**Section 661.303 Contracts for Personal and Professional Services - Consulting Engineering Agreements**

a) Scope of Application

The provisions of subsections (a) through (i) apply to all subagreements of grantees for architectural or engineering services in which the aggregate amount of services involved is expected to exceed $10,000. When $10,000 or less of services (e.g., for consultant or consultant subcontract service) is required, the provisions of Section 661.301(m) shall apply.

b) Type of Contract (Subagreement)

1) General

Cost reimbursement, fixed price or per diem types of contracts or combinations of those contracts may be negotiated for architectural or engineering services.

2) Contracts prohibited

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

3) Fixed price contracts

A fixed price contract is one that established a guaranteed maximum price that may not be increased except to the extent that a contract amendment increases the scope of work. A fixed price contract may be used only if the scope and extent of work to be performed are clearly defined.

4) Cost reimbursement contracts

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

5) Per diem contracts

Per diem agreements should be used only when the first task under the grant involves establishing the scope and cost of succeeding tasks, or for incidental services, such as expert testimony or other intermittent or professional services. Resident engineer and resident inspection services shall be compensated under a fixed price contract or a cost reimbursement contract as described in subsections (b)(3) and (b)(4), respectively.

6) Compensation procedures

If, under either a cost reimbursement or 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 set forth in Section 661.701;

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 that may not be increased except in a case of a contract amendment that increases the scope of work.

c) 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.

2) Negotiation shall be conducted in accordance with State and local laws. If State laws conflict with this Part, State laws shall take precedence over this Part. This Part shall have precedence over local ordinances.

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

A) The scope and extent of work;

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 subsections (d) and (e), and payment provisions.

d) Cost and Price Considerations

1) General

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

2) Subagreements over $100,000

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

A) The candidates selected for negotiation shall submit to the grantee cost and pricing data described in subsection (d)(3) to enable the grantee to determine if the costs are fair and reasonable.

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

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

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

iii) A copy of the proposed subagreement document.

C) The Agency will review the complete subagreement action and approve the grantee's compliance with this Part prior to 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 a 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 set forth in the summary format may be required to enable the grantee to determine if the costs are fair and reasonable.

E) 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 in accordance with this Part.

F) The engineer shall have an accounting system which accounts for costs in accordance with GAAP. This system shall provide for the identification, accumulation and segregation of allowable and unallowable project costs among projects in accordance with Section 661.701. The engineer must propose and account for costs in a manner consistent with his or her normal accounting procedures.

G) Subagreements awarded on the basis of review of a cost element summary and a 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 the certification was not based on complete, current and accurate cost and pricing data at the time of award.

e) Profit

The objective of negotiations shall be the determination of a fair and reasonable profit as defined in Section 661.301(c). 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. Where cost review is performed, the estimate of profit should be reviewed by the grantee as are all other elements of price.

f) Award of Subagreement

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

g) Required Solicitation and Subagreement Provisions

1) Required solicitation statement

A) Requests for qualification 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 define:

i) The scope and extent of project work;

ii) The time for performance and completion of the contract work, and 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 at the time of contract execution, the subsequent tasks or steps shall be included in the contract at a time specified in the contract.

3) Required subagreement provisions

Each consulting engineering contract must include the provisions set forth in Appendix B. The grant will not be awarded unless each consulting engineering contract includes the provision set forth in Appendix B.

h) Subagreement Payments − Architectural or Engineering Services

1) Grantee payments to consulting engineers for work done during construction will be made periodically throughout the construction period.

2) Upon satisfactory completion by the engineer of the work called for under the terms of a contract, and upon acceptance of that work by the grantee, with the concurrence of the Agency based upon the Agency's professional judgment as defined in Section 661.102(b), the engineer will be paid the unpaid balance of any money due for that 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.

i) 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 subcontracts are not required to comply with any of the provisions selection procedures, policies or principles set forth in Section 661.301 or Section 661.303, except those specifically stated in subsection (i)(2).

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) Section 661.301(a) (Local preference);

B) Section 661.303(d) (Cost and Price Considerations); and

C) Section 661.303(e) (Profit).

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)