

§ 35.935

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§ 35.935 Grant conditions.

In addition to the EPA general grant conditions (subpart C and appendix A to part 30 of this subchapter), each treatment works grant shall be subject to the following conditions:

§ 35.935-1 Grantee responsibilities.

(a) Review or approval of project plans and specifications by or for EPA is for administrative purposes only and does not relieve the grantee of its responsibility to design, construct, operate, and maintain the treatment works described in the grant application and agreement.

(b) By its acceptance of the grant, the grantee agrees to complete the treatment works in accordance with the facilities plan, plans and specifications, and related grant documents approved by the Regional Administrator, and to maintain and operate the treatment works to meet the enforceable requirements of the Act for the design life of the treatment works. The Regional Administrator is authorized to seek specific enforcement or recovery of funds from the grantee, or to take other appropriate action (see § 35.965), if he determines that the grantee has failed to make good faith efforts to meet its obligations under the grant.

(c) The grantee agrees to pay, pursuant to section 204(a)(4) of the Act, the non-Federal costs of treatment works construction associated with the project and commits itself to complete the construction of the operable treatment works and complete waste treatment system (see definitions in § 35.905) of which the project is a part.

(d) The Regional Administrator may include special conditions in the grant or administer this subpart in the manner which he determines most appropriate to coordinate with, restate, or enforce NPDES permit terms and schedules.

§ 35.935-2 Procurement.

The grantee and party to any sub-agreement must comply with the applicable provisions of §§ 35.935 through 35.939 with respect to procurement for step 1, 2, or 3 work. The Regional Administrator will cause appropriate review of grantee procurement to be made.

§ 35.935-3 Property.

(a) The grantee must comply with the property provisions of § 30.810 *et seq.* of this subchapter with respect to all property (real and personal) acquired with project funds.

(b) With respect to real property (including easements) acquired in connection with the project, whether such property is acquired with or in anticipation of EPA grant assistance or solely with funds furnished by the grantee or others:

(1) The acquisition must be conducted in accordance with part 4 of this chapter;

(2) Any displacement of a person by or as a result of any acquisition of the real property shall be conducted under the applicable provisions of part 4 of this chapter; and

(3) The grantee must obtain (before initiation of step 3 construction), and must thereafter retain, a fee simple or such estate or interest in the site of a step 3 project, and rights of access, as the Regional Administrator finds sufficient to assure undisturbed use and possession for the purpose of construction and operation for the estimated life of the project. If a step 3 project serves more than one municipality, the grantee must insure that the participating municipalities have, or will have before the initiation of step 3 construction, such interests or rights in land as the Regional Administrator finds sufficient to assure their undisturbed utilization of the project site for the estimated life of the project.

(c) With respect to real property acquired with EPA grant assistance, the grantee must defer acquisition of such property until approval of the Regional Administrator is obtained under § 35.940-3.

§ 35.935-4 Step 2+3 projects.

A grantee which has received step 2=3 grant assistance must make submittals required by § 35.920-3(c), together with approvable user charge and industrial cost recovery systems and a preliminary plan of operation. The Regional Administrator shall give written approval of these submittals before advertising for bids on the step 3 construction portion of the step 2=3

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project. The cost of step 3 work initiated before such approval is not allowable. Failure to make the above submittals as required is cause for invoking sanctions under § 35.965.

§ 35.935-5 Davis-Bacon and related statutes.

Before soliciting bids or proposals for step 3-type work, the grantee must consult with the Regional Administrator concerning compliance with Davis-Bacon and other statutes referenced in § 30.415 *et seq.* of this subchapter.

§ 35.935-6 Equal employment opportunity.

Contracts involving step 3-type work of \$10,000 or more are subject to equal employment opportunity requirements under Executive Order 11246 (see part 8 of this chapter). The grantee must consult with the Regional Administrator about equal employment opportunity requirements before issuance of an invitation for bids where the cost of construction work is estimated to be more than \$1 million or where required by the grant agreement.

§ 35.935-7 Access.

The grantee must insure that EPA and State representatives will have access to the project work whenever it is in preparation or progress. The grantee must provide proper facilities for access and inspection. The grantee must allow the Regional Administrator, the Comptroller General of the United States, the State agency, or any authorized representative, to have access to any books, documents, plans, reports, papers, and other records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, copies and transcriptions. The grantee must insure that a party to a subagreement will provide access to the project work, sites, documents, and records. See §§ 30.605 and 30.805 of this subchapter, clause 9 of appendix C-1 to this subpart, and clause 10 of appendix C-2 to this subpart.

§ 35.935-8 Supervision.

In the case of any project involving Step 3, the grantee will provide and

maintain competent and adequate engineering supervision and inspection of the project to ensure that the construction conforms with the approved plans and specifications.

§ 35.935-9 Project initiation and completion.

(a) The grantee agrees to expeditiously initiate and complete the step 1, 2, or 3 project, or cause it to be constructed and completed, in accordance with the grant agreement and application, including the project progress schedule, approved by the Regional Administrator. Failure of the grantee to promptly initiate and complete step 1, 2, or 3 project construction may result in annulment or termination of the grant.

(b) No date reflected in the grant agreement, or in the project completion schedule, or extension of any such date, shall modify any compliance date established in an NPDES permit. It is the grantee's obligation to request any required modification of applicable permit terms or other enforceable requirements.

(c) The invitation for bids for step 3 project work is expected to be issued promptly after grant award. Generally this action should occur within 90 to 120 days after award unless compliance with State or local laws requires a longer period of time. The Regional Administrator shall annul or terminate the grant if initiation of all significant elements of step 3 construction has not occurred within 12 months of the award for the step 3 project (or approval of plans and specifications, in the case of a step 2=3 project). (See definition of "initiation of construction" under "construction" in § 35.905.) However, the Regional Administrator may defer (in writing) the annulment or termination for not more than 6 additional months if:

(1) The grantee has applied for and justified the extension in writing to the Regional Administrator;

(2) The grantee has given written notice of the request for extension to the NPDES permit authority;

(3) The Regional Administrator determines that there is good cause for the delay in initiation of project construction; and