

Requirements For Approved Construction Projects

Ninth Edition
April 2000

U.S. Department of Commerce
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Sections

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**REQUIREMENTS FOR APPROVED CONSTRUCTION PROJECTS
NINTH EDITION**

April 2000

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FOREWORD

The technology and communications advances of the last decade have created a globally competitive environment with opportunities for American goods and services. At the beginning of a new century, the United States economy is a thriving marketplace characterized by continued prosperity and growth.

For every successful community, however, the Nation has at least one or multiple locations overcome by economic need or distress, areas that will experience further decline without the implementation of technology-led approaches that create sustainable, new market and/or liveable communities with the capacity for world success.

The Economic Development Administration (EDA) provides meaningful assistance generally on a cost-shared basis to economically-challenged communities. Through a broad range of flexible economic development tools, EDA promotes local partnerships for job creation and economic growth.

The Public Works Program is considered the mainstay of job creation for EDA. Publically validated reports show that one million dollars of EDA public works investments create at least 327 direct permanent jobs, generate \$10.08 million of private sector investment, add \$10.13 million to the local tax base, and create jobs at an EDA

cost of \$3,058 per job.

This publication, “Requirements for Approved Construction Projects”, is the policy and procedures guidebook for the proper use of assistance provided by EDA. It was designed to assist the EDA grant recipient to complete its project economically, within quality standards, and in accordance with regulations governing federal grant assisted construction projects.

Your EDA assisted project, when successfully completed, will be an integral part of both EDA’s and your community’s plans and hopes for national and local economic development through cooperative effort.

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SECTION VIII: EXHIBITS.

SECTION I GENERAL AND PRE-CONSTRUCTION REQUIREMENTS

1. Basis for Economic Development Administration (EDA) Requirements

A. These Requirements for Approved Construction Projects apply to all awards for construction projects and they are based on Office of Management and Budget (OMB) administrative requirements for Federal grants as set forth in OMB Circulars and on regulations set forth in the Code of Federal Regulations (CFR) Section 13 Chapter III, Section 15 Part 24 and Section 15 Part 14 as they may be amended.

B. These Requirements for Approved Construction Projects are intended to organize and explain the various requirements that apply to Federally-assisted construction programs. They are not intended to derogate, replace, or negate the above cited Federal requirements. Conflicts between these Requirements for Approved Construction Projects and the documents referred to above should be brought to the attention of EDA immediately. Any inconsistencies or conflicts shall be resolved in favor of such Federal requirements.

C. EDA, as a Federal agency, is obligated to promulgate policies and procedures applicable to Recipients of EDA grants to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds in accomplishing the purpose for which they were granted. Pursuant to this obligation, grant terms and conditions require Recipients to comply with changes in regulations and other requirements and policies EDA may issue from time to time. Such changes apply to actions taken by all Recipients of EDA grants, existing and prospective, after the effective date of the changes.

D. EDA's policy is to administer grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic development problems, requests for variances to the requirements of this Requirements for Approved Construction Projects will be considered if they are consistent with the goals of EDA programs, make sound and financial sense, and do not conflict with applicable Federal and regulatory requirements.

2. The EDA Grant Award

The EDA grant award contains mandatory requirements and information vital to the accomplishment of the project. It should be read carefully with particular attention paid to:

A. The description of the project. This description and the corresponding scope of work must be adhered to. Proposed changes to EDA approved projects will be permitted by EDA only if they are necessary to the proper functioning of the project. Enhancements to the project that were not envisioned in the grant award will not be approved for EDA participation.

B. The Standard Terms and Conditions for Public Works and Development Facilities and Economic Adjustment Construction Projects. The Standard Terms and Conditions contain, by reference or substance, a summary of the pertinent statutes, regulations published in the Federal Register or Code of Federal Regulations, Executive Orders or OMB Circulars.

C. The Special Conditions of the grant award. The Special Conditions generally contain two types of information. The first type relates specifically to the grant being awarded. The second type relates to all approved grants and are of recent origin and therefore have not yet been incorporated into the Standard Terms and Conditions. Special attention should be paid to the Project Development Time Schedule. The time schedule can only be extended as a result of a written request from the Recipient and a written approval by EDA. Failure to meet the time schedule is considered a violation of the grant award and may result in action by EDA to suspend and/or terminate the grant. No disbursement of EDA grant funds is permitted when a project has exceeded the time schedule in the grant award unless EDA has given written approval to a time schedule extension.

D. For projects approved prior to October 1, 1999, the EDA grant funds remain available for a period beginning at the time the grant is awarded and ending five (5) years after the end of the fiscal year in which the grant was approved. Any funds not disbursed to the Recipient before the end of that period are automatically canceled and

will be deobligated and will no longer be available for payment of costs incurred by the Recipient.

E. Combination construction and nonconstruction grants. If the EDA grant award is for both construction and nonconstruction, the Recipient must obtain prior written approval from EDA before making any fund or budget transfer from nonconstruction to construction or vice versa.

F. Performance Measures. The Standard Terms and Conditions of the EDA grant award make reference to "Core Performance Measures" that requires post-construction reports to be submitted to EDA. The first report will be due at the completion of construction of the project. The due dates for the submission of the second and third reports are 3 years and six years after the completion of construction. Questions regarding the content or submission of these reports should be directed to EDA.

3. Initial Actions

A. After the Grant Award has been affirmed, the EDA Regional Office will mail a pre-construction package to the Recipient that includes a copy of "Requirements for approved Construction Projects", and a list of items that need special attention (such as the project development time schedule), and a list of any unresolved problems identified during the preapproval review process. The EDA Project Manager will then contact the Recipient to offer assistance and guidance, to arrange for an updated schedule of the Recipient's proposed activities and to arrange a Project Management Conference.

B. Because it is the policy of EDA to discourage the undertaking of any construction prior to the submission of an application for financial assistance, special consideration and judgment must be executed if it becomes necessary for a project to proceed prior to award of the EDA grant. Commencement of a project prior to approval of the application for assistance is not prohibited, but it may jeopardize the favorable consideration of such application since, among other things, it raises a rebuttable presumption that funds necessary for the accomplishment of the project are otherwise available and that proper contracting procedures and labor standards may not have been followed.

C. If construction of the project was begun before affirmation of the grant award, the Recipient will be required to document to EDA's satisfaction that it has complied with all EDA requirements, including but not limited to the payment of Davis-Bacon wages from the start of construction and environmental requirements, in order to qualify for EDA reimbursement of costs incurred, if agreed to in the grant award.

4. Project Management Conference

Whenever practical, the Project Management Conference will be held at the Recipient's location; however, if necessary and required for appropriate EDA personnel to be present, it may be held at another location including in the Regional Office. The Recipient's Authorized Representative, Architect/Engineer, attorney and possibly the Recipient's financial representative should be in attendance. Reasonable costs for transportation, meals and lodging for these individuals are an authorized cost under the administrative line item in the project budget. Per diem costs eligible for EDA reimbursement may not exceed the current Federal per diem rate.

5. Selection of the Architect/Engineer

A. If an Architect/Engineer has been selected by the Recipient prior to EDA approval of the grant award and the contract between the Recipient and the Architect/Engineer has not been previously submitted to EDA, it should be submitted as soon after the grant award as possible. If the selection has not been made at the time of grant award the contract should be sent to the EDA Regional Office as soon as possible after its execution by both parties.

B. For EDA to participate in the cost for architect/engineer services the Architect/Engineer must be selected competitively by sealed bids (formal advertising) or by competitive proposals. If the selection is made by competitive proposal the following requirements apply:

- (1) Requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (2) Proposals will be solicited from an adequate number of qualified sources (normally sufficient to secure at least three proposals from qualified proposers);
- (3) The Recipient will have a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered;
- (4) The Recipient will determine the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Competitor's qualifications will be evaluated and the most qualified competitor will be selected, subject to negotiation of fair and reasonable compensation.

6. The Architect/Engineer Contract for Services

A. The architect/engineer agreement shall provide for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the

American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

B. The Architect/Engineer's fee for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on a determination, subject to audit, that the compensation is reasonable.

C. The use of the cost-plus-a-percentage-of-cost and percentage of construction cost forms of compensation are specifically prohibited.

D. The Architect/Engineer's fee shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. The basic fee shall not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services shall be identified in the agreement. Such additional charges may be approved for grant participation by EDA if they:

- (1) Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;
- (2) Are a proper charge against the project cost; and
- (3) Are reasonable for the extra services to be rendered.

E. Regardless of who furnishes the construction inspector, the Architect/Engineer shall be held responsible for making sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

F. All negotiated architect/engineer contracts (except those of \$100,000 or less awarded under small purchase procedures) awarded by Recipients shall include a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the architect/engineer (which are directly pertinent to a specific grant project) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

G. EDA requirements for the agreement for architect/engineer services are contained in Exhibit A-1 to these “Requirements for Approved Construction Projects”.

7. Multiple Contracts and Phasing

A. The Recipient is strongly urged to award all contracts for the project construction at one time. Where compelling reasons justify phasing the project, the Recipient must secure the approval of EDA for phasing prior to advertising any portion for bid. The Recipient's request for approval of phasing must include:

- (1) Valid reasons justifying the request, and
- (2) A statement from the Recipient that it can, and will, fund any overrun that arises in the later phases.

B. Normally EDA will not disburse funds until all construction contracts have been awarded, (an exception is the development of a water source when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as called for in the Grant Agreement). Disbursement of grant funds by phases must be approved by EDA. Such approvals will be given only if the Recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time. The recipient must be capable of meeting incurred costs prior to the first disbursement of EDA grant funds.

8. Recipient Furnished Equipment and/or Materials

The Recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts. It is the responsibility of the Recipient to assure that such equipment and/or materials are adequate for the proposed use. The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participation. The Recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs. Acquisitions of Recipient furnished equipment and/or materials under this section are subject to the requirements of 15 CFR Part 24 or 15 CFR Part 14. The Recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value.

9. Services Performed by the Recipient's Own Forces

A. The Recipient may have a portion or all of the design, construction, inspection, legal

services, or other work and/or services in connection with the project performed by personnel who are employed by the Recipient either full-time or part-time (in-house), subject to the following conditions:

- (1) EDA must review and approve the Recipient's plan if this method is to be elected by the Recipient.
- (2) Such work or services performed by in-house personnel may be considered an eligible cost for EDA reimbursement if in conformance with Office of Management and Budget Circulars A-87, A-21 or A-122, as appropriate.
- (3) If a portion of the architect/engineer services is to be performed by in-house forces, the Recipient will submit a statement listing the services to be so performed. This statement should accompany the architect/engineer agreement when it is submitted to EDA for approval.

B. Due to the difficulty in monitoring in-house construction and the limited EDA staff available to perform the monitoring, in-house construction is strongly discouraged. The in-house method of construction may be approved only if:

- (1) The Recipient has a special skill required for the construction, e.g., construction of unique Indian structures, or
- (2) Substantial cost savings can be demonstrated, or
- (3) The Regional Office is satisfied that the Recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors, such as the remoteness of the site combined with a small contract or an overabundance of construction work in the project area, or
- (4) It has been determined by EDA that special circumstances require its use to successfully complete the project.

C. If EDA approves the use of the Recipient's in-house forces to construct all or part of the EDA assisted project and the in-house forces are to be augmented by personnel hired specifically for the EDA assisted project, the hourly wages to be paid to such personnel shall be the same as the hourly wages paid to full time personnel of the Recipient doing the same or similar work. If the nature of the work is not similar and/or there is not an established wage scale, the prevailing state or county hourly wage for public employees shall be obtained from the appropriate state or county agency and used for the newly established position. However, non-profit recipients must pay all personnel employed for the construction of the EDA assisted project the prevailing hourly wages for the area as established by the U.S. Department of Labor.

10. Construction Management Services

A. For the purposes of this document, Construction Management is defined as the services of a firm with competent and experienced staff to act as the Recipient's agent to perform all or part of the following:

- (1) Aid the project designer to find expedited or less costly methods of construction (Value Engineering).
- (2) Monitor the contracting process. This may vary in scope from giving advice to the Recipient to complete control of the contracting process.
- (3) Inspection or supervision of inspection of the construction work.
- (4) Controlling the expenditure of project funds on a multi-faceted or highly complex project.
- (5) Controlling unusual methods of contracting such as "fast track" or "turn-key".

B. EDA will not normally approve the use of a Construction Management firm for projects costing less than \$5 million.

C. If the Recipient wishes to use a Construction Manager, EDA will participate in such costs only if EDA approves the proposed or actual contract for such services between the Recipient and the Construction Manager.

D. The compensation for Construction Management services is subject to the same rules as those for architect/engineer services.

E. The Construction Management Agreement must spell out who is responsible for construction inspection, approval of construction and supply contracts, change orders and other areas of possible conflicts (i.e., the division of responsibility and authority between the Recipient, the Architect/Engineer and the Construction Manager).

11. Certification of Acquisition of Land, Easements and Rights-of-Way

A. As required in the Financial Assistance Award the Recipient must furnish evidence satisfactory to the EDA that it has good and merchantable title to the tracts or parcels of land on which buildings, structures, or other project improvements will be located, with any liens or encumbrances noted, and that it has obtained all necessary easements, permits, rights-of-way, franchises, condemnations, and all Federal, State and local approvals necessary to the completion of the project.

B. To aid EDA in making its determination, the Recipient must furnish a description of the sites and rights-of-way on which the project will be located. Exhibit C of this document is a "Certificate as to Project Site, Rights-of-Way, and Easements," which is a format acceptable to EDA as evidence of the Recipient's title to the real property necessary for the project. The Recipient has the option to prepare the title opinion in a format that meets local law or custom. Any title opinion submitted must be approved by EDA. EDA may require additional documentation.

C. If land acquisition is a part of the project, the EDA project file must be documented to show the basis for determining that the amount of land acquired and the cost of the land is reasonable. If an appraisal is required, a professional appraiser(s) should perform the service. An appraiser registered with a national society and/or licensed by the State will normally be required.

D. Any significant change in the amount and cost of land from that upon which the project approval was based must be approved by EDA to be eligible for EDA reimbursement.

E. No financial assistance under the Act will be approved for a project involving public or privately owned land adjacent to or in the vicinity of a federally owned or operated airfield, unless the Recipient can demonstrate that the proposed project is compatible with the airfield land use plan prepared for that facility.

12. Relocation Assistance

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), as amended, are applicable to all States and political subdivisions of States and non-profits, which are recipients of EDA funding assistance. This Act requires financial and other assistance to persons, businesses, or farm operations displaced from real property acquired for a project financed wholly or in part with Federal funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of this Act.

13. Clean Water Act Compliance Procedures

A. The National Environmental Policy Act (NEPA) requires all federally funded actions to be compliant with all Federal environmental regulations and Executive Orders, including the Clean Water Act. The Clean Water Act prohibits anyone from discharging pollutants without a National Pollutant Discharge Elimination System (NPDES) permit, or from knowingly violating an existing NPDES permit as the result of a connection to an existing sewage treatment plant. These permits contain limits on discharge, as well as

monitoring and reporting requirements tailored to the regulated facility.

B. The U.S. Environmental Protection Agency (EPA) has delegated NPDES permitting authority to 43 states (as of March 1999). In most states the NPDES permits are issued from the state environmental protection agency. NPDES permits for the remaining 7 states, territories, Federal Indian Reservations, and the District of Columbia are issued from the appropriate EPA regional office. In the states that do not have delegated NPDES authority, a state water quality permit must also be obtained in addition to the EPA NPDES clearance.

C. EDA will not disburse any funds for a facility requiring a NPDES permit or an amendment to an existing permit, prior to the issuance of the permit and prior to the start of construction. However, EDA may pay its share of engineering design costs, and costs associated with any other element of the project unrelated to the regulated pollutant discharge prior to obtaining the NPDES permit.

14. Project Financing

Prior to obtaining EDA approval of the project's final plans and specifications, the Recipient should furnish evidence to the EDA Project Manager that the Recipient has its share of matching funds either on hand or firmly committed. Any change in the amount or availability of the Recipient's share must be made known to EDA at this time. This is equally true of the interim financing amount and availability.

15. Safeguarding Funds

A. Checks drawn to pay project costs will be signed by the Authorized Representative of the Recipient and may be counter-signed by other representatives of the Recipient if he/she so designates. The Recipient shall retain all bank statements, deposit slips, canceled checks, and related invoices pertaining to these project costs to facilitate final audit.

B. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks as the depository for project funds.

C. Although a separate bank account is not required by EDA, the Recipient is urged to use one for the EDA project as it will be helpful to the audit of the project costs claimed by the Recipient at project closeout.

D. For non-governmental Recipients, EDA recommends that the Recipient have the custodian of the project funds bonded in an amount not less than the amount of the EDA grant.

16. Department of Commerce Metric Program

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce.

17. Seasonality

It is EDA policy to promote construction of projects continuously throughout the year. Recipients and their Architect/Engineers are encouraged to design projects so that construction will not be unreasonably curtailed by weather.

18. Design for the Handicapped

A. Any building or facility financed in whole or in part with assistance under the Act must be designed, constructed, or altered, so as to insure ready access to, and use of, such building or facility by the physically handicapped, as required by P.L. 90-480 (42 U.S.C. 4151-4156) and the regulations promulgated there under (41 CFR Subpart 101-19.6).

B. Except as otherwise provided in paragraph (C) of this section, every building, except a residential structure, shall be designed, constructed, or altered in accordance with the minimum standards contained in the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A 117.1 (1971) approved by and available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

C. The standards established in paragraph (B) of this section shall not apply to:

(1) The design, construction, or alteration of any portion of a building or facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installations or improvements to accommodate the physically handicapped;

(3) The alteration of an existing building or facility, or of such portions thereof, to which application of the standards is not structurally possible.

D. The standards established in paragraph (B) of this section may be modified or waived

on a case-by-case basis, provided that the Administrator of the General Services Administration determines that such waiver or modification is clearly necessary.

19. Reporting of Project Progress

A. Recipients are required to constantly monitor project progress to assure that time schedules are being met, project work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity as set forth in the approved grant application.

B. The Recipient is required to submit a project performance report for each calendar quarter. The report will cover the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the timetable established in the Grant Award;

(2) Reasons for delays in those cases where the timetable approved by EDA was not met;

(3) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;

(4) All change orders issued up to the date of the report and not previously reported to EDA; and

(5) Other pertinent information including, when appropriate, an analysis and explanation of cost overruns or high unit costs.

C. The project performance report will be due not later than January 15, April 15, July 15 and October 15 for the immediate previous quarter year. This requirement shall begin with the Recipient's acceptance of the EDA Grant Award and shall end when EDA approves the final grant disbursement.

D. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the Recipient will be required to inform EDA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions, which will materially affect the ability of the Recipient to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work than originally projected; or

(3) If any performance review conducted by the Recipient discloses the need for change in the budget estimates, the Recipient is required to submit a request for budget revision.

E. A sample format for the required project performance report is included herein as Exhibit J. The report will be sent to the EDA Regional Office. The Recipient may use a format other than the EDA sample, provided that the information called for in this section is furnished.

F. EDA does not normally permit grant advances. However, where EDA determines that grant advances are necessary and in the best interest of the Government and the Recipient, the Recipient will be required to submit with the project performance report a Report of Federal Cash Transactions. The EDA Regional Office shall furnish the required forms for this report.

G. EDA will not process any requests for grant disbursement from Recipients with delinquent performance reports.

20. Environmental Requirements

A. EDA is required by law to insure that proper environmental review of its actions takes place; that there is a proper balance between the goals of economic development and environmental enhancement in its actions; and, that adverse environmental impacts from its actions are mitigated or avoided to the extent possible.

B. Environmental assessments of EDA actions are conducted in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et. seq.), the Environmental Quality Improvement Act (42 U.S.C. 4371 et. seq.), The Clean Air Act, as amended (42 U.S.C. 7401 et. seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.), The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271 et. seq.), the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4002 et. seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Section 1500-1508), as specified in EDA Directives 17.02-2, 17.02-7, and 17.04, as hereafter amended or superseded. Directives are available from any EDA office.

C. EDA recipients are subject to Federal, state and local requirements concerning hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Public Law 96-510 (1980), as amended by Public Law 99-499 (1986), 42 U.S.C. 9601-9675; and the Resource

Conservation and Recovery Act (RCRA), Public Law 89-272 (1965), as amended by Public Law 94-580 (1976), Public Law 96-482 (1980) and Public Law 98-616 (1984), 42 U.S.C. 6901-6991.

21. Project Revisions

After Recipient acceptance of the EDA grant award, any change to the project as described in the grant award must be reviewed and approved by EDA. To be eligible for EDA financial participation the proposed revision must meet certain conditions. See Section V of this document for guidelines on securing EDA approval of proposed project revisions.

SECTION II CONTRACTING FOR PROJECT CONSTRUCTION

1. Contracting Standards

A. For States: If a State is the recipient of the EDA grant award, the State may follow the same policies and procedures it uses for procurements from its non-Federal funds provided that 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. For reimbursable cost determinations, OMB Circular A-87 will be applicable.

B. For Other than States: Recipients of EDA grants other than States may 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 contained in these "Requirements for Approved Construction Projects". Recipients may request EDA to approve self-certification of their procurement system. Such self-certification shall not limit EDA's right to survey the system. The Recipient must cite specific procedures, regulations, standards, etc. as being in compliance with EDA and other Federal requirements and have its system available for review. In the absence of written procurement regulations issued by the Recipient, which meet the following requirements, applicable Federal procurement standards shall govern.

C. Contract Administration System: Recipients 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.

D. Standards of Conduct: Recipients shall maintain a written code or standards of conduct, which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No

employee, officer or agent of the Recipient 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 any of the following has a financial or other interest in the firms elected for award:

- (1) An employee, officer or agent
- (2) Any member of his/her immediate family
- (3) His or her partner
- (4) An organization, which employs, or is about to employ, any of the above.

The Recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements except that Recipients 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 of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Recipient's officers, employees, or agent, or by contractors or their agents.

E. State and Local Agreements: To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

F. Surplus Property: Recipients 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.

G. Value Engineering: Recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. EDA will not normally approve value engineering costs for construction contracts with estimated costs of less than \$1,000,000. Value engineering is defined for the purposes of this paragraph as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. Value engineering, as a function, is done separately from the architect/engineer design by a person or firm not controlled by the architect/engineer.

H. Awards to Responsible Contractors: Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and

technical resources.

I. Maintenance of Records: Recipients will maintain records sufficient to detail the significant history of each procurement affecting the EDA assisted project. These records will include, but are not necessarily limited to, the rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price.

J. Time and Material Contracts: Recipients will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable, and
- (2) If the contract includes a ceiling price that the contractor exceeds at its own risk.

K. Settlement of Issues: Recipients 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 Recipient of any contractual responsibilities under its contracts. EDA will not substitute its judgment for that of the Recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

L. Protest Procedures: Recipients will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to EDA. A protestor must exhaust all administrative remedies with the Recipient before pursuing a protest with EDA. Reviews of protests by EDA will be limited to:

- (1) Violations of Federal law or regulations (violations of State or local law will be under the jurisdiction of State or local authorities); and
- (2) Violations of the Recipient's protest procedures for failure to review a complaint or protest. Protests received by EDA other than those specified above will be referred to the Recipient for resolution.

2. Competition in Procurement

A. All procurement transactions affecting the EDA project will be conducted in a manner providing full and open competition consistent with the standards contained herein. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (2) Requiring unnecessary experience and excessive bonding,
- (3) Noncompetitive pricing practices between firms or between affiliated companies,
- (4) Noncompetitive awards to consultants that are on retainer contracts,
- (5) Organizational conflicts of interest,
- (6) 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
- (7) Any arbitrary action in the procurement process.

B. Recipients 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 these Requirements for Approved Construction Projects preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographical 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.

C. Recipients will have written selection procedures for procurement actions. These procedures will ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions 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
- (2) Identify all requirements, which the offerors must fulfill, and all other factors to be used in evaluating bids or proposals.

D. Recipients will ensure that all lists of prequalified 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, Recipients will not preclude potential bidders from qualifying during the solicitation period.

3. Acceptable Methods of Procurement

A. 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) in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources (normally at least three quotes will be required).

B. 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 lowest in price. The sealed bid method is the preferred method for procuring construction. In order for sealed bidding to be feasible, the following conditions should be present:

- (1) A complete, adequate and realistic specification or purchase description approved by EDA is available,
- (2) Two or more responsible bidders are willing and able to compete effectively for the business, and
- (3) 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.

C. If sealed bids are used, the following requirements apply:

- (1) 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 the opening of bids.
- (2) 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.
- (3) All bids will be publicly opened at the time and place prescribed in the invitation for bids.

(4) A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs 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.

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

D. Procurement by Competitive Proposals: The technique of competitive proposals may be used on EDA projects to secure architect/engineer services and is 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:

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

(2) Proposals will be solicited from an adequate number of qualified sources (normally EDA requires responses from at least three responsible firms).

(3) Recipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees.

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

(5) Recipients 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.

E. Procurement by Noncompetitive Proposals: This technique requires EDA prior written concurrence and is conducted by solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. 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:

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

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

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

4. Unacceptable Method of Procurement

The cost-plus-a-percentage-of-cost method of contracting is unacceptable for use on EDA assisted projects. EDA grant funds may not be used to reimburse costs incurred under such a contract.

5. Contracting with Disadvantaged Firms

A. The Recipient shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises;

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

6. Contract Cost and Price Analysis

A. Recipients must perform a cost or price analysis in connection with every procurement action including contract modifications (change orders). The method and degree of analysis is dependent upon the facts surrounding the particular procurement situation, but as a starting point, Recipients 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.

B. Recipients 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.

C. 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 OMB Circulars A-21, A-87 or A-122 as applicable). Recipients may reference their own cost principles that comply with the applicable Federal cost principles.

D. The cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting shall not be used.

7. Advertising for Bids

A. In the absence of State or local law to the contrary, the advertisement for bids should appear in publications of general circulation a minimum of four times within a 30-day period prior to the opening of bids.

B. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids.

C. Generally, a minimum of 30 days should be allowed for submission of bids.

8. Bonding and Insurance Requirements

A. For construction or facility improvement contracts or subcontracts exceeding \$100,000 the following minimum bonding requirements apply:

(1) The bonding company selected must be listed in U.S. Treasury Department Circular

570.

(2) 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.

(3) A performance bond on the part of the contractor for 100 percent of the contract price.

(4) A payment bond on the part of the contractor for 100 percent of the contract provisions.

B. The Recipient shall require that each construction contractor and all subcontractors maintain, during the life of its contract, Workmen's Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by the nature of the work and State and local law. When appropriate, the Recipient shall require the prime contractor to provide Builder's Risk Insurance as part of the construction contract. In any case, the responsibility for seeing that coverage is obtained and kept in force remains with the Recipient. Such coverage is an eligible project cost, when obtained by the Recipient directly.

9. Bid Schedules for Alternative Materials

A. Should the Recipient, acting upon the advice of his/her consultant Architect/Engineer desire to obtain competitive prices for differing materials, such bids should be requested on the basis of "Bid Schedule A", "Bid Schedule B", etc. Bid Schedules, as used herein, refer to the method used to obtain bids on more than one material to be used for the same purpose. As an example, if 2,000 linear feet of sewer line were to be installed, Bid Schedule A might call for the pipe material to be cast iron. Bid Schedule B might call for the pipe material to be ductile iron. Bid Schedule C might call for the material to be asbestos cement, etc.

B. If bids are asked for on the basis of two or more Bid Schedules as set forth above, the bid documents must clearly set forth that the contract will be awarded to the bidder having proposed the lowest responsive bid within the amount of funds announced as available by the Recipient to finance the contract and including the Bid Schedule upon which that Contractor bid the lowest price.

C. If the Recipient wishes to use a bid material, which will result in increased cost, EDA may permit the use of the material chosen, but the amount of grant participation by EDA

shall remain based on the lowest responsive bid. The contract must be awarded to the lowest bidder determined in accordance with the procedure described above unless a deviation is specifically allowed in applicable State and local law.

10. Non-EDA Work

A. If the Recipient plans to add work that is an addition to the approved EDA project, the following will apply:

(1) The advertisement for bids, all bid documents, and contract documents shall clearly define and separate the EDA portion of the work from the non- EDA portion.

(2) The Recipient may offer for bid and award work in addition to the EDA portion, provided:

- a. The Recipient understands that EDA will participate in the EDA portion only;
- b. The additional work does not adversely affect the original intent of the EDA project or its economic impact, as approved.

(3) Contracts shall be so drawn that the EDA-assisted portion of the work is clearly identifiable at all times during construction.

(4) Underruns in the EDA project cannot be applied to assist the Recipient in funding work, which is not a part of the EDA project. It is the responsibility of the Recipient to pay for all added work in full.

(5) In the event of an overrun on the EDA portion of the work, it is the Recipient's responsibility to supply the necessary additional funds and to deposit such funds in the project account. A revised project budget estimate will then be prepared which will clearly show the portion of project cost to be shared by EDA and the portion the Recipient must fund in its entirety. In addition, the overall percentage participation of EDA in the project shall be clearly identified.

B. When the EDA project is included with non-EDA assisted work, the Recipient will normally award to the lowest bidder on all the work. However, EDA participation will be based on the lowest bid for the EDA-assisted portion. When this occurs, the Recipient will prepare a memorandum to EDA, which will clearly present the details of the award.

11. EDA Review of Proposed Procurement Documents

A. EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the EDA grant award and does not attest to the accuracy or

completeness of design, dimensions, details, proper selection of materials nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

B. A pre-bid review of proposed construction bid documents by EDA is required if:

- (1) The procurement is expected to exceed the simplified acquisition threshold (currently \$100,000) and the Recipient's procurement procedures and operations have not been certified by EDA and/or do not comply with the procurement standards of this document, or
- (2) The scope of the work as approved in the EDA grant award has changed, or
- (3) The proposed bid documents specify one or more "brand name" products.

C. A pre-award review by EDA is required if:

- (1) The procurement is expected to exceed the simplified acquisition threshold (currently \$100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation, or
- (2) 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
- (3) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold, or
- (4) The Recipient's procurement procedures or operation fails to comply with the procurement standards in this Requirement for Approved Construction Projects, or
- (5) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product.

D. It will greatly expedite EDA's review of the proposed bid documents if the Recipient completes the Checklist for Construction Contracts (Exhibit A-2), has it signed by the Recipient's authorized representative and submits it to the EDA regional office with the proposed construction bid package for approval. EDA review and approval of the proposed contract documents will also be expedited if the Recipient uses standardized documents such as "Contract Documents for Construction of Federally Assisted Water and Sewer Projects" jointly prepared, endorsed by, and available from, the Environmental Protection Agency, Rural Development, the Department of Housing and Urban Development, the Associated General Contractors of America, the Consulting Engineers Council and the National Society of Professional Engineers. Standardized

contract forms available from the American Institute of Architects are also acceptable to EDA.

E. Until EDA has reviewed and approved the Recipient's proposed contracts and related procurement documents, the Recipient will be proceeding at its own risk regarding the eligibility of costs incurred.

12. Construction and Services Contract Provisions

A. The proposed contract documents to be part of the invitation for bids should contain at least the following:

- (1) An Index
- (2) Advertisement for Bids
- (3) Information for Bidders
- (4) Bid Form
- (5) Contract Form
- (6) Bid Bond
- (7) Performance Bond
- (8) Payment Bond
- (9) General Conditions
- (10) "Supplemental General Conditions" (to be furnished by EDA)
- (11) Technical Specifications
- (12) Working Drawings
- (13) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246 and 41 CFR 60-4) (Exhibit E)

B. The package sent to EDA should also contain a documentation of the estimated cost for the proposed contract (see Section II 6. of these "Requirements for Approved Construction Projects").

C. The Recipient shall include the following contract provisions or conditions in all procurement contracts and subcontracts for the EDA assisted project.

(1) Contracts in excess of the simplified acquisition threshold (currently \$100,000) shall contain provisions or conditions which will allow for 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.

(2) Contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the Recipient including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe

conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of \$10,000 by the Recipient and their contractors or subrecipients shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All contracts and subgrants in excess of \$2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he/she is otherwise entitled. The Recipient shall report all suspected or reported violations to EDA.

(5) All construction contracts in excess of \$2,000 awarded by the Recipient and Subrecipients shall include a provision for compliance with the Davis- Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Recipient shall place a copy of the current prevailing wage determination issued for each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Recipient shall report all suspected or reported violations to EDA.

(6) Where applicable, all contracts awarded by the Recipients and Subrecipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 102 of this Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(7) Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or

dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR Part 401, "Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Grants, Contracts and Cooperative Agreements".

(9) All negotiated contracts (except those awarded by small purchases procedures) awarded by the Recipient shall include a provision to the effect that the Recipient, EDA, the Office of Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(10) The Recipient shall require contractors to maintain all required records for three years after the Recipient makes final payments and all other pending matters are closed.

(11) Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251 et seq.), Violations shall be reported to EDA and the regional office of the Environmental Protection Agency (EPA).

(12) Recipients and subrecipients must contain mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan, where applicable, issued in compliance with the Energy Policy and Conservation Act (P.L. 94- 165).

(13) EDA may require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

(14) The EDA project number should appear on all drawings and on the face sheet of specification documents. In the case of a single sheet layout included in folders, the project number should be shown on the face of the sheet or at a point, which will be outside when folded. If the layout consists of two or more sheets, all sheets should be so identified.

(15) In all cases, a reasonable time must be allowed to perform the work and the contract

documents should stipulate the number of calendar days allowed for completing the work.

(16) EDA urges that a liquidated damage provision be included in all construction contracts with a specific dollar amount of daily damage to be assessed against the Contractor for each calendar day beyond the stipulated completion date. The daily amount of damages shall be a reasonable and adequate amount based upon the circumstances and estimated dollar cost of the individual contract, or the revenue-producing capacity of the project. The liquidated damages provision provides the Recipient with a feasible means of securing compensation for damages for delays in completing the work. Without such a provision, the proving of such damage is difficult and usually entails court action. In the event that the Recipient objects to the inclusion of a liquidated damages provision in construction contracts, a statement of the reasons for objecting should be submitted with the proposed contract documents.

(17) The Architect/Engineer should be encouraged to use deductive alternates, which do not alter the scope of the project, affect the economic impact or project revenue, or change the project justification. Thus, should the bids exceed the cost estimate, deductive alternates may be used to reduce the cost to the extent necessary to come within the approved funds. Deductive alternates, where used, must be listed in the order to be used on the bid documents and must be taken in that order when awarding the contract. Deductive alternates should not be used for material. EDA recommends that unit price bidding based on quantities estimated by the Architect/Engineer so as to arrive at a total base bid be used to the greatest practical degree.

(18) The limiting of materials and/or equipment to a particular manufacturer or brand name ("sole source") must have EDA approval to be eligible for reimbursement from grant funds unless an "or equal" clause is included in the equipment specifications.

(19) EDA discourages the use of performance type specifications. If the Recipient or his/her Architect/Engineer wishes to use performance type specifications, written approval must be secured from EDA.

(20) See Section II, paragraph 8 of these "Requirements for Approved Construction Projects" for bonding and insurance requirements.

(21) Exhibit B, "Supplemental General Conditions" found in the Exhibits section of these "Requirements for Approved Construction Projects" must be made a part of the construction bid and contract documents unless all EDA and other Federal requirements contained therein are covered elsewhere.

(22) The bidding documents should stipulate that:

- (a) The Recipient may consider any bid informal which is not prepared and submitted in accordance with the provision of the bid documents and may waive any informalities or reject any and all bids;
- (b) Any bid may be withdrawn prior to the time scheduled for the opening of bids but not afterward; and
- (c) Any bid received after the time and date specified for the bid opening shall not be considered.
- (23) Stated allowances may be used for certain items such as door and/or window hardware with the approval of EDA.
- (24) All of the above documents shall be included in the sets of bidding documents to be issued to prospective bidders, with any changes or additions recommended by EDA. The responsibility for complying with all State and local laws rests with the Recipient.
- (25) Exhibit E to these "Requirements for Approved Construction Projects" is a notice, which provides goals and timetables for minority and female participation in construction work. This notice must be included in all invitations for bids for construction projects for which the prime contract and any related subcontracts are in excess of \$10,000. EDA shall furnish the Recipient with the appropriate goals and timetables to be inserted in the above notice. In addition, the requirements of the above notice have been provided in the "Supplemental General Conditions" (Exhibit B) as the Standard Federal Equal Employment Opportunity Construction Contract Specifications.
- (26) EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the Grant Agreement and does not imply nor attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, nor compliance with required codes or ordinances. This responsibility rests with the Recipient.
- (27) In the absence of State or local law to the contrary, the advertisement for bids will conform to the requirements of Section II 7 of these "Requirements for Approved Construction Projects".
- (28) Only complete sets of plans and specifications should be issued to prospective contractors and/or subcontractors.
- (29) Generally, a minimum of 30 days should be allowed for submission of bids.

13. Wage Rates

A. Wage rates paid for labor must not be less than the prevailing area wages as determined by the Secretary of Labor and embodied in the construction contract, pursuant to the provisions of the Davis-Bacon act, as amended (40 USC 276a to 276a-7). EDA will secure the wage determination for the Recipient based on the following.

B. Most areas of the United States are covered by existing Department of Labor (DOL) wage decisions published and updated at irregular intervals. If the Recipient's project is in a covered area, the EDA Regional Office will supply copies of the applicable wage decision upon the Recipient's request. If the area is not covered by an existing wage decision the following procedure will apply. Between 45 and 60 days prior to the anticipated date of advertising for bids, the Recipient shall send to the EDA Regional Office a request for a wage determination (also referred to as a wage decision) defining the type of construction category (Building, Heavy or Highway) with each feature of work listed under the appropriate category. In addition, the crafts or skills needed for each category shall be listed and any pertinent wage information available submitted, such as statements from the secretaries of the Association of General Contractors and the Building Trades Council having jurisdiction. In isolated communities, certified copies of current contractors' payrolls for similar type work in the area concerned may accompany the request. When a State wage determination is required by State law, the Recipient must secure a schedule of rates from the State Labor Department and incorporate both State and Federal schedules of rates in the contract documents. The Recipient is responsible for seeing that the wage rates shown in the contract documents reflect not less than the higher of the Federal or State rate by trade. EDA will secure the wage decision from the appropriate Department of Labor Regional Administrator.

C. Each feature of work scheduled must call for Building, Heavy, or Highway wage rates, if applicable. Where a proposed contract involves only one type of construction, the specifications shall so state. Where more than one type of construction is involved, the specification shall identify, as specifically as possible, into which category of construction each work item falls. This decision, made by the Recipient in consultation with the Architect/Engineer, shall be based on local or area practice to insure fairness to all prospective bidders on construction contracts to be awarded.

D. Wage decisions are only valid for a 120-day period and extensions of wage decisions shall not be granted. If the decision expires without being superseded prior to award of contract, a new wage decision must be secured and included in the proposed contract documents prior to award. The request for a new wage decision shall be addressed to the EDA Regional Office. If the wage rate included in the Invitation for Bids is superseded, the new wage rate must be substituted if the new wage rate decision is dated over ten days prior to the bid openings; otherwise the old wage rate shall apply.

E. Contractors and subcontractors shall be advised that upon acceptance of their bids, they are obligated to pay not less than the established wage rate unless otherwise required by law. Wage rates need not be listed for non-manual workers, including executive, supervisory, administrative and clerical employees.

F. Wage rate schedules are generally not required for contracts between Recipients and railroads and other public utilities for construction services to the extent that the services are performed by personnel employed directly by the utility concerned and paid at rates prevailing for the type of work and utility concerned.

G. EDA or the Department of Labor may cause investigation to be made as may be necessary to assure compliance with the labor standard clauses required by the regulations contained in 29 CFR, Part 5 and the applicable statutes listed therein. Complaints made to, or which come to the attention of the Recipient, shall be called to the attention of the EDA Regional Office.

H. The Recipient shall require each contractor and subcontractor to submit, in compliance with the Davis-Bacon Act, a weekly payroll record. These records shall be retained for a period of three years from the date of completion of the contract and in a manner reasonably accessible. Such payroll records shall be made available at all times for inspection by EDA, the Department of Commerce Inspector General or their authorized representative, and by authorized representatives of the Department of Labor. The recipient shall file these records by contract number. If the Recipient wishes to use another system for maintaining these records, the EDA Regional Office shall be consulted to avoid any violations of the Privacy Act. The Recipient shall check the submitted payroll records to assure they contain the following:

- (1) A properly completed payroll Form WH-347, or
- (2) If another form is used, all the information required by Form WH-347, including the name, address, correct job classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid for all employees; and the Statement of Compliance, properly executed as shown on the reverse side of Department of Labor Form WH-347, "Payroll Reporting Form" containing all of the information requirements including the Statement of Compliance. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

I. Where a construction contract has been awarded and work has commenced on the EDA approved project prior to acceptance of the Grant Award, wage rates and requirements listed herein shall be retroactive to the date of start of construction.

14. The Bid Opening

A. Whether or not an EDA representative or his/her designee is present at the bid opening, the Recipient will furnish the following to the EDA Regional Office:

- (1) A statement signed by the Authorized Representative of the Recipient, certifying that all bids were received sealed and were opened in his/her presence;
- (2) Copy of official minutes of the bid opening;
- (3) A copy of the bid tabulation.

15. Overrun at the Bid Opening

A. If the lowest responsive bid received at the bid opening exceeds the amount of funds available to finance the contract:

- (1) The Recipient may without taking deductive alternates:
 - (a) Reject all bids;
 - (b) Augment the funds available in an amount sufficient to enable award to the lowest responsive bidder.
- (2) The Recipient may take deductive alternates in the order shown in the Invitation for Bids until at least one of the responsive bids less deductive alternates result in a price within the funds announced as available. Then award may be made to that bidder. It should be noted that this procedure may change the order of bidders and thus extra care must be exercised to insure that:
 - (a) All responsive bids are considered;
 - (b) Deductive alternates have been taken in the exact order shown in the Invitation for Bids; and
 - (c) Only sufficient deductive alternates have been taken to reduce at least one of the responsible bids to or below the amount of funds announced as available.
- (3) In no event, however, should the Recipient negotiate with the low bidder or other bidders in order to reduce the cost within the funds available.

B. If the low bid less all deductive alternates exceeds the funds available, the Recipient may:

- (1) Furnish the additional funds required. If the Recipient intends to finance the overrun from his/her own funds, he/she will furnish a written letter or statement to the EDA Regional Office affirming his/her intention to finance the overrun and indicating the source of funds. If such funds are to be borrowed an appropriate supplemental financial plan must be prepared by the Recipient; or
- (2) Reject all bids and have the Architect/Engineer redesign the project, within the approved scope, to reduce the cost to, or below the approved amount and readvertise; or
- (3) Request additional EDA financial assistance as a last resort. However, before the Regional Office can accept a request for additional EDA funds, it will be necessary for the Recipient to furnish the following documentation to the EDA Regional Office:
 - (a) A written statement from the Architect/Engineer giving his/her professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and
 - (b) A written statement from the Authorized Representative or governing body of the Recipient that the Recipient cannot furnish the additional funds required, giving the reasons plus documentation and/or statistics relative to the financial condition of the Recipient.

16. Underrun Funds at the Bid Opening

A. If the total amount of construction contract awards is less than the approved line item for construction and/or any of the other line items in the EDA approved budget experiences an underrun such that the total expected actual cost will be less than the cost estimated in the EDA approved budget, EDA must be notified.

17. EDA Approval of the Contract Award

A. EDA must review and approve the award of all necessary contracts in order for the cost to be eligible for EDA reimbursement. However, pending EDA approval the Recipient may issue the Notice to Proceed permitting the work to go forward.

B. To obtain approval of the contract award, the Recipient shall submit to the EDA Regional Office:

- (1) Those items listed in Section II, Paragraph 12.A and 12.B of these “Requirements for Approved Construction Projects”, if not furnished previously;
- (2) Evidence of bidder's qualification. Architect/Engineer must review and add his/her opinion of bidder's qualifications;

- (3) Evidence of publication of advertisement for bids;
- (4) Certified evidence of the Recipient's ability to provide the financial participation required by the Grant Agreement;
- (5) Evidence of ability to provide construction financing;
- (6) Evidence of ability to provide the movable equipment and furnishings necessary to make the project a usable facility;
- (7) A resume of Resident Engineer's or Resident Inspector's qualifications for approval if not previously furnished;
- (8) Evidence of establishing a project accounting system for the project; and
- (9) Evidence of bonding of those persons authorized to draw upon the project funds as required by State and/or local law.

C. Prior to awarding any contract the Recipient should contact the EDA Regional Office so that the contractor can be checked against the list of contractors debarred, ineligible, or suspended from dealing with the Federal government or indebted to the United States. Costs for work done by such contractors are ineligible for EDA financial participation.

18. Executed Bid Award

A. After the bid award has been made, if EDA requests it, the Recipient will submit to EDA one set of bound executed contract documents. Each set shall consist of:

- (1) All documents furnished the bidder prior to receipt of bids and upon which base bids were submitted;
- (2) A signed or certified copy of the contract or agreement executed between the Recipient and the Contractor, including all addenda as issued, with necessary blanks completed;
- (3) A copy of performance and payment bonds, dated the same date or subsequent to the date of the contract, supported by a properly signed and dated power of attorney, issued by the Surety. The Surety must be authorized to transact a fidelity and surety business in the State where the project is located and must be on the Treasury Department's current Circular 570, as "Companies Holding Certificate of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies". The underwriting limitations provided for in the said Treasury Department listing shall be applicable. A bound set of final plans are to be submitted with each set of contract documents.

(4) Copies of insurance policies and/or certificates described in Section II, Paragraph 5.A of these “Requirements for Approved Construction Projects”.

19. Preconstruction Conference

Before the start of construction, an EDA representative may arrange to meet with the Recipient, the Architect/Engineer, and the Prime Contractor(s) to discuss EDA requirements on such matters as project supervision, on-site inspections, progress schedules, reports, payrolls, payments to contractors, contract change orders, insurance, safety, and other items pertinent to the project. At this conference, all parties shall be prepared to discuss any anticipated problems or issues that could affect the timely completion of the project.

SECTION III CONSTRUCTION PROCEDURES

1. Recipient Responsibilities

A. The Recipient is responsible for expeditiously prosecuting the project to completion, for monitoring project progress, for keeping EDA advised of project progress, for adequate construction inspection, for prompt payment of costs incurred for the project and for monitoring the contractor's compliance with local, State and Federal construction requirements.

B. The Recipient, with the assistance of its Architect/Engineer, is responsible for the accuracy and completeness of the plans, specifications and other contract documents. The Recipient, with the assistance of its Architect/Engineer, is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, and compliance with applicable building codes or ordinances. EDA review of proposed and/or final contract documents does not in any way relieve the Recipient of the foregoing responsibilities.

2. Employment of Local Labor

A. EDA encourages the maximum feasible employment of local labor in the construction of EDA assisted public works projects. The Recipient should supply a list of the successful bidder's anticipated labor requirements to the applicable Federal/State Employment Office far enough in advance of the start of construction so that the employment office may provide the contractor with the names of suitable local personnel from its rolls.

3. Construction Progress Schedule

A. If requested by EDA, the Recipient will secure from the contractor or

Architect/Engineer, and furnish a copy to EDA, of the predicted construction progress chart and a schedule of amounts for contract payments.

B. The construction progress chart should be updated monthly by the Recipient, the Architect/Engineer or the contractor. A copy for each month will be attached to the Quarterly Performance Report. The EDA Regional Office will advise as to the content of the report. The report will be due quarterly throughout the construction of the project.

C. After a review of the project the EDA project manager may discuss with the Recipient, or the Recipient's representative, the appropriate type of progress chart. The bar graph type of chart will generally be acceptable but some type of network analysis may be more appropriate for projects with cost in excess of \$1 million and with greater than average complexity. The cost for such network analysis may be an eligible project cost if EDA approves its use.

4. Construction Sign

A. The Recipient shall be responsible for the construction, erection, and maintenance in good condition throughout the construction period, of a sign or signs, (specifications for the sign are included as an exhibit to this document), at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if site conditions so warrant.

B. Project signs will not be erected on public highway rights-of-way.

C. Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area if any possibility exists for obstruction to traffic line of sight.

D. Whenever EDA site sign recommended specifications conflict with State law or local ordinance, the Recipient may modify such conflicting recommended specifications so as to comply with the State law or local ordinance.

E. When appropriate, EDA may require that a bilingual project sign be used. Recommended specifications for such a sign are contained in this document in Exhibit B.

5. Inspection of Construction

The Recipient must provide competent project inspection during the construction period. The inspector may be an employee of the Recipient, an employee of the Architect/Engineer, or a person(s) under contractual control of the Recipient. The extent of the inspection and the selection of the inspector must be approved by EDA. Pertinent

information regarding the proposed inspector's experience, qualifications, salary plan and the scope of his responsibilities and authorities shall be furnished to EDA for this purpose.

6. Occupancy Prior to Completion

A. If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the Recipient must:

(1) Notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;

(2) Secure the written consent of the contractor;

(3) Secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and.

(4) Secure permanent fire and extended coverage insurance, where applicable, including a permit to complete construction.

B. EDA may require from the Recipient an assurance to protect the EDA investment in the project, prior to the approval of occupancy and/or use of all or any part of the project before completion of the construction.

7. Contractor Payrolls

A. Each contractor and subcontractor must be required by the Recipient to maintain weekly payroll records. These records are to be retained for a period of three years from the date of project closeout. Each contractor and subcontractor must also be required to furnish a copy of each payroll to the Recipient. The Recipient is responsible to assure that the payrolls meet the following standards:

(1) Wage rates and fringe benefits paid agree with the Department of Labor wage rate, or State wage rates if they are higher.

(2) Name, address, and Social Security number and work classification is shown for all employees.

(3) The Certificate of Prime Contractor on the reverse side of the Form WH-347 has been properly executed. If EDA has approved a substitute form for the WH-347 the substitute form must contain the certification as well as all of the above standards.

B. EDA may require that copies of the weekly payroll records be furnished to the

applicable EDA regional office.

8. Civil Rights Requirements

The regulations issued under Executive Order 11246 (41 CFR 60-1.7) require the submission of compliance reports regarding civil rights. Standard Form 100 is to be used for this purpose. The requirement applies to any person or entity subject to Executive Order 11246 who:

- (1) Has 50 or more employees; and
- (2) Is a prime contractor or first-tier subcontractor; and
- (3) Has a Federally assisted contract, subcontract or purchase order amounting to \$50,000 or more.

9. Contract Change Orders

A. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the Recipient and accepted by the contractor. All contract change orders must be concurred in by EDA even if the Recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced. The work on the project may continue pending EDA review and concurrence in the change order but the Recipient should be aware that all such work is at the Recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.

B. The Recipient or its Architect/Engineer shall perform a cost or price analysis in connection with every change order, which affects the contract price.

C. Proposed contract change orders will be prepared by the Recipient in sufficient quantity that two copies can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications, and plans will be attached. Before submission to the EDA regional office, the change order must be signed by the Recipient, the Architect/Engineer, and the contractor. The Recipient will be notified in writing of EDA concurrence if the change order is acceptable to EDA.

D. EDA will not approve change orders, which change the scope of the project. Change orders that add minimally or incidentally to the cost of the project but do not change the project scope may be approved by EDA provided that either:

- (1) The Recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project

cost and no EDA funds will be used to pay for it; or

(2) There are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

E. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA approved project budget. EDA approval of change orders must be based on a finding by EDA that the work called for in the change order is within the project scope and will enhance the operation or functioning of the project.

F. Normally change orders should be submitted to EDA for approval as the changes occur.

G. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. When actual quantities differ substantially from those estimated quantities upon which the contractor's bid was based, a "substantial variation" results. A substantial variation is usually considered to be for actual quantities in excess of 115% to 120% or less than 85% to 90% of the estimated quantities. Substantial variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity which will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract.

10. Inspection for Final Acceptance

A. A final inspection will be scheduled by the Recipient when all construction has been completed, the Architect/Engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed.

B. The final inspection will be made by representatives of the Recipient, the Architect/Engineer and the contractor(s). EDA must be given advance notice of the final inspection so that an EDA representative may participate, at the option of EDA.

11. Specific Requirements for Subcontractors

A. The Recipient is responsible to ensure that the contractor(s) causes appropriate provisions to be inserted in all subcontracts to bind subcontractors to EDA contract requirements as contained herein, in 15 CFR Part 24, or in 15 CFR Part 14 as appropriate.

- B. Each subcontractor must agree to comply with all applicable Federal, State, and local requirements in addition to those set forth in this section.
- C. Prior to the approval of any subcontract EDA will check the proposed subcontractor against the listing of contractors debarred, ineligible, suspended or indebted to the United States from contractual dealings with Federal government departments. The work performed by any such contractor or subcontractor will be ineligible for reimbursement wholly or partially from EDA grant funds.
- D. All subcontracts in excess of \$10,000 shall include, or incorporate by reference, the equal opportunity clause of Executive Order 11246.
- E. All subcontracts must contain a nondiscrimination clause.
- F. Each subcontract must contain a requirement for compliance with the Davis-Bacon and related acts.
- G. Each subcontractor must submit weekly payroll records and a weekly statement of compliance. These documents should be submitted to the prime contractor. The subcontractor can satisfy this requirement by submitting a properly executed Department of Labor Form WH-347.
- H. Each subcontract with every subcontractor must contain a clause committing the subcontractor to employment of local labor to the maximum extent possible.
- I. The Standard Terms and Conditions of the grant agreement impose other requirements, which the Recipient will be required to have the prime contractor impose on the subcontractor.
- J. All subcontractors who meet the conditions set forth in Section III, Paragraph 8 must submit a completed Standard Form 100 by March 30 of each year.
- K. Subcontractors performing work in areas covered by published goals for minorities will be required to report monthly on Form CC-257.

12. Safety

- A. All contractors on EDA assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Recipient or its Architect/Engineer should periodically check the contractor's compliance.

B. The Recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA assisted project.

SECTION IV FINANCIAL ADMINISTRATION

1. Standards for Financial Management Systems

A. A State must expend 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 Subrecipients and cost-type contractors, must be sufficient to:

- (1) Permit preparation of reports required by this document and applicable regulations and statutes cited herein, 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 Recipients 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: Recipients 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 awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- (3) Internal controls: Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Recipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- (4) Budget controls: 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 costs: Applicable OMB cost principles, agency program regulations, and the terms of grant agreements will be followed in determining the reasonableness, allowableness, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as canceled 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 Recipients must be followed whenever advance payment procedures are used. When advances are made by electronic transfer of funds methods, the Recipient must make drawdowns as close as possible to the time of making disbursements.

C. EDA 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.

2. Grant Disbursements

A. Reimbursement: Reimbursement is the preferred method of grant disbursement. EDA will not use the percentage of completion method to pay construction grants. The Recipient may use that method to pay its construction contractor. However, EDA's payments to the Recipient will be based on the Recipient's actual rate of disbursement.

B. Effect of program income, refunds, and audit recoveries on payment: Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional grant disbursements.

C. Withholding payments: EDA will not withhold payments for proper charges incurred by Recipients unless—

(1) The Recipient has failed to comply with grant award conditions, or

(2) The Recipient is indebted to the United States.

Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the Recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with the section on enforcement contained in this document.

EDA will not make payment to Recipients for amounts that are withheld by Recipients

from payment to contractors to assure satisfactory completion of work. Payments shall be made by EDA when the Recipients actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

D. Cash depositories: Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients 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. EDA will not require the Recipient to maintain a separate bank account unless required by Federal-State agreement.

E. Interest earned on advances:

(1) For entities subject to 15 CFR Part 24: 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), Recipients shall promptly, but at least quarterly, remit interest earned on advances to EDA. The Recipient may keep interest amounts up to \$100 per year for administrative expenses.

(2) For entities subject to 15 CFR Part 14: Entities not subject to the Cash Management Improvement Act may keep up to \$250 for administrative costs, to be remitted annually.

3. Allowable Costs

A. Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the Recipients, 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 Recipient.

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.

TABLE 1 COST PRINCIPLES

For the costs of a --	Use the principles in --
State, local or Indian tribal government	OMB Circular A-87

Private nonprofit organization other than an
 (1) Institution of higher education, (2) hospital,
 or (3) organization named in OMB Circular A-122
 as not subject to that circular

OMB Circular A-122

Educational institutions

OMB Circular A-21.

For-profit organization other than a hospital
 Cost
 and an organization named in OMB Circular
 or
 A-122 as not subject to that circular
 standards

48 CFR Part 31. Contract
 Principles and Procedures,
 uniform cost accounting

principles

That comply with cost

Acceptable to EDA.

4. Period of Availability of Funds

A. For EDA projects approved prior to October 1, 1999, the maximum period for any EDA financial assistance that is provided is not more than 5 years from the end of the fiscal year of the award. Normally, costs incurred after the end of the funding period will not be eligible for reimbursement from the EDA grant.

B. Liquidation of obligations. A Recipient must liquidate all obligations incurred under the award not later than 90 days after the acceptance of the project from the construction contractor or before the end of the funding period, whichever occurs earlier.

5. Matching or Cost Sharing

A. Acceptable Costs and Contributions: With the qualifications and exceptions listed on the next page 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 Recipient, or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by 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 Recipient or Subrecipient 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 the following section on program income, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement.
- (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 Recipients 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.
 - (a) 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.
 - (b) Some third party in-kind contributions are goods and services that, if the Recipient, 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 Recipient, 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.

(c) 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:

(i) An increase in the services or property provided under the contract (without additional cost to the Recipient or Subrecipient), or

(ii) A cost savings to the Recipient or Subrecipient.

(d) 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 Recipient by individuals will be valued at rates consistent with those ordinarily paid for similar work in the Recipient's organization. If the Recipient 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 Recipient, 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 5.A 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 Recipient or Subrecipient, the

treatment of the donated property will depend upon the purpose of the grant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant is to assist the Recipient 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, the following paragraphs of this section apply:

(a) If approval is obtained from EDA, 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 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.

(b) If approval is not obtained under Paragraph 5.E.(2)(a) (above), 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 Recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in OMB Circulars A-87, A-21 and A-122, 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 Recipient Donated Real Property for Construction/Acquisition: If a Recipient 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 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, EDA may require the market value or fair rental value be set by one or independent appraisal.

6. Program Income

A. General. Recipients 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. Program income does not normally 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 Recipient 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 incidental 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 Recipient are not program income unless the revenues are specifically identified in the grant agreement as program income.

E. Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a Recipient is program income only if the revenues are specifically identified in the grant agreement as program income.

F. Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Section VII of these "Requirements for Approved Construction Projects".

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 grant agreement specifies another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between sources, kinds, or amounts of income. Alternative uses include:

(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 EDA authorizes otherwise. Program income which the Recipient did not anticipate at the time of the award shall be used to reduce the EDA and Recipient 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 EDA and the Recipient. 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. Income earned beginning at the end of the award period (see Paragraph 4A of this Section IV) and ending at the end of the useful life of the project shall be used only for the following purposes:

(1) To satisfy any debt service (mortgage payments) existing during this time period. Note that any new encumbrances on the EDA assisted facility during this period must have EDA approval.

(2) For necessary operation, maintenance and repair services.

(3) Any excess above the costs of (1) and (2) above may be used for other economic development purposes in the same economic development area with the concurrence of EDA.

7. Non-Federal Audit

A. Basic rule: Recipients and Subrecipients are subject to audit requirements contained in the Single Audit Act amendments of 1996 (31U.S.C. 7501-7) and revised OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations".

SECTION V AMENDMENTS TO GRANT AGREEMENTS

1. General Requirements

A. Between approval and closeout of an EDA construction project, one or more changes in the project may be necessary to resolve unforeseen problems or remove obstacles to the project's successful completion. In most instances, the proposed change can be effected only through a formal amendment to the project.

B. Project amendments generally fall into the following categories.

(1) Time extensions;

(2) Budget revisions;

(3) Additional funding (overrun);

(4) Permitted waiver of EDA regulations;

(5) Changes which do not involve overall funding (e.g., change of Recipient; method and schedule of financing; addition, deletion, or change affecting a line item in the approved project cost estimate);

(6) Change to the Special Conditions of the Grant Award;

(7) Termination (for cause or by mutual consent).

C. A change-of-scope determination may be necessary before a decision can be made if the requested change involves a change to the purpose, bona fide need, nature or community served of the project.

2. Changes to the Project Scope

A. Project scope is defined as the purpose, bona fide need, nature and community served of the approved grant. A project amendment, which amounts to a change of scope, is, in fact, the substitution of one grant for another. A change of scope modification to a project, which was funded in a prior fiscal year, cannot be approved by EDA.

Modifications to projects funded from the current fiscal year's appropriation, or from a no-year appropriation, do not constitute a prohibited change of scope but must have the written approval of EDA. Any proposed change to an EDA assisted project, which is a change of scope, will be disapproved by EDA.

B. Certain types of project modifications can be approved by EDA if specified findings can be made. These include time extensions for commencement or completion of work, waivers of certain EDA requirements and some types of budget line item changes.

C. Certain types of project modifications are normally assumed to constitute a change of scope, although the facts of a particular situation could permit such modifications to be approved. Examples are:

(1) A change of Recipient;

(2) A change of project location;

(3) Addition of a new line item to the EDA approved budget;

(4) An expansion of the activity associated with a budget line item.

D. Every proposed modification to a grant shall be considered not only in the light of the foregoing policy on change of scope, but shall also be processed in accordance with all EDA legal and technical requirements so that grants as amended will not deviate from the standards employed in initial grant approval.

3. Time Extensions

A. The Recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the Recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office. The Recipient's notice to EDA should contain the following information.

(1) An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain state or Federal approvals; or unplanned environmental mitigation required).

(2) A statement that no other changes to the project are contemplated;

(3) Documentation that demonstrates there is still a bona fide need for the project; and

(4) A statement that no further delay is anticipated and that the project can be completed within the revised time schedule.

B. EDA will advise the Recipient if a formal written request from the Recipient for a time extension will be required. The Recipient should be aware that grant disbursements may be suspended while the Recipient is not in compliance with the time schedule.

C. A mandatory review of a project's progress will be performed by EDA for any project, which is not under construction within two years of the grant award. The Recipient will be required to justify in writing to EDA why the grant should not be terminated. Depending on the circumstances, a request for time extension has to be approved by either the Regional Director or the Assistant Secretary for Economic Development.

D. EDA reserves the right to suspend and/or terminate any grant if the Recipient fails to proceed with reasonable diligence to accomplish the project as intended.

4. Budget Line Item Revisions

A. The tabulation of estimated project costs contained in the EDA Grant Award is the controlling budget for the project. Budget line item revisions which do not involve a change of scope may be approved by EDA if:

(1) No new EDA funds are involved; and

(2) Another budget line item (preferably the contingency line item, although this is not

mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and

(3) Unless the line item which is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed; and

B. Funds may be transferred to other approved budget line items from the contingencies line item provided the activity associated with the line item cannot be completed unless the line item to be supplemented is supplemented.

C. The transfer of funds from line items other than the contingencies line item may be permitted with EDA written permission provided there will be no significant adverse effect to the object of the line item from which the transfer is to be made.

D. The construction line item shall be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts shall be transferred to the contingencies line item. Recipients are reminded that contingency funds are to be used to cover situations resulting from unknown conditions and changes required for the fulfillment of the previously authorized project activities intended under the grant award. Underrun funds cannot be used to change the scope of the project.

E. The Recipient shall notify EDA of any proposed transfer of funds from one budget line item to another.

5. Additional EDA Funding

A. In accepting the award of an EDA grant the Recipient agreed to fund any overrun(s). Additional EDA funding for an approved project is unlikely to be approved. To be considered for approval it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will accept a formal request for additional EDA funds it will be necessary for the Recipient to furnish the following documentation to EDA:

(1) A written statement from the Recipient's Architect/Engineer giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds.

(2) A written statement from the administrative head of the Recipient's organization justifying why the Recipient cannot furnish the additional funds required. Relevant data may be in the form of an audit performed within the past two years, schedule of bonded debt, assessed property values as a percentage of market value, tax rates, and percent of collection. The statement should state why non-EDA sources of funds cannot be used.

B. Acceptance by EDA of a request for additional EDA assistance does not indicate approval. Any further action by the Recipient pending EDA's review of the Recipient's request is at the Recipient's risk.

6. Termination of the EDA Grant

A. Termination for Cause

(1) If a Recipient materially fails to comply with any term of a grant award, whether stated in a Federal statute, regulation, assurance, grant application, or notice of award, EDA may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold disbursement of grant funds pending correction of the deficiency by the Recipient, or more severe enforcement action by EDA;

(b) 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;

(c) Wholly or partly suspend or terminate the current award;

(d) Withhold further awards for the project or program;

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

(2) In taking an enforcement action, EDA will provide the Recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Recipient is entitled under any statute or regulation applicable to the action involved.

(3) Costs resulting from obligations incurred by the Recipient after notice by EDA of suspension or termination of the grant, are not allowable unless EDA expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other Recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(a) The costs result from obligations which were properly incurred by the Recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are noncancellable; and,

(b) 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.

(4) The enforcement remedies identified in this section, including suspension and termination, do not preclude Recipient from being subject to "Debarment and

Suspension" under E.O.s 12549 and 12689 and implementing regulations at 15 CFR Part 26.

B. Termination for Convenience

(1) Terminations for convenience have the following requirements:

(a) EDA may propose the termination for convenience, 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) The Recipient may propose the termination to EDA in writing, 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, EDA determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, EDA may terminate the grant in its entirety under the termination for cause procedures or termination for convenience procedures with the consent of the Recipient. An appropriate official of the Recipient may request EDA to cancel or terminate a project. This request must be accompanied by a certified resolution or ordinance authorizing the requesting party to make such request. EDA will determine the legal sufficiency of such request.

SECTION VI PROJECT CLOSEOUT PROCEDURES

1. Audit Requirements

A. Recipients are subject to audit requirements contained the Single Audit Act of 1984, and the amendments of 1996, (31 U.S.C. 7501-7) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". If the Recipient has no current audit performed in accordance with the Single Audit Act, EDA will advise the Recipient of the procedure for securing the required audit.

B. Normally, if the Recipient has had an audit in accordance with the Single Audit Act within the prescribed period, EDA will not require a project specific audit. However, if the documentation supplied by the Recipient is inadequate for a determination by EDA of the eligibility of claimed costs for reimbursement from the EDA grant, EDA may require such a project specific audit. EDA reserves the right to: (1) require the Recipient to secure an independent audit of the project cost, or (2) conduct an audit of project

costs using Department of Commerce auditors, and (3) recover any costs previously allowed for EDA reimbursement but found by the audit to be not allowable.

C. From time to time the Department of Commerce Office of the Inspector General selects an EDA assisted project for audit. If its project is one of those selected, the Recipient will be notified in advance.

D. In arranging for audit services, Section II, Contracting for Project Construction will be followed. An independent audit arranged by the Recipient must meet the standards of the Comptroller General publication, "Standards for Audit of Government Organizations, Programs, Activities, and Functions".

2. Closeout Procedures

A. When project construction is complete, the final inspection has been completed, and the Recipient has accepted the project from the contractor, the Recipient can begin the closeout process. This should include notifying EDA of the following actions:

- (1) Compliance with all Special Conditions of the EDA grant award.
- (2) Securing permanent insurance for above ground facilities.
- (3) Results of a review of the project to determine that all changes to the project have been brought to the attention of EDA.
- (4) Provisions have been made for the retention for three years of all records pertaining to the project.
- (5) Certificate of Final Completion has been prepared, executed and a copy furnished to EDA.
- (6) As-built drawings have been received from the contractor and/or the architect/engineer.
- (7) A copy of a current Single Audit Act audit of the Recipient has been furnished to EDA. If no Single Audit Act audit is available but is required, the Recipient's plan to secure the audit has been furnished to EDA and approved. If no Single Audit Act audit is required, EDA has been advised and has determined whether an independent audit will be required.
- (8) To the knowledge of the Recipient there are no outstanding Davis-Bacon or local labor employment violations.

(9) EDA has been notified of any change, lien, mortgage or other encumbrance relating to the ownership of the project.

(10) EDA has been notified of any unresolved contract/contractor disputes.

(11) If required, a lien or Covenant of Purpose, Use, and Ownership in favor of EDA has been executed and recorded.

(12) A record will be maintained by the Recipient of the useful life of the facility as determined by EDA during which period the Recipient may not alienate its ownership or change the use and purpose of the EDA assisted facility without EDA's written permission.

B. Recipients shall submit, within 90 calendar days after the completion of the project, all financial, performance and other reports as required by the terms and conditions of the grant award.

C. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under the grant award no later than 90 calendar days after the funding period or the date of completion, whichever is earlier, as specified in the terms and conditions of the award.

D. When EDA is satisfied that the audit requirement has been met and the actions discussed in paragraphs A, B, and C above have been accomplished, the Recipient may request the final grant disbursement. The request will be prepared on EDA Form ED-113, Outlay Report and Request for Reimbursement for Construction Programs. EDA may assist with filling out the form but it is the responsibility of the Recipient to assure that the numbers on the form are correct. The following documentation should accompany the executed form ED-113 when it is sent to the EDA Regional Office unless the documentation has been previously furnished:

(1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the Form ED-113;

(2) A copy of the currently valid Single Audit Act audit if one was performed;

(3) Payroll forms, if any of the cost claimed is for work performed by in-house work forces;

(4) Payroll Compliance Certificate;

(5) Civil Rights documents;

(6) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed; and

(7) Specifics of any administrative costs being claimed.

E. The Recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the Recipient, the balance will be paid by electronic transmittal. If the Recipient has received a grant amount in excess of the amount due the Recipient, the Recipient will be requested to refund the excess to EDA payable to the U.S. Treasury.

F. The closeout of an award does not affect any of the following:

(1) The right of EDA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the Recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Requirements for property management, records retention and performance measurement reports.

(4) Audit requirements.

SECTION VII POST CONSTRUCTION GRANT REQUIREMENTS

1. Real Property

A. All property that is acquired or improved with EDA grant assistance shall be held in trust by the grantee for the benefit of the project purposes under which the property was acquired or improved.

B. During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance.

C. EDA may approve the substitution of an eligible entity for a grantee. The original grantee remains responsible for the period it was the grantee, and the successor grantee holds the project property with the responsibilities of an original grantee under the award.

D. The requirements contained in this part apply solely to grant and cooperative agreement award projects.

2. Definitions

A. As used in this Section VII:

(1) Dispose includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

(2) Estimated useful life means that period of years from the time of award, determined by EDA as the expected life span of the project.

(3) Grantee includes any recipient, subrecipient, awardee, or subawardee of grant assistance under the Public Works and Economic Development Act of 1965, as amended.

(4) Owner includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project, which has as its purpose that the property be sold or leased.

(5) Personal Property means all property other than real property.

(6) Project means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs "project" includes such programs.

(7) Property includes all forms of property, real, personal (tangible and intangible), and mixed.

(8) Real property means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land, which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

3. Use of property

A. The grantee or owner shall use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project as long as it is needed during the estimated useful life of the project and such property shall not be leased, sold, disposed of or encumbered without the written authorization of EDA.

B. In the event that EDA and the grantee determine that property acquired or improved

in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, if EDA approves such use.

C. When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided it is for adequate consideration and the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination and environmental compliance.

D. When acquiring replacement personal property of equal or greater value, the grantee may, with EDA's approval, trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property.

4. Unauthorized use

A. Except as provided in 3B, 3C, or 3D above, whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of without the approval of EDA, or no longer used for the authorized purpose of the project, the Federal Government shall be compensated by the grantee for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR Part 24 and 15 CFR Part 14 or any supplements or successors thereto, as applicable, shall apply.

B. If property is disposed of without approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs A and B of this section, except that the total amount to be recovered shall not exceed the Federal share, plus costs and interest.

5. Federal Share

A. For purposes of this Section, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale).

B. Where the grantee's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor shall be considered in determining

the percentage of the Federal share.

C. If property is transferred from the grantee to another eligible entity, as provided in paragraph 1C above, the Federal Government shall be compensated the Federal share of any money paid by or on behalf of the successor grantee to or for the benefit of the original grantee, provided that EDA may first permit the recovery by the original grantee of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

D. When the Federal Government is compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use or disposition of the property.

6. Encumbrances

A. Except as provided in paragraph 6 C below, grantee-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project.

B. Encumbering such property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in paragraphs 4 and 5 above.

C. EDA may waive the provisions of paragraph 6A above for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the grantee, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The lender/grantor would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/grantee will not default on its obligation.

D. The EDA Assistant Secretary or his/her designee may waive the provisions of paragraphs A and B above as to an encumbrance on property which is financed by an EDA construction grant when he/she determines that the encumbrance arises solely from

the provisions of a pre-existing water, sewer or other utility encumbrance which by its terms extends to additional property connected to such facilities. EDA's determination shall make reference to the specific requirements (for example, "water system and all accessions, additions or improvements thereto"), which extend the terms of the pre-existing encumbrance to the property, which is financed and/or improved by the EDA construction grant.

7. Civil Rights Restriction

Among other applicable requirements, the Recipient or in the case of a transfer, the transferee, of real property, structures or improvements thereon or interests therein acquired, leased, or improved with EDA assistance may not sell, lease, or otherwise make any part of such premises available for occupancy by any person, firm, or entity unless the Recipient includes in the instrument effecting the sale, lease or transfer a covenant running with the land that assures that the purchaser, lessee or occupant will comply with the nondiscrimination provisions of the Civil Rights Act of 1964, as amended as provided in 15 CFR 8.5(b)(5)(6) and (11).

8. Performance Reports

The Government Performance and Results Act of 1993 (GPRA) requires EDA to report on program performance including the long-term outcomes of EDA grant awards. Recipients are required to report on core program performance measures at the intervals and in such form as EDA may require in compliance with GPRA. The current core performance measures and reporting requirements are set forth in Exhibit O of in Section VIII of these requirements. EDA regional offices will provide written notice within a reasonable period prior to project close out and prior to the submission of subsequent reports, in the event that modifications are made to the core performance measures or reporting requirements.

9. Record Retention

Architect/engineering records and payroll records relating to the project must be retained as described in Section I, Paragraph 6.F; Section II, Paragraph 13.H; and Section III, Paragraph 7.A. Recipients are required to retain documentation to support data submitted to EDA in GPRA performance reports for a minimum of six years.

10. Program Income Earned After the Award Period

The uses for program income earned after the award period are described in Section IV, Paragraph 6.H.

SECTION VIII

EXHIBITS

This section contains a copy of the Exhibits cited elsewhere in this Volume and other items, which may be helpful to the Recipient as it proceeds through project design, construction, and closeout. The EDA forms shown as exhibits herein are updated and revised as new procedures and requirements become known. Thus, the exhibit may not be the latest version of the form currently in use. The Recipient should check with the EDA regional office to be sure the correct form is being used before the initial use of any of the exhibits. The documents marked with an asterisk (*) are available from the EDA regional office, if needed.

A. Checklists for:

- [\(1\) Architect/Engineer Contracts](#)
- [\(2\) Construction Contracts](#)
- [\(3\) Initial Grant Disbursement](#)
- [\(4\) Project Closeout](#)

[B. Supplemental General Conditions](#)

[C. Certificate as to Project Site, Rights-of-Way, and Easements \(Form ED-152\)](#)

[D. * Sample Agreement and Mortgage](#)

[E. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity \(E.O. 11246\)](#)

F. * Sample Contract Documents

- [\(1\) Advertisement for Bid](#)
- [\(2\) Information for Bidders](#)
- [\(3\) Bid Form](#)
- [\(4\) Bid Bond](#)
- [\(5\) Agreement \(Construction Contract\)](#)
- [\(6\) Performance Bond](#)
- [\(7\) Payment Bond](#)
- [\(8\) General Conditions](#)
- [\(9\) Contractor's Application for Payment \(AIA Document #G 702\)](#)
- [\(10\) Weekly Payroll Form \(use Dept. of Labor's Form WH-347\) \(PDF\)](#)
- [\(11\) Notice of Award](#)
- [\(12\) Notice to Proceed](#)
- [\(13\) Change Order](#)

[G. Recipient's Outlay Report and Request for Reimbursement for Construction](#)

[Programs \(Form ED-113\) \(PDF\)](#)

[H. ACH Vendor/Miscellaneous Payment Enrollment Form \(Form SF-3881\) \(PDF\)](#)

[I. Sample Final Acceptance Inspection Report](#)

[J. Sample Quarterly Performance Report](#)

[K. Sample Architect/Engineer's Certificate](#)

[L. Sample Certificate of Grantee/Borrower's Attorney](#)

[M. Information Required for EPA Certification as to Adequacy of Treatment](#)

[N. Financial Status Report \(Form SF-269\) \(PDF\)](#)

[O. Recipient Report on Core Program Performance Measures](#)