**Section 661.301 General Conditions for all Subagreements**

The following conditions shall apply to all subagreements entered into between the grantee and any other party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which the grant is awarded, including contracts and subcontracts for personal and professional services, and for construction and purchase orders.

a) Local preference

Local laws, ordinances, regulations or procedures which are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be employed in evaluating bids or proposals for subagreements under a grant.

b) Competition

It is the policy of the Agency to encourage free and open competition appropriate to the type of project work to be performed.

c) Profits

1) Only fair and reasonable profits may be earned by contractors in subagreements under Agency grants.

2) Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 661.302 is presumed to be reasonable.

3) For determining a fair and reasonable profit for negotiated subagreements, the factors to be considered shall include material acquisition, labor costs, associated management costs, contract risks, capital investments, degree of independent development, and cost control and recordkeeping efforts. The determination of a fair and reasonable profit for negotiated contracts or agreements shall not be based solely upon the application of a predetermined percentage factor.

d) Grantee responsibility

The grantee is responsible for the administration and successful accomplishment of the project for which Agency grant assistance is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements entered into under the grant. This includes but is 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.

e) Privity of contract

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

f) General requirements

Subagreements must:

1) Be necessary for and directly related to the accomplishment of the project work based upon the Agency's professional judgement as defined in Section 661.102(b);

2) Be in the form of a bilaterally executed written agreement (except for small purchases of $10,000 or less);

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

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

g) Documentation

1) Procurement records and files for purchases in excess of $10,000 shall include the following:

A) Basis for contractor selection;

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

C) Basis for award cost or price.

2) Procurement documentation as described in subsection (g)(1) shall be retained by the grantee or contractors of the grantee for the period of time required under Section 661.502.

h) Specifications

1) Nonrestrictive specifications

No specification for bids or statement of work in connection with work performed under this grant shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance (as determined by the Agency based upon the Agency's professional judgement as defined in Section 661.102(b)), unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least one brand name or trade name of comparable quality or utility are listed and followed by the words "or equal". The single base bid method of solicitation for equipment and parts for determination of a low, responsive bidder may not be utilized. With regard to materials, if a single material is specified, the applicant must be prepared to substantiate the basis for the selection of the material.

2) Standard or proven production techniques

Project specifications shall provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques (consistent with 35 Ill. Adm. Code: Subtitle F), methods, and processes, except to the extent that advanced technology may be utilized if approved by the Agency (based upon the Agency's professional judgement as defined in Section 661.102(b)) by the issuance of a construction permit or authorization to construct.

3) Sole source restriction

A specification shall not require the use of structures, materials, equipment, or processes which are known to be available only from a sole source, unless such use has been justified in writing by the grantee's engineer as meeting the needs of the particular project.

4) Experience clause restriction

The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases in which the grantee justifies any such requirement in writing. The Agency's acceptance of the justification shall be based upon the Agency's acceptance of the justification shall be based upon the Agency's professional judgement as defined in Section 661.102(b). Where such justification has been made, submission of a bond or deposit shall be permitted in lieu of a specified experience period, and the period of time for which such bond or deposit is required may not exceed the experience period specified.

i) Force account work

1) The grantee must request and secure prior written approval of the Agency for utilization of the force account method in lieu of subagreement.

2) The Agency's approval shall be based on its determination that:

A) All of the following conditions are met:

i) The grantee posses the necessary competence and resources to accomplish the project work, as determined by the Agency based upon the Agency's professional judgement as defined in Section 661.102(b); and

ii) The work can be accomplished more economically by the use of the force account method, as determined by the Agency based upon the Agency's professional judgement as defined in Section 661.102(b); and

iii) The grantee can document and support the costs incurred for the project work, as determined by the Agency based upon generally accepted accounting principles and generally accepted auditing standards as defined in Section 661.102(b); or

B) Emergency circumstances (i.e., conditions that threaten the safety or adequacy of the water supply) so dictate.

j) No subagreement shall be awarded to any person or organization which does not:

1) Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

2) Have resources sufficient to comply with the proposed or required completion schedule for the project;

3) Have a satisfactory record of integrity, judgment, and performance, including in particular any prior performance under grants and contracts with the federal or state government;

4) Have a financial management system and audit procedure which complies with generally accepted accounting principles and with American Institute of Certified Public Accountant's Professional Standards. (666 Fifth Avenue, N.Y., N.Y. 10019, June 1, 1987). (This incorporation contains no later amendments or editions.)

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

6) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding and deposition of all property; and

7) Conform to the civil rights, equal employment opportunity, and labor laws of the State of Illinois.

k) Fraud and other unlawful or corrupt practices

1) The award and administration of grants by the State of Illinois, and of subagreements awarded by grantees under those grants, must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.

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

l) Negotiation of subagreements

Negotiation of subagreements (i.e., award of subagreements by any method other than formal advertising) is authorized if one or more of the following conditions exist:

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

2) The material or service to be procured is available from only one person or firm, and the Agency has given prior written approval of the justification submitted under subsection (h)(3);

3) The aggregate amount involved does not exceed $2,500;

4) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution;

5) No responsive, responsible bids at acceptable price levels have been received after formal advertising, and the Agency has given advance written approval. The Agency shall give such approval upon a showing by the grantee that no responsive, responsible bids were received;

6) The procurement is for material or services where 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, resale, or for technical or specialized supplies requiring substantial initial investment for manufacture. Any negotiated procurement under this subsection other than for perishable materials, must be approved in advance by the Agency based upon the Agency's professional judgement as defined in Section 661.102(b).

m) Small purchase

1) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed $10,000. The small purchase limitation of $10,000 applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should logically be grouped together. Reasonable competition shall be obtained and shall be evidenced by submission of price quotations to the grantee

2) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like may be utilized in the interest of minimizing paperwork. Retention in the purchase files of these documents and of written quotations received, or references to written catalogs or printed price lists used, will suffice as the record supporting the price paid.

3) All small purchases must be done in accordance with state and local laws.

n) Agency Review of Subagreements

The Agency retains the right to review and approve in accordance with this Part any subagreement to be entered into by the grantee in furtherance of the administration of the grant prior to execution of that subagreement.