

resubmission when the deficiencies are cured; or

(iii) EDA denies the proposal for specifically stated reasons.

(b) *National technical assistance, training, research, or evaluation projects.* If you are or represent a party eligible to be an applicant, and are interested in a national technical assistance, training, research, or evaluation project under PWEDA, you should make initial contact with EDA in Washington, D.C., at locations identified in the NOFA, for information and assistance concerning proposals and to obtain program information, including a copy of the current NOFA, and OMB approved proposal form. After submission of the proposal to the appropriate EDA Washington, D.C. office, generally, three or more technically knowledgeable EDA officials will review the proposal for relevance and quality.

(1) If EDA determines that the proposal is acceptable under §304.2, program specific sections of this chapter, and the NOFA, if applicable, EDA may by letter invite the submitter to provide an application with a more detailed and comprehensive project narrative.

(2) If EDA determines that the proposal is not acceptable because of specified deficiencies, EDA will so notify the submitter in writing in a timely manner.

(c) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

(d) EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter. EDA's invitation to submit an application does not assure EDA funding.

[64 FR 5357, Feb. 3, 1999, as amended at 64 FR 69874, Dec. 14, 1999]

§304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

(a) General proposal and application evaluation criteria for projects funded under PWEDA are as follows: EDA will screen all proposals/applications for conformance to statutory and regulatory requirements, the reasonableness of the budget presented, and the following criteria:

(1) The relative severity of the economic problem of the area,

(2) The quality of the scope of work proposed to address the problem,

(3) The merits of the activity(ies) for which funding is requested, and

(4) The ability of the prospective applicant to carry out the proposed activity(ies) successfully.

(b) EDA will also review applications for conformance with any additional program specific evaluation criteria as stated in applicable sections of these rules or the NOFA.

(c) The NOFA may identify special areas of interest or priority consideration for the period of such NOFA.

[64 FR 5357, Feb. 3, 1999, as amended at 64 FR 69875, Dec. 14, 1999]

PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

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305.26 Reports.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

§ 305.1

SOURCE: 64 FR 5358, Feb. 3, 1999, unless otherwise noted.

Subpart A—General

§ 305.1 Purpose and scope.

The purpose of Public Works and Development Facilities grants is to help the Nation's distressed communities revitalize and expand their physical and economic infrastructure and thereby provide support for the creation or retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of distressed areas. The primary focus is on the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by high unemployment, low income, or a special need arising from actual or threatened severe unemployment or severe changes in local economic conditions. These grants are intended to help communities achieve sustainable economic development by developing and expanding new and existing public works and other infrastructure facilities that will help generate long-term jobs and economic growth, improve economic conditions or otherwise enhance and promote the economic recovery of the area.

§ 305.2 Criteria.

(a) A grant may be made under part 305 for the following purposes:

(1) For the acquisition or development of land and improvements for use for a public works, public service or other type of development facility; or

(2) For the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) A grant may be made under part 305 only when:

(1) The project for which the grant is applied for will, directly or indirectly—

(i) Improve the opportunities, in the area where the project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

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(ii) Assist in the creation of additional long-term employment opportunities in the area; or

(iii) Primarily benefit the long-term unemployed and members of low-income families;

(2) The project for which the grant is applied for will fulfill a pressing need of the area, or a part of the area, in which the project is or will be located; and

(3) The area for which the project is to be carried out has a strategy and the project is consistent with the strategy.

(c) Maximum assistance for each State. Not more than 15 percent of the annual appropriations available to carry out this part may be expended in any one State.

[64 FR 5358, Feb. 3, 1999, as amended at 64 FR 69875, Dec. 14, 1999]

§ 305.3 Application requirements.

Each application for a grant under part 305 must:

(a) Include evidence of area and applicant eligibility;

(b) Include, or incorporate by reference, a strategy, as provided in § 301.3;

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 305.2.

§ 305.4 Selection and evaluation.

(a) Projects will be selected in accordance with the application evaluation criteria set forth in § 304.2 of this chapter.

(b) In addition to the evaluation criteria set forth in part 304 of this chapter, project selection and evaluation will be made on the basis of whether, and to what extent, the proposed project will:

(1) Assist in creating new or retaining existing private sector jobs and assist in the creation of additional long-

term employment opportunities rather than merely transferring jobs from one area of the country to another;

(2) Be supported by significant private sector investment;

(3) Leverage or be a catalyst for the effective use of private, local government, State or other Federal funding that is available;

(4) Likely be started and completed in a timely fashion; and

(5) If the project is located in an area with a stable economy and low distress, provide employment opportunities for residents of nearby areas of high distress.

Subpart B—Requirements for Approved Projects

§ 305.5 Pilot program.

(a) EDA's Regional Offices may, upon approval of the Deputy Assistant Secretary for Program Operations, institute pilot programs for post-approval construction monitoring, thereby continuing EDA's efforts to streamline and simplify procedures for monitoring approved EDA construction projects. The knowledge and efficiencies gained from the pilot programs will be evaluated and used to improve and revise EDA's post-approval project management requirements and procedures.

(b) As part of a pilot program, the procedures developed by a Regional Office may vary from those listed in this subpart B. No additional requirements are imposed by pilot program procedures. A Regional Office will provide guidelines, in its version of the "Requirements for Approved Projects," to all recipients of grants for construction projects monitored by the Office. The recipient may not be required to submit to EDA certain documentation at any set time, but will be required to maintain all documentation supporting any and all certifications submitted to the Regional Office, for the period of time provided in 15 CFR part 14 or 24, as appropriate.

[65 FR 71024, Nov. 28, 2000]

§ 305.6 Project management conference.

After the EDA financial assistance award has been accepted by the recipient,

EDA may schedule a planning conference with the recipient's representatives to explain the post-approval requirements for administration of the EDA assisted project.

[64 FR 69875, Dec. 14, 1999]

§ 305.7 Selection of the Architect/Engineer.

Guidelines for the selection of the Architect/Engineer (A/E), services to be performed by the A/E, contract provisions for those services and eligible fees for the A/E are as follows:

(a) Selection of the A/E may be by sealed bids using formal advertising or by competitive proposal procedures subject to negotiation of fair and reasonable compensation. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(b) The A/E agreement shall provide for all services required by the recipient for the engineering feasibility, design and contract administration of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council, American Society of Civil Engineers, National Society of Professional Engineers, and/or the American Institute of Architects may be used where the grantee does not have standard procurement/contract documents.

(c) Exhibit A-1, Checklist for Architect/Engineer Services, in the EDA publication, *Requirements for Approved Construction Projects*, displayed at EDA's Web Site, <http://www.doc.gov/eda> (a copy of this publication is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance), lists the contract provisions which EDA recommends for the A/E contract. The A/E agreement must be furnished to EDA in order for the allowability of the costs of A/E services to be determined.

(d) Eligible project costs may include, but not be limited to, costs for A/E fees, resident inspection, test borings, and the testing of materials provided under an agreement or contract with the recipient. The A/E fees should

§ 305.8

be in conformity with similar costs and projects in the area.

[64 FR 69875, Dec. 14, 1999]

§ 305.8 Project phasing.

The recipient is strongly urged to award all contracts for construction at one time.

(a) Where compelling reasons justify phasing the project, the recipient must secure the approval of EDA for phasing prior to advertising any portion for bid.

(b) The recipient's request for approval of phasing must include valid reasons justifying the request and a statement from the recipient that it can, and will, fund any overrun that arises in the later phases.

(c) Normally, EDA will not disburse funds until all construction contracts have been awarded, (an exception is the development of an underground source of water when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as described in the grant application).

(d) Disbursement of grant funds by phases must be approved by EDA. Such approvals will be given only if the recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time.

(e) The recipient must be capable of paying incurred costs prior to the first disbursement of EDA grant funds.

[64 FR 69875, Dec. 14, 1999]

§ 305.9 Recipient furnished equipment and materials.

The recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts.

(a) It is the responsibility of the recipient to assure that such equipment and/or materials are adequate for the proposed use.

(b) The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participation. The recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who

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normally distribute such equipment and/or materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value.

(c) The recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs.

(d) Acquisitions of recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR part 24 or 15 CFR part 14.

[64 FR 69875, Dec. 14, 1999]

§ 305.10 Construction Management services.

Construction Management is defined as the services of a firm with competent and experienced staff to act as the recipient's agent to perform all or part of project administration. EDA will not normally approve the use of a Construction Management firm for projects costing less than \$5 million. EDA will participate in such cost only if EDA approves the contract for such services.

[64 FR 69876, Dec. 14, 1999]

§ 305.11 Design/Build method of construction.

EDA discourages the use of the same entity to both design and to build EDA assisted facilities. If the recipient desires to use such a method, its use must be justified and EDA must approve the contract. The procurement of, and the compensation to, the designer/builder will be subject to the same rules as for the procurement of construction services.

[64 FR 69876, Dec. 14, 1999]

§ 305.12 Advertising for bids.

In the absence of State or local law to the contrary, the advertisement for bids for construction projects should appear in publications of general circulation a minimum of four times within a 30-day period prior to the opening of bids. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids.

Generally, a minimum of 30 days should be allowed for submission of bids.

[64 FR 69876, Dec. 14, 1999]

§ 305.13 Bid overrun.

If at the construction contract bid opening the lowest responsive bid less deductive alternates, if any, exceeds the funds available for construction, the recipient may reject all bids or augment the funds available in an amount sufficient to enable the award to be made to the low bidder. If available, the recipient may take deductive alternates in the order given in the Invitation for Bids until at least one of the responsive bids less deductive alternates results in a price within the funds announced as available prior to the bid opening. The award then may be made to that bidder. Additional information on the procedures to be followed is in the EDA publication, *Requirements for Approved Construction Projects*.

[64 FR 69876, Dec. 14, 1999]

§ 305.14 Bid underrun.

If at the construction contract bid opening, the lowest responsive bid is less than the funds available for construction, EDA must be notified immediately to determine whether any unneeded grant funds should be deobligated.

[64 FR 69876, Dec. 14, 1999]

§ 305.15 Contract award.

EDA must concur in the award of all necessary contracts for design and construction of the EDA assisted facility in order for the cost to be eligible for EDA reimbursement. Pending EDA approval of the construction contract(s), the recipient may issue the notice to proceed permitting the work to go forward. If the work does go forward prior to EDA approval, the recipient will be proceeding at its own risk pending EDA review and concurrence. The EDA regional office will advise the recipient of the documents that are required to obtain EDA approval.

[64 FR 69876, Dec. 14, 1999]

§ 305.16 Construction progress schedule.

If requested by EDA, the recipient will secure from the contractor or A/E and furnish a copy to EDA of the estimated construction progress chart and a schedule of amounts for contract payments. The construction progress chart should be updated monthly by the recipient, the A/E or the contractor, and an up-to-date copy furnished to EDA quarterly throughout the construction of the project.

[64 FR 69876, Dec. 14, 1999]

§ 305.17 Project sign.

The recipient shall be responsible for the construction, erection, and maintenance in good condition throughout the construction period, of a sign or signs, (recommended specifications for the sign are included as an exhibit to the EDA publication, *Requirements for Approved Construction Projects*) at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if the project's location so warrants. The recipient should confer with the EDA regional office for suggestions on where the sign(s) should be located.

[64 FR 69876, Dec. 14, 1999]

§ 305.18 Occupancy prior to completion.

If the project or any part of it is to be occupied or used prior to the project's acceptance from the contractor, the recipient must notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use, secure the written consent of the contractor; secure an endorsement from the insurance carrier and consent of the surety company permitting occupancy or use during the period of construction; secure permanent fire and extended coverage insurance and, when required, secure a permit to occupy the facility from the appropriate authority, e.g. the local building inspector.

[64 FR 69876, Dec. 14, 1999]

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§ 305.19 Contract change orders.

After construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor.

(a) All contract change orders must be concurred in by EDA even if the recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced.

(b) The work on the project may continue pending EDA review and concurrence in the change order but the recipient should be aware that all such work will be at the recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received.

(c) EDA will not approve financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the approved project budget.

(d) When a change order is for a project funded with one-year funds, EDA approval of such change order must be based on a finding by EDA that the work called for in the change order is within the project scope and is required for satisfactory operation or functioning of the project.

[64 FR 69876, Dec. 14, 1999, as amended at 65 FR 71025, Nov. 28, 2000]

§ 305.20 Project development time schedule.

The recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office.

[64 FR 69876, Dec. 14, 1999]

§ 305.21 Controlling budget.

The tabulation of estimated project costs contained in the EDA grant award is the controlling budget for the project.

(a) Budget line item revisions, including the addition of a new line item,

which do not involve a change of scope may be approved by EDA if no new EDA funds are involved; another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and unless the line item that is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed.

(b) The recipient shall notify EDA of any proposed transfer of funds from one budget line item to another. The recipient's attention is called to the fact that the addition of a new line item to the approved budget may involve an impermissible change of scope and, therefore, may result in such costs being excluded from EDA's participation. Accordingly, the recipient is advised to discuss the need to add a new line item to the approved budget with EDA regional office staff before any costs are incurred under such new line item.

[64 FR 69877, Dec. 14, 1999]

§ 305.22 Services performed by the recipient's own forces.

The recipient may wish to have a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the project performed by personnel who are employed by the recipient either full or part time (in-house). Due to the difficulty in monitoring in-house construction and the limited EDA staff available to perform the monitoring, in-house construction is discouraged.

(a) If EDA approves the use of the recipient's in-house forces to construct all or part of the EDA assisted project and the in-house forces are to be augmented by personnel hired specifically for the EDA assisted project, the hourly wages to be paid to such personnel shall be the same as the hourly wages paid to full time personnel of the recipient doing the same or similar work. If the nature of the work is not similar and/or there is not an established wage scale, the prevailing state or county hourly wage for public employees shall be obtained from the appropriate state or county agency and used for the

newly established position. However, non-profit recipients must pay all personnel employed for the construction of the EDA assisted project the prevailing hourly wages for the area as established by the U.S. Department of Labor.

(b) The use of in-house forces for construction may be approved by EDA if:

(1) The recipient has a special skill required for the construction of the project, *e.g.*, construction of unique Indian structures, or

(2) The recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the project area, or

(3) Substantial cost savings can be demonstrated.

[64 FR 69877, Dec. 14, 1999]

§ 305.23 Public Works projects for design and engineering work.

In general, EDA prefers to award a Public Works grant that includes all of the costs required for the successful completion of a project, including the design and engineering work.

(a) When the purpose of the Public Works project is to accomplish only the design and engineering work for a proposed future construction project, EDA may award a grant for the design and engineering work with the understanding that EDA cannot make a commitment against a future fiscal year appropriation to fund the proposed construction project.

(b) The purpose of the EDA assisted project for design and engineering work is to produce all of the documents required for the construction of the proposed future project in a format and in sufficient quantity to permit a construction contract to be advertised and awarded soon after the project's construction financing has been arranged. The EDA document, *Requirements for Approved Construction Projects*, should be used to ensure that the proposed construction project meets all applicable Federal requirements.

(c) Design and engineering projects will not generally be considered unless the nature of the proposed project to be considered is complex or environ-

mentally sensitive and EDA makes a determination that it is in the best interest of the Government to award a separate grant for design and engineering.

(d) EDA requires the design/engineering contract to be submitted to and approved by EDA before any EDA grant funds can be disbursed.

[64 FR 69877, Dec. 14, 1999]

§ 305.24 Disbursements of funds for grants.

(a) Disbursements of funds for construction grants are generally made on a reimbursable basis on request of the recipient for reimbursement. Disbursements may be made only:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) On the basis of the work accomplished and the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds not yet expended is on deposit;

(5) After a determination by EDA that all applicable terms and conditions of the grant have been met; and

(6) After meeting such other requirements as EDA may establish in accordance with other Federal laws, rules and regulations.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

(c) Advances of funds are allowable when disbursement on a reimbursable basis would impose an undue burden, as determined by EDA, upon the recipient.

[64 FR 5358, Feb. 3, 1999. Redesignated and amended at 64 FR 69875, 69877, Dec. 14, 1999]

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§ 305.25 Final inspection.

A final inspection will be scheduled by the recipient and appropriate notification given to EDA, when the project has been completed and all deficiencies have been corrected. EDA personnel may attend and participate in the final inspection and, in any event, EDA must be advised of the outcome of such final inspection and the recipient's acceptance of the work.

[64 FR 69877, Dec. 14, 1999]

§ 305.26 Reports.

Financial and performance reports requirements will be specified in the Special Award Conditions of the grant. Construction progress schedule reports will be required in §305.16.

[64 FR 69877, Dec. 14, 1999]

PART 306—PLANNING ASSISTANCE

Sec.

306.1 Purpose and scope.

306.2 Application evaluation criteria.

306.3 Award requirements.

306.4 Post-approval requirements.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

SOURCE: 64 FR 5427, Feb. 3, 1999, unless otherwise noted.

§ 306.1 Purpose and scope.

The primary objective of planning assistance is to provide funding for administrative expenses to support the formulation and implementation of economic development planning programs and for the conduct of planning activities designed to create and retain permanent jobs and increase incomes, particularly for the unemployed and underemployed in the nation's most economically distressed areas. EDA's planning assistance is for partnership planning grants with Districts, Indian Tribes and other eligible applicants, as well as for short term grants to eligible grantees. Planning activities supported by these funds must be part of a continuous process involving the active participation of public officials and private citizens, and include the following:

(a) Analyzing local economies;

(b) Defining economic development goals;

(c) Determining project opportunities; and

(d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

[64 FR 5427, Feb. 3, 1999, as amended at 65 FR 71025, Nov. 28, 2000]

§ 306.2 Application evaluation criteria.

(a) EDA uses the application evaluation criteria set forth in part 304 of this chapter. In addition, EDA evaluates applications on the following:

(1) Quality of the proposed work program;

(2) Management and staff capacity and qualifications of the applicant organization; and

(3) Extent of broad-based representation including for example, involvement of the local civic, business, leadership, labor, minority, and other community interests in the applicant's economic development activities.

(b) Previously funded grantees, in addition to the requirements of paragraph (a) of this section, will also be evaluated on the basis of the quality of their past performance.

§ 306.3 Award requirements.

(a) Planning assistance shall be used in conjunction with any other available Federal planning assistance to ensure adequate and effective planning and economical use of funds.

(b) Grant rate: (1) The maximum Federal grant rate for a project under this part for recipients other than Economic Development Districts is 50 percent, except as supplemented as provided in §301.4(b) of this chapter.

(2) The maximum Federal grant rate for a project under this part for a district is:

(i) 50 percent, or

(ii) 75 percent, if the project meets the criteria of paragraph (b)(3) of this section.

(3) A district project is eligible for a supplemental grant increasing the Federal share up to and including 75 percent when the applicant is able to demonstrate that: