**Section 360.303 Contracts for Personal and Professional Services − Consulting Engineering Agreements**

a) Except as is otherwise provided in Section (d) below, the provisions of Section 360.303(a) through (n) apply to all subagreements of grantees for architectural or engineering services where the aggregate amount of services involved is expected to exceed $10,000. The provisions of Section 360.303(d), (e), and (f) are not required, but may be allowed where the population of the grantee municipality is 25,000 or less according to the most recent U.S. census. When $10,000 or less of services (e.g., for consultant or consultant subcontract services) is required, the provisions of General Condition Section 360.301(n) (Small Purchases) shall apply.

b) Type of Contract (Subagreement)

1) General

Cost reimbursement, fixed price or per diem types of contracts or combinations thereof may be negotiated for architectural or engineering services. A fixed price contract is generally used only when the scope and extent of work to be performed is clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate. A per diem contract may be used if no other type of contract is appropriate. An incentive fee may be utilized if the grantee submits an adequate independent cost estimate and price comparison pursuant to Section 360.303(h).

2) Contracts prohibited

The cost-plus-percentage-of-cost and the percentage-of-construction-cost types of contract are prohibited.

3) Fixed price contracts

An acceptable fixed price contract is one which establishes a guaranteed maximum price which may not be increased except to the extent that a contract amendment increases the scope of work.

4) Cost reimbursement contracts

Each cost reimbursement contract must clearly establish a cost ceiling which the engineer may not exceed without formally amending the contract and a fixed dollar profit which may not be increased except in case of a contract amendment which increases the scope of the work.

5) Per diem contracts

A per diem agreement expected to exceed $10,000 may be utilized only after a determination that a fixed price or cost reimbursement type contract is not appropriate. Per diem agreements should be used only to a limited extent such as where the first task under Step 1 grant involves establishing the scope and cost of succeeding Step 1 tasks, or for incidental services such as expert testimony or intermittent or professional testing services. (Resident engineer and resident inspection services should generally be compensated under paragraph (b)(3) or (4) of this Section 360.303.) Cost and profit included in the per diem rate must be specifically negotiated and displayed separately in the engineer's proposal. The contract must clearly establish a price ceiling which may not be exceeded without formally amending the contract.

6) Compensation procedures

If, under either a cost reimbursement of fixed price contract, the grantee desires to utilize a multiplier type of compensation, all of the following must apply:

A) The multiplier and the portions of the multiplier allocable to overhead and allocable to profit have been specifically negotiated;

B) The portion of the multiplier allocable to overhead includes only allowable items of cost under the cost principles approved by the Agency;

C) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract; and

D) The fixed price contract includes a guaranteed maximum price for completion of the specifically defined scope of work; the cost reimbursement contract includes a fixed dollar profit which may not be increased except in a case of a contract amendment which increases the scope of work.

c) Transition Policy

1) Announcement and Selection

The requirements of Section 360.303(c) through (e) of this General Condition shall not apply to Step 1 work where the Step 1 grant was awarded or the initiation of Step 1 work was approved by the Agency prior to July 1, 1976, nor to subsequent Step 2 and Step 3 work in accordance with Section 360.303(c)(3), provided that the grantee is satisfied with the qualifications and performance of the engineer employed.

2) Required Consulting Engineering Provisions

Effective July 1, 1976, grant assistance for Steps 1, 2, or 3 will not be awarded nor will initiation of Step 1 work be approved unless the subagreement clauses required pursuant to Appendix C. (Required Provisions − Consulting Engineering Agreements) are included in the consulting engineering subagreement.

3) Enforcement:

A) Refusal by a consulting engineer to insert the required access clause, or to allow access to its records or to renegotiate a consulting engineering contract in accordance with the foregoing requirements, will render costs incurred under such contract unallowable. Accordingly, all such costs will be questioned and disallowed pending compliance with this general condition and Appendix C.

B) Where the Agency determines that the time required to comply with the access to records and type of contract provisions of this general condition will unduly delay award of grant assistance, it may award the grant assistance conditioned upon compliance with this general condition within a specified period of time. In such event, no grant payments for the affected engineering work may be made until such compliance has been obtained.

4) Access to Records − Audit:

A) After June 30, 1975, a construction grant for Steps 1, 2, or 3 will not be awarded unless an acceptable records and access clause is included in the consulting engineering agreement. The clause contained in section 9 of Appendix C, (Required Provisions - Consulting Engineering Agreements) shall be used after July 1, 1976.

B) For the purpose of determining where the Agency shall exercise its right of access with respect to consulting engineering agreements entered into between June 30, 1975 and July 1, 1976, the Agency will follow the guidelines set forth in Appendix B, (Access to Records − Audit (Existing Consulting Engineering Agreements) of these General Conditions.

d) Public Notice:

1) Adequate notice as provided in paragraph 2 of this section must be given of the requirement for architectural or engineering services for all subagreements with an anticipated price in excess of $25,000, except as provided in paragraphs (3), (4) and (5) of this section. In providing public notice pursuant to paragraph 2 of this section, grantees must comply with the policies enunciated in paragraphs (b), "Local Preference", and (c) "Competition", of General Condition Section (General Conditions for all Subagreements).

2) Public Announcement

A notice of request for qualifications should be published in professional journals, newspapers, or publications of general circulation over a reasonable area, and, in addition if desired, through posted public notices or written notification directed to interested persons, firms, or professional organizations inviting the submission of statements of qualifications. The announcement must clearly state the deadline and place for submission of qualification statements.

3) This public notice requirement and the related requirements of Section 360.303(e) and (f) shall not be required, but may be followed, where the population of the grantee municipality is 25,000 or less according to the latest U.S. census.

4) This public notice requirement and the related requirements of Section 360.303(e), (Evaluation of qualifications) and (f), (Solicitation and Evaluation of Proposals), of this General Condition, shall not apply to the procurement of architectural or engineering services for Steps 2 or 3 of a grant if the grantee is satisfied with the qualifications and performance of an engineer who performed all or any part of the Step 1 or Step 2 work, the engineer has the capacity to perform the subsequent steps, and the grantee desires the same engineer to provide architectural or engineering services for the subsequent steps.

5) When a single treatment works is segmented into two or more Step 3 projects, and if the Step 2 work is accordingly segmented so that the initial contract for preparation of construction drawings and specifications does not cover the entire treatment works to be built under one grant, the grantee need not announce the requirement for architectural or engineering services for subsequent segments of design work under one grant. The grantee may use the same engineering form that was selected for the initial segment of Step 2 work for subsequent segments if he desires to do so. All other appropriate provisions of these sections, including cost review and negotiation of price, will apply to each segment of work.

e) Evaluation and qualifications:

1) The grantee shall review the qualifications of firms which responded to the announcement and shall uniformly evaluate the firms.

2) Qualification shall be evaluated by an objective process such as by the the appointment of a board or committee, which, to the extent practicable, should include persons with technical skills.

3) Criteria which should be considered in the evaluation of candidates for submission of proposals should include:

A) Specialized experience and technical competence of the candidate or firm and its personnel (including a joint venture, association or professional subcontract) in connection with the type of services required and the complexity of the project;

B) Past record of performance on contracts with the grantee, other government agencies or public bodies, and with private industry, including such factors as control of costs, quality of work, and ability to meet schedules;

C) Capacity of the candidate to perform the work (including any specialized services) with the time limitations, taking into consideration the current and planned workload of the firm;

D) The familiarity of the candidate with types of problems applicable to the project; and

E) Avoidance of personal and organizational conflicts of interest prohibited under State and local law.

f) Solicitations and Evaluation of Proposals:

1) Requests for professional services proposals must be sent to no fewer than three candidates who responded to the announcement, unless after good faith effort to solicit qualifications in accordance with Subsection (d), (Public Notice) hereof, fewer than three qualified candidates respond, in which case all qualified candidates must be provided requests for proposals.

2) Requests for professional services proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals must include the solicitation statement required pursuant to Section 360.303(k)(1), hereof and must inform offerors of the evaluation criteria, including all those in paragraph (3) of this section, and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized).

3) All proposals submitted in response to the request for professional services proposals must be uniformly evaluated. Evaluation criteria shall include as a minimum, all criteria stated in Section 360.303(e)(3). The grantee shall also evaluate the candidate's proposed method to accomplish the work required, including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and designs.

4) Proposals shall be evaluated by an objective process such as the appointment of a board or committee which to the extent practicable includes persons with technical skills. Oral (including telephone) or written interviews should be conducted with top rated proposers, and information derived therefrom shall be treated on a confidential basis, except as required to be disclosed pursuant to State or local law or to the Agency pursuant to Section 360.303(h), (Cost and Price Considerations) hereof.

5) At no point during the entire procurement process shall information be conveyed to any candidate which would provide an unfair competitive advantage.

g) Negotiation

1) Grantees are responsible for negotiation of their contracts for architectural or engineering services. Contract procurement including negotiation may be performed by the grantee directly or by another non-state governmental body, person or firm retained for the purpose. Contract negotiations may include the services of technical, legal, audit or other specialists to the extent deemed appropriate.

2) Negotiation shall be conducted in accordance with state or local procedure.

3) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proposed contract. The grantee and the candidate shall discuss, as a minimum:

A) The scope and extent of work and other essential requirements;

B) Identification of the personnel and facilities to accomplish the work within the required time, including where needed, employment of additional personnel, subcontracting, joint ventures, etc;

C) Provision of the required technical services in accordance with regulations and criteria established for the project; and

D) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations set forth in Section 360.303(h) and (i), and payment provisions.

h) Cost and Price Considerations:

1) General

It is the policy of the Agency that the cost of price of all subagreements and amendments thereto must be considered. For each subagreement in excess of $10,000 but not greater than $100,000 grantees shall use the procedures described in paragraph (3) of this section or an equivalent process.

2) Subagreements over $100,000

For each subagreement expected to exceed $100,000, or for two subagreements which aggregate more than $100,000 awarded to an engineer for work on one step, or where renegotiation or amendment itself is in excess of $100,000, the provisions of this paragraph (2) shall apply.

A) The candidate(s) selected for negotiation shall submit to the grantee for review sufficient cost and pricing data as described in paragraph (3) of this section to enable the grantee to ascertain the necessary and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

B) The applicant/grantee shall submit to the Agency for review:

i) Documentation of the public notice of need for architectural or engineering services, selection procedures used, and negotiation methodology used, in those cases where sections Section 360.303(d), (e) and (f) are applicable;

ii) The cost and pricing data submitted by the selected engineer;

iii) A certification of review and acceptance of the selected engineer's cost or price; and

iv) A copy of the proposed subagreement document.

C) The Agency will review the complete subagreement actions and approve the grantee's compliance with appropriate procedures prior the the award of the subagreement. The grantee shall be notified upon completion of the review.

3) Cost Review

A) A review of proposed subagreement costs shall be made by the grantee.

B) As a minimum, proposed subagreement costs shall be presented in summary format prescribed by the Agency and shall be supported by a certification executed by the selected engineer that proposed costs reflect complete, current and accurate cost and pricing data applicable to the date of anticipated subagreement award.

C) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price contracts and maximum total dollar amount of profit shall be set forth separately in the cost summary for cost reimbursement contracts.

D) More detailed cost data than that required by the summary format may be required by the grantee to substantiate the reasonableness of proposed subagreement costs. Such detailed documentation is normally required by the Agency only when the selected engineer is unable to certify that the cost and pricing data used are complete, current and accurate. The Agency may, on a selected basis, perform a preaward cost analysis on any subagreement. Normally, a provisional overhead rate will be agreed upon prior to contract award.

E) Appropriate consideration should be given to General Condition Section 360.801, (Determination of Allowable Costs) which contains general cost principles which must be used for the determination of the allowability of costs under grants. The engineer's actual costs, direct and indirect, allowable for State participation shall be determined in accordance with the terms and conditions of the subagreement and this subpart. Examples of costs which are not allowable under those cost principles include, but are not limited to, entertainment, interest on borrowed capital and bad debts.

F) The engineer shall have an accounting system which accounts for costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable project costs among projects. Allowable project costs shall be determined in accordance with Section 360.303(3)(E) of this section. The engineer must propose and account for costs in a manner consistent with his normal accounting procedures.

G) Subagreements awarded on the basis of review of a cost element summary and certification of complete, current and accurate cost, and pricing data shall be subject to downward renegotiation or recoupment of funds where the Agency determines that such certification was not based on complete, current and accurate cost and pricing data or not based on costs allowable under the appropriate Agency cost principles at the time of award.

i) Profit

The objective of negotiations shall be the exercise of sound business judgement and good administrative practice including the determination of a fair and reasonable profit based on the firm's assumption of risk and input to total performance and not merely the application of a predetermined percentage factor. For the purpose of subagreements under State grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. Profit on a subagreement and each amendment to a subagreement under a grant should be sufficient to attract engineers who possess talents and skills necessary to the accomplishment of project objectives, and to stimulate efficient and expeditious completion of the project. Where cost review is performed, the estimate of profit should be reviewed by the grantee as are all other elements of price.

j) Award of Subagreement

After the close of negotiations and after review and approval by the Agency if required pursuant to Section 360.303(h)(2), the grantee may award the contract. Unsuccessful candidates should be notified promptly.

k) Required Solicitation and Subagreement Provisions:

1) Required solicitation statement

A) Requests for qualifications or proposals must include the following statement, as well as the proposed terms of the subagreement.

"Any contract or contracts awarded under this request for (qualifications/professional proposals) are expected to be funded in part by a grant from the Illinois Environmental Protection Agency. This procurement will be subject to the requirements of the grant offer."

B) Neither the State of Illinois nor the Illinois Environmental Protection Agency is nor will be a party to this request for (qualifications/professional proposals) or any resulting contract.

2) Content of subagreement

A) Each subagreement must adequately define:

i) The scope and extent of project work;

ii) The time for performance and completion of the contract work, including where appropriate, dates for completion of significant project tasks;

iii) Personnel and facilities necessary to accomplish the work within the required time;

iv) The extent of subcontracting and consultant agreements.

B) If any of these elements cannot be defined adequately for later tasks or steps at the time of contract execution, the subsequent tasks or steps shall not be included in the contract at that time.

3) Required subagreement provisions. Each consulting engineering contract must include the provisions set forth in Appendix C, (Required Provisions − Consulting Engineering Agreements) to these general conditions.

l) Subagreement Payments − Architectural or Engineering Services:

1) Generally, payment will be made under consulting engineering contracts upon the completion of a step, or if specified in the grant agreement, upon completion of specific tasks within the step.

2) Upon satisfactory completion by the engineer of the work called for under the terms of a contract, and upon acceptance of such work by the grantee, with the concurrence of the Agency, the engineer will be paid the unpaid balance of any money due for such work, including any retained percentages relating to this portion of the work.

3) Payment may not be withheld for professional services, except as provided in the contract for professional services. Any withholding should be limited to only that amount necessary to assure contract compliance.

m) Applicability to Existing Contracts. In some cases a negotiated subagreement may have been executed prior to the effective date of these general conditions to cover work under more than one step of a grant. Such contracts already in existence may not comply with the requirements of Section 360.301 and Section 360.303 herein. Section 360.303(C) of this General Condition and Appendix B set forth Agency policy with respect to such contracts and must be implemented prior to the grant award action for the next step under the grant.

n) Subcontracts under subagreements for architectural or engineering services:

1) The award or execution of subcontracts under a prime contract for architectural or engineering services awarded to an engineer by a grantee, and the procurement and negotiation procedures used by the engineer in awarding such subcontracts are not required to comply with any of the provisions, selection procedures, policies or principles set forth in General Condition in Section 360.301 or Section 360.303 except those specifically stated in paragraph (2) of this section.

2) The award or execution of subcontracts in excess of $10,000 under a prime contract for architectural or engineering services and the procurement procedures used by the engineer in awarding such subcontracts must comply with the following:

A) General Condition Section 360.301(b), (Local preference).

B) General Condition Section 360.303(h), (Cost and Price Considerations).

C) General Condition Section 360.303(i), (Profit).