**Section 365.630 Contracts for Personal and Professional Services**

All subagreements for personal and professional services for design or construction expected to exceed $25,000 in the aggregate shall include the following subagreement provisions.

a) Subagreements for personal and professional construction services shall include:

1) Evidence that affirmative steps have been taken in accordance with 40 CFR 33 to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA.

2) An audit and access to records clause that provides as follows:

A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of $25,000.

B) Books, records, documents, and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained in accordance with generally accepted accounting principles. The Agency or any of its authorized representatives shall have access to the books, records, documents, and other evidence for the purpose of inspection, audit, and copying. Facilities shall be provided for access and inspection.

C) Audits conducted pursuant to this provision shall be in accordance with auditing standards generally accepted in the United States.

D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 365.650 (Disputes), litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.

3) A covenant against contingent fees clause as follows:

"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee."

4) A Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) showing compliance with federal Executive Order 12549.

5) A description of the scope and extent of the project work.

6) The schedule for performance and completion of the contract work including, when appropriate, dates for completion of significant project tasks.

7) A method of compensation.

8) A clause as follows:

"No contractor or subcontractor shall discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor or subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under the WPCLP. Failure by the contractor or subcontractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."

b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.

c) Amendments. When the loan recipient authorizes a change that would add, delete, or revise the work within the general scope of the contract documents, or authorizes an adjustment in the contract price or contract time, the loan recipient shall submit one copy of the fully executed contract amendment signed by the loan recipient and the professional services provider. Failure to give timely notice of contract amendments may result in disallowance of loan participation for costs incurred that are attributable to the change.

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