.

IF YOU WISH TO PROTEST THE RECOMMENDED REJECTION OF THIS BID, PLEASE RESPOND IN ACCORDANCE WITH THE CITY OF JACKSONVILLE BID PROTEST PROCEDURES. THIS ACTION IS SCHEDULED FOR THE GENERAL GOVERNMENT AWARDS COMMITTEE MEETING ON THURSDAY, **05/03/18** AT 1:00 PM. DIRECT ALL PROTEST TO THE RESPECTIVE BUYER/ANALYST, FACSIMILE NUMBER (904) 255-8837.

BUYER'S SIGNATURE: Marilyn Laudh

EXHIBIT
A

Procurement

Grantees are required to comply with all federal and local procurement and selection regulations in selecting contractors (24 CFR 570.502, 24 CFR 570.610, 24 CFR 85.35).

Federal procurement rules require that Grantees or their subrecipients must: 1) clearly articulate the goods or services being procured; 2) obtain competitive bids; 3) use written agreements; 4) document results; and 5) insure that the procured item is good quality. Procurement rules can be broken into the following categories: small purchase procedures, sealed bids, competitive proposals and non-competitive proposals.

Public Body Estimate (PBE)

The PBE must be completed, signed and dated prior to the bid date. The lowest and best bid must be within 10% of the estimate. HCDD utilizes the strictest procedure, be it federal, state or local and complies with 24 CFR PART 85.

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The Division Chief, in coordination with the Community Development Manager and HOME Program Managers, is responsible for monitoring and tracking the performance of subrecipients' time of performance to ensure that all funds are expended timely. This procedure is essential in the Division's work to adhere to HUD's Timeliness Test conducted in July of each year. (This process is explained in detail below).

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- Functional plans (for housing, land use and urban environmental design, economic development, open space and recreation, energy use and conservation, floodplain and wetlands management, transportation, utilities, historic preservation, etc.)

EXHIBIT
6

Code of Federal Regulations
Title 24. Housing and Urban Development
Subtitle B. Regulations Relating to Housing and Urban Development
Chapter V. Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Refs & Annos)
Subchapter C. Community Facilities
Part 570. Community Development Block Grants (Refs & Annos)
Subpart J. Grant Administration (Refs & Annos)

24 C.F.R. § 570.502

§ 570.502 Applicability of uniform administrative requirements.

Effective: January 6, 2016
Currentness

(a) Grantees and subrecipients shall comply with 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", except that:

(1) Section 200.305 "Payment" is modified for lump sum drawdown for financing of property rehabilitation activities, in accordance with § 570.513.

(2) Section 200.306 "Cost sharing or matching" does not apply.

(3) Section 200.307 "Program income" does not apply. Program income is governed by § 570.504.

(4) Section 200.308 "Revisions of budget and program plans" does not apply.

(5) Section 200.311 "Real property" does not apply, except as provided in § 570.200(j). Real property is governed by § 570.505.

(6) Section 200.313 "Equipment" applies, except that when the equipment is sold, the proceeds shall be program income. Equipment not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient.

(7) Section 200.333 "Retention requirements for records" applies except that:

(i) For recipients:

(A) The period shall be 4 years from the date of execution of the closeout agreement for a grant, as further described in this part;

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EXHIBIT
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C

(B) Records for individual activities subject to the reversion of assets provisions at § 570.503(b)(7) or the change of use provisions at § 570.505 must be maintained for 3 years after those provisions no longer apply to the activity;

(C) Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained for 3 years after the receivables or liabilities have been satisfied.

(ii) For subrecipients:

(A) The retention period for individual CDBG activities shall be the longer of 3 years after the expiration or termination of the subrecipient agreement under § 570.503, or 3 years after the submission of the annual performance and evaluation report, as prescribed in § 91.520 of this title, in which the specific activity is reported on for the final time;

(B) Records for individual activities subject to the reversion of assets provisions at § 570.503(b)(7) or change of use provisions at § 570.505 must be maintained for as long as those provisions continue to apply to the activity; and

(C) Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied.

(8) Section 200.343 "Closeout" applies to closeout of subrecipients.

(b) [Reserved]

Credits

[57 FR 33256, July 27, 1992; 59 FR 2738, Jan. 19, 1994; 60 FR 1916, Jan. 5, 1995; 60 FR 56915, Nov. 9, 1995; 80 FR 75937, Dec. 7, 2015]

SOURCE: 40 FR 24693, June 9, 1975; 50 FR 37525, Sept. 16, 1985; 50 FR 39091, Sept. 27, 1985; 53 FR 8058, March 11, 1988; 53 FR 31239, Aug. 17, 1988; 53 FR 34437, Sept. 6, 1988; 54 FR 31672, Aug. 1, 1989; 55 FR 18494, May 2, 1990; 56 FR 41938, Aug. 26, 1991; 56 FR 56126, Oct. 31, 1991; 56 FR 56906, Nov. 6, 1991; 57 FR 27119, June 17, 1992; 57 FR 40067, Sept. 1, 1992; 57 FR 53397, Nov. 9, 1992; 59 FR 66598, Dec. 27, 1994; 61 FR 5209, Feb. 9, 1996; 62 FR 62914, Nov. 25, 1997; 81 FR 90659, Dec. 14, 2016, unless otherwise noted.

AUTHORITY: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

Current through May 3, 2018; 83 FR 19463.

End of Document

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Code of Federal Regulations
Title 24. Housing and Urban Development
Subtitle B. Regulations Relating to Housing and Urban Development
Chapter V. Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Refs & Annos)
Subchapter C. Community Facilities
Part 570. Community Development Block Grants (Refs & Annos)
Subpart K. Other Program Requirements (Refs & Annos)

24 C.F.R. § 570.610

§ 570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.

Effective: January 6, 2016
Currentness

The recipient, its agencies or instrumentalities, and subrecipients shall comply with 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", as set forth at § 570.502.

Credits

[53 FR 41330, Oct. 21, 1988; 57 FR 33256, July 27, 1992; 59 FR 2738, Jan. 19, 1994; 60 FR 56916, Nov. 9, 1995; 80 FR 75938, Dec. 7, 2015]

SOURCE: 40 FR 24693, June 9, 1975; 50 FR 37525, Sept. 16, 1985; 50 FR 39091, Sept. 27, 1985; 53 FR 31239, Aug. 17, 1988; 53 FR 34437, Sept. 6, 1988; 53 FR 34456, Sept. 6, 1988; 53 FR 40221, Oct. 14, 1988; 54 FR 31672, Aug. 1, 1989; 55 FR 18494, May 2, 1990; 56 FR 41938, Aug. 26, 1991; 56 FR 56126, Oct. 31, 1991; 56 FR 56906, Nov. 6, 1991; 57 FR 27119, June 17, 1992; 57 FR 40067, Sept. 1, 1992; 57 FR 53397, Nov. 9, 1992; 59 FR 66598, Dec. 27, 1994; 61 FR 5209, Feb. 9, 1996; 62 FR 62914, Nov. 25, 1997; 81 FR 90659, Dec. 14, 2016, unless otherwise noted.

AUTHORITY: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

Current through May 3, 2018; 83 FR 19463.

End of Document

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Code of Federal Regulations
Title 24. Housing and Urban Development
Subtitle A. Office of the Secretary, Department of Housing and Urban Development
Part 85. Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments (Refs & Annos)
Subpart C. [Reserved] (Refs & Annos)

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ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

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Subpart A—General

§ 85.1 Purpose and scope of this part.
This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 85.2 Scope of subpart.
This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 85.3 Definitions.
As used in this part:
Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for ***grant*** and ***subgrant*** in this section and except where qualified by ***Federal***) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

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Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For non-construction grants, the SF–269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF–271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense

incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of ***grant*** in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than ***equipment*** as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. ***Termination*** does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior

period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or non-competing continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 85.4 Applicability.

(a) ***General.*** Subparts A—D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §85.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary grant program) and titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).
(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:
(i) Special Milk (section 3 of the Act), and
(ii) School Breakfast (section 4 of the Act).
(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).
(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;
(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;
(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and
(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).
(b) ***Entitlement programs.*** Entitlement programs enumerated above in §85.4(a) (3) through (8) are subject to subpart E.

§ 85.5 Effect on other issuances.
All other grants administration provisions of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §85.6.

§ 85.6 Additions and exceptions.
(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.
(b) Exceptions for classes of grants or grantees may be authorized only by OMB.
(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements
§ 85.10 Forms for applying for grants.
(a) ***Scope.***
(1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.
(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.
(b) ***Authorized forms and instructions for governmental organizations.***
(1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.
(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

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(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.
(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 85.11 State plans.
(a) ***Scope.*** The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.
(b) ***Requirements.*** A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.
(c) ***Assurances.*** In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:
(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,
(2) Repeat the assurance language in the statutes or regulations, or
(3) Develop its own language to the extent permitted by law.
(d) ***Amendments.*** A State will amend a plan whenever necessary to reflect:
(1) New or revised Federal statutes or regulations or;
(2) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 85.12 Special grant or subgrant conditions for "high-risk" grantees.
(a) A grantee or subgrantee may be considered ***high risk*** if an awarding agency determines that a grantee or subgrantee:
(1) Has a history of unsatisfactory performance, or
(2) Is not financially stable, or
(3) Has a management system which does not meet the management standards set forth in this part, or
(4) Has not conformed to terms and conditions of previous awards, or
(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.
(b) Special conditions or restrictions may include:
(1) Payment on a reimbursement basis;
(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
(3) Requiring additional, more detailed financial reports;
(4) Additional project monitoring;
(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.
(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:
(1) The nature of the special conditions/restrictions;
(2) The reason(s) for imposing them;
(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and
(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements
Financial Administration
§ 85.20 Standards for financial management systems.
(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—
(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
(b) The financial management systems of other grantees and subgrantees must meet the following standards:
(1) ***Financial reporting.*** Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
(2) ***Accounting records.*** Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
(3) ***Internal control.*** Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
(4) ***Budget control.*** Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
(5) ***Allowable cost.*** Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
(6) ***Source documentation.*** Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
(7) ***Cash management.*** Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their

subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.
(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

§ 85.21 Payment.
(a) ***Scope.*** This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.
(b) ***Basic standard.*** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.
(c) ***Advances.*** Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.
(d) ***Reimbursement.*** Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.
(e) ***Working capital advances.*** If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.
(f) ***Effect of program income, refunds, and audit recoveries on payment.***
(1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.
(g) ***Withholding payments.***
(1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—
(i) The grantee or subgrantee has failed to comply with grant award conditions or
(ii) The grantee or subgrantee is indebted to the United States.
(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with §85.43(c).
(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually

disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
(h) ***Cash depositories.***
(1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.
(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) ***Interest earned on advances.*** Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 ***et seq.***) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 85.22 Allowable costs.
(a) ***Limitation on use of funds.*** Grant funds may be used only for:
(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and
(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.
(b) ***Applicable cost principles.*** For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

§ 85.23 Period of availability of funds.
(a) ***General.*** Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.
(b) ***Liquidation of obligations.*** A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 85.24 Matching or cost sharing.
(a) ***Basic rule: Costs and contributions acceptable.*** With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:
(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.
(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.
(b) ***Qualifications and exceptions—***
(1) ***Costs borne by other Federal grant agreements.*** Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant.

This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) ***General revenue sharing.*** For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) ***Cost or contributions counted towards other Federal costs-sharing requirements.*** Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) ***Costs financed by program income.*** Costs financed by program income, as defined in §85.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in §85.25(g).)

(5) ***Services or property financed by income earned by contractors.*** Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) ***Records.*** Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) ***Special standards for third party in-kind contributions.***

(i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) ***Valuation of donated services—***

(1) ***Volunteer services.*** Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) ***Employees of other organizations.*** When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) ***Valuation of third party donated supplies and loaned equipment or space.***

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) ***Valuation of third party donated equipment, buildings, and land.*** If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) ***Awards for capital expenditures.*** If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) ***Other awards.*** If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

> (i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.
>
> (ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in §85.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) ***Valuation of grantee or subgrantee donated real property for construction/acquisition.*** If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) ***Appraisal of real property.*** In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 85.25 Program income.

(a) ***General.*** Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant

funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.
(b) ***Definition of program income.*** Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ***During the grant period*** is the time between the effective date of the award and the ending date of the award reflected in the final financial report.
(c) ***Cost of generating program income.*** If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.
(d) ***Governmental revenues.*** Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.
(e) ***Royalties.*** Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §85.34.)
(f) ***Property.*** Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§85.31 and 85.32.
(g) ***Use of program income.*** Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.
(1) ***Deduction.*** Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.
(2) ***Addition.*** When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.
(3) ***Cost sharing or matching.*** When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.
(h) ***Income after the award period.*** There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 85.26 Non-Federal audit.
(a) ***Basic rule.*** Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.
(b) ***Subgrantees.*** State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee which

expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:
(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;
(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–133 (as set forth in 24 CFR part 45), or through other means (e.g., program reviews) if the subgrantee has not had such an audit;
(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;
(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and
(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.
(c) ***Auditor selection.*** In arranging for audit services, §85.36 shall be followed.
[53 FR 8068, 8087, Mar. 11, 1988, as amended at 57 FR 33255, July 27, 1992; 62 FR 61617, Nov. 18, 1997]

Changes, Property, and Subawards
§ 85.30 Changes.
(a) ***General.*** Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.
(b) ***Relation to cost principles.*** The applicable cost principles (see §85.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.
(c) ***Budget changes—***
(1) ***Nonconstruction projects.*** Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.
(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.
(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) ***Construction projects.*** Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.
(3) ***Combined construction and non-construction projects.*** When a grant or subgrant provides funding for both construction and non-construction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from non-construction to construction or vice versa.

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(d) ***Programmatic changes.*** Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:
(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).
(2) Need to extend the period of availability of funds.
(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.
(4) Under non-construction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §85.36 but does not apply to the procurement of equipment, supplies, and general support services.
(e) ***Additional prior approval requirements.*** The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.
(f) ***Requesting prior approval.***
(1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.
(2) A request for a prior approval under the applicable Federal cost principles (see §85.22) may be made by letter.
(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 85.31 Real property.
(a) ***Title.*** Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
(b) ***Use.*** Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.
(c) ***Disposition.*** When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:
(1) ***Retention of title.*** Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
(2) ***Sale of property.*** Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or

subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.
(3) ***Transfer of title.*** Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 85.32 Equipment.
(a) ***Title.*** Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
(b) ***States.*** A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.
(c) ***Use.***
(1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.
(3) Notwithstanding the encouragement in §85.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.
(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.
(d) ***Management requirements.*** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:
(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
(4) Adequate maintenance procedures must be developed to keep the property in good condition.
(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
(e) ***Disposition.*** When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.
(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.
(f) ***Federal equipment.*** In the event a grantee or subgrantee is provided federally-owned equipment:
(1) Title will remain vested in the Federal Government.
(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.
(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.
(g) ***Right to transfer title.*** The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:
(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.
(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §85.32(e).
(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 85.33 Supplies.
(a) ***Title.*** Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.
(b) ***Disposition.*** If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 85.34 Copyrights.
The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 85.35 Subawards to debarred and suspended parties.
Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

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§ 85.36 Procurement.

(a) ***States.*** When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) ***Procurement standards.***

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

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Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.
(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) ***Competition.***
(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ***brand name*** product instead of allowing ***an equal*** product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ***brand name or equal*** description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) ***Methods of procurement to be followed.***

(1) Procurement by ***small purchase procedures.*** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by ***sealed bids*** (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §85.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

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(3) Procurement by ***competitive proposals.*** The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by ***noncompetitive proposals*** is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) ***Contracting with small and minority firms, women's business enterprise and labor surplus area firms.***

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) ***Contract cost and price.***

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) ***Awarding agency review.***

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) ***Bonding requirements.*** For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) ***A bid guarantee from each bidder equivalent to five percent of the bid price.*** The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) ***A performance bond on the part of the contractor for 100 percent of the contract price.*** A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) ***A payment bond on the part of the contractor for 100 percent of the contract price.*** A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) ***Contract provisions.*** A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)
(7) Notice of awarding agency requirements and regulations pertaining to reporting.
(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).
(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871). [53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]

§ 85.37 Subgrants.
(a) ***States.*** States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:
(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;
(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;
(3) Ensure that a provision for compliance with §85.42 is placed in every cost reimbursement subgrant; and
(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.
(b) ***All other grantees.*** All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:
(1) Ensure that every subgrant includes a provision for compliance with this part;
(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and
(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.
(c) ***Exceptions.*** By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:
(1) Section 85.10;
(2) Section 85.11;
(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in §85.21; and

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(4) Section 85.50.

Reports, Records, Retention, and Enforcement

§ 85.40 Monitoring and reporting program performance.
(a) ***Monitoring by grantees.*** Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.
(b) ***Non-construction performance reports.*** The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.
(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.
(2) Performance reports will contain, for each grant, brief information on the following:
(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.
(ii) The reasons for slippage if established objectives were not met.
(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
(3) Grantees will not be required to submit more than the original and two copies of performance reports.
(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.
(c) ***Construction performance reports.*** For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.
(d) ***Significant developments.*** Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:
(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.
(e) Federal agencies may make site visits as warranted by program needs.
(f) ***Waivers, extensions.***
(1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 85.41 Financial reporting.
(a) ***General.***
(1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:
(i) Submitting financial reports to Federal agencies, or
(ii) Requesting advances or reimbursements when letters of credit are not used.
(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.
(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decision-making purposes.
(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.
(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.
(6) Federal agencies may waive any report required by this section if not needed.
(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) ***Financial Status Report—***
(1) ***Form.*** Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all non-construction grants and for construction grants when required in accordance with §85.41(e)(2)(iii) of this section.
(2) ***Accounting basis.*** Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.
(3) ***Frequency.*** The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.
(4) ***Due date.*** When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) ***Federal Cash Transactions Report—***
(1) ***Form.***
(i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions

Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) ***Forecasts of Federal cash requirements.*** Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) ***Cash in hands of subgrantees.*** When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) ***Frequency and due date.*** Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) ***Request for advance or reimbursement—***

(1) ***Advance payments.*** Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) ***Reimbursements.*** Requests for reimbursement under non-construction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in §85.41(b)(3).

(e) ***Outlay report and request for reimbursement for construction programs—***

(1) ***Grants that support construction activities paid by reimbursement method.***

(i) Requesters for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in §85.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in §85.41(b)(3).

(2) ***Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.***

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by §85.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in §85.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in §85.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) ***Accounting basis.*** The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by §85.41(b)(2).

§ 85.42 Retention and access requirements for records.

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(a) ***Applicability.***
(1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see §85.36(i)(10).
(b) ***Length of retention period.*** (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.
(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.
(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.
(c) ***Starting date of retention period—***
(1) ***General.*** When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.
(2) ***Real property and equipment records.*** The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.
(3) ***Records for income transactions after grant or subgrant support.*** In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.
(4) ***Indirect cost rate proposals, cost allocations plans, etc.*** This paragraph applies to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) ***If submitted for negotiation.*** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) ***If not submitted for negotiation.*** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its

supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) ***Substitution of microfilm.*** Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) ***Access to records—***

(1) ***Records of grantees and subgrantees.*** The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) ***Expiration of right of access.*** The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) ***Restrictions on public access.*** The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 85.43 Enforcement.

(a) ***Remedies for noncompliance.*** If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) ***Hearings, appeals.*** In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) ***Effects of suspension and termination.*** Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are non-cancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) ***Relationship to debarment and suspension.*** The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

§ 85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.

Subpart D—After-the-Grant Requirements

§ 85.50 Closeout.
(a) ***General.*** The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.
(b) ***Reports.*** Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:
(1) ***Final performance or progress report.***
(2) ***Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).***
(3) ***Final request for payment (SF–270) (if applicable).***
(4) ***Invention disclosure (if applicable).***
(5) ***Federally-owned property report:***
In accordance with §85.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.
(c) ***Cost adjustment.*** The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.
(d) ***Cash adjustments.***
(1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.
(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 85.51 Later disallowances and adjustments.
The closeout of a grant does not affect:
(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;
(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
(c) Records retention as required in §85.42;
(d) Property management requirements in §§85.31 and 85.32; and
(e) Audit requirements in §85.26.

§ 85.52 Collection of amounts due.
(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:
(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or
(3) Other action permitted by law.
(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

CHAPTER 10. MISCELLANEOUS REQUIREMENTS

10.1 Contract Pricing and Types

This chapter includes miscellaneous procurement requirements.

A. General Guidance. A wide selection of contract types is available to PHAs to provide needed flexibility in acquiring supplies and services.

1. Contract types vary according to: (a) the degree and timing of the responsibility assumed by the contractor for the costs of performance; and (b) the amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

2. The contract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts. The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts, in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

3. Contracts resulting from sealed bidding shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment.

4. Contracts resulting from competitive proposals may be of any type or combination of types.

5. In accordance with **24 CFR 85.36(f)(4)**, the use of the following types of contracts is prohibited:
   a. **Cost-plus-percentage-of-cost.** This type of contract is prohibited because it obligates the PHA to pay all costs incurred throughout the contract, plus a commission based on the percentage of future costs. In this type of pricing arrangement, the contractor's profit increases in proportion to its costs incurred in the performance of the contract. The contractor has a clear incentive to increase costs.
   b. **Cost-plus-percentage-of-construction-cost**. The cost for individual construction-related services is determined by applying a percentage of actual construction costs as a fee, such as an A/E contract in which the fee is determined based on the total construction cost. Such an arrangement allows the possibility of the contractor designing an overly expensive construction project in order to increase profits.

EXHIBIT E

B. Selecting Contract Type. There are many factors that the Contracting Officer should consider in selecting and when appropriate (e.g., using competitive proposals), negotiating the contract type. They include:

1. Price competition. Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the PHA's interest.
2. Price analysis. Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered.
3. Cost analysis. In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the PHA provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.
4. Type and complexity of the requirement. Complex requirements, particularly those unique to the PHA, usually result in greater risk assumption by the PHA. This situation is especially true for complex development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.
5. Urgency of the requirement. If urgency is a primary factor, the PHA may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.
6. Period of performance. In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.
7. Contractor's technical capability and financial responsibility.
8. Adequacy of the contractor's accounting system. Before agreeing on a contract type other than firm-fixed-price, the Contracting Officer should ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis.
9. Concurrent contracts. If performance under the proposed contract involves concurrent operations under other contracts, the impact of

those contracts, including their pricing arrangements, should be considered.

10. Extent and nature of proposed subcontracting. If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.
11. Procurement history. Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

C. Contract Types

The following types are the most commonly used by PHAs. They are ranked in order of risk to the PHA, from lowest to highest. Other types and variations on these types may be used as appropriate in accordance with the limitations set forth in this section 10.3.

1. **Fixed-Price.** Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.
   a. **Firm fixed-price**. This contract type requires the delivery of products or services at a specified price, fixed at the time of contract award and not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. It is appropriate for use when fair and reasonable prices can be established at time of award, definite design or performance specifications are available, products are off-the-shelf or modified commercial products or services for which realistic prices can be offered, and any performance uncertainties can be identified and reasonable cost estimated in advance. Its advantages are that it encourages contractor efficiency and places total responsibility and risk on the contractor. Its disadvantages are that it lacks flexibility in pricing and performance. It is the most preferred type of contract and the most commonly used, requiring the least amount of contract administration. However, as discussed below under other types, it is not always possible to use firm fixed-price contracts.
   b. **Fixed-price with economic price adjustment**. In cases where the market for a particular supply or service is especially volatile, and the PHA needs a contract for a term greater than just an initial quantity, this contract type allows for adjustment in the contract price based upon the occurrence of specified

contingencies stated in the contract (e.g., changes in market conditions, the Consumer Price Index, or other commodity price indices that are not controlled by the contractor). The contract contains initial firm fixed prices that may be adjusted upward or downward during the performance period. The contract must contain a clause explaining how the price adjustment will be made, identifying the price index to be used, the frequency of adjustment, and any overall ceiling price. A fixed-price contract with economic price adjustment may be used when:

i. There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and,

ii. Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control.

2. **Cost-reimbursement**. Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. A cost-reimbursement contract may be used only when: the contractor's accounting system is adequate for determining costs applicable to the contract; and, appropriate surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

a. **Cost contract (no fee)**. This is a cost-reimbursement contract under which the contractor receives no fee. This type is often used when contracting with nonprofit organizations that may not receive any fee or profit.

b. **Cost-plus-fixed-fee**. This is a type of cost-reimbursement contract that provides for payment to the contractor of a negotiated fee (profit) that is fixed at the time of contract award. The fixed fee does not vary with the contract's actual costs (e.g., the contractor will not receive a greater fee for incurring less

cost), but may be adjusted as a result of changes in the work to be performed under the contract (e.g., as a result of a change order). This contract type permits contracting for efforts that might otherwise present too great a risk to contractors (e.g., there is a high degree of uncertainty in, or the ultimate costs of, accomplishing the contract's requirements). A cost-plus-fixed-fee contract presents the greatest risk to the PHA because it provides the contractor only a minimum incentive to control the costs of contract performance. Therefore, it should be used only when no other type is feasible. Like all cost-reimbursement contracts it requires a significant amount of monitoring by the PHA to ensure contractor compliance.

i. There are two forms of cost-plus-fixed-fee contracts:

(A) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (*e.g.*, a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee.

(B) The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if the Contracting Officer considers the contractor's performance to be satisfactory, the fixed fee is payable at the expiration of the agreed-upon period.

ii. Because of the differences in obligation assumed by the contractor, the completion form is preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work. The term form should not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

3. **Indefinite-delivery contracts**

a. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact

times and/or exact quantities of future deliveries are not known at the time of contract award.

i. **Definite-quantity** contracts provide for delivery of a definite quantity of specific supplies or services for a fixed period of time (e.g., one year), with deliveries or performance to be scheduled at designated locations upon order. A definite-quantity contract may be used when it can be determined in advance that:

(A) A definite quantity of supplies or services will be required during the contract period; and,

(B) The supplies or services are regularly available or will be available after a short lead time.

ii. **Requirements** contracts provide for filling *all* of the PHA's purchase requirements for the supplies or services specified in the contract during a fixed period of time. The PHA may not buy the supplies or services from another source during the period of the contract. A requirements contract may be appropriate for acquiring any supplies or services when the PHA anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that it will need during a definite period.

iii. **Indefinite-quantity** contracts provide for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period. Quantity limits may be stated in the contract as number of units or as dollar values. PHAs may use an indefinite-quantity contract when they cannot predetermine, above a specified minimum, the precise quantities of supplies or services that they will require during the contract period, and it is inadvisable to commit itself for more than a minimum quantity. PHAs should use an indefinite-quantity contract only when a recurring need is anticipated.

(A) The contract must require the PHA to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The Contracting Officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or

services, survey of potential users, or any other rational basis.

(B) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the PHA is fairly certain to order.

(C) The contract may also specify maximum or minimum quantities that the PHA may order under each task or delivery order and the maximum that it may order during a specific period of time. This ensures that the contractor knows what the potential maximum number of deliveries he/she may have to make and allows him/her to adequately prepare.

(D) The solicitation and resulting contract for an indefinite-quantity contract should:

(1) Specify the period of the contract, including the number of options and the period for which the PHA may extend the contract under each option;

(2) Specify the total minimum and maximum quantity of supplies or services the PHA will acquire under the contract. This may be expressed in units (e.g., number of items) or total dollar amount;

(3) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the PHA will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(4) State the procedures that the PHA will use in issuing orders, including the ordering media (fax, email, etc.) and whether oral orders may be placed; and,

(5) Identify the PHA personnel who are authorized to issue orders.

b. Indefinite-delivery contracts:

i. Specify the prices for the supplies or services, the period under which the PHA may place orders with

the contractor, the ordering procedures, and the contract terms and conditions that govern the orders;

ii. Provide for obtaining the supplies or services when needed by placing orders with the contractor within the time period stated in the contract (e.g., one year);

iii. May be awarded using sealed bidding or competitive proposals as appropriate. Indefinite-delivery purchase orders should not be used unless the PHA knows that multiple orders for items or services will be needed, and the total amount of all orders will not exceed the PHA's small purchase threshold; and,

iv. May use any type of pricing arrangement (e.g., fixed-price) as appropriate to the supplies and/or services being purchased.

c. Orders placed under indefinite-delivery contracts are not considered purchase orders. Since the indefinite-delivery contracts are awarded competitively, no further competition is required for individual orders placed under it.

4. **Time and materials and labor-hour**.

a. A time-and-materials contract provides for acquiring supplies or services on the basis of:

i. Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and,

ii. Materials at cost, including, if appropriate, material handling costs as part of material costs.

b. In accordance with **24 CFR 85.36(b)(10)** a time-and-materials contract may be used only when the Contracting Officer has determined that no other type of contract is suitable (i.e., it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence), and the contract includes a ceiling price that the contractor exceeds at his/her own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price.

c. A time-and-materials contract provides no positive profit incentive to the contractor to control cost or labor use. The more the contractor's labor force works, the more profit the contractor realizes. Therefore, appropriate PHA surveillance of contractor performance is required to ensure that efficient methods and effective cost controls are being used.

d. A labor-hour contract is a variation of the time-and-materials contract. The only difference is that the contractor provides only labor and no materials.

5. **Letter contract**. A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately performing services or delivering supplies while the contract terms are negotiated. A letter contract is a form of negotiated contract (i.e., not sealed bidding) and may result in any contract type (e.g., fixed-price, cost-reimbursement, etc.). It should be used only in exceptional circumstances, and is most appropriate for emergency work, or other urgent and compelling needs. The single advantage of this method is that it expedites the procurement process. The contractor may begin performance on urgent requirements before the full requirements of the contract are made final, or "definitized." The disadvantage is that it provides no incentive for cost control by the contractor, and the PHA is in a very weak bargaining position at the time the final contract is negotiated. The contractor is already performing the work, and the work is usually critical.

a. A letter contract may be used when:

i. The PHA's interests demand that the contractor be given a binding commitment so that work can start immediately; and,

ii. Negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances. Letter contracts that are subject Davis-Bacon or HUD-determined wage rate requirements shall so state, and where feasible, the applicable wage determination shall be attached.

b. When a letter contract award is based on price competition, the contracting officer should include an overall price ceiling in the letter contract.

c. Each letter contract should contain a negotiated definitization schedule including:

i. Dates for submission of the contractor's price proposal;

ii. A date for the start of negotiations; and,

iii. A target date for definitization. PHA's may establish maximum periods for negotiating final contracts (e.g., no more than 90 days after the issuance of the letter contract) in their Procurement Policies.

d. The maximum liability of the PHA under a letter contract should be the estimated amount necessary to cover the contractor's requirements for funds before definitization. PHAs should establish limits on letter contract liability in their Procurement Policies (e.g., no more than 50% of the total estimated contract price).

e. A letter contract should be used only after the Contracting Officer, or another official as designated in the PHA's Procurement Policy, determines in writing that no other contract is suitable. Letter contracts should not:

i. Commit the PHA to a definitive contract in excess of the funds available at the time the letter contract is executed;

ii. Be entered into without competition unless infeasible (see **24 CFR 85.36(c)**); or,

iii. Be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment should be subject to the same requirements and limitations as a new letter contract.

f. A letter contract is not a letter of intent. A letter contract is a bona fide obligation on the part of the PHA. A letter of intent is a non-binding statement to a contractor about an intended future contract. Since a letter of intent has no legal effect, it should not be used as a form of contract.

10.2 Contractor Responsibility

A. **General Requirements and Definition**. PHAs shall not award any contract until the prospective contractor, i.e., low responsive bidder or successful

offeror, has been determined to be responsible. A responsible bidder/offeror must:

1. Have adequate financial resources to perform the contract, or the ability to obtain them;

2. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

3. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

4. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;

5. Have a satisfactory performance record;

6. Have a satisfactory record of integrity and business ethics; and

7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

B. **Acceptable Evidence of Responsibility**

It is incumbent upon bidders/offerors to provide acceptable evidence of their ability to meet the requirements in paragraph 10.2.A(1) through 10.2(A)(3). Acceptable evidence normally consists of a commitment or explicit arrangement that will be in existence at the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, financing, personnel, or other resources.

C. **Researching Responsibility**. The Contracting Officer will need to conduct research to determine that a prospective contractor is responsible. The size and complexity of the contract, the degree of prior experience of the PHA or the Contracting Officer with the offeror, and the extent to which the PHA can cancel the contract and install a replacement vendor will all influence the extent of research required. For example, a $150,000 requirements contract for supplying appliances may require minimal research in that the vendor may be well-known. It is also the case that there are multiple alternate vendors in the event that the initial supplier were to be replaced due to non-performance. On the other hand, more research would be required of a vendor to design a new accounting software program for the agency. Only that information deemed necessary to determine the offeror's responsibility should be requested, obtained, and reviewed. Some methods include:

1. **Financial Capability**. Obtain financial information and credit bureau reports; require the offeror to provide information on and then verify their lines of credit and account balances with the financial institution officer servicing their account;

2. **Compliance with Delivery and Performance Schedules**. Request information on all other active contracts the offeror is performing and verify their status with those buyers;

3. **Performance Record**. Require offerors to submit contact information for recent contracts they have performed for other customers and contact them to ascertain the offeror's quality of performance, including timeliness of delivery/completion, quality of work, compliance with terms and conditions of the contract, and cost control, if applicable. Inquire of past customers whether or not they would contract with the offeror again and why. Research the offeror's performance history with the PHA;

4. **Integrity and Business Ethics**. Contact the offeror's previous and current customers to verify their dealings with the offeror. Check with the local Better Business Bureau, local offices of Code Compliance and Business Licenses, or other regulatory agencies for business ethics record and compliance with public policy. Verify the offeror's compliance with payments, wage rates, and affirmative action requirements with other customers and with applicable State and Federal Government offices, e.g., DOL Wage and Hour Division;

5. **Necessary Organization, Experience, Accounting and Operational Controls, and Technical Skills**. Verify experience with other customers. Request copies of any audits. Verify that necessary personnel will be available to work on the PHA's contract;

6. **Necessary Production, Construction, and Technical Equipment and Facilities**. Request evidence that the offeror has all the equipment and facilities he/she will need or the capability to obtain them. Visit the offeror's place of business or other job sites to verify equipment and facilities. Contact equipment dealers and/or facility owners from whom the offeror indicates that he/she will rent or lease equipment or space; and

7. **Eligible to Receive a PHA Contract**. Verify that the offeror has not been suspended, debarred or is under a HUD LDP (see paragraph H below).

D. **Responsible at Time of Award**. Bidders/offerors must be determined to be responsible at the time of award. For sealed bidding this means at the point where the low, responsive bidder has been determined. For the competitive proposal method, this means after the successful offeror has been selected for award. Bidders/offerors may be afforded the opportunity to provide acceptable evidence of their ability to meet the stated requirements after bid opening (sealed bidding) or contractor selection (competitive proposal method) in accordance with the PHA's written procurement policy and procedures and applicable State or local law or regulation. The Contracting Officer must clearly indicate to potential bidders/offerors the time frame in which they are required to submit evidence that they meet the above requirements.

E. **Determination of Non-Responsibility**. With the exception of a finding that a bidder/offeror is suspended, debarred or under a HUD LDP, a determination of non-responsibility will be a matter of judgment on the part of the PHA, given the preponderance of the evidence. If the facts indicate that the bidder/offeror fails to meet the requirements for responsibility, the Contracting Officer shall document the findings of fact that led him/her to make the determination (see paragraph G below).

F. **Notifying Bidders/Offerors of Non-Responsibility**. The Contracting Officer should notify low bidders or otherwise successful offerors who are determined to be non-responsible. Some States require a hearing before a bidder or offeror may be

determined to be non-responsible. The PHA should include guidance on any applicable hearing procedures in its solicitations.

G. **Documenting the Responsibility Determination**. After all research is completed, the Contracting Officer shall document the results in the procurement file. Any determination of non-responsibility must be signed by the authorized official (if not the Contracting Officer) designated in the PHA's written procurement policy and procedures. A sample checklist format is provided in **Appendix 10**.

H. **Limited Denials of Participation and Debarments and Suspensions**. PHAs should determine whether contractors have been restricted from participation in HUD or Government Services Administration (GSA) contracts.

1. **LDP.** HUD may impose an administrative sanction against a contractor known as a LDP. It is a temporary restriction on a contractor and is narrower in scope and effect than either suspension or debarment as prescribed in **24 CFR 24.700 - 24.713** and discussed below.

   Reasons that HUD may impose an LDP include irregularities in a contractor's past performance, failure to honor contractual obligations, deficiencies in ongoing construction projects, false certifications or statements, or any other cause prescribed in **24 CFR 24.305**.

   When HUD has issued an LDP, the contractor or firm becomes ineligible for participation in HUD programs (Multifamily or Public Housing) in which the violation occurred. The LDP is limited to the geographic jurisdiction of the office that imposed it. An LDP remains in effect until the causes for which it was imposed are eliminated and the action is withdrawn, or until the life of the sanction has lapsed (up to 12 months).

2. **Suspensions and Debarment**. The PHA shall not make an award to any contractor or individual who has been suspended or debarred and whose name appears on the GSA List of Parties Excluded from Procurement and Non-procurement Programs, i.e., debarred and suspended.

   Debarment is an exclusion from participation in all Federal programs for a reasonable and specified time-period commensurate with the seriousness of the violation or failure to perform on other contracts. Debarment may be imposed for violation of contract clauses, including equal employment opportunity provisions, acceptance of contingent fees, or other serious contract violations. The Secretary of Labor may also debar a contractor based on violation of the labor standards regulations.

   Suspension means a disqualification from all Federal programs for a temporary time-period because of adequate evidence that the contractor engaged in criminal, fraudulent, or other very serious misconduct. A contractor is suspended pending investigation and appropriate action. All suspensions are temporary, pending the completion of an investigation and such legal proceedings as may ensue.

3. **PHA Responsibility in LDPs, Debarment, and Suspension**. Before a contact is awarded, the PHA shall check to determine if HUD has issued an LDP or if a contractor has been debarred or suspended. A list of persons and contractors for which LDPs have been issued may be found on the Internet at: www.hud.gov/enforce. All persons or contractors that

have been suspended or debarred from Federal programs will show up on the GSA website: http://epls.arnet.gov. It is recommended that PHAs also check with their State agencies regarding debarred or suspended contractors.

Prime contractors are responsible for determining that potential subcontractors are not on any of the above lists precluding participation in a PHA project. The PHA should advise potential contractors of their responsibility to confirm in their proposals the acceptability of their subcontractors. The PHA should also advise potential contractors of their responsibility to provide evidence that a check has occurred on each proposed subcontractor before the award is made or before new subcontractors will be allowed to participate in the contract. The PHA may check the subcontractor references if they so desire. If a subcontractor is found to be under sanctions, the prime contractor must be notified that the subcontractor may not participate in the work.

4. **Enforcement**. If a PHA materially fails to comply with any term of an award whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, there are a number of enforcement actions that HUD may exercise, including those listed at **24 CFR 85.43(a)**.

10.3 Evaluating Cost and Price (For Purchases above the Federal Small Purchase Threshold)

A. **General**. For every procurement, PHAs are required to perform a cost or price analysis to determine that the price is reasonable. In competitive procurements, the force of competition is usually adequate to allow the PHA to make a price reasonableness determination based simply on a comparison of the offered prices.

1. PHAs should always compare the prices offered with the ICE. While this initial cost estimate may not be sufficient for price reasonableness, it can assist the Contracting Officer in determining the extent to which the offerors understand the PHA's requirements. Sometimes, the comparison of prices may point out the need for verification of bids (in sealed bid procurements) or negotiations (in the competitive proposals methods) if prices of the different offerors vary widely or seem unusually high (or low) compared to the ICE.

2. If adequate competition does not exist, including sole source procurements or noncompetitive proposals, the PHA must perform a cost analysis, except as provided in 10.3.B. A cost analysis is an evaluation of the separate elements that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirement, and reasonable.

3. The number of times that a PHA will need to conduct a cost analysis will be limited given that most purchases will be of a commercial nature and based on adequate competition.

B. **Alternative Methods of Determining that a Price is Reasonable (Other than Cost Analysis)**. A comparison of proposed prices received in response to the solicitation to each other is generally sufficient to establish price reasonableness,

assuming a sufficient number of competitive offers are received to constitute competitive pricing from the marketplace. If, after appropriate solicitation efforts, the PHA does not receive an adequate number of responses, the PHA may use one of the following alternative methods of establishing price reasonableness without having to conduct a formal cost analysis. In all such cases, the PHA should appropriately support and document its actions in the procurement file.

1. Comparison to prior proposed prices and contract prices with current proposed prices for the same or similar items/services. The PHA should factor in any market changes, e.g., commodity price changes or inflation, since the last time the item or service was purchased.

2. In comparison to competitive price lists, published catalog or market prices of commodities and products, similar indices and discount or rebate arrangements. The Contracting Officer should analyze the offered price in terms of its commerciality. This involves examining any catalog used by the contractor to ensure that catalog prices are bona fide prices charged to commercial customers. Any discounts offered to commercial customers should be offered to the PHA; however, consideration must be given to differing terms and conditions of commercial contracts as compared with public contracts. There may be justification for paying more than the catalog or market price if the PHA's contracts demand more of the contractor (such as services, warranties, etc.) than do those of commercial customers.

   In some cases, there may be no catalog prices, but the offered price may qualify as a market price, meaning a price paid by buyers and sellers free to bargain. As with a catalog price, a market price should be verified independently before it is accepted as reasonable. The bidder should be asked to provide evidence of recent sales at the market price to the general public or provide a justification for not charging the PHA the same price or better. The volume of sales should be significant compared to the PHA's procurement to ensure that commercial sales are sufficient to establish a bona fide catalog or market price. The goal should be to ensure that the PHA does not pay more than other buyers, particularly commercial customers, normally pay for the same item.

3. Professional estimate, either one prepared by the PHA or outside party. The level of analysis should be commensurate with the extent and complexity of the procurement.

C. **Situations Requiring a Cost Analysis**. A cost analysis must be conducted if one or more of the following conditions apply:

1. All sole source and non competitive proposals. In noncompetitive situations, no incentive exists for an offeror to submit a low price, and no price competition exists for determining the reasonableness of the price.

2. If, after soliciting bids/proposals, the PHA receives only one bid/proposal that it finds unreasonable and decides to cancel the solicitation and negotiate a contract price with the sole bidder

3. If, under sealed bidding or competitive proposals, a sufficient number of bids were not received and the PHA cannot establish price reasonableness through alternative means.

4. If, under competitive proposals, the PHA requested that bidders provide separate elements of their costs, e.g., labor, materials, overhead, profit, etc. (Note: it will not be necessary in most competitive procurements to ask for bidders to submit separate elements of their costs. For example, if a PHA is soliciting property management services, the PHA should not need to request a break-out of costs since one can generally evaluate the reasonableness of management fees without such break-down.)

5. When there is a contract modification. When negotiating a modification to any contract (even if the basic contract was awarded competitively through sealed bidding) that changes the scope of work previously authorized and impacts the price or estimated cost, the PHA must use cost analysis to arrive at a reasonable cost. The only exception to this rule is a contract modification based on pricing terms already established in the contract document, e.g., exercising an option to buy additional items at preset prices. It is important to note that changes in a contract's scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.

6. When making contract termination payments. When terminating a contract of any type (fixed-price or cost-reimbursement) for convenience, or terminating a cost-reimbursement contract for cause, the PHA must use cost analysis - and the appropriate cost principles - to negotiate the final amount of the termination settlement.

7. When awarding any construction contracts that were obtained through means other than sealed bidding. Construction contracts awarded using any method other than sealed bidding and modifications to construction contracts require cost analysis.

D. **Cost Analysis Technologies**. Where a formal cost analysis is required, PHAs should follow the instructions in this section. As indicated, the number of instances where a PHA will be required to conduct a formal cost analysis will be limited.

1. **Commercial Yardsticks**. Where available, a PHA may use commercial yardsticks in lieu of a formal cost analysis. Since the overall purpose of a cost analysis is to settle on total prices that are fair and reasonable, these yardsticks provide a measure of that overall price reasonableness. The following examples illustrate this point.

   a. A PHA is negotiating A/E fees with the architect for additional work pursuant to the changes clause in the contract. The PHA would not need to request that the A/E firm break out its hourly fees in terms of profit, overhead, etc., provided that the overall hourly fee was reasonable; vis-à-vis fees normally charged in that community.

   b. A PHA has a 6-unit scattered site project that is adjacent to its HOPE VI development. The HOPE VI development is operated by a private management company. The PHA determines that it is in the best interest

of the PHA that the HOPE VI development and the scattered site project be managed jointly and is negotiating a sole source procurement with the HOPE VI management company. The PHA would not need to request that the management company break out its proposed management fee in terms of profit, overhead, etc., provided that the overall management fee was reasonable vis-à-vis fees normally charged in that community.

c. The PHA has a security guard contract for its high-rise properties. The rates charged are $14/hour for non-armed guards. Because of a recent rise in security incidents, the agency is negotiating a change order to increase the coverage under the contract. The PHA would not need to request that the security company break out its proposed cost fee in terms of profit, overhead, etc., provided that the overall hourly rate was reasonable vis-à-vis rates normally charged in that community.

2. **Level of Detail and Analysis**. The level of detail and complexity of the cost analysis should be commensurate with the dollar value and complexity of the contract. For example, in a construction change order proposal for $30,000, where the PHA's changes to the specifications only result in added labor hours for three skill categories, and the wage rates are at the Davis-Bacon wages, the PHA's cost analysis may be limited to determining the reasonableness of the number of hours proposed. If, however, the change order proposal was for $250,000 and included added material, new subcontracts, and other items, the PHA should evaluate whether the costs proposed are allowable, allocable, and reasonable, using the more detailed techniques described below.

3. **Conducting a Cost Analysis**. When conducting a cost analysis, PHAs should generally proceed in accordance with the following (see also **Appendix 12** for a guideline).

a. Verify the cost and pricing information submitted and evaluate the following:

i. The necessity for, and reasonableness of, proposed costs, including allowances for contingencies. Proposed costs must meet three critical tests. The costs must be:

- *Allowable*. The applicable cost principles (see discussion below) will usually state whether a type of cost is allowable or not.

- *Allocable*. This means that the costs are logically related to or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract.

- *Reasonable*. This term is generally defined as what a prudent business would pay in a competitive marketplace. A

cost can be allowable, allocable and still not be what a prudent businessperson would pay.

ii. The projection of the contractor's cost trends. Are his/her costs likely to increase or decrease?

iii. The assessment of proposed direct cost elements by a technical expert, e.g., engineer, architect, etc., to determine their necessity to perform the contract and reasonableness, e.g., in comparison to market rates.

iv. The application of audited or pre-negotiated, e.g., by the Federal Government, indirect cost, e.g., overhead rates, labor and fringe benefit rates, or other factors.

v. The effect of the contractor's current practices on future costs. Does the contractor have a track record of containing costs (completing contracts at or "under cost")? Does he/she overrun costs?

b. Compare costs proposed by the offeror with:

i. Actual costs previously incurred by the same offeror. If it is a repetitive type of work or service, how much has it cost in the past? Apply any appropriate inflation factors for past work.

ii. Costs proposed by other offerors. This comparison may point out the need for negotiations if prices of the different offerors vary widely or seem unusually high (or low) compared to the ICE.

iii. Previous cost estimates from the offeror or other offerors for the same or similar items.

iv. The methods proposed by the offeror with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed and the work required, and are they cost efficient?).

v. The PHA's ICE.

c. Verify that the offeror's cost submissions comply with the appropriate set of cost principles.

i. When performing a cost analysis, PHAs shall use the applicable set of cost principles, which have been issued by the Federal Government, to determine the allowability of proposed costs. (Note that cost principles are not used when performing a price analysis.) These cost principles set the standards for the allowability of a wide range of costs (e.g., salaries, travel, advertising, etc.). Each set applies to contracts with a specific

group or type of organizations, so one set will not work for all contracts.

ii. The cost principles and the type of contractor entity to which they apply are as follows:

- OMB Circular A-87, for contracts with State, local or Indian tribal governments.
- OMB Circular A-122 for contracts with most non-profit organizations.
- OMB Circular A-21 for educational institutions.
- **FAR 48 CFR Chapter 1, Subpart 31.2** for profit-making entities (e.g., commercial business concerns) and certain nonprofit organizations listed in Attachment C of OMB Circular A-122.

E. Documentation. With respect to price reasonableness, the procurement file should be documented to support the actions taken. In the case of sealed bids where there was adequate competition, no additional documentation is required in that the bid tabulation sheet, or equivalent, will serve as the test of price reasonableness. Similarly, in the case of competitive proposals where (1) there was adequate competition, (2) the scope of work was not complex (easy to evaluate competing bids), and (3) the PHA did not ask the vendor to break out elements of costs separately, no additional documentation is required for price reasonableness other than the comparison of prices offered. However, documentation is required to demonstrate price reasonableness, including any cost analyses, whenever (1) adequate competition did not exist, (2) adequate competition existed but the PHA received only one bid/proposal, or (3) the price obtained varied significantly from the ICE, in which case the Contracting Officer should notate/explain the reasons for the difference, e.g., poor estimate, etc.

F. Audit.

1. When cost analysis is required, and the usual means of analysis (e.g., comparison historical cost data) are insufficient, the PHA may need to audit or review the contractor's/offeror's financial records. Such a review should be limited to the needs of the immediate procurement action (new contract award, modification, etc.) and not be overly broad in scope or intrusive. The audit should provide an independent verification that the costs proposed by the contractor are legitimate. The PHA may conduct the audit using its own employees, obtain the services of other governmental agencies to perform the audit, or contract with a private firm for audit services.

2. The audit should examine each element of cost relevant to the procurement action, indicating whether it should be accepted, questioned, or further documented. The audit should also analyze the contractor's accounting system to ensure that it is adequate to properly allocate costs in accordance with the applicable cost principles, and in the case of new contract awards or significant modifications, will permit timely development of all necessary cost data in the form required by the contract type contemplated.

3. Audit reports should always be written and maintained in the contract file.

4. The Contracting Officer's cost analysis shall document how and the degree to which the audit results were relied upon.

5. In accordance with **24 CFR 85.36(i)(10)**, contractors (i.e., firms under contract to the PHA) may not deny access to their records for the purpose of audits. A competing offeror's denial of access may disqualify it from contract award. In the case of competitive proposals, offerors may withdraw their offer, unless they have been notified that they have been selected for award. Then it is up to the PHA's discretion to permit the withdrawal. In the case of a single bid received under the sealed bidding method (the most likely scenario under which cost analysis would be needed), the bidder may not withdraw his/her bid once it has been opened. The Contracting Officer s should seek advice from legal counsel when a contractor or offeror denies access to records.

10.4 Protests (24 CFR 85.36(b)(12))

Disagreements over the award of a PHA contract, referred to as protests, may occasionally arise between the PHA and an offeror. Usually, the protestor asserts that he/she should have received the contract award and alleges that the PHA did not conduct the competition appropriately. (Note: While protests are commonly referred to as "bid protests," any type of contract award, including small purchase, competitive proposal, or sealed bid, may be protested by an unsuccessful offeror.) For small purchase procedures see Chapter 5.

A. **Responsibility**. PHAs, in accordance with sound business judgment, are responsible for the settlement of protests arising from the procurement process.

B. **Written Protest Procedures**. Providing a formal, objective means for offerors to receive an unbiased hearing of their concerns is critical to preserving the integrity and confidence in the PHA's procurement operations. Therefore, PHAs shall have written procedures for handling and resolving protests against their contract awards. These may be

included in the PHA's procurement policy. The procedures should include:

1. **Designation of Protest Officials**. The procedure should identify:

   a. The PHA employee responsible for receipt of protests (e.g. Contracting Officer), This information should be included in written solicitations;

   b. The PHA employee or a designee (e.g., an independent third party who can render an impartial opinion) who will decide the protest; and

   c. The official or third party who will hear any appeal of the initial protest decision.

2. **Requirement for written protests**. Protestors should be required to submit protests in writing, clearly stating the basis for their protest. Protests should include, at a minimum, the following information:

   a. Name, address, and phone number(s) of the protestor;

   b. Solicitation number and project title;

   c. A detailed statement of the basis for the protest;

   d. Supporting evidence or documents to substantiate any arguments; and

   e. The form of relief requested (e.g., reconsideration of their offer).

3. **Submission Time Period**. The procedure shall state the time period during which a protest must be submitted. Generally, the time period should begin on the date that the protestor has knowledge, or may be presumed to have knowledge, of the basis for his/her protest (e.g., the date the solicitation was issued, or the date he/she receives notification from the PHA that his/her proposal did not win). The protest submission period must be stated in solicitations. Protests against the terms of a solicitation should be considered late if submitted after the due date for offers.

4. **Remedial Action**. The PHA's procedures shall provide remedies when a protest is decided in favor of the protestor, and the PHA must take appropriate action in accordance with those procedures.

For example, if the contract has not been awarded, the PHA may cancel or revised the solicitation or proposed contract award, or if the contract has been awarded, the contract may be terminated for convenience and awarded to the protestor, or the procurement may be canceled and offers resolicited.

5. **Emergencies or Unusual and Compelling Circumstances.** PHA protest procedures should provide for allowing contracts to remain in place despite a successful protest in cases of emergency or unusual and compelling need for the supplies or services. However, if the PHA determines, based on compelling circumstances such as an emergency or serious disruption of the PHA's operations, that termination or re-solicitation would not be in the best interest of the PHA, the PHA may allow the award to stand and pay the successful protestor costs associated with preparing the bid along with the cost of filing and pursuing the protest and other damages determined.

6. **Denials.** The PHA's protest procedures shall require the Contracting Officer to notify the protestor in writing of the PHA's decision and state the basis for the denial. The notification shall apprise the protestor of any appeal rights in accordance with the PHA's protest procedures.

7. **Appeal Procedures.** The PHA's protest procedures shall provide for hearing appeals by unsuccessful protestors including, but not limited to: requirements for written appeals, designation of appeal official(s) and timeframes for submitting and resolving appeals. Appeals should contain a statement of the factual and legal grounds on which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered.

C. **Documentation**. The Contracting Officer shall fully document the protest decision in writing in the contract file. The PHAs protest procedures should describe the requirements for such documentation.

D. **Informal Resolution Processes.** PHAs are encouraged to resolve potential and actual protests outside of the formal protest process or litigation (e.g., through mediation).

E. **HUD Review 24 CFR 85.36(b)(12)(i) & (ii).** Review by HUD of a protest will be limited to:

1. Violations of Federal law or regulations. The protest should cite the specific Federal or HUD regulation that has been violated. Violations of State or local laws should be referred to the State or local entity having jurisdiction over such matters.

2. Violation of the PHA's protest procedures for failure to review a complaint or protest. The PHA shall submit a copy of the protest to the HUD Field Office having jurisdiction over the PHA.

HUD will refer any protests other than those specified above back to the PHA for action.

10.5 Mandatory Contract Clauses (For purchases above the Federal Small Purchase Threshold)

A. **Mandatory Requirements for Construction/Development Contracts greater than $100,000**. PHAs must incorporate the clauses contained in form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision.

B. **Mandatory Requirements for Non-Construction Contracts (without maintenance work) greater than $100,000.** PHAs must incorporate the clauses contained in Section I of form HUD-5370-C, General Conditions for Non-Construction Contracts.

C. **Mandatory Requirements for Maintenance Contracts (including non-routine maintenance work) greater than $100,000.** PHAs must incorporate the clauses contained in Sections I and II of form HUD-5370-C, General Conditions for Non-Construction Contracts.

D. **Acceptable Methods of Incorporation**. PHAs may utilize any one or any combination of the following methods to incorporate mandatory clauses and applicable wage decisions into bid specifications and contracts. PHAs may:

1. Attach the HUD form(s), and/or wage decisions, as printed;

2. Incorporate the clauses/text of the applicable HUD form and wage decision into other documents (e.g., into the PHA's own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference (see paragraph 3, below).

3. Incorporate the clauses or HUD forms and/or any applicable Davis-Bacon or HUD wage decision by reference. The reference must be specific as to the exact clauses or form(s) that are incorporated, and where the clauses or forms(s) may be accessed or obtained (e.g., HUDClips, PHA web site). A Davis-Bacon wage decision (applicable to construction/development work) may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the wage decision. HUD wage decisions (applicable to maintenance work) are not available at HUD's web site; however, a PHA may post any applicable HUD wage decision to its own web site and reference that site. PHAs must provide hard-copies of any referenced clauses, forms, and/or wage decisions on request.

10.6 Prohibited Clauses-Project Labor Agreements. HUD regulations at **24 CFR 5.108** implement Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on

Federal and Federally Funded Construction Projects. Under this regulation, to the extent permitted by law, the bid specifications, project agreements, or other controlling documents for a constructions contract awarded by a HUD grantee or recipient of financial assistance for a construction project (or a construction manager acting on their behalf) shall not:

(1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or

(2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors, for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project.

Accordingly, documents pertaining to a construction contract awarded by a PHA or other recipient of HUD financial assistance shall not contain the above-prohibited provisions. HUD may exempt a particular construction project or contract from these requirements in special circumstances specified in Section 5.108. Contractors and subcontractors are not prohibited from voluntarily entering into project labor agreements.

10.7 Performance Standards

It is possible to use performance, delivery, or cost incentives to motivate the contractor to achieve realistic, measurable targets set forth in the specification, purchase description, or statement of work. Performance standards may be used to determine the degree to which the desired results are achieved. Performance incentives increase the efficiency of contractor performance. For example, there could be a monetary bonus for early delivery. Cost incentives are used to motivate the contractor to manage costs effectively, but cost incentives should not be used if a large number of technical changes in the project are expected. As for all contracts, PHA personnel should closely monitor contractor performance.

10.8 Use of Options

A. **General**. In many cases, the PHA may have a recurring need for specific supplies or services. One method of obtaining firm commitments from contractors for additional quantities or longer time-periods is to include an option clause in the contract. The advantage of awarding a contract with options is that it gives the PHA a continued source of supply or services under contract at known prices.

B. **Definition**. The option to extend the term of the contract or to order additional supplies or services is the unilateral right of the PHA. The additional supplies or services are ordered at the prices specified in the original contract. A clause that allows an option to be exercised by the contractor is not a legitimate option clause.

C. **Limitations.**

1. **Price**. The option to extend the term of the contract or to order additional quantities may only be exercised if the contract contained an options clause and if a price for the additional supplies or services was included. An unpriced option is considered a new procurement and, therefore, may not be used. In the case of a cost-reimbursement contract, an estimated cost for the option periods or additional quantities must be negotiated and included in the contract award; otherwise, the option will need to be treated either as a change order or a new contract.

2. **Time and Quantity**. Contracts shall not exceed a period of five years, including options for renewal or extension. (For PHAs still operating under the "old" ACC – form HUDs-53010 and 53011 – the maximum contract term is two years.) Contracts, other than energy performance contracts, with terms, plus extensions, that exceed a total of five years are viewed as restrictive of competition and in violation of **24 CFR 85.36(c)**. A Field Office may approve contracts in excess of five years if it determines there is no practical alternative. Energy performance contracts may be for a period not to exceed 20 years in accordance with **24 CFR Part 990** and PIH Notice 2006-6. A PHA must also follow its own procurement policy and any applicable local or State laws and regulations. There must be a finite period for a contract, including all options, and a specific limit on the total quantity or maximum value of items to be purchased under an option.

3. **Option to Extend.**

   a. Any contract containing options must specify the timeframe within which the option to extend the term of the contract must be exercised.

   b. If the PHA decides to include options in a solicitation, the pricing of the options should be evaluated as part of the overall contract award.

   c. Contractors should be notified of the PHA's likely intention to exercise the option to extend the term of the contract approximately 90 days before the expiration date of the contract. This notice does not obligate the PHA to extend the contract; however, it allows PHA

staff time to assess the need for and advisability of extending the contract. It also makes the contractor aware of the potential extension.

d. The Contracting Officer should notify the contractor at least 30 days before the contract expiration date of the specific intention to exercise the option, and then issue a formal modification extending the contract.

e. Options may not be exercised after the term of the contract has expired; technically, there is no longer a legal and binding contract to extend.

D. **Exercising Options**. Before exercising an option, the PHA should document the contract file with a written determination. At least the following items should be included:

1. Fund availability;
2. Statement that the option was included in and evaluated as part of the basic contract;
3. A brief review of market prices to justify price reasonableness, indicating whether the option is still economical for the PHA; and
4. Any other factors that support the PHA's decision to exercise the option. For example, the PHA avoids the cost of a new procurement and ensures continuity in service.

10.9 Federal Labor Standards and Wage Rates - Construction

A. **General**. All laborers and mechanics (including apprentices and other workers trained by PHAs, Resident Management Corporations (RMCs), or other contractors under HUD's "Step-Up" or similarly approved training initiatives) involved in construction contracts in excess of $2,000 must be paid wages in accordance with Federal labor standards issued pursuant to the Davis-Bacon Act by the Department of Labor (DOL). In addition, the overtime requirements of the Contract Work Hours and Safety Standards Act are applicable to construction contracts in excess of $100,000. See, also, DOL regulations at **29 CFR Parts 1, 3 and 5**. Additional information about labor standards administration and enforcement is contained in HUD Handbook 1344.1, REV 1, Chg 1.

B. **Solicitations and Contracts.** Solicitations (e.g., Invitations for Bids) and contracts subject to Davis-Bacon wage requirements must contain the applicable wage decision and labor standards provisions. Davis-Bacon Wage Decisions can be obtained at no charge from a DOL-approved web site at: www.wdol.gov

C. **Reporting**. As provided by DOL regulations (**29 CFR Parts 3 and 5**), each construction employer (the contractor and any/all subcontractors) shall submit a payroll report and statement of compliance to the PHA for each week during which work is performed under the contract. Such reports may be submitted on the DOL Payroll Form (WH-347), which includes on its reverse side the required Statement of Compliance. These forms, WH-347 and instructions, may be obtained from HUD's Labor Relations field staff and are also available in "fillable" Portable Document Format (PDF) on-line through HUDClips or directory at the DOL web site at this address: www.dol.gov/esa/programs/dbra/forms.htm

Employers are not required to use the form WH-347 and may substitute other payroll formats, including computer-generated forms, *provided* that all of the required information and the exact language of the Statement of Compliance (reverse side of the WH-347) is included.

D. **Compliance.** The contractor and any/all subcontractors are responsible, on no less than a weekly basis, for paying not less than the applicable wage rates to all laborers and mechanics in their employ and engaged in work under the contract. The contractor is responsible for its own full compliance, and for the full compliance of any/all subcontractors, with all wage, overtime and reporting requirements included in the contract.

E. **Enforcement**. The PHA is responsible for the administration and enforcement of labor standards requirements as provided in HUD Handbook 1344.1, REV 1, Chg 1 and as required by DOL regulations applicable to Davis-Bacon covered work (**29 CFR Part 5**). These activities include:

1. **Posting Wage Rates**. The PHA must ensure that a copy of the applicable Davis-Bacon wage decision and the DOL poster *Notice to All Employees* (WH-1321) are displayed at the job site in a place accessible to all laborers and mechanics and placed in an area that is protected from inclement weather. The WH-1321 poster is available through HUDClips or directory at DOL's web site at: www.dol.gov/esa/programs/dbra/forms.htm

2. **On-site Interviews**. The PHA is responsible for conducting interviews with the laborers and mechanics on the jobsite to determine if the work performed and wages received are consistent with the job classifications and wage rates contained in the applicable wage determination and the classifications and wages reported by the employer on certified payrolls. On-site interviews are documented on form HUD-11, Record of Employee Interview, which can be found at HUDClips.

3. **Certified Payroll Review**. The PHA must review the certified payroll reports submitted by the contractor for itself and any subcontractors to ensure that all laborers and mechanics are classified and paid in accordance

with the applicable wage determination and must compare information collected during on-site interviews to ensure consistency with such interview data. Any discrepancies found must be corrected and wage restitution must be required wherever underpayments are disclosed.

F. Recordkeeping. The PHA shall retain all payroll reports and statements of compliance for three years from the date of contract completion and acceptance by the PHA, or from the date of resolution of any standards issues outstanding at contract completion.

10.10 Federal Labor Standards and Wage Rates - Maintenance

A. General. All maintenance laborers and mechanics employed under contracts in excess of $2,000 for the operation of public housing must be paid no less than prevailing wages determined or adopted by HUD. In addition, the overtime requirements of the Contract Work Hours and Safety Standards Act are applicable to maintenance contracts in excess of $100,000.

B. **Employment of apprentices or trainees**. PHAs, RMCs, or other contractors on work subject to HUD-determined wage rates may employ apprentices or trainees. Apprentices and trainees may be compensated at less than the prevailing wage rate for their craft, provided that they are individually registered in an apprenticeship or trainee program that has been approved by HUD, the DOL's Bureau of Apprenticeship and Training (BAT), or a BAT-recognized state apprenticeship agency. PHAs, RMCs, or other contractors who wish to discuss the development of such training programs may contact HUD Labor Relations Staff for assistance. Unless otherwise directed, RMCs and other contractors should submit all requests to develop approved training/apprenticeship programs and proposed program descriptions to the HUD Labor Relations field staff with jurisdiction over the PHA.

C. **Exclusions for professional service contracts**. Contracts for certain professional services are excluded from coverage by HUD-determined (or HUD-adopted) prevailing wage rates. These exclusions include: Periodic inspections or testing of equipment without repairs; testing for lead-based paint; warranty inspections; installation, service or maintenance of leased equipment, fixtures or appliances; and installation, inspections, maintenance or service on equipment or fixtures which are owned by a utility. Examples include, but are not limited to, local code or performance inspections of elevators or escalators, gas lines or equipment, or fire hydrants or water lines; inspections or routine servicing of fire extinguishers, smoke detectors, security systems, boilers, heating systems, water heaters, air conditioners, water testing or treatment; soil testing or treatment; energy use or conservation analyses; routine garbage removal; and pest control (without attendant repairs).

D. **Solicitations and Contracts.** Solicitations (e.g., Invitations for Bids) and contracts for all maintenance services subject to HUD wage rates must contain the applicable HUD wage decision and labor standards provisions.

1. HUD wage decisions are obtained from the HUD Labor Relations staff. A list of the Labor Relations staff, their contact information, and the jurisdictions they cover can also be found at the HUD web site: www.hud.gov/offices/olr

2. For all maintenance contracts of more than $2,000, but less than the Federal small purchase threshold, PHAs should use the clauses found in Table 5.1 and the clauses in Section II of form HUD-5370-C. For all maintenance contracts of more than the Federal small purchase threshold, PHAs should use the clauses in Sections I and II of form HUD-5370-C.

E. **Reporting**. Unlike construction contracts subject to Davis-Bacon wage provisions, maintenance contracts subject to HUD-determined wage rates do *not* require the submission of payroll reports. Contractors and subcontractors are still required to maintain payroll records and must make such records available to the PHA and/or to HUD, on request (see Labor Relations Letter No. LR 2004-01).

F. **Compliance**. The contractor and any/all subcontractors are responsible, on no less than a *semi-monthly* basis, for paying not less than the applicable wage rates to all maintenance laborers and mechanics in their employ and engaged in work under the contract. The contractor is responsible for its own full compliance, and for the full compliance of any/all subcontractors, with all wage, overtime and record keeping requirements included in the contract.

G. **Enforcement**. The PHA is responsible for the administration and enforcement of labor standards requirements as provided in Labor Relations Letter LR-2004-01. These activities include:

1. **Posting Wage Rates**. The PHA must ensure that a copy of the applicable HUD wage decision is displayed at the job site in a place accessible to all laborers and mechanics and placed in an area that is protected from inclement weather.

2. **On-site Interviews**. The PHA is responsible for conducting interviews with the laborers and mechanics on the jobsite to determine if the work performed and wages received are consistent with the job classifications and wage rates contained in the applicable wage determination and the classifications and wages reported by the employer on certified payrolls. On-site interviews are documented on form HUD-11, Record of Employee Interview, which can be found at HUDClips.

3. **Enforcement**. The PHA must perform contractor compliance monitoring with such frequency and depth as appropriate (based upon the scope and duration of the contract involved) to ensure that all laborers and mechanics are paid no less than the HUD prevailing wage rate for the type of work they perform.

H. Recordkeeping. The PHA shall retain all compliance monitoring records, including employee interview records, for three years from the date of contract completion and acceptance by the PHA, or from the date of resolution of any labor standards issues outstanding at contract completion.

10.11 Guidance on Federal Labor Standards Requirements

Additional guidance on Federal labor standards is available on the Office of Labor Relations web site at: www.hud.gov/offices/olr

This web site offers the latest in HUD policy guidance and instructional materials regarding labor standards, including two guides concerning Davis-Bacon, *Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies* and *A Contractor's Guide to Prevailing Wage Requirements*, and Labor Relations Letters. The web site also includes HUD's Regional and Field Office Labor Relations Staff as well as links to other related web sites.

10.12 Procurement of Recovered Materials

PHAs must give preference to EPA-listed recovered materials in their own procurement practices, in accordance with the provisions in Section 6002 of the Solid Waste Disposal Act. See EPA regulations in **40 CFR Part 247**. Required language relating to procurement of recovered materials is included with the mandatory contract clauses/forms.

ADA CURB RAMP IMPROVEMENTS
WESTSIDE - PART 1

ENGINEERS ESTIMATE OF PROBABALE COST

BASE BID

UNIT PRICE SCHEDULE

Bid Item No.	Spec. Section	Description	Unit	Estimated Quantity	Unit Cost	Total Cost
1	31.21	FDOT CR-A CURB RAMP	EA	2	$ 1,250.00	$ 2,500.00
2	31.21	FDOT CR-C CURB RAMP	EA	13	$ 1,250.00	$ 16,250.00
3	31.21	FDOT CR-D CURB RAMP	EA	8	$ 1,250.00	$ 10,000.00
4	31.21	FDOT CR-E CURB RAMP	EA	884	$ 1,250.00	$ 1,105,000.00
5	31.21	FDOT CR-F CURB RAMP	EA	80	$ 1,250.00	$ 100,000.00
6	31.21	FDOT CR-G CURB RAMP	EA	17	$ 1,250.00	$ 21,250.00
7	31.21	FDOT CR-H CURB RAMP	EA	4	$ 1,250.00	$ 5,000.00
8	31.21	FDOT CR-L CURB RAMP	EA	17	$ 1,250.00	$ 21,250.00
9	31.22	DETECTABLE WARNING INSTALLATION ON EXISTING RAMP	SF	1600	$ 30.00	$ 48,000.00
10	31.23	GRIND TRIP HAZARD ON EXISTING RAMP	EA	36	$ 175.00	$ 6,300.00
11	31.24	REMOVE EXISTING CURB RAMP	EA	21	$ 500.00	$ 10,500.00
12	31.25	PAVER CURB RAMP RECONSTRUCTION (UPCHARGE) (CONTINGENCY)	EA	105	$ 250.00	$ 26,250.00
13	31.26	A-3 FILL (CONTINGENCY)	CY	75	$ 15.00	$ 1,125.00
14	31.27	OVEREXCAVATION (CONTINGENCY)	CY	75	$ 12.50	$ 937.50
15	31.28	PAVER DETECTABLE WARNING INSTALLATION (CONTINGENCY)	SF	150	$ 15.00	$ 2,250.00
16	31.29	SIDEWALK REMOVAL (CONTINGENCY)	SY	2250	$ 14.50	$ 32,625.00
17	31.30	SIDEWALK REMOVAL (ADDITIONAL 2" OF THICKNESS) (CONTINGENCY)	SF	750	$ 2.50	$ 1,875.00
18	31.31	SIDEWALK (4" THICK) (CONTINGENCY)	SY	2250	$ 37.50	$ 84,375.00
19	31.32	SIDEWALK (ADDITIONAL 2" OF THICKNESS) (CONTINGENCY)	SF	750	$ 7.50	$ 5,625.00
20	31.33	STAMPED CONCRETE SIDEWALK (CONTINGENCY)	SY	2500	$ 47.50	$ 118,750.00
21	31.34	EXISTING PAVER RECONSTRUCTION (CONTINGENCY)	SF	500	$ 15.00	$ 7,500.00
22	31.35	REMOVE AND REPLACE CURB AND GUTTER (CONTINGENCY)	LF	750	$ 17.50	$ 13,125.00
23	31.36	RELOCATE EXISTING SIGN AND SIGN POST (CONTINGENCY)	EA	10	$ 125.00	$ 1,250.00
24	31.36	NEW SIGN AND SIGN POST (CONTINGENCY)	EA	5	$ 275.00	$ 1,375.00
25	31.37	ASPHALT REPAIR/REPLACEMENT (CONTINGENCY)	TN	75	$ 150.00	$ 11,250.00
26	31.38	ROADWAY STRIPING (PAINTED) (CONTINGENCY)	SF	500	$ 1.00	$ 500.00
27	31.39	LANSCAPING REMOVAL AND REPLACEMENT (CONTINGENCY)	SF	1000	$ 5.00	$ 5,000.00
					CONSTRUCTION TOTAL	$ 1,659,862.50

BASE BID TOTAL (ITEM NOS. 1-27) $ 1,659,862.50

ENGINEER OF RECORD SIGNATURE

EXHIBIT
F