

#### **§ 35.937-9**

contract. Unsuccessful candidates should be notified promptly.

#### **§ 35.937-9 Required solicitation and subagreement provisions.**

(a) *Required solicitation statement.* Requests for qualifications or proposals must include the following statement, as well as the proposed terms of the subagreement.

Any contract awarded under this request for (qualifications/professional proposals) is expected to be funded in part by a grant from the United States Environmental Protection Agency. This procurement will be subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939. Neither the United States nor the United States Environmental Protection Agency is nor will be a party to this request for (qualifications/professional proposals) or any resulting contract.

(b) *Content of subagreement.* Each subagreement must adequately define:

- (1) The scope and extent of project work;
- (2) The time for performance and completion of the contract work, including where appropriate, dates for completion of significant project tasks;
- (3) Personnel and facilities necessary to accomplish the work within the required time;
- (4) The extent of subcontracting and consultant agreements; and
- (5) Payment provisions in accordance with § 35.937-10.

If any of these elements cannot be defined adequately for later tasks or steps at the time of contract execution, the contract should not include the subsequent tasks or steps at that time.

(c) *Required subagreement provisions.* Each consulting engineering contract must include the provisions set forth in appendix C-1 to this subpart.

#### **§ 35.937-10 Subagreement payments—architectural or engineering services.**

The grantee shall make payment to the engineer in accordance with the payment schedule incorporated in the engineering agreement or in accordance with paragraph 7b of appendix C-1 to this subpart. Any retainage is at the option of the grantee. No payment request made by the Engineer under the agreement may exceed the esti-

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mated amount and value of the work and services performed.

#### **§ 35.937-11 Applicability to existing contracts.**

Some negotiated engineering subagreements already in existence may not comply with the requirements of §§ 35.936 and 35.937. Appendix D to this subpart contains EPA policy with respect to these subagreements and must be implemented before the grant award action for the next step under the grant.

#### **§ 35.937-12 Subcontracts under subagreements for architectural or engineering services.**

(a) Neither award and execution of subcontracts under a prime contract for architectural or engineering services, nor the procurement and negotiation procedures used by the engineer in awarding such subcontracts are required to comply with any of the provisions, selection procedures, policies or principles set forth in § 35.936 or § 35.937 except as provided in paragraphs (b), (c), and (d) of this section.

(b) 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:

- (1) Section 35.936-2 (Grantee procurement systems; State or local law);
- (2) Section 35.936-7 (Small and minority business);
- (3) Section 35.936-15 (Limitations on subagreement award);
- (4) Section 35.936-17 (Fraud and other unlawful or corrupt practices);
- (5) Section 35.937-6 (Cost and price considerations);
- (6) Section 35.937-7 (Profit);
- (7) Prohibition of percentage-of-construction-cost and cost-plus-percentage-of-cost contracts (see § 35.937-1); and
- (8) Applicable subagreement clauses (see appendix C-1, clauses 9, 17, 18; note clause 10).

(c) The applicable provisions of this subpart shall apply to lower tier subagreements where an engineer acts as