**Section 369.630 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) Disadvantaged Business Enterprise Requirements

Evidence, such as, but not limited to, a copy of the advertisement and the record of negotiation in accordance with 40 CFR 33 that affirmative steps have been taken 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 the USEPA.

2) An audit and access to records clause that specifies 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 consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. 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 subsection (a)(2) shall be in accordance with generally accepted auditing standards.

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 369.650 (Disputes) of this Subpart, 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, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee".

4) Debarment and Suspension Certification

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

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

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

7) A method of compensation.

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) If, at the time of contract execution, any of the elements required in this Section cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.