**Section 886.255 Requirements Applicable to Contracting and Subcontracting**

a) The following conditions and limitations shall apply to all contracts and subcontracts entered into by the loan recipient:

1) The loan recipient must use a freely and openly competitive bidding process in contracting and must require the same of any contractor in subcontracting;

2) Only fair and reasonable profits may be earned by contractors and subcontractors in contracts and subcontracts under Agency loans. Factors to be considered in determining a fair and reasonable profit shall include project-related: material acquisition costs; labor costs; management costs; contract risks; capital investments; degree of independent development; and cost control and record keeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor;

3) The loan recipient, rather than the Agency, is responsible for the administration and successful accomplishment of the project for which the Agency loan is awarded. The loan recipient, rather than the Agency, is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of contracts and subcontracts entered into under the loan. This responsibility includes, but is not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protest of awards, claims, disputes and other procurement matters;

4) Any contract or subcontract must include a provision allowing project-related access, in accordance with Section 886.400 (Access) of this Part;

5) Any contract or subcontract must provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records, including computer-generated documents, of the contractor or subcontractor that are pertinent to the project, for the purpose of making an audit, examination, excerpts, and transcriptions thereof;

6) Neither the Agency nor the State shall be a party to any contract or subcontract, solicitation, or request for proposals;

7) Any contract or subcontract shall be in compliance with all local, State and federal law.

b) No contract or subcontract shall be awarded to any person or organization that does not:

1) Have adequate financial resources, experience, organization, technical qualification, and facilities for performance of the subagreement, or a firm written commitment or arrangement to obtain such;

2) Have staffing sufficient to comply with the completion schedule for the project;

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

4) Have an established financial management system and audit procedure;

5) Maintain a written property management system that provides procedures for the acquisition, maintenance, safeguarding and disposition of all project-related property; and

6) Conform to the civil rights law, equal employment opportunity law, and labor law requirements, as well as all other statutes of the State.