**Section 365.610 Requirements for Subagreements**

The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction of projects funded from the WPCLP. Any procurement method, except as allowed under this Part, that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

a) Local Preference

Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under WPCLP loans.

b) Profits

Only fair and reasonable profits may be earned by contractors in subagreements under WPCLP loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 365.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.

c) Loan Recipient Responsibility

The loan recipient shall be responsible for the administration and successful accomplishment of the project for which WPCLP loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. The individual or firm shall be deemed the loan recipient's agent and shall be subject to all the provisions of the loan agreement and all the provisions of this Part that apply to the loan recipient.

d) Privity of Contract

Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts) or to any solicitation or request for proposals under those subagreements.

e) Subagreements shall:

1) be directly related to the accomplishment of the loan recipient's approved work program;

2) be in the form of an executed written agreement (except for small purchases of $25,000 or less);

3) be for monetary or in-kind consideration; and

4) not be in the nature of a grant or gift.

f) Documentation

1) Procurement records and files for purchases in excess of $25,000 shall include the following:

A) the basis for contractor selection;

B) the justification for lack of competition if competition appropriate to the type of project work to be performed is required but not obtained; and

C) the basis for award cost or price.

2) Procurement documentation as described in subsection (f)(1) shall be retained by the loan recipient or contractors for the period required by Section 365.470 (Ongoing Auditing and Monitoring Financial Capability).

g) Subagreements shall only be awarded to persons or organizations that:

1) Have adequate financial resources for performance;

2) Have the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain these requirements;

3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;

4) Have a satisfactory record of integrity, judgment, and performance;

5) Have an adequate financial management system and audit procedure that is consistent with auditing standards generally accepted in the United States;

6) Maintain a standard of procurement in accordance with this Part;

7) Maintain a property management system that provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and

8) Conform to the civil rights, equal employment opportunity, and labor law requirements of this Part.

h) Fraud and Other Unlawful or Corrupt Practices

1) The obtaining and administration of loans from the WPCLP, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks, and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of that conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.

2) The loan recipient shall effectively pursue available State or local legal and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices brought to its attention. The loan recipient shall advise the Agency immediately when any allegation or evidence comes to its attention and shall periodically advise the Agency of the status and ultimate disposition of any matter.

i) Negotiation of Subagreements

All subagreements greater than $25,000 shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent and not be in conflict with other State statutes. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:

1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement);

2) The aggregate amount of the contract to be competitively negotiated is allowed by State law;

3) The materials or services to be procured are available from only one person or firm;

4) The procurement is for personal or professional services, or for any services to be rendered by an educational institution;

5) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or

6) The procurement is for materials or services for which the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

(Source: Amended at 43 Ill. Reg. 11141, effective October 1, 2019)