**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**13 CFR Chapter III**

**[Docket No. 990106003–9003–01]**

**RIN 0610–AA56**

# Economic Development Administration Regulations; Revision To Implement the Economic Development Reform Act of 1998

**AGENCY:** Economic Development Administration (EDA), Department of Commerce (DoC).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The purpose of this interim-final rule is to revise regulations of the Economic Development Administration (EDA) to implement the comprehensive amendment to the Public Works and Economic Development Act of 1965, as amended, by the Economic Development Administration Reform Act of 1998 (Pub. L.105–393).

**DATES:** Effective date: February 11, 1999.

*Comment date:* Comments are due on or before April 5, 1999.

**ADDRESSES:** Send comments to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230

**FOR FURTHER INFORMATION CONTACT:** Edward M. Levin, Chief Counsel, Telephone Number 202–482–4687, fax 202–482–5671, and e-mail ELevin@doc.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

The Economic Development Administration (EDA) was reauthorized for a five-year period by legislation enacted on November 13, 1998. Congress had not authorized the agency since 1982. This legislative accomplishment will create stability and opportunities for EDA to better serve economically distressed communities across the country.

EDA continues to take steps toward improving its program delivery, policies and procedures, and to be more responsive to those whom it serves. In step with the National Performance Review and Paperwork Reduction Act, EDA had completely revised its regulations, thereby creating fewer burdens on and making them more accessible to the public. This interim-final rule continues EDA's efforts in this regard.

## Description of Major Changes

This interim-final rule removes, adds, redesignates and revises parts and sections of EDA's regulations at 13 CFR Chapter III to implement Pub. L. 105–393 and to continue the streamlining and plain language initiatives of this administration. Significant changes are described below.

### *Removals of Parts and Sections*

Certain parts and sections have been removed because the programs to which these regulations apply were deleted by Pub. L. 105–393 as follows: Part 302 Economic Development Districts, Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers and Subpart C, Financial and Other Assistance to Economic Development Centers and Districts; part 312, Supplemental and Basic Assistance Under Section 304 of the Act; references to and requirements under the Public Works Impact Program in parts 301 and 305 and § 316.3; § 305.10 Construction cost increases; § 316.2 Certification as to waste treatment, and § 316.5 Electric and gas facilities.

Other parts and sections were removed to streamline and simplify the rules such as: § 302.1 Authorization of Economic Development Districts, and § 305.12 Variance in cost of grant projects.

### *New Parts and Sections*

New parts and sections have been added to implement Pub. L. 105–393 as follows: Pursuant to sec. 302 of Pub. L. 105–393, new language has been added in §§ 301.3, 305.3 and 308.5 on requirements for strategies for public works and economic adjustment projects (except for planning); pursuant to sec. 601 of Pub. L. 105–393, with EDA's prior written approval EDA may release its grant related property interests 20 years after the grant award, and § 314.11(b) releases all real and personal property in projects funded under Pub. L. 94–369, as amended by Pub. L. 95–28. Other sections have been added in light of new provisions in Pub. L. 105–393, such as § 316.13 Economic development information clearinghouse, § 316.17 Acceptance of certifications by applicants, and § 316.18 Reports by recipients, and part 318 Evaluations of Economic Development Districts and University Centers.

New parts of sections have been added for other reasons, for example, § 314.3(c) defines ''adequate consideration'' to distinguish it from fair market value; and § 314.7(c) provides exceptions to the title requirement when for example, a railroad or state or local highway is part of the EDA funded project.

### *Significant Revisions*

Part 301—Designation of Areas has been substantially rewritten because under Pub. L. 105–393 areas designated by EDA prior to the effective date of Pub. L. 105–393 will no longer be so designated and areas thereafter will be determined on a project by project basis (for public works and economic adjustment projects, except for planning activities); and § 316.2 has been redesignated and substantially changed to more accurately reflect statutory intent and practices and procedures for determining if a project would result in excess capacity.

Other significant changes—Grant rates have been modified at § 301.4 to cover all EDA grants (not just public works awards) and to reflect changed unemployment conditions; and § 308.3 has been changed to revise area criteria for economic adjustment projects to emphasize unique economic adjustment tools.

**Note**

- EDA has recently established a task force to examine its Revolving Loan Fund (RLF) program as described in part 308 of these rules. The results of this task force may lead to changes in EDA's RLF program.
- An interest rate buy down program (see § 308.3), is being considered under EDA's Economic Adjustment program. Suggestions on structuring and implementing such a program are welcome.
- As part of the economic development clearinghouse described in § 316.14, EDA's Office of Economic Development Information is accessible on the internet web sites at http://www.doc.gov/eda and http://netsite.esa.doc.gov/oeci.

TABLE OF CHANGES

| Old section | New section | Description of change |
|---|---|---|
| § 300.1 | § 300.1 | Renamed and changed for Plain Language purposes. |

TABLE OF CHANGES—Continued

| Old section | New section | Description of change |
|---|---|---|
| Part 301—Designation of areas | Part 301—General eligibility and grant rate requirements. | Renamed. |
| §§ 301.1–301.16 | | Removed since under Pub. L. 105–393 there is no longer area designation except on a project-by-project basis. |
| | §§ 301.1–301.4 | New §§ include information and requirements about applicants, area eligibility, strategy required and grant rates. |
| § 302.1 | | Removed. |
| § 302.2 | § 302.1 | Redesignated and modified for Plain Language purposes. |
| § 302.3 | § 302.2 | Redesignated and modified for Plain Language purposes. |
| § 302.4 | § 302.3 | Redesignated and modified for Plain Language purposes. |
| § 302.5 | § 302.4 | Redesignated and modified for Plain Language purposes. |
| § 302.6 | § 302.4 | Made part of this new section. |
| § 302.7 | § 302.5 | Redesignated and streamlined. |
| § 302.8 | § 302.6 | Redesignated, modified and streamlined. |
| § 302.9 | § 301.4(d) | Redesignated, terminology modified, and portions removed since Economic Development Centers are no longer part of PWEDA |
| | § 302.7 | New under Pub. L. 105–393. |
| §§ 302.10–302.19 | | Removed since Economic Development Centers are no longer part of PWEDA. |
| Part 303—Overall Economic Development Program. | Part 303—Planning Process and Strategies for District and Other Planning Organizations Supported by EDA. | Renamed. |
| § 303.1 | § 303.1 | Renamed and modified to add definitions and streamlined. |
| §§ 303.2, 303.3 | | Removed. |
| §§ 303.4, 303.5, 303.6 | §§ 303.2, 303.3 | Renamed and revised for Plain Language purposes and consistent with Pub. L. 105–393. |
| § 304.1 | §§ 304.1, 304.2 | Renamed and revised to make more accessible to reader. |
| § 304.2 | §§ 307.11, 307.14 | Renamed and redesignated to implement Pub. L. 105–393. |
| Part 305—Public Works and Development Facilities Program. | | Part 305—Grants for Public Works and Development Facilities Renamed. |
| § 305.2 | § 300.2 | Renamed and applicable to all programs. |
| | § 305.3 | Application requirements. |
| §§ 305.3, 305.4 | § 305.2 | Renamed, merged and modified to implement Pub. L. 105–393. |
| §§ 305.5, 305.6 | § 305.4 | Renamed, combined and modified to implement Pub. L. 105–393. |
| § 305.7 | | Removed. |
| §§ 305.8, 305.9 | § 301.4 | Renamed and applicable to all programs. |
| § 305.10 | | Removed. |
| § 305.11 | § 305.5 | Redesignated and revised to make more accessible to reader. |
| § 305.12 | | Removed. |
| § 305.13 | § 305.6 | Redesignated. |
| | § 305.7 | Added for guidelines and reports. |
| Part 306 [Reserved]; Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning—Subpart E—Economic Development Districts American Indian Tribes and Redevelopment Areas Economic Development Planning Grants and Subpart F—State and Urban Development Planning Grants. | Part 306—Planning Assistance | Renamed and revised under Pub. L. 105–393 and for Plain Language purposes. |
| Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning. | Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Training, Research and Evaluation. | Renamed consistent with Pub. L. 105–393. |
| § 307.2 | § 300.2 | Redesignated to apply to all programs and this program in particular. |
| §§ 307.3, 307.4 | § 307.2 | Renamed, merged and revised to make more accessible to reader. |

TABLE OF CHANGES—Continued

| Old section | New section | Description of change |
|---|---|---|
| § 307.5 | § 307.3 | Renamed, redesignated and revised to make more accessible to reader and in accordance with Pub. L. 105–393. |
| § 307.6 | § 307.4 | Redesignated. |
| § 307.7 | § 300.2 | Redesignated to apply to all programs and this program in particular. |
| §§ 307.8, 307.9 | § 307.5 | Renamed, merged and revised to make more accessible to reader. |
| § 307.10 | § 307.6 | Renamed, redesignated and revised to make more accessible to reader and in accordance with Pub. L. 105–393. |
| Subpart C—National Technical Assistance, Subpart D—Research and Evaluation. | Subpart C—National Technical Assistance, Training, Research, and Evaluation. | Renamed, merged and redesignated to be consistent with Pub. L. 105–393. |
| §§ 307.11, 307.16 | § 307.7 | Redesignated, merged and revised to make more accessible to reader. |
| §§ 307.12, 307.17 | § 300.2 | Renamed and merged as applicable to all programs and to this program in particular. |
| §§ 307.13, 307.14, 307.18, 307.19 | § 307.8 | Renamed, merged and revised to make more accessible to reader. |
| §§ 307.15, 307.21 | § 307.9 | Renamed, revised and modified for Plain Language purposes. |
| § 307.20 | | Removed—will be in Notice(s) of Funding Availability—Request for Proposals. |
| §§ 307.22 | § 306.1 | Redesignated, merged and revised consistent with Pub. L. 105–393. |
| § 307.23 | | Removed. |
| §§ 307.24, 307.30 | § 300.2 | Applicable to all programs. |
| §§ 307.25, 307.26, 307.31, 307.32 | § 306.2 | Renamed, merged, streamlined and modified for Plain Language purposes. |
| §§ 307.27, 307.33 | §§ 306.3, 306.4 | Redesignated and made consistent with Pub. L. 105–393. |
| § 307.28 | § 302.3 | Part of new provision on District Organizations. |
| Part 308—Requirements for Grants Under the Title IX Economic Adjustment Program. | Part 308—Requirements for Economic Adjustment Grants. | Renamed consistent with Pub. L. 105–393. |
| § 308.2 | § 308.3 | Renamed and revised to make more accessible to reader. |
| § 308.3 | §§ 308.5, 300.2 | Renamed and revised to be more accessible to readers and applicable to all programs. |
| § 308.4 | § 308.2 | Renamed and revised for consistency with Pub. L. 105–393. |
| §§ 308.5, 308.6 | § 308.4 | Renamed, merged and modified to implement Pub. L. 105–393 and to be more accessible to readers. |
| § 308.7 | § 308.6 | Renamed and streamlined. |
| Part 312—Supplemental and Basic Assistance Under. | Section 304 of the Act | Removed as no longer in effect. |
| Part 314—Property | Part 314—Property Management Standards | Renamed. |
| § 314.9 | § 314.9 | Renamed and expanded to refer to title requirements. |
| | Subpart D—Release of EDA's Property Interest. | Added to implement provision of Pub. L. 105–393 and to clarify EDA's property release requirements. |
| § 316.2 | | Removed as no longer in effect. |
| § 316.3 | § 316.2 | Redesignated and clarified. |
| § 316.4 | § 316.3 | Redesignated. |
| § 316.5 | | Removed as no longer in effect. |
| § 316.6 | § 316.4 | Redesignated. |
| § 316.7 | § 316.5 | Redesignated. |
| § 316.8 | § 316.6 | Redesignated. |
| § 316.9 | § 316.7 | Redesignated. |
| § 316.10 | § 316.8 | Redesignated and clarified. |
| § 316.11 | § 316.9 | Redesignated. |
| § 316.12 | | Removed as included in § 316.8. |
| § 316.13 | § 316.10 | Renamed and modified. |
| | §§ 316.11–316.18 | Added to implement provisions of Pub. L. 105–393. |
| | § 316.19 | Added to replace current procedures and requirements. |
| | Part 318—Evaluations of Economic Development Districts and University Centers. | Added to implement provisions of Pub. L. 105–393. |

**Savings Clause**

The rights, duties, and obligations of all the parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule shall continue in effect, except that EDA may waive administrative or procedural requirements of provisions removed by this rule.

**Executive Orders 12866 and 12875**

This rule has been determined to be significant for the purposes of E.O. 12866, Regulatory Planning and Review. In addition, it has been determined that, consistent with the requirements of E.O. 12875, Enhancing Intergovernmental Partnership, this interim final rule will not impose any unfunded mandates upon State, local, and tribal governments.

**Notice and Comment**

This rule is not subject to the rulemaking requirements of 5 U.S.C. 553 because it relates to public property, loans, grants, benefits, and contracts, 5 U.S.C. 553(c)(2), including the provision of prior notice and an opportunity for public comment and delayed effective date.

No other law requires that notice and opportunity for comments be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendments, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address or numbers listed in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections above. Comments received by April 5, 1999 will be considered in promulgating a final rule.

**Note:** EDA is particularly interested in comments relating to its use of Plain Language in order to make these requirements more readily accessible to the public.

**Regulatory Flexibility Act**

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

**Paperwork Reduction Act**

This regulation imposes new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), as amended, but has been cleared under OMB's Emergency Clearances process under OMB approval numbers: 0610–0093; 0610–0094; 0610–0095; 0610–0096 and will expire on July 31, 1999. To remain effective after such expiration date, EDA must receive OMB's final clearance and display a currently valid OMB control number. If such final clearance is not obtained after the expiration date of the Emergency Clearance so that a currently valid OMB control number is not displayed, applicants and recipients will not thereafter be required to submit information requested pursuant to this rule.

The information is needed to determine eligibility of those applicants and projects and to monitor projects for compliance with EDA's construction or Revolving Loan Fund requirements, as applicable. EDA then uses information obtained in these collections to help carry out its mission to aid economically distressed areas of the Nation. Responses to requests for information are necessary under Pub. Law 105–393 for obtaining and for keeping benefits. The reporting burden for this collection is estimated to be approximately 7 burden hours for the Proposal; approximately 50 burden hours for the Application; approximately 18 burden hours for Requirements for Approved Construction Projects; approximately 240 burden hours for the CED Strategy Guidelines; and approximately 76 burden hours for the series of Guidelines for the Revolving Loan program, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspects of the collection of information, including suggestions for reducing the burdens, should be forwarded to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention EDA Desk Officer).

**Administrative Procedure Act and Regulatory Flexibility Act**

*Executive Order 12612 (Federalism Assessment)*

This action has been reviewed in accordance with the principles and criteria contained in E.O. 12612. It has been determined that this interim final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in E.O. 12612.

**List of Subjects**

*13 CFR Part 300*

Reporting and recordkeeping requirements; Non-profit organizations; American Indians.

*13 CFR Part 301*

Grant Programs; Community Development; American Indians.

*13 CFR Part 302*

Community Development; Grant programs-community development; Technical assistance.

*13 CFR Part 303*

Community Development; Grant programs-community development.

*13 CFR Part 304*

Selection and evaluation.

*13 CFR Part 305*

Community development; Community facilities; Grant programs-community development.

*13 CFR Part 306*

Community development; Grant programs-community development.

*13 CFR Part 307*

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; Research; Technical Assistance.

*13 CFR Part 308*

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; American Indians; Manpower training programs; Mortgages; Research; Technical assistance.

*13 CFR Part 314*

Community development; Grant programs-community development.

*13 CFR Part 315*

Administrative practice and procedure; Community development; Grant programs-business; Technical assistance; Trade adjustment assistance.

*13 CFR Part 316*

Community development; Grant programs-community development; Freedom of Information; Uniform Relocation Act; Loan programs-business; Loan programs-community development; Environmental protection; Record retention; Records.

*13 CFR Part 317*

Civil rights; sex discrimination.

*13 CFR Part 318*

Colleges and universities.

For the reasons set forth in the preamble, 13 CFR Chapter III is revised to read as follows:

## CHAPTER III—DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION

Part
300 General Information.
301 General Eligibility and Grant Rate Requirements.
302 Economic Development Districts; standards for designation, modification and termination.
303 Planning Process and Strategies for District and Other Planning Organizations Supported by EDA.
304 General Selection Process and Evaluation Criteria.
305 Grants for Public Works and Development Facilities.
306 Planning Assistance.
307 Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Training, Research, and Evaluation.
308 Requirements for Economic Adjustment Grants.
309–313 [Reserved].
314 Property.
315 Certification and Adjustment Assistance for Firms.
316 General Requirements for Financial Assistance.
317 Civil Rights.
318 Evaluations of University Centers and Economic Development Districts.

## PART 300—GENERAL INFORMATION

Sec.
300.1 Introduction and purpose.
300.2 Definitions.
300.3 OMB control numbers.
300.4 Economic Development Administration—Washington, DC, Regional and Economic Development Representatives.

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

### § 300.1 Introduction and Purpose.

(a) *Introduction.* Is your community suffering from severe economic distress (e.g., high unemployment, low income, sudden economic changes, etc.)? Are you a representative of a State or local unit of government, Indian tribe, public or private nonprofit organization, educational institution, or community development corporation looking for grant assistance to enhance your opportunities for economic development? If so, these regulations of the Economic Development Administration (EDA) of the U.S. Department of Commerce may be of help. These regulations tell you the purpose of EDA and outline the program requirements, project selection process, project evaluation criteria, and other relevant matters. The information in these regulations covers grant programs of EDA that provide financial awards for the following:

- Public Works and Development Facilities;
- Planning;
- Research, Evaluation, Training and Technical Assistance;
- Trade Adjustment Assistance; and
- Economic Adjustment Assistance.

(b) What is the Purpose of the Economic Development Administration?

(1) Many communities lag behind and suffer economic distress in one form or another, such as:

- High unemployment;
- Low income;
- Underemployment;
- Outmigration;
- Sudden economic changes due to the restructuring or relocation of industrial firms;
- Closing or realignment of defense bases or cutbacks in defense procurement;
- Economic impact of natural disasters or other emergencies;
- Actions of the Federal government (such as environmental requirements) that curtail or remove economic activities; and
- Impacts of foreign trade.

(2) The purpose of the Economic Development Administration is to address economic problems affecting economically distressed rural and urban communities; by helping them:

(i) Develop and strengthen their economic development planning and institutional capacity to design and implement business outreach and development programs; and

(ii) Develop or expand public works and other facilities, financing tools, and resources that will create new job opportunities, save existing jobs, retain existing businesses, and support the development of new businesses.

(3) To promote a strong and growing economy throughout the United States, EDA works in partnership with State and local governments, Indian tribes and local, regional, and State public and private nonprofit organizations. With them EDA develops and carries out comprehensive economic development strategies that address the economic problems of distressed communities. EDA helps such communities increase their economic development capacities so that they can take advantage of existing resources and development opportunities.

### § 300.2 Definitions.

Unless otherwise defined in other parts or sections of this Chapter, the terms listed are defined as follows:

*Comprehensive Economic Development Strategy, CED Strategy,* or *strategy* means a strategy approved by EDA under § 301.3 of these regulations.

*Department* means the Department of Commerce.

*Economic Development District* or *district:*

(1) Means any area in the United States that has been designated by EDA as an Economic Development District under § 302.1 of these regulations; and

(2) Includes any Economic Development District designated by EDA under sec. 403 of the Public Works and Economic Development Act of 1965, as amended, as in effect on the day before the effective date of Public Law 105–393.

*EDA* means the Economic Development Administration in the U.S. Department of Commerce when a place or agency is intended, and refers to the headquarters office in Washington, D.C., or a regional office, as appropriate; or it means the Assistant Secretary of Commerce for Economic Development or his/her designee when a person is intended. The locations of EDA's offices are listed each year in a Notice of Funding Availability (NOFA). The general information telephone number for EDA is (202) 482–2309.

*Eligible applicant* means:

(1) In general,—

(i) An entity qualified to be an eligible recipient, or

(ii) Its authorized representative.

(2) Except in the case of Research, Evaluation, Training, or Technical Assistance grants under part 307, a private individual or for-profit organization cannot be an eligible applicant.

*Eligible recipient* means

(1) In general,—

(i) An area described in § 301.2 of these regulations;

(ii) An Economic Development District;

(iii) An Indian tribe or a consortium of Indian tribes;

(iv) A State;

(v) A city or other political subdivision of a State or a consortium of political subdivisions;

(vi) An institution of higher education or a consortium of institutions of higher education; or

(vii) A public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a State.

(2) In the case of Research, Evaluation, Training, and Technical Assistance grants under part 307, eligible recipient also includes private individuals and for-profit organizations.

*Federal agency* means a department, agency, or instrumentality of the United States.

*Financial assistance* means grant.

*Grant* means the non-procurement award of EDA funds to an eligible recipient under PWEDA or the Trade Act, as applicable. The term includes a cooperative agreement, within the meaning of chapter 63 of title 31, United States Code.

*Indian tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term includes: The governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other nonprofit tribal organization or entity, provided that the tribal organization or entity is wholly owned by, and established for the benefit of, the tribe or Alaska Native Village.

*Local share, matching share* or *local share match* are used interchangeably to mean non-Federal funds or goods and services provided by recipients or third parties that are required as a condition of a grant, and includes funds from other Federal agencies only if there is statutory authority allowing such use.

*Notice of Funding Availability* or *NOFA*, refers to the notice or notices EDA publishes each year in the **Federal Register** and on EDA's internet web site, *http://www.doc.gov/eda*, describing the available amounts, particular procedures, priorities, and special circumstances for the EDA grant programs for that year.

*OEDP* (Overall Economic Development Program), as the term is used in part 317 (Civil Rights) of this chapter, means CED Strategy developed in accordance with part 303 of this chapter.

*PWEDA* means the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105–393). (The term ''PWEDA'' was used to refer to EDA's authorizing legislation as it was in effect before the effective date of Public Law 105–393, signed into law on November 13, 1998. In these regulations, the term ''PWEDA'' refers to the legislation as currently amended by the 1998 law.)

*Project* means the activity or activities the purpose of which fulfills EDA program requirements and that EDA funds in whole or in part.

*Proposed District* means a geographic entity composed of one or more eligible areas proposed for designation as an Economic Development District.

*Recipient* and *grantee* are used interchangeably to mean an entity receiving funds from EDA under PWEDA or the Trade Act, as applicable, and includes any EDA approved successor to such recipient.

*State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

*The Trade Act* means Title II, Chapters 3 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341, *et seq.*).

*United States* means all of the States.

### § 300.3 OMB Control Numbers.

(a) This table displays control numbers assigned to EDA's information collection requirements by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. EDA intends that this table comply with Section 3507(f) of the Paperwork Reduction Act, requiring agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control Number Table:

| 13 CFR part or section where identified and described | Current OMB control No. |
|---|---|
| 301 | 0610–0094. |
| 302 | 0610–0094. |
| 303 | 0610–0093. |
| 304 | 0610–0094. |
| 305 | 0610–0094 and 0610–0096. |
| 306 | 0610–0094. |
| 307 | 0610–0094. |
| 308 | 0610–0094 and 0610–0095. |
| 314 | 0610–0094. |
| 315 | 0610–0094. |
| 316 | 0610–0094. |

### § 300.4 Economic Development Administration-Washington, D.C., Regional and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., Regional and Field Offices and Economic Development Representatives, refer to EDA's annual Fiscal Year (FY) Notice of Funding Availability (NOFA).

## PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

Sec.
301.1 Applicants.
301.2 Area eligibility.
301.3 Strategy required.
301.4 Grant rates.

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

### § 301.1 Applicants.

(a) Eligible applicants are defined in § 300.2 of this chapter.

(b) Except as otherwise provided in part 307, a public or private nonprofit organization applicant must include in its application for assistance, a resolution passed by, or a letter signed by an authorized representative of, a political subdivision of a State or an Indian tribe, acknowledging that the applicant is acting in cooperation with officials of the political subdivision or Indian tribe, as applicable.

### § 301.2 Area eligibility.

(a) EDA awards public works and development facilities grants under part 305 and economic adjustment grants under part 308 for projects to enhance economic development in economically distressed areas.

(b) An area is eligible for a project grant under part 305 or 308 if it has one of the following:

(1) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate. For example, if the national average unemployment rate is 6 percent, an area is eligible under this provision if it has an unemployment rate of 7 percent.

(2) Per capita income that is, for the most recent period for which data are

available, 80 percent or less of the national average per capita income.

(3) A special need, as determined by EDA, arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, for example:

(i) Substantial outmigration or population loss;

(ii) Underemployment, that is, employment of workers at less than full time or at less skilled tasks than their training or abilities permit;

(iii) Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions;

(iv) Natural or other major disasters or emergencies;

(v) Extraordinary depletion of natural resources;

(vi) Closure or restructuring of industrial firms, essential to area economies; or

(vii) Destructive impacts of foreign trade.

(c) A non-distressed area [i.e., an area that does not meet the criteria of paragraph (b) of this section] within an Economic Development District is also eligible, provided the project will be of a substantial direct benefit to an area that meets at least one of the criteria of paragraph (b) of this section. A project provides substantial direct benefit if it provides significant employment opportunities for unemployed, underemployed or low income residents.

(d) Normally an area is defined by geographical/political boundaries, e.g., city, county, Indian reservation. However, a smaller area (without regard to political boundaries) is also eligible even though it may be part of a larger community that overall is experiencing low distress. When the boundaries of the project area differ from established political boundaries, the project area must be of sufficient size appropriate to the proposed project, and the applicant must justify the proposed boundaries in relation to the project's benefits to the area.

(e) Eligibility is determined at the time that EDA receives an application and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located.

(f) EDA may reject any documentation of eligibility that it determines is inaccurate.

(g) There is no area eligibility requirement for a project grant under part 306 or 307.

(h) EDA will describe special needs criteria under paragraph (b)(3) of this section in a NOFA.

### § 301.3 Strategy Required.

(a) To be eligible for a project grant under part 305 or 308, the application for assistance must include a CED Strategy acceptable to EDA. The applicant may, however, incorporate by reference a current strategy previously approved by EDA, as an alternative to including the strategy in the application. (Exception: A strategy is not required when a funding request is for planning assistance, i.e., a strategy grant, under part 308.) The strategy must:

(1) Be the result of a continuing economic development planning process;

(2) Identify the economic development problems to be addressed using the assistance;

(3) Identify past, present, and projected future economic development investments in the area receiving the assistance;

(4) Identify the public and private participants in the investments and the sources of the funding for them;

(5) Describe how the problems identified under paragraph (a) (2) of this section will be addressed, in a manner that promotes economic development and opportunity, fosters effective transportation access, enhances and protects the environment, and balances resources through sound management of development; and

(6) Describe how the activities described under paragraph (a) (5) of this section will contribute to the solution of the problems.

(b) EDA will approve as acceptable a strategy that it determines meets the requirements of paragraph (a) of this section. The strategy may be one developed:

(1) With EDA assistance,

(2) Under another Federally supported program, or

(3) Through a local, regional, or State process.

(c) In determining acceptability of a strategy, EDA will take into consideration the circumstances of the application, so that for instance a strategy accompanying an application for assistance immediately following a natural disaster will require less depth and detail than would be the case in other circumstances.

(d) To be acceptable, a strategy must be approved by the applicant's governing body within one year prior to the date of application.

### § 301.4 Grant Rates.

(a) Except as otherwise provided for in this chapter, the amount of the EDA grant may not exceed 50 percent of the cost of the project. Cash or in-kind contributions, fairly evaluated by EDA, including contributions of space, equipment, and services, may provide the non-Federal share of the project cost. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements.

(b) EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. It is not necessary for an applicant to prove that it would be impossible to provide a full 50 percent non-Federal share, but it must show circumstances warranting any reduction. In determining whether to provide a Federal share greater than 50 percent for a project, EDA will give due consideration to the applicant's economic situation and the relative needs of the area. In the case of Indian tribes, EDA may reduce or waive the non-Federal share, and in other cases EDA may reduce the non-Federal share of the cost of the project below 50 percent, in accordance with the following table, showing the maximum Federal grant rate, including the supplement:

| Projects | Maximum grant rates (percentage) |
|---|---|
| Projects of Indian tribes where EDA has made a determination to waive the non-Federal share of the cost of the project | 100 |
| Projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent | 100 |
| Projects of Indian tribes where EDA has made a determination to reduce the non-Federal share of the cost of the project | (1) |

| Projects | Maximum grant rates (percentage) |
|---|---|
| Projects of States or political subdivisions of States that have exhausted their effective taxing and/or borrowing capacity, or non-profit organizations that have exhausted their borrowing capacity | (1) |
| Projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, unless the applicant or the area is otherwise eligible for a higher rate of Federal participation under another provision of this section | 80 |
| Projects located in eligible areas where: (1) the 24-month unemployment rate is at least 11 percent and is at least 225% of the national average or (2) the per capita income (PCI) is not more than 50% of the national average | 80 |
| Projects located in eligible areas that are not eligible for a higher rate, where: (1) the 24-month unemployment rate is at least 9 percent and is at least 180% of the national average or (2) the PCI is not more than 60% of the national average | 70 |
| Projects located in eligible areas that are not eligible for a higher rate, where: (1) the 24-month unemployment rate is at least 7.5 percent and is at least 150% of the national average or (2) the PCI is not more than 70% of the national average | 60 |
| Projects in all other eligible areas | 50 |

[1] Less than 100.

(c) Projects under part 306 or 307 are eligible for maximum grant rates as provided in those parts.

(d) Projects located in designated Economic Development Districts are eligible for an amount of additional Federal grant assistance not to exceed 10 percent of the estimated cost of the project, provided

(1) The project applicant is actively participating in the economic development activities of the district;

(2) The project is consistent with the strategy of the district; and

(3) The non-Federal share of the project is not less than 20 percent.

(e) EDA may make grants to supplement grants awarded in other Federal grant programs.

(1) Supplemental grants under paragraph (e) of this section are only available for projects:

(i) Under Federal grant programs that

(A) Provide assistance in the construction or equipping of public works, public service, or development facilities, and

(B) Are designated by EDA as eligible for supplemental EDA grants, and

(ii) Are consistent with a strategy.

(2) EDA's funds combined with funds from another Federal grant program may be at the maximum EDA grant rate, as set forth above, even if the other Federal program has a lower grant rate. If the other Federal program has a grant rate higher than the maximum EDA grant rate as set forth above, the combination of funds may exceed the EDA rate provided the EDA share does not exceed the EDA rate.

(f) An applicant is eligible for the highest applicable maximum grant rate, as set forth above, in effect between the time EDA invites the application and the time the project is approved. The Federal share of a project receiving EDA grant assistance may be (and often is) less than the maximum grant rate for which the recipient is eligible.

(g) EDA's NOFA will provide additional criteria to ensure that the level of economic distress of an area, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating assistance.

## PART 302—ECONOMIC DEVELOPMENT DISTRICTS; STANDARDS FOR DESIGNATION, MODIFICATION AND TERMINATION

Sec.
302.1 Designation of economic development districts.
302.2 Designation of nonfunded districts.
302.3 District organizations.
302.4 District organization functions and responsibilities.
302.5 Modification of district boundaries.
302.6 Termination and suspension of district designation.
302.7 Eligibility of non-distressed areas.

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

### § 302.1 Designation of Economic Development Districts.

EDA will designate a proposed district as an Economic Development District with the concurrence of the State or States in which the District will be wholly or partially located, when the proposed district meets the following requirements:

(a) It is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single eligible area;

(b) It has an EDA approved strategy which:

(1) Contains a specific program for intra-district cooperation, self-help, and public investment;

(2) Is approved by each affected State;

(3) Identifies problems, and conditions underlying economic distress in the district; and

(4) Promotes economic development opportunities, plans for transportation access, enhancement and protection of the environment and balances resources through sound management of development;

(c) It contains at least one area, eligible for assistance under § 301.2, that has been identified in an approved strategy;

(d) At least a majority of the counties, or other areas as determined by EDA, within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district;

(e) A district organization has been established in the proposed district which meets the requirements of § 302.4; and

(f) The proposed district organization requests such designation.

### § 302.2 Designation of nonfunded districts.

The continuing designation of any Economic Development District is subject to the criteria and organization requirements of this part whether or not the Economic Development District organization receives any EDA financial assistance.

### § 302.3 District organizations.

(a) The district shall be organized in one of the following ways:

(1) As a public organization through an intergovernmental agreement for the joint exercise of local government powers; or

(2) As a public organization established under State enabling legislation for the creation of multi-jurisdictional area wide planning organizations; or

(3) As a non-profit organization incorporated under the laws of the State in which it is located.

(b) Each district organization must meet EDA requirements concerning membership composition [§ 302.3(c)], the maintenance of adequate staff support to perform its economic development functions [§ 302.3(d)], and its authorities and responsibilities for

carrying out economic development functions [§ 302.4]. Such requirements must also be met by the board of directors (or other governing body of the organization) as a whole.

(c) The district organization shall demonstrate that its governing body meets all of the following requirements:

(1) It is broadly representative of the principal economic interests of the district area including the interests of its minority and low-income populations;

(2) There is at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government; and

(3) At least 20 percent of its membership who are private citizens, i.e., neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government.

(d) The district organization shall be assisted by a professional staff drawn from qualified persons in economic development, planning or related disciplines. EDA may provide planning grants to Economic Development Districts to employ professional staff in accordance with part 306 of this chapter.

(e) The governing bodies of district organizations shall provide access for persons who are not members to make their views known concerning ongoing and proposed district activities in accordance with the following requirements:

(1) The economic development district organization must hold meetings open to the public at least once a year and shall also publish the date and agenda of the meeting enough in advance to allow the public a reasonable time to prepare to participate effectively.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and others have access to and an effective opportunity to participate in the affairs of the district.

(3) Information should be provided sufficiently in advance of public decisions to give the public adequate opportunity to review and react to proposals. District organizations should seek to relate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.

**§ 302.4 District organization functions and responsibilities.**

(a) All Economic Development District organizations are responsible for seeing that the following are provided on a continuing basis, consistent with the requirements of § 302.3:

(1) Organizational actions, including:

(i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the governing body to meet § 302.3 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) Contracting for services to carry out district functions;

(vi) Establishing and directing activities of economic development subcommittees; and

(vii) Submitting reports as determined by EDA to comply with civil rights requirements under part 317 of this chapter.

(2) Actions to develop and maintain the required district strategy, and any subsequent supplements or revisions, including:

(i) Preparing the analytic, strategic and implementation components of the strategy;

(ii) Adopting the strategy by formal action of the Economic Development District governing board;

(iii) Submitting the strategy, any supplements or revisions and annual reports for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(iv) Submitting to EDA an approvable strategy.

(b) Organizations receiving EDA financial assistance for the development and implementation of Comprehensive Economic Development Strategies must also:

(1) Coordinate and implement economic development activities in the district, including:

(i) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(ii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary to the development and implementation of the strategy;

(2) Coordinate the development and implementation of the strategy with other local, State, Federal and private organizations (including minority organizations);

(3) Carry out the annual strategy for implementation; and

(4) Comply with the requirement of part 303.

**§ 302.5 Modification of district boundaries.**

EDA, at the request of a district and with concurrence of the State or States affected (unless such concurrence is waived by the Assistant Secretary), may modify the boundaries of a district, if it determines that such modification will contribute to a more effective program for economic development.

**§ 302.6 Termination and suspension of district designation.**

EDA may, upon 30 days prior written notice, terminate the designation status of an Economic Development District:

(a) When the district no longer meets the standards for designation as set forth above;

(b) When a district has not maintained a currently approved strategy in accordance with part 303 of this chapter; or

(c) When a district has requested termination (with the approval of the State or States affected).

**§ 302.7 Eligibility of non-distressed areas.**

Areas in districts which are not themselves eligible for assistance under parts 305 or 308 may be eligible, as provided in § 301.2(c).

## PART 303—PLANNING PROCESS AND STRATEGIES FOR DISTRICT AND OTHER PLANNING ORGANIZATIONS SUPPORTED BY EDA

Sec.
303.1 Definitions, purpose and scope.
303.2 Planning process.
303.3 Requirements for a strategy.

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

**§ 303.1 Definitions, Purpose and Scope.**

(a) As used in this part 303.

(1) *Planning organization* means an Economic Development District organization, Indian tribe, or other recipient of an EDA grant under part 306 which grant is awarded in whole or in part to develop, update, or replace a CED Strategy, and

(2) *Strategy committee* means that committee or other entity identified by the planning organization as responsible for developing, updating, or replacing a strategy.

(b) This part describes the planning process of and requirements for strategies developed and implemented by planning organizations supported by EDA. The requirements for a strategy in this part 303 exceed the requirements of § 301.3.

**§ 303.2 Planning Process.**

(a) The strategy committee must be inclusive and representative of the main economic interests of the area covered by the strategy. Such interests include public officials, community leaders, private individuals, business leaders, labor groups, minorities, and others who can contribute to and benefit from improved economic development in the area covered.

(b) The planning organization must support the strategy committee with a staff skilled in economic planning or related fields.

(c) The planning organization must conduct an initial and continuous study and analysis of the opportunities for economic development and of problems contributing to economic and related distress in the area covered, such as, for example, unemployment, underemployment, outmigration, or low per capita income, and possible solutions to such problems.

(d) Planning organizations covered by this part 303 must submit an initial strategy to EDA in compliance with the requirements of § 303.3, as determined by EDA. Each year thereafter, the planning organization must submit an annual strategy report, acceptable to EDA.

(e) A new or revised strategy is required at least every five years, or sooner if EDA or the planning organization determines that the strategy is inadequate due to changed circumstances. Each strategy must be available for review and comment by appropriate government bodies and interest groups in the area covered. Strategies submitted by Districts require concurrence by the State or States in which they are located, prior to EDA approval. If EDA identifies any deficiencies, it will notify the organization in writing and provide the organization a reasonable opportunity to remedy such deficiencies.

**§ 303.3 Requirements for a strategy.**

A strategy must contain the following:

(a) An analysis of economic and community development problems and opportunities including incorporation of any relevant material or suggestions from other government sponsored or supported plans;

(b) Background and history of the economic development situation of the area covered, with a discussion of the economy, including geography, population, labor force, resources, and the environment;

(c) A discussion of community participation in the planning efforts;

(d) A section setting forth goals and objectives for taking advantage of the opportunities of and solving the economic development problems of the area serviced;

(e) A plan of action, including suggested projects to implement objectives and goals set forth in the strategy; and

(f) Performance measures that will be used to evaluate whether and to what extent goals and objectives have been or are being met.

## PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

Sec.

304.1 Project proposal, application, selection and evaluation for programs under PWEDA.
304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

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

**§ 304.1 Project proposal, application, selection and evaluation for programs under PWEDA.**

(a) *Local projects.* Parties eligible as applicants who are interested in a public works, economic adjustment, planning, local technical assistance or university center project grant should contact the appropriate Economic Development Representative (EDR) (or EDA Regional or headquarters office), identified in the NOFA. The EDR or other EDA official is available to provide program information, including the current published NOFA; provide a proposal form approved by the U.S. Office of Management and Budget (OMB), and provide assistance as needed in filling out the proposal form.

(1) After submission of the proposal to the appropriate EDR or Regional Office of EDA, the appropriate Regional Office Project Review Committee (PRC), consisting of at least three EDA officials, will review the proposal. The EDR or other appropriate EDA official will evaluate the proposal under § 304.2, program specific sections of this rule, and the NOFA, if applicable, before submitting it to the EDA Regional Office for its review.

(2) After review by the PRC, EDA will send a letter in a timely manner to each submitter advising either that:

(i) EDA invites the submitter to prepare and present a formal application on a standard application form, with attachments for the type of grant being requested; or

(ii) EDA returns the proposal because of specified deficiencies and suggests resubmission when the deficiencies are cured; or

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

(b) *National Technical Assistance Research, Evaluation, or Training Projects.* Parties eligible as applicants who are interested in a national technical assistance, research, evaluation, or training project under PWEDA, 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 rule, and the NOFA, if applicable, EDA may by letter invite the submitter to provide an application with a more detailed and comprehensive project narrative. EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter.

(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) 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.

**§ 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:

(1) Conformance to statutory and regulatory requirements,

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

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

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

(5) 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.

## PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

**Subpart A—General**

Sec.
305.1 Purpose and scope.
305.2 Criteria.
305.3 Application requirements.
305.4 Selection and evaluation.

**Subpart B—Other Requirements**

305.5 Disbursements of funds for grants.
305.6 Final inspection.
305.7 Requirements for approved projects.

**Appendix A to Part 305—Requirements for Approved Construction Projects.**

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

## 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;

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

(d) 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.

### § 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—Other Requirements

### § 305.5 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 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.

### § 305.6 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.

**§ 305.7 Requirements for Approved Projects.**

(a) The requirements for approved projects are set forth in this part and the EDA publication, *Requirements for Approved Construction Projects,* Appendix A to this part 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.

(b) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

## Appendix A to Part 305—Requirements For Approved Construction Projects

OMB Approval No. 0610–0096
Approval Expires 07/31/99

*Burden Statement for REQUIREMENTS FOR APPROVED CONSTRUCTION PROJECTS INTERIM NINTH EDITION, OCTOBER 1998:*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. The reason for collecting this information is to enable the Economic Development Administration to monitor construction projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 18 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

## Requirements for Approved Construction Projects

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**Section I—General and Pre-Construction Requirements**

*1. Basis for Economic Development Administration (EDA) Requirements*

A. These Requirements for Approved Projects apply to all awards for construction projects and they are based on Office of Management and Budget (OMB) administrative requirements for Federal grants as set forth in OMB Circulars and on regulations set forth in the Code of Federal Regulations (CFR) Section 13 Chapter III, Section 15 Part 24 and Section 15 Part 14 as they may be amended.

B. These Requirements for Approved Projects are intended to organize and explain the various requirements that apply to Federally-assisted construction programs. They are not intended to derogate, replace, or negate the above cited Federal requirements. Conflicts between these Requirements for Approved Projects and the documents referred to above should be brought to the attention of EDA immediately. Any inconsistences or conflicts shall be resolved in favor of such Federal requirements.

C. EDA, as a Federal agency, is obligated to promulgate policies and procedures applicable to Recipients of EDA grants to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds in accomplishing the purpose for which they

were granted. Pursuant to this obligation, grant terms and conditions require Recipients to comply with changes in regulations and other requirements and policies EDA may issue from time to time. Such changes apply to actions taken by all Recipients of EDA grants, existing and prospective, after the effective date of the changes.

D. EDA's policy is to administer grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic development problems, requests for variances to the requirements of this Requirements for Approved Projects will be considered if they are consistent with the goals of EDA programs, make sound and financial sense, and do not conflict with applicable Federal and regulatory requirements.

*2. The EDA Grant Award*

The EDA grant award contains mandatory requirements and information vital to the accomplishment of the project. It should be read carefully with particular attention paid to:

A. The description of the project. This description and the corresponding scope of work must be adhered to. Proposed changes to EDA approved projects will be permitted by EDA only if they are necessary to the proper functioning of the project. Enhancements to the project that were not envisioned in the grant award will not be approved for EDA participation.

B. The Standard Terms and Conditions for Title I Public Works and Development Facilities and Title IX Economic Adjustment Construction Projects. The Standard Terms and Conditions contain, by reference or substance, a summary of the pertinent statutes, regulations published in the **Federal Register** or Code of Federal Regulations, Executive Orders or OMB Circulars.

C. The Special Conditions of the grant award. The Special Conditions generally contain two types of information. The first type relates specifically to the grant being awarded. The second type relates to all approved grants and are of recent origin and therefore have not yet been incorporated into the Standard Terms and Conditions. Special attention should be paid to the Project Development Time Schedule. The time schedule can only be extended as a result of a written request from the Recipient and a written approval by EDA. Failure to meet the time schedule is considered a violation of the grant award and may result in action by EDA to suspend and/or terminate the grant. No disbursement of EDA grant funds is permitted when a project has exceeded the time schedule in the grant award unless EDA has given written approval to a time schedule extension.

D. Please note that, unless otherwise stated, EDA funds are available for a period beginning at the time the project is approved and ending five years after the end of the fiscal year in which the project was approved. Any funds not disbursed to the Recipient before the end of that period are automatically canceled and will be deobligated and will no longer be available for payment of costs incurred by the Recipient.

E. Combination construction and nonconstruction grants. If the EDA grant award is for both construction and nonconstruction, the Recipient must obtain prior written approval from EDA before making any fund or budget transfer from nonconstruction to construction or vice versa.

F. Performance Measures. The Standard Terms and Conditions of the EDA grant award make reference to ''Core Performance Measures'' that require post-construction reports to be submitted to EDA. The first report will be due at the completion of construction of the project. The due dates for the submission of the second and third reports are 3 years and six years after the completion of construction. Questions regarding the content or submission of these reports should be directed to EDA.

*3. Initial Actions*

A. After the Grant Award has been affirmed, the EDA Regional Office will mail a pre-construction package to the Recipient that includes a copy of ''Requirements for Approved Projects'', and a list of items that need special attention (such as the project development time schedule), and a list of any unresolved problems identified during the preapproval review process. The EDA Project Manager will then contact the Recipient to offer assistance and guidance, to arrange for an updated schedule of the Recipient's proposed activities and to arrange a Project Management Conference.

B. Because it is the policy of EDA to discourage the undertaking of any construction prior to the submission of an application for financial assistance, special consideration and judgment must be executed if it becomes necessary for a project to proceed prior to award of the EDA grant. Commencement of a project prior to approval of the application for assistance is not prohibited, but it may jeopardize the favorable consideration of such application since, among other things, it raises a rebuttable presumption that funds necessary for the accomplishment of the project are otherwise available and that proper contracting procedures and labor standards may not have been followed.

C. If construction of the project was begun before affirmation of the grant award, the Recipient will be required to document to EDA's satisfaction that it has complied with all EDA requirements, including but not limited to the payment of Davis-Bacon wages from the start of construction and environmental requirements, in order to qualify for EDA reimbursement of costs incurred, if agreed to in the grant award.

*4. Project Management Conference*

Whenever practical, the Project Management Conference will be held at the Recipient's location; however, if necessary and required for appropriate EDA personnel to be present, it may be held at another location including in the Regional Office. The Recipient's Authorized Representative, Architect/Engineer, attorney and possibly the Recipient's financial representative should be in attendance. Reasonable costs for transportation, meals and lodging for these individuals are an authorized cost under the administrative line item in the project budget. Per diem costs eligible for EDA reimbursement may not exceed the current Federal per diem rate.

*5. Selection of the Architect/Engineer*

A. If an Architect/Engineer has been selected by the Recipient prior to EDA approval of the grant award and the contract between the Recipient and the Architect/Engineer has not been previously submitted to EDA, it should be submitted as soon after the grant award as possible. If the selection has not been made at the time of grant award the contract should be sent to the EDA Regional Office as soon as possible after its execution by both parties.

B. For EDA to participate in the cost for architect/engineer services the Architect/Engineer must be selected competitively by sealed bids (formal advertising) or by competitive proposals. If the selection is made by competitive proposal the following requirements apply:

(1) Requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources (normally sufficient to secure at least three proposals from qualified proposers);

(3) The Recipient will have a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered;

(4) The Recipient will determine the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Competitor's qualifications will be evaluated and the most qualified competitor will be selected, subject to negotiation of fair and reasonable compensation.

*6. The Architect/Engineer Contract for Services*

A. The architect/engineer agreement shall provide for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

B. The Architect/Engineer's fee for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on a determination, subject to audit, that the compensation is reasonable.

C. The use of the cost-plus-a-percentage-of-cost and percentage of construction cost forms of compensation are specifically prohibited.

D. The Architect/Engineer's fee shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, ''as-built'' or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. The basic fee shall not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services shall be identified in the agreement. Such additional charges may be approved for grant participation by EDA if they:

(1) Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;

(2) Are a proper charge against the project cost; and

(3) Are reasonable for the extra services to be rendered.

E. Regardless of who furnishes the construction inspector, the Architect/Engineer shall be held responsible for making sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

F. All negotiated Architect/Engineer contracts (except those of $100,000 or less awarded under small purchase procedures) awarded by Recipients shall include a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant project) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

G. EDA requirements for the agreement for Architect/Engineer services are contained in Exhibit A–1 to these ''Requirements for Approved Projects''.

*7. Multiple Contracts and Phasing*

A. The Recipient is strongly urged to award all contracts for the project construction at one time. Where compelling reasons justify phasing the project, the Recipient must secure the approval of EDA for phasing prior to advertising any portion for bid. The Recipient's request for approval of phasing must include:

(1) Valid reasons justifying the request, and

(2) A statement from the Recipient that it can, and will, fund any overrun that arises in the later phases.

B. Normally EDA will not disburse funds until all construction contracts have been awarded (an exception is the development of a water source when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as called for in the Grant Agreement). 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. The Recipient must be capable of meeting incurred costs prior to the first disbursement of EDA grant funds.

*8. Recipient Furnished Equipment and/or Materials*

The Recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts. It is the responsibility of the Recipient to assure that such equipment and/or materials are adequate for the proposed use. The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participation. The Recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs. Acquisitions of Recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR Part 24 or OMB Circular A–110 (or any DOC rule implementing such Circular, as applicable). 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 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.

*9. Services Performed by the Recipient's Own Forces*

A. The Recipient may 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-time or part-time (in-house), subject to the following conditions:

(1) EDA must review and approve the Recipient's plan if this method is to be elected by the Recipient.

(2) Such work or services performed by in-house personnel may be considered an eligible cost for EDA reimbursement if in conformance with Office of Management and Budget Circulars A–87, A–21 or A–122, as appropriate.

(3) If a portion of the architect/engineer services is to be performed by in-house forces, the Recipient will submit a statement listing the services to be so performed. This statement should accompany the architect/engineer agreement when it is submitted to EDA for approval.

B. Due to the difficulty in monitoring force account construction and the limited EDA staff available to perform the monitoring, force account construction is strongly discouraged. The force account method of construction may be approved only if:

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

(2) Substantial cost savings can be demonstrated, or

(3) The Regional Office is satisfied that 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 site combined with a small contract or an overabundance of construction work in the project area, or

(4) It has been determined by EDA that special circumstances require its use to successfully complete the project.

(5) EDA has available the publication, ''Guidelines for Force Account Projects'', which can be secured from the EDA Regional Office. This publication can be very helpful in ensuring that this type of project activity would be an eligible project cost.

*10. Construction Management Services*

A. For the purposes of this document, 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 the following:

(1) Aid the project designer to find expedited or less costly methods of construction (Value Engineering).

(2) Monitor the contracting process. This may vary in scope from giving advice to the Recipient to complete control of the contracting process.

(3) Inspection or supervision of inspection of the construction work.

(4) Controlling the expenditure of project funds on a multi-faceted or highly complex project.

(5) Controlling unusual methods of contracting such as ''fast track'' or ''turn-key''.

B. EDA will not normally approve the use of a Construction Management firm for projects costing less than $5 million.

C. If the Recipient wishes to use a Construction Manager, EDA will participate in such costs only if EDA approves the proposed or actual contract for such services between the Recipient and the Construction Manager.

D. The compensation for Construction Management services is subject to the same rules as those for architect/engineer services.

E. The Construction Management Agreement must spell out who is responsible for construction inspection, approval of construction and supply contracts, change orders and other areas of possible conflicts (i.e., the division of responsibility and authority between the Recipient, the Architect/Engineer and the Construction Manager).

*11. Certification of Acquisition of Land, Easements and Rights-of-Way*

A. As required in the Financial Assistance Award the Recipient must furnish evidence satisfactory to the EDA that it has good and merchantable title to the tracts or parcels of land on which buildings, structures, or other project improvements will be located, with any liens or encumbrances noted, and that it has obtained all necessary easements, permits, rights-of-way, franchises, condemnations, and all Federal, State and local approvals necessary to the completion of the project.

B. To aid EDA in making its determination, the Recipient must furnish a description of the sites and rights-of-way on which the project will be located. Exhibit C of this

document is a ''Certificate as to Project Site, Rights-of-Way, and Easements,'' which is a format acceptable to EDA as evidence of the Recipient's title to the real property necessary for the project. The Recipient has the option to prepare the title opinion in a format that meets local law or custom. Any title opinion submitted must be approved by EDA. EDA may require additional documentation.

C. If land acquisition is a part of the project, the EDA project file must be documented to show the basis for determining that the amount of land acquired and the cost of the land is reasonable. If an appraisal is required, a professional appraiser(s) should perform the service. An appraiser registered with a national society and/or licensed by the State will normally be required.

D. Any significant change in the amount and cost of land from that upon which the project approval was based must be approved by EDA to be eligible for EDA reimbursement.

E. No financial assistance under the Act will be approved for a project involving public or privately owned land adjacent to or in the vicinity of a federally owned or operated airfield, unless the Recipient can demonstrate that the proposed project is compatible with the airfield land use plan prepared for that facility.

*12. Relocation Assistance*

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646), as amended, are applicable to all States and political subdivisions of States and non-profits which are recipients of EDA funding assistance. This Act requires financial and other assistance to persons, businesses, or farm operations displaced from real property acquired for a project financed wholly or in part with Federal funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of this Act.

*13. Certification of Adequacy of Treatment of Sewage and Other Waste*

A. EDA will not provide financial assistance for projects involving sewer or other waste disposal facilities unless a State permit has been obtained by the Recipient in those States where EPA has delegated authority to the State to certify adequacy of treatment. In those States where EPA has not delegated such authority, a certificate of adequacy of treatment must be obtained from EPA in addition to a State permit.

B. Certification of adequacy of treatment is not normally required under the following conditions:

(1) For single service connections unless an unusual effluent is expected.

(2) For replacement of portions of an existing sewer system where sewage flow resulting from the project is not increased.

(3) For projects which will include only storm drainage as the component and the flow from the storm sewer is not introduced in the existing sanitary sewer system.

C. If EPA certification is required, EDA will not authorize the advertising, bid opening nor a disbursement of grant funds until an unconditional certificate has been obtained. The EDA Project Manager will prepare all EDA requests to EPA for Certificates of Adequacy of Treatment for projects which involve sewage and/or storm drainage facilities. The certification should be obtained as early as practicable after acceptance of the project application by EDA. The Recipient must provide as much of the following information as is required to obtain the certification:

(1) For sanitary sewer system.

a. A general descriptive statement of the project explaining the problem to be eliminated and the proposed method of elimination.

b. A vicinity map of the complete project area showing the location and size of all existing and proposed sanitary and storm sewer lines in plan view, the street system, topographical features, overflows and bypasses.

c. Project design criteria, including the following data:

(i) Industrial and domestic contribution. (Type of industrial contribution should be stated).

(ii) Line and treatment facility sizing and design criteria used therefor.

(iii) Population figures used.

(iv) Number of existing and planned sewer connections.

d. Design criteria to be used for the new treatment facilities. This should include the following data:

(i) Type and extent of existing treatment.

(ii) Industrial and domestic contribution. (Type of industrial contribution should be stated).

(iii) Peak and average flow data.

(iv) Component sizing and design criteria used therefor.

e. For existing treatment facilities to be affected by the proposed project submit the design criteria, permit number and effluent limitations.

f. If available, as-built drawings of existing treatment facilities showing the location, type, number and size of the treatment facilities. If as-built drawings are not available a single line drawing of the existing structures such as lift stations, manholes, pumping stations, etc., will be accepted.

g. Agreements, if any, for treatment by other entities.

(2) For projects involving only storm sewer facilities submit the following dated statement, signed by the Recipient's authorized representative; ''This proposed storm water sewer system will be constructed and operated so as to exclude the introduction of domestic sewage and industrial or agricultural waste and will not be connected in any way to a sanitary sewer system.''

(3) Upon receipt by EDA, the certification of adequacy of treatment will be reviewed to assure that the certification is unconditional. EDA will not accept a conditional certification (defined as an approval conditioned on the occurrence of a future event such as the future construction of a sewage treatment plant).

*14. Project Financing*

Prior to obtaining EDA approval of the project's final plans and specifications, the Recipient should furnish evidence to the EDA Project Manager that the Recipient has its share of matching funds either on hand or firmly committed. Any change in the amount or availability of the Recipient's share must be made known to EDA at this time. This is equally true of the interim financing amount and availability.

*15. Safeguarding Funds*

A. Checks drawn to pay project costs will be signed by the Authorized Representative of the Recipient and may be counter-signed by other representatives of the Recipient if he/she so designates. The Recipient shall retain all bank statements, deposit slips, canceled checks, and related invoices pertaining to these project costs to facilitate final audit.

B. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks as the depository for project funds.

C. Although a separate bank account is not required by EDA, the Recipient is urged to use one for the EDA project as it will be helpful to audit project costs claimed by the Recipient at project closeout.

D. For non-governmental Recipients EDA requires that the Recipient furnish evidence that the custodian of the project funds is bonded in an amount not less than the amount of the EDA grant. If subject to 15 CFR Part 24, the Recipient must furnish assurances that the Recipient's financial management system meets the requirements of 15 CFR Part 24.20, Financial Administration, if this was not accomplished prior to approval of the grant award.

*16. Department of Commerce Metric Program*

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce.

*17. Seasonality*

It is EDA policy to promote construction of projects continuously throughout the year. Recipients and their Architect/Engineers are encouraged to design projects so that construction will not be unreasonably curtailed by weather.

*18. Design for the Handicapped*

A. Any building or facility financed in whole or in part with assistance under the Act must be designed, constructed, or altered, so as to insure ready access to, and use of, such building or facility by the physically handicapped, as required by P.L. 90–480 (42 U.S.C. 4151–4156) and the regulations promulgated thereunder (41 CFR Subpart 101–19.6).

B. Except as otherwise provided in paragraph C of this section, every building, except a residential structure, shall be designed, constructed, or altered in accordance with the minimum standards contained in the ''American National Standard Specifications for Making Buildings

and Facilities Accessible to, and Usable by, the Physically Handicapped,'' Number A 117.1 (1971) approved by and available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

C. The standards established in paragraph (B) of this section shall not apply to:

(1) The design, construction, or alteration of any portion of a building or facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installations or improvements to accommodate the physically handicapped;

(3) The alteration of an existing building or facility, or of such portions thereof, to which application of the standards is not structurally possible.

D. The standards established in paragraph (B) of this section may be modified or waived on a case-by-case basis, provided that the Administrator of the General Services Administration determines that such waiver or modification is clearly necessary.

*19. Reporting of Project Progress*

A. Recipients are required to constantly monitor project progress to assure that time schedules are being met, project work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity as set forth in the approved grant application.

B. The Recipient is required to submit a project performance report for each calendar quarter. The report will cover the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the timetable established in the Grant Award;

(2) Reasons for delays in those cases where the time table approved by EDA was not met;

(3) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;

(4) All change orders issued up to the date of the report and not previously reported to EDA, and

(5) Other pertinent information including, when appropriate, an analysis and explanation of and cost overruns or high unit costs.

C. The project performance report will be due not later than January 15, April 15, July 15 and October 15 for the immediate previous quarter year. This requirement shall begin with the Recipient's acceptance of the EDA Grant Award and shall end when EDA approves the final grant disbursement.

D. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the Recipient will be required to inform EDA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability of the Recipient to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work than originally projected; or

(3) If any performance review conducted by the Recipient discloses the need for change in the budget estimates, the Recipient is required to submit a request for budget revision.

E. A sample format for the required project performance report is included herein as Exhibit J. The report will be sent to the EDA Regional Office. The Recipient may use a format other than the EDA sample, provided that the information called for in this section is furnished.

F. EDA does not normally permit grant advances. However, where EDA determines that grant advances are necessary and in the best interest of the Government and the Recipient, the Recipient will be required to submit with the project performance report a Report of Federal Cash Transactions. The EDA Regional Office shall furnish the required forms for this report.

G. EDA will not process any requests for grant disbursement from Recipients with delinquent performance reports.

*20. Environmental Requirements*

A. EDA is required by law to insure that proper environmental review of its actions take place; that there is a proper balance between the goals of economic development and environmental enhancement in its actions; and, that adverse environmental impacts from its actions are mitigated or avoided to the extent possible.

B. Environmental assessments of EDA actions are conducted in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et. seq.), the Environmental Quality Improvement Act (42 U.S.C. 4371 et. seq.), The Clean Air Act, as amended (42 U.S.C. 7401 et. seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.), The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271 et. seq.), the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4002 et. seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Section 1500–1508), as specified in EDA Directives 17.02–2, 17.02–7, and 17.04, as hereafter amended or superseded. Directives are available from any EDA office.

C. EDA recipients are subject to Federal, state and local requirements concerning hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Public Law 96–510 (1980), as amended by Public Law 99–499 (1986), 42 U.S.C. 9601–9675; and the Resource Conservation and Recovery Act (RCRA), Public Law 89–272 (1965), as amended by Public Law 94–580 (1976), Public Law 96–482 (1980) and Public Law 98–616 (1984), 42 U.S.C. 6901–6991.

*21. Project Revisions*

After Recipient acceptance of the EDA grant award, any change to the project as described in the grant award must be reviewed and approved by EDA. To be eligible for EDA financial participation the proposed revision must meet certain conditions. See Section V of this document for guidelines on securing EDA approval of proposed project revisions.

**Section II—Contracting For Project Construction**

*1. Contracting Standards*

A. For States: If a State is the recipient of the EDA grant award, the State may follow the same policies and procedures it uses for procurements from its non-Federal funds provided that the State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A–87 will be applicable.

B. For Other than States: Recipients of EDA grants other than States may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards contained in these ''Requirements for Approved Projects''. Recipients may request EDA to approve self-certification of their procurement system. Such self-certification shall not limit EDA's right to survey the system. The Recipient must cite specific procedures, regulations, standards, etc. as being in compliance with EDA and other Federal requirements and have its system available for review. In the absence of written procurement regulations issued by the Recipient which meet the following requirements, applicable federal procurement standards shall govern.

C. Contract Administration System: Recipients will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

D. Standards of Conduct: Recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the Recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firms elected for award:

(1) an employee, officer or agent

(2) any member of his/her immediate family

(3) his or her partner

(4) an organization which employs, or is about to employ, any of the above.

The Recipient's officers, employees or agents shall neither solicit nor accept

gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements except that Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Recipient's officers, employees, or agent, or by contractors or their agents.

E. State and Local Agreements: To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

F. Surplus Property: Recipients are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

G. Value Engineering: Recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. EDA will not normally approve value engineering costs for construction contracts with estimated costs of less than $1,000,000. Value engineering is defined for the purposes of this paragraph as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. Value engineering, as a function, is done separately from the architect/engineer design by a person or firm not controlled by the architect/engineer.

H. Awards to Responsible Contractors: Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.

I. Maintenance of Records: Recipients will maintain records sufficient to detail the significant history of each procurement affecting the EDA assisted project. These records will include, but are not necessarily limited to, the rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price.

J. Time and Material Contracts: Recipients will use time and material type contracts only:

(1) After a determination that no other type of contract is suitable, and

(2) If the contract includes a ceiling price that the contractor exceeds at its own risk.

K. Settlement of Issues: Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims. These standards do not relieve the Recipient of any contractual responsibilities under its contracts. EDA will not substitute its judgment for that of the Recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

L. Protest Procedures: Recipients will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to EDA. A protestor must exhaust all administrative remedies with the Recipient before pursuing a protest with EDA. Reviews of protests by EDA will be limited to:

(1) Violations of Federal law or regulations (violations of State or local law will be under the jurisdiction of State or local authorities); and

(2) Violations of the Recipient's protest procedures for failure to review a complaint or protest. Protests received by EDA other than those specified above will be referred to the Recipient for resolution.

*2. Competition in Procurement*

A. All procurement transactions affecting the EDA project will be conducted in a manner providing full and open competition consistent with the standards contained herein. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business,

(2) Requiring unnecessary experience and excessive bonding,

(3) Noncompetitive pricing practices between firms or between affiliated companies,

(4) Noncompetitive awards to consultants that are on retainer contracts,

(5) Organizational conflicts of interest,

(6) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(7) Any arbitrary action in the procurement process.

B. Recipients will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in these Requirements for Approved Projects preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographical location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

C. Recipients will have written selection procedures for procurement actions. These procedures will ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

D. Recipients will ensure that all lists of prequalified persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, Recipients will not preclude potential bidders from qualifying during the solicitation period.

*3. Acceptable Methods of Procurement*

A. Procurement by Small Purchase Procedures: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000) in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources (normally at least three quotes will be required).

B. Procurement by Sealed Bids (formal advertising): Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction. In order for sealed bidding to be feasible, the following conditions should be present:

(1) A complete, adequate and realistic specification or purchase description approved by EDA is available,

(2) Two or more responsible bidders are willing and able to compete effectively for the business, and

(3) The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

C. If sealed bids are used, the following requirements apply:

(1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids.

(2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

(3) All bids will be publicly opened at the time and place prescribed in the invitation for bids.

(4) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

(5) Any or all bids may be rejected if there is a sound and properly documented reason.

D. Procurement by Competitive Proposals: The technique of competitive proposals may be used on EDA projects to secure architect/engineer services and is conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals will be publicized and will identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.

(2) Proposals will be solicited from an adequate number of qualified sources (normally EDA requires responses from at least three responsible firms).

(3) Recipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees.

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

(5) Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

E. Procurement by Noncompetitive Proposals: This technique requires EDA prior written concurrence and is conducted by solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(1) The item is available only from a single source; or

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or

(3) After solicitation of a number of sources, competition is determined inadequate.

*4. Unacceptable Method of Procurement*

The cost-plus-a-percentage-of-cost method of contracting is unacceptable for use on EDA assisted projects. EDA grant funds may not be used to reimburse costs incurred under such a contract.

*5. Contracting with Disadvantaged Firms*

A. The Recipient shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises;

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

*6. Contract Cost and Price Analysis*

A. Recipients must perform a cost or price analysis in connection with every procurement action including contract modifications (change orders). The method and degree of analysis is dependent upon the facts surrounding the particular procurement situation, but as a starting point, Recipients must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural/engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

B. Recipients will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates in the surrounding geographical area for similar work.

C. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see OMB Circulars A–21, A–87 or A–122 as applicable). Recipients may reference their own cost principles that comply with the applicable Federal cost principles.

D. The cost-plus-a-percentage of cost and percentage of construction cost methods of contracting shall not be used.

*7. Advertising for Bids*

A. In the absence of State or local law to the contrary, the advertisement for bids should appear in publications of general circulation a minimum of four times within a 30 day period prior to the opening of bids.

B. When the estimated construction cost exceeds one million dollars, the advertisement for bids should appear in publication(s) with national circulation a minimum of four times within the 30-day period prior to the opening of bids.

C. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids.

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

*8. Bonding and Insurance Requirements*

A. For construction or facility improvement contracts or subcontracts exceeding $100,000 the following minimum bonding requirements apply:

(1) The bonding company selected must be listed in U.S. Treasury Department Circular 570.

(2) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(3) A performance bond on the part of the contractor for 100 percent of the contract price.

(4) A payment bond on the part of the contractor for 100 percent of the contract provisions.

B. The Recipient shall require that each construction contractor and all subcontractors maintain, during the life of its contract, Workmen's Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by the nature of the work and State and local law. When appropriate, the Recipient shall require the prime contractor to provide Builder's Risk Insurance as part of the construction contract. In any case, the responsibility for seeing that coverage is obtained and kept in force remains with the Recipient. Such coverage is an eligible project cost, when obtained by the Recipient directly.

*9. Bid Schedules for Alternative Materials*

A. Should the Recipient, acting upon the advice of his/her consultant Architect/Engineer desire to obtain competitive prices for differing materials, such bids should be requested on the basis of ''Bid Schedule A'', ''Bid Schedule B'', etc. Bid Schedules, as used herein, refer to the method used to obtain bids on more than one material to be used for the same purpose. As an example, if 2,000 linear feet of sewer line were to be installed, Bid Schedule A might call for the pipe material to be cast iron. Bid Schedule B might call for the pipe material to be ductile iron. Bid Schedule C might call for the material to be asbestos cement, etc.

B. If bids are asked for on the basis of two or more Bid Schedules as set forth above, the bid documents must clearly set forth that the contract will be awarded to the bidder having proposed the lowest responsive bid within the amount of funds announced as available by the Recipient to finance the contract and including the Bid Schedule upon which that Contractor bid the lowest price.

C. If the Recipient wishes to use a bid material which will result in increased cost, EDA may permit the use of the material chosen, but the amount of grant participation by EDA shall remain based on the lowest responsive bid. The contract must be awarded to the lowest bidder determined in accordance with the procedure described above unless a deviation is specifically allowed in applicable State and local law.

*10. Non-EDA Work*

A. If the Recipient plans to add work that is an addition to the approved EDA project, the following will apply:

(1) The advertisement for bids, all bid documents, and contract documents shall clearly define and separate the EDA portion of the work from the non-EDA portion.

(2) The Recipient may offer for bid and award work in addition to the EDA portion, provided:

a. the Recipient understands that EDA will participate in the EDA portion only;

b. the additional work does not adversely affect the original intent of the EDA project or its economic impact, as approved.

(3) Contracts shall be so drawn that the EDA-assisted portion of the work is clearly identifiable at all times during construction.

(4) Underruns in the EDA project cannot be applied to assist the Recipient in funding work which is not a part of the EDA project. It is the responsibility of the Recipient to pay for all added work in full.

(5) In the event of an overrun on the EDA portion of the work, it is the Recipient's responsibility to supply the necessary additional funds and to deposit such funds in the project account. A revised project budget estimate will then be prepared which will clearly show the portion of project cost to be shared by EDA and the portion the Recipient must fund in its entirety. In addition, the overall percentage participation of EDA in the project shall be clearly identified.

B. When the EDA project is included with non-EDA assisted work, the Recipient will normally award to the lowest bidder on all the work. However, EDA participation will be based on the lowest bid for the EDA-assisted portion. When this occurs, the Recipient will prepare a memorandum to EDA, which will clearly present the details of the award.

*11. EDA Review of Proposed Procurement Documents*

A. If a Recipient wishes to have its procurement system certified by EDA, it should follow the procedures in Section II 1 B of these ''Requirements for Approved Projects''. If EDA certifies the Recipient's procurement system, the Recipient may not have to submit proposed bid documents to EDA for approval if instead it submits an executed copy of the Checklist for Construction Contracts (see Exhibit A–2).

B. EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the EDA grant award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

C. A pre-bid review of proposed construction bid documents by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently $100,000) and the Recipient's procurement procedures and operations have not been certified by EDA and/or do not comply with the procurement standards of this document, or

(2) The scope of the work as approved in the EDA grant award has changed, or

(3) The proposed bid documents specify one or more ''brand name'' products.

D. A pre-award review by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently $100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation, or

(2) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement, or

(3) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold, or

(4) The Recipient's procurement procedures or operation fails to comply with the procurement standards in this Requirement for Approved Construction Projects, or

(5) The procurement, which is expected to exceed the simplified acquisition threshhold, specifies a ''brand name'' product.

E. It will greatly expedite EDA's review of the proposed bid documents if the Recipient completes the Checklist for Construction Contracts (Exhibit A–2), has it signed by the Recipient's authorized representative and submits it to the EDA regional office with the proposed construction bid package for approval. EDA review and approval of the proposed contract documents will also be expedited if the Recipient uses standardized documents such as ''Contract Documents for Construction of Federally Assisted Water and Sewer Projects'' jointly prepared, endorsed by, and available from, the Environmental Protection Agency, the Rural Development Agency, the Department of Housing and Urban Development, the Associated General Contractors of America, the Consulting Engineers Council and the National Society of Professional Engineers. Standardized contract forms available from the American Institute of Architects are also acceptable to EDA.

F. Until EDA has reviewed and approved the Recipient's proposed contracts and related procurement documents, the Recipient will be proceeding at its own risk regarding the eligibility of costs incurred.

*12. Construction and Services Contract Provisions*

A. The proposed contract documents to be part of the invitation for bids should contain at least the following:

(1) An Index.
(2) Advertisement for Bids.
(3) Information for Bidders.
(4) Bid Form.
(5) Contract Form.
(6) Bid Bond.
(7) Performance Bond.
(8) Payment Bond.
(9) General Conditions.
(10) ''Supplemental General Conditions'' (to be furnished by EDA).
(11) Technical Specifications.
(12) Working Drawings.
(13) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246 and 41 CFR 60–4) (Exhibit E).

B. The package sent to EDA should also contain a documentation of the estimated cost for the proposed contract (see Section II 6. of these ''Requirements for Approved Projects'').

C. The Recipient shall include the following contract provisions or conditions in all procurement contracts and subcontracts for the EDA assisted project.

(1) Contracts in excess of the simplified acquisition threshold (currently $100,000) shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) Contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the Recipient including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of $10,000 by the Recipient and their contractors or subrecipients shall contain a provision requiring compliance with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All contracts and subgrants in excess of $2,000 for construction or repair shall

include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he/she is otherwise entitled. The Recipient shall report all suspected or reported violations to EDA.

(5) All construction contracts in excess of $2,000 awarded by the Recipient and Subrecipients shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Recipient shall place a copy of the current prevailing wage determination issued for each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Recipient shall report all suspected or reported violations to EDA.

(6) Where applicable, all contracts awarded by the Recipients and Subrecipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of this Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1–½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(7) Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Grants, Contracts and Cooperative Agreements''.

(9) All negotiated contracts (except those awarded by small purchases procedures) awarded by the Recipient shall include a provision to the effect that the Recipient, EDA, the Office of Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(10) The Recipient shall require contractors to maintain all required records for three years after the Recipient makes final payments and all other pending matters are closed.

(11) Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to EDA and the regional office of the Environmental Agency (EPA).

(12) Recipients and subrecipients must contain mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan, where applicable, issued in compliance with the Energy Policy and Conservation Act (P.L. 94–165).

(13) EDA may require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

(14) The EDA project number should appear on all drawings and on the face sheet of specification documents. In the case of a single sheet layout included in folders, the project number should be shown on the face of the sheet or at a point which will be outside when folded. If the layout consists of two or more sheets, all sheets should be so identified.

(15) In all cases, a reasonable time must be allowed to perform the work and the contract documents should stipulate the number of calendar days allowed for completing the work.

(16) EDA urges that a liquidated damage provision be included in all construction contracts with a specific dollar amount of daily damage to be assessed against the Contractor for each calendar day beyond the stipulated completion date. The daily amount of damages shall be a reasonable and adequate amount based upon the circumstances and estimated dollar cost of the individual contract, or the revenue-producing capacity of the project. The liquidated damages provision provides the Recipient with a feasible means of securing compensation for damages for delays in completing the work. Without such a provision, the proving of such damage is difficult and usually entails court action. In the event that the Recipient objects to the inclusion of a liquidated damages provision in construction contracts, a statement of the reasons for objecting should be submitted with the proposed contract documents.

(17) The Architect/Engineer should be encouraged to use deductive alternates which do not alter the scope of the project, affect the economic impact or project revenue, or change the project justification. Thus, should the bids exceed the cost estimate, deductive alternates may be used to reduce the cost to the extent necessary to come within the approved funds. Deductive alternates, where used, must be listed in the order to be used on the bid documents and *must* be taken in that order when awarding the contract. Deductive alternates should not be used for material. EDA recommends that unit price bidding based on quantities estimated by the Architect/Engineer so as to arrive at a total base bid be used to the greatest practical degree.

(18) The limiting of materials and/or equipment to a particular manufacturer or brand name (''sole source'') must have EDA approval to be eligible for reimbursement from grant funds unless an ''or equal'' clause is included in the equipment specifications.

(19) EDA discourages the use of performance type specifications. If the Recipient or his/her Architect/Engineer wishes to use performance type specifications, written approval must be secured from EDA.

(20) See Section II, paragraph 8 of these ''Requirements for Approved Projects'' for bonding and insurance requirements.

(21) Exhibit B, ''Supplemental General Conditions'' found in the Exhibits section of these ''Requirements for Approved Projects'' must be made a part of the construction bid and contract documents unless all EDA and other Federal requirements contained therein are covered elsewhere.

(22) The bidding documents should stipulate that:

a. the Recipient may consider any bid informal which is not prepared and submitted in accordance with the provision of the bid documents and may waive any informalities or reject any and all bids;

b. any bid may be withdrawn prior to the time scheduled for the opening of bids but not afterward; and

c. any bid received after the time and date specified for the bid opening shall not be considered.

(23) Stated allowances may be used for certain items such as door and/or window hardware with the approval of EDA.

(24) All of the above documents shall be included in the sets of bidding documents to be issued to prospective bidders, with any changes or additions recommended by EDA. The responsibility for complying with all State and local laws rests with the Recipient.

(25) Exhibit E to these ''Requirements for Approved Projects'' is a notice which provides goals and timetables for minority and female participation in construction work. This notice must be included in all invitations for bids for construction projects for which the prime contract and any related subcontracts are in excess of $10,000. EDA shall furnish the Recipient with the appropriate goals and timetables to be inserted in the above notice. In addition, the requirements of the above notice have been provided in the ''Supplemental General Conditions'' (Exhibit B) as the Standard Federal Equal Employment Opportunity Construction Contract Specifications.

(26) EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the Grant

Agreement and does not imply nor attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

(27) In the absence of State or local law to the contrary, the advertisement for bids will conform to the requirements of Section II 7 of these ''Requirements for Approved Projects''.

(28) Only complete sets of plans and specifications should be issued to prospective contractors and/or subcontractors.

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

*13. Wage Rates*

A. Wage rates paid for labor must not be less than the prevailing area wages as determined by the Secretary of Labor and embodied in the construction contract, pursuant to the provisions of the Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a–7). EDA will secure the wage determination for the Recipient based on the following.

B. Most areas of the United States are covered by existing Department of Labor (DOL) wage decisions published and updated at irregular intervals. If the Recipient's project is in a covered area, the EDA Regional Office will supply copies of the applicable wage decision upon the Recipient's request. If the area is not covered by an existing wage decision the following procedure will apply. Between 60 and 45 days prior to the anticipated date of advertising for bids, the Recipient shall send to the EDA Regional Office a request for a wage determination (also referred to as a wage decision) defining the type of construction category (Building, Heavy or Highway) with each feature of work listed under the appropriate category. In addition, the crafts or skills needed for each category shall be listed and any pertinent wage information available submitted, such as statements from the secretaries of the Association of General Contractors and the Building Trades Council having jurisdiction. In isolated communities, certified copies of current contractors' payrolls for similar type work in the area concerned may accompany the request. When a State wage determination is required by State law, the Recipient must secure a schedule of rates from the State Labor Department and incorporate both State and Federal schedules of rates in the contract documents. The Recipient is responsible for seeing that the wage rates shown in the contract documents reflect not less than the higher of the Federal or State rate by trade. EDA will secure the wage decision from the appropriate Department of Labor Regional Administrator.

C. Each feature of work scheduled must call for Building, Heavy, or Highway wage rates, if applicable. Where a proposed contract involves only one type of construction, the specifications shall so state. Where more than one type of construction is involved, the specification shall identify, as specifically as possible, into which category of construction each work item falls. This decision, made by the Recipient in consultation with the Architect/Engineer, shall be based on local or area practice to insure fairness to all prospective bidders on construction contracts to be awarded.

D. Wage decisions are only valid for a 120-day period and extensions of wage decisions shall not be granted. If the decision expires without being superseded prior to award of contract, a new wage decision must be secured and included in the proposed contract documents prior to award. The request for a new wage decision shall be addressed to the EDA Regional Office. If the wage rate included in the Invitation for Bids is superseded, the new wage rate must be substituted if the new wage rate decision is dated over ten days prior to the bid openings; otherwise the old wage rate shall apply.

E. Contractors and subcontractors shall be advised that upon acceptance of their bids, they are obligated to pay not less than the established wage rate unless otherwise required by law. Wage rates need not be listed for non-manual workers, including executive, supervisory, administrative and clerical employees.

F. Wage rate schedules are generally not required for contracts between Recipients and railroads and other public utilities for construction services to the extent that the services are performed by personnel employed directly by the utility concerned and paid at rates prevailing for the type of work and utility concerned.

G. EDA or the Department of Labor may cause investigation to be made as may be necessary to assure compliance with the labor standard clauses required by the regulations contained in 29 CFR, Part 5 and the applicable statutes listed therein. Complaints made to, or which come to the attention of the Recipient, shall be called to the attention of the EDA Regional Office.

H. The Recipient shall require each contractor and subcontractor to submit, in compliance with the Davis-Bacon Act, a weekly payroll record. These records shall be retained for a period of three years from the date of completion of the contract and in a manner reasonably accessible. Such payroll records shall be made available at all times for inspection by EDA, the Department of Commerce Inspector General or their authorized representative, and by authorized representatives of the Department of Labor. The Recipient shall file these records by contract number. If the Recipient wishes to use another system for maintaining these records, the EDA Regional Office shall be consulted to avoid any violations of the Privacy Act. The Recipient shall check the submitted payroll records to assure they contain the following:

(1) A properly completed payroll Form WH–347, or

(2) If another form is used, all the information required by Form WH–347, including the name, address, correct job classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid for all employees; and the Statement of Compliance, properly executed as shown on the reverse side of Department of Labor Form WH–347, ''Payroll Reporting Form'' containing all of the information requirements including the Statement of Compliance. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

I. Where a construction contract has been awarded and work has commenced on the EDA approved project prior to acceptance of the Grant Award, wage rates and requirements listed herein shall be retroactive to the date of start of construction.

*14. The Bid Opening*

A. Whether or not an EDA representative is present at the bid opening, the Recipient will furnish the following to the EDA Regional Office:

(1) a statement signed by the Authorized Representative of the Recipient, certifying that all bids were received sealed and were opened in his/her presence;

(2) copy of official minutes of the bid opening;

(3) a copy of the bid tabulation.

*15. Overrun at the Bid Opening*

A. If the lowest responsive bid received at the bid opening exceeds the amount of funds available to finance the contract:

(1) the Recipient may without taking deductive alternates:

a. reject all bids;

b. augment the funds available in an amount sufficient to enable award to the lowest responsive bidder.

(2) The Recipient may take deductive alternates in the order shown in the Invitation for Bids until at least one of the responsive bids less deductive alternates result in a price within the funds announced as available. Then award may be made to that bidder. It should be noted that this procedure may change the order of bidders and thus extra care must be exercised to insure that:

a. all responsive bids are considered;

b. deductive alternates have been taken in the exact order shown in the Invitation for Bids; and

c. only sufficient deductive alternates have been taken to reduce at least one of the responsible bids to or below the amount of funds announced as available.

(3) In no event, however, should the Recipient negotiate with the low bidder or other bidders in order to reduce the cost within the funds available.

B. If the low bid less all deductive alternates exceeds the funds available, the Recipient may:

(1) furnish the additional funds required. If the Recipient intends to finance the overrun from his/her own funds, he/she will furnish a written letter or statement to the EDA regional office affirming his/her intention to finance the overrun and indicating the source of funds. If such funds are to be borrowed an appropriate supplemental financial plan must be prepared by the Recipient; or

(2) reject all bids and have the Architect/Engineer redesign the project, within the approved scope, to reduce the cost to, or below the approved amount and readvertise; or

(3) request additional EDA financial assistance as a last resort. However, before the Regional Office can accept a request for additional EDA funds, it will be necessary for the Recipient to furnish the following documentation to the EDA Regional Office:

a. a written statement from the Architect/Engineer giving his/her professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and

b. a written statement from the Authorized Representative or governing body of the Recipient that the Recipient cannot furnish the additional funds required, giving the reasons plus documentation and/or statistics relative to the financial condition of the Recipient.

*16. Underrun Funds at the Bid Opening*

A. If the total amount of construction contract awards is less than the approved line item for construction and/or any of the other line items in the EDA approved budget experiences an underrun such that the total expected actual cost will be less than the cost estimated in the EDA approved budget, EDA must be notified.

B. Underrun funds resulting from the situation described in paragraph A above may not be used to enhance or increase the scope of the project.

*17. EDA Approval of the Contract Award*

A. EDA must review and approve the award of all necessary contracts in order for the cost to be eligible for EDA reimbursement. However, pending EDA approval the Recipient may issue the Notice to Proceed permitting the work to go forward.

B. To obtain approval of the contract award, the Recipient shall submit to the EDA Regional Office:

(1) those items listed in Section II, Paragraph 13A and 13B of these ''Requirements for Approved Projects'', if not furnished previously;

(2) evidence of bidder's qualification. Architect/Engineer must review and add his/her opinion of bidder's qualifications;

(3) evidence of publication of advertisement for bids;

(4) certified evidence of the Recipient's ability to provide the financial participation required by the Grant Agreement;

(5) evidence of ability to provide construction financing;

(6) evidence of ability to provide the movable equipment and furnishings necessary to make the project a usable facility;

(7) a résumé of Resident Engineer's or Resident Inspector's qualifications for approval if not previously furnished;

(8) evidence of establishing a project accounting system for the project; and

(9) evidence of bonding of those persons authorized to draw upon the project funds as required by State and/or local law.

C. Prior to awarding any contract the Recipient should contact the EDA Regional Office so that the contractor can be checked against the list of contractors debarred, ineligible, or suspended from dealing with the Federal government or indebted to the United States. Costs for work done by such contractors are ineligible for EDA financial participation.

*18. Executed Bid Award*

A. After the bid award has been made, if EDA requests it, the Recipient will submit to EDA one set of bound executed contract documents. Each set shall consist of:

(1) all documents furnished the bidder prior to receipt of bids and upon which base bids were submitted;

(2) a signed or certified copy of the contract or agreement executed between the Recipient and the Contractor, including all addenda as issued, with necessary blanks completed;

(3) a copy of performance and payment bonds, dated the same date or subsequent to the date of the contract, supported by a properly signed and dated power of attorney, issued by the Surety. The Surety must be authorized to transact a fidelity and surety business in the State where the project is located and must be on the Treasury Department's current Circular 570, as ''Companies Holding Certificate of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies''. The underwriting limitations provided for in the said Treasury Department listing shall be applicable. A bound set of final plans are to be submitted with each set of contract documents.

(4) copies of insurance policies and/or certificates described in paragraph 5 of Section III of these ''Requirements for Approved Projects''.

*19. Preconstruction Conference*

Before the start of construction, an EDA representative may arrange to meet with the Recipient, the Architect/Engineer, and the Prime Contractor(s) to discuss EDA requirements on such matters as project supervision, on-site inspections, progress schedules, reports, payrolls, payments to contractors, contract change orders, insurance, safety, and other items pertinent to the project. At this conference, all parties shall be prepared to discuss any anticipated problems or issues that could affect the timely completion of the project.

**Section III—Construction Procedures**

*1. Recipient Responsibilities*

A. The Recipient is responsible for expeditiously prosecuting the project to completion, for monitoring project progress, for keeping EDA advised of project progress, for adequate construction inspection, for prompt payment of costs incurred for the project and for monitoring the contractor's compliance with local, State and Federal construction requirements.

B. The Recipient, with the assistance of its architect/engineer, is responsible for the accuracy and completeness of the plans, specifications and other contract documents. The Recipient, with the assistance of its architect/engineer, is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, and compliance with applicable building codes or ordinances. EDA review of proposed and/or final contract documents does not in any way relieve the Recipient of the foregoing responsibilities.

*2. Employment of Local Labor*

A. The maximum feasible employment of local labor shall be made in the construction of EDA assisted public works projects. The Recipient should supply a list of the successful bidder's anticipated labor requirements to the applicable Federal/State Employment Office far enough in advance of the start of construction so that the employment office may provide the contractor with the names of suitable local personnel from its rolls.

B. The contractor shall be required to include the above requirement in every subcontract for all work on the EDA assisted project.

*3. Construction Progress Schedule*

A. If requested by EDA, the Recipient will secure from the contractor or Architect/Engineer, and furnish a copy to EDA, of the predicted construction progress chart and a schedule of amounts for contract payments.

B. The construction progress chart should be updated monthly by the Recipient, the Architect/Engineer or the contractor. A copy for each month will be attached to the Quarterly Performance Report. The EDA Regional Office will advise as to the content of the report. The report will be due quarterly throughout the construction of the project.

C. After a review of the project the EDA project manager may discuss with the Recipient, or the Recipient's representative, the appropriate type of progress chart. The bar graph type of chart will generally be acceptable but some type of network analysis may be more appropriate for projects with cost in excess of $1 million and with greater than average complexity. The cost for such network analysis may be an eligible project cost if EDA approves its use.

*4. Construction Sign*

A. The Recipient shall require the prime contractor to secure or construct, erect, and maintain in good condition throughout the construction period, a sign or signs, (specifications for the sign are included as an exhibit to this document), 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 site conditions so warrant.

B. Project signs will not be erected on public highway rights-of-way.

C. Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area if any possibility exists for obstruction to traffic line of sight.

D. Whenever EDA site sign specifications conflict with State law or local ordinance, the EDA regional director may modify such conflicting specifications so as to comply with the State law or local ordinance.

E. When appropriate, EDA may require that a bilingual project sign be used. Specifications for such a sign are contained in this document in Exhibit B.

*5. Inspection of Construction*

The Recipient must provide competent project inspection during the construction period. The inspector may be an employee of the Recipient, an employee of the architect/

engineer, or a person(s) under contractual control of the Recipient. The extent of the inspection and the selection of the inspector must be approved by EDA. Pertinent information regarding the proposed inspector's experience, qualifications, salary plan and the scope of his responsibilities and authorities shall be furnished to EDA for this purpose.

*6. Occupancy Prior to Completion*

A. If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the Recipient must:

(1) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;

(2) secure the written consent of the contractor;

(3) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and.

(4) secure permanent fire and extended coverage insurance, where applicable, including a permit to complete construction.

B. EDA may require from the Recipient an assurance to protect the EDA investment in the project, prior to the approval of occupancy and/or use of all or any part of the project before completion of the construction.

*7. Contractor Payrolls*

A. Each contractor and subcontractor must be required by the Recipient to maintain weekly payroll records. These records are to be retained for a period of three years from the date of project closeout. Each contractor and subcontractor must also be required to furnish a copy of each payroll to the Recipient. The Recipient is responsible to assure that the payrolls meet the following standards:

(1) Wage rates and fringe benefits paid agree with the Department of Labor wage rate, or State wage rates if they are higher.

(2) Name, address, and Social Security number and work classification is shown for all employees.

(3) The Certificate of Prime Contractor on the reverse side of the Form WH–347 has been properly executed. If EDA has approved a substitute form for the WH–347 the substitute form must contain the certification as well as all of the above standards.

B. EDA may require that copies of the weekly payroll records be furnished to the applicable EDA regional office.

*8. Civil Rights Requirements*

The regulations issued under Executive Order 11246 (41 CFR 60–1.7) require the submission of compliance reports regarding civil rights. Standard Form 100 is to be used for this purpose. The requirement applies to any person or entity subject to Executive Order 11246 who:

(1) has 50 or more employees; and

(2) is a prime contractor or first-tier subcontractor; and

(3) has a Federally assisted contract, subcontract or purchase order amounting to $50,000 or more.

*9. Contract Change Orders*

A. After the 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. 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. 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 is 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 for the change order.

B. The Recipient or its architect/engineer shall perform a cost or price analysis in connection with every change order which affects the contract price.

C. Proposed contract change orders will be prepared by the Recipient in sufficient quantity that two copies can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications, and plans will be attached. Before submission to the EDA regional office, the change order must be signed by the Recipient, the Architect/Engineer, and the contractor. The Recipient will be notified in writing of EDA concurrence if the change order is acceptable to EDA.

D. EDA will not approve change orders which change the purpose and intent (the scope) of the project. Change orders that add minimally or incidently to the cost of the project but do not change the project scope may be approved by EDA provided that either:

(1) the Recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or

(2) there are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

E. EDA will not approve EDA 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 EDA approved project budget. EDA approval of change orders must be based on a finding by EDA that the work called for in the change order *is within the project scope and* is necessary for the proper functioning of the project.

F. Normally change orders should be submitted to EDA for approval as the changes occur.

G. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. When actual quantities differ substantially from those estimated quantities upon which the contractor's bid was based, a ''substantial variation'' results. A substantial variation is usually considered to be for actual quantities in excess of 115% to 120% or less than 85% to 90% of the estimated quantities. Substantial variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity which will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract.

*10. Inspection for Final Acceptance*

A. A final inspection will be scheduled by the Recipient when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed.

B. The final inspection will be made by representatives of the Recipient, the architect/engineer and the contractor(s). EDA must be given advance notice of the final inspection so that an EDA representative may participate, at the option of EDA.

*11. Specific Requirements for Subcontractors*

A. The Recipient is responsible to ensure that the contractor(s) causes appropriate provisions to be inserted in all subcontracts to bind subcontractors to EDA contract requirements as contained herein, in 15 CFR Part 24, or in 15 CFR Part 14 as appropriate.

B. Each subcontractor must agree to comply with all applicable Federal, State, and local requirements in addition to those set forth in this section.

C. Prior to the approval of any subcontract EDA will check the proposed subcontractor against the listing of contractors debarred, ineligible, suspended or indebted to the United States from contractual dealings with Federal government departments. The work performed by any such contractor or subcontractor will be ineligible for reimbursement wholly or partially from EDA grant funds.

D. All subcontracts in excess of $10,000 shall include, or incorporate by reference, the equal opportunity clause of Executive Order 11246.

E. All subcontracts must contain a nondiscrimination clause.

F. Each subcontract must contain a requirement for compliance with the Davis-Bacon and related acts.

G. Each subcontractor must submit weekly payroll records and a weekly statement of compliance. These documents should be submitted to the prime contractor. The subcontractor can satisfy this requirement by submitting a properly executed Department of Labor Form WH–347.

H. Each subcontract with every subcontractor must contain a clause committing the subcontractor to employment of local labor to the maximum extent possible.

I. The Standard Terms and Conditions of the grant agreement impose other requirements which the Recipient will be required to have the prime contractor impose on the subcontractor.

J. All subcontractors who meet the conditions set forth in Paragraph 9B of this Section III must submit a completed Standard Form 100 by March 30 of each year.

K. Subcontractors performing work in areas covered by published goals for minorities will be required to report monthly on Form CC–257.

*12. Safety*

A. All contractors on EDA assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Recipient or its Architect/Engineer should periodically check the contractor's compliance.

B. The Recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA assisted project.

**Section IV—Financial Administration**

*1. Standards for Financial Management Systems*

A. A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its Subrecipients and cost-type contractors, must be sufficient to:

(1) Permit preparation of reports required by this document and applicable regulations and statutes cited herein, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

B. The financial management systems of other Recipients must meet the following standards:

(1) Financial reporting: Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records: Recipients must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal controls: Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Recipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget controls: Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable costs: Applicable OMB cost principles, agency program regulations, and the terms of grant agreements will be followed in determining the reasonableness, allowableness, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by Recipients must be followed whenever advance payment procedures are used. When advances are made by electronic transfer of funds methods, the Recipient must make drawdowns as close as possible to the time of making disbursements.

C. EDA may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

*2. Grant Disbursements*

A. Reimbursement. Reimbursement is the preferred method of grant disbursement. EDA will not use the percentage of completion method to pay construction grants. The Recipient may use that method to pay its construction contractor. However, EDA's payments to the Recipient will be based on the Recipient's actual rate of disbursement.

B. Effect of program income, refunds, and audit recoveries on payment. Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional grant disbursements.

C. Withholding payments. EDA will not withhold payments for proper charges incurred by Recipients unless—

(1) The Recipient has failed to comply with grant award conditions, or

(2) The Recipient is indebted to the United States.

Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the Recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with the section on enforcement contained in this document.

EDA will not make payment to Recipients for amounts that are withheld by Recipients from payment to contractors to assure satisfactory completion of work. Payments shall be made by EDA when the Recipients actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

D. Cash depositories. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230. EDA will not require the Recipient to maintain a separate bank account unless required by Federal-State agreement.

E. Interest earned on advances.

(1) For entities subject to 15 CFR Part 24: Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), Recipients shall promptly, but at least quarterly, remit interest earned on advances to EDA. The Recipient may keep interest amounts up to $100 per year for administrative expenses.

(2) For entities subject to 15 CFR Part 14 and any DOC rule implementing such Circular: Entities not subject to the Cash Management Improvement Act may keep up to $250 for administrative costs, to be remitted annually.

*3. Allowable Costs*

A. Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the Recipients, and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the Recipient.

B. Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

TABLE 1.—COST PRINCIPLES

| For the costs of a— | Use the principles in— |
|---|---|
| State, local or Indian tribal government. | OMB Circular A–87. |
| Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular. | OMB Circular A–122 |
| Educational institutions. | OMB Circular A–21. |
| For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular. | 48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to EDA. |

*4. Period of Availability of Funds*

A. Generally, the maximum period for any EDA financial assistance that is provided is not more than 5 years from the end of the fiscal year of the award. Normally, costs incurred after the end of the funding period will not be eligible for reimbursement from the EDA grant.

B. Liquidation of obligations. A Recipient must liquidate all obligations incurred under the award not later than 90 days after the acceptance of the project from the construction contractor or before the end of the funding period, whichever occurs earlier.

*5. Matching or Cost Sharing*

A. Acceptable Costs and Contributions: With the qualifications and exceptions listed on the next page of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the Recipient, or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

B. Qualifications and exceptions:

(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a Recipient or Subrecipient from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in the following section on program income, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement.

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of Recipients or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

a. Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

b. Some third party in-kind contributions are goods and services that, if the Recipient, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the Recipient, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

c. A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(i) An increase in the services or property provided under the contract (without additional cost to the Recipient or Subrecipient), or

(ii) A cost savings to the Recipient or Subrecipient.

d. The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

C. Valuation of Donated Services:

(1) Volunteer services. Unpaid services provided to a Recipient by individuals will be valued at rates consistent with those ordinarily paid for similar work in the Recipient's organization. If the Recipient does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a Recipient, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph A of this section applies.

D. Valuation of Third Party Donated Supplies and Loaned Equipment or Space:

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

E. Valuation of Third Party Donated Equipment, Buildings, and Land: If a third party donates equipment, buildings, or land, and title passes to a Recipient or Subrecipient, the treatment of the donated property will depend upon the purpose of the grant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant is to assist the Recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following paragraphs of this section apply:

a. If approval is obtained from EDA, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

b. If approval is not obtained under the above paragraph, E(2)b no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the Recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in OMB Circulars A–87, A–21 and A–122, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

F. Valuation of Recipient Donated Real Property for Construction/Acquisition: If a Recipient donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

G. Appraisal of Real Property: In some cases it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, EDA may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the Recipient.

*6. Program Income*

A. General. Recipients are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Program income does not normally include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

B. Definition of program income. Program income means gross income received by the Recipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

C. Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incidental to the generation

of program income may be deducted from gross income to determine program income.

D. Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a Recipient are not program income unless the revenues are specifically identified in the grant agreement as program income.

E. Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a Recipient is program income only if the revenues are specifically identified in the grant agreement as program income.

F. Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Section VII of these ''Requirements for Approved Projects''.

G. Use of program income. Program income shall be deducted from outlays which may be both Federal and non-federal as described below, unless the grant agreement specifies another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between sources, kinds, or amounts of income. Alternative uses include:

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless EDA authorizes otherwise. Program income which the Recipient did not anticipate at the time of the award shall be used to reduce the EDA and Recipient contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by EDA and the Recipient. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

H. Income after the award period. Income earned beginning at the end of the award period (see Paragraph 4A of this Section IV) and ending at the end of the useful life of the project shall be used only for the following purposes:

(1) To satisfy any debt service (mortgage payments) existing during this time period. Note that any new encumbrances on the EDA assisted facility during this period must have EDA approval.

(2) For necessary operation, maintenance and repair services.

(3) Any excess above the costs of (1) and (2) above may be used for other economic development purposes in the same economic development area *with the concurrence of EDA*.

*7. Non-Federal Audit*

A. Basic rule: Recipients and Subrecipients are subject to audit requirements contained in the Single Audit Act amendments of 1996 (31 U.S.C. 7501–7) and revised OMB Circular A–133, ''Audits of State, Local Governments, and Non-Profit Organizations''.

**Section V—Amendments to Grant Agreements**

*1. General Requirements*

A. Between approval and closeout of an EDA construction project, one or more changes in the project may be necessary to resolve unforeseen problems or remove obstacles to the project's successful completion. In most instances, the proposed change can be effected only through a formal amendment to the project.

B. Project amendments generally fall into the following categories.

(1) Time extensions;

(2) Budget revisions;

(3) Additional funding (overrun);

(4) Permitted waiver of EDA regulations;

(5) Changes which do not involve overall funding (e.g., change of Recipient; method and schedule of financing; addition, deletion, or change affecting a line item in the approved project cost estimate);

(6) Change to the Special Conditions of the Grant Award;

(7) Termination (for cause or by mutual consent).

C. A change-of-scope determination may be necessary before a decision can be made if the requested change involves a change to the purpose, bona fide need, nature or community served of the project.

*2. Changes to the Project Scope*

A. Project scope is defined as the purpose, bona fide need, nature and community served of the approved grant. A project amendment which amounts to a change of scope is, in fact, the substitution of one grant for another. A change of scope modification to a project which was funded in a prior fiscal year cannot be approved by EDA. Modifications to projects funded from the current fiscal year's appropriation, or from a no-year appropriation, do not constitute a prohibited change of scope but must have the written approval of EDA. Any proposed change to an EDA assisted project which is a change of scope will be disapproved by EDA.

B. Certain types of project modifications can be approved by EDA if specified findings can be made. These include time extensions for commencement or completion of work, waivers of certain EDA requirements and some types of budget line item changes.

C. Certain types of project modifications presumptively constitute a change of scope, although the facts of a particular situation could permit such modifications to be approved. Examples are:

(1) A change of Recipient;

(2) A change of project location;

(3) Addition of a new line item to the EDA approved budget;

(4) An expansion of the activity associated with a budget line item.

D. Every proposed modification to a grant shall be considered not only in the light of the foregoing policy on change of scope, but shall also be processed in accordance with all EDA legal and technical requirements so that grants as amended will not deviate from the standards employed in initial grant approval.

*3. Time Extensions*

A. 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. The Recipient's notice to EDA should contain the following information.

(1) An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain state or Federal approvals; or unplanned environmental mitigation required).

(2) A statement that no other changes to the project are contemplated;

(3) Documentation that demonstrates there is still a bona fide need for the project; and

(4) A statement that no further delay is anticipated and that the project can be completed within the revised time schedule.

B. EDA will advise the Recipient if a formal written request from the Recipient for a time extension will be required. The Recipient should be aware that grant disbursements may be suspended while the Recipient is not in compliance with the time schedule.

C. EDA reserves the right to suspend and/or terminate any grant if the Recipient fails to proceed with reasonable diligence to accomplish the project as intended.

*4. Budget Line Item Revisions*

A. The tabulation of estimated project costs contained in the EDA Grant Award is the controlling budget for the project. Budget line item revisions which do not involve a change of scope may be approved by EDA if:

(1) no new EDA funds are involved; and

(2) 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

(3) unless the line item which is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed; and

(4) no new line items are being added to the budget.

B. Funds may be transferred to other approved budget line items from the contingencies line item provided the activity associated with the line item cannot be completed unless the line item to be supplemented is supplemented.

C. The transfer of funds from line items other than the contingencies line item may be permitted with EDA written permission provided there will be no significant adverse effect to the object of the line item from which the transfer is to be made.

D. The construction line item shall be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts shall be transferred to the contingencies line item. Recipients are reminded that contingency funds are only to be used to cover situations resulting from unknown conditions and changes required

for the fulfillment of the previously authorized project activities intended under the grant award. Underrun funds cannot be used to change the scope of the project.

E. The Recipient shall notify EDA of any proposed transfer of funds from one budget line item to another.

*5. Additional EDA Funding*

A. In accepting the award of an EDA grant the Recipient agreed to fund any overrun(s). Additional EDA funding for an approved project is unlikely to be approved. To be considered for approval it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will accept a formal request for additional EDA funds it will be necessary for the Recipient to furnish the following documentation to EDA:

(1) A written statement from the Recipient's Architect/Engineer giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds.

(2) A written statement from the administrative head of the Recipient's organization justifying why the Recipient cannot furnish the additional funds required. Relevant data may be in the form of an audit performed within the past two years, schedule of bonded debt, assessed property values as a percentage of market value, tax rates, and percent of collection. The statement should state why non-EDA sources of funds cannot be used.

B. Acceptance by EDA of a request for additional EDA assistance does not indicate approval. Any further action by the Recipient pending EDA's review of the Recipient's request is at the Recipient's risk.

*6. Termination of the EDA Grant*

A. Termination for Cause

(1) If a Recipient materially fails to comply with any term of a grant award, whether stated in a Federal statute, regulation, assurance, grant application, or notice of award, EDA may take one or more of the following actions, as appropriate in the circumstances:

a. Temporarily withhold disbursement of grant funds pending correction of the deficiency by the Recipient, or more severe enforcement action by EDA;

b. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

c. Wholly or partly suspend or terminate the current award;

d. Withhold further awards for the project or program;

e. Take other remedies that may be legally available.

(2) In taking an enforcement action, EDA will provide the Recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Recipient is entitled under any statute or regulation applicable to the action involved.

(3) Costs resulting from obligations incurred by the Recipient after notice by EDA of suspension of, or termination of, the grant, are not allowable unless EDA expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other Recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

a. The costs result from obligations which were properly incurred by the Recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are noncancellable; and,

b. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(4) The enforcement remedies identified in this section, including suspension and termination, do not preclude Recipient from being subject to ''Debarment and Suspension'' under E.O.s 12549 and 12689 and implementing regulations at 15 CFR Part 26.

B. Termination for Convenience

(1) Terminations for convenience have the following requirements:

a. EDA may propose the termination for convenience, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

b. The Recipient may propose the termination to EDA in writing, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, EDA determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, EDA may terminate the grant in its entirety under the termination for cause procedures or termination for convenience procedures with the consent of the Recipient. An appropriate official of the Recipient may request EDA to cancel or terminate a project. This request must be accompanied by a certified resolution or ordinance authorizing the requesting party to make such request. EDA will determine the legal sufficiency of such request.

**Section VI—Project Closeout Procedures**

*1. Audit Requirements*

A. Recipients are subject to audit requirements contained the Single Audit Act of 1984, and the amendments of 1996, (31 U.S.C. 7501–7) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations''. If the Recipient has no current audit performed in accordance with the Single Audit Act, EDA will advise the Recipient of the procedure for securing the required audit.

B. Normally, if the Recipient has had an audit in accordance with the Single Audit Act within the prescribed period, EDA will not require a project specific audit. However, if the documentation supplied by the Recipient is inadequate for a determination by EDA of the eligibility of claimed costs for reimbursement from the EDA grant, EDA may require such a project specific audit. EDA reserves the right to: (1) require the Recipient to secure an independent audit of the project cost, or (2) conduct an audit of project costs using Department of Commerce auditors, and (3) recover any costs previously allowed for EDA reimbursement but found by the audit to be not allowable.

C. From time to time the Department of Commerce Office of the Inspector General selects an EDA assisted project for audit. If its project is one of those selected, the Recipient will be notified in advance.

D. In arranging for audit services, Section II, Contracting for Project Construction will be followed. An independent audit arranged by the Recipient must meet the standards of the Comptroller General publication, ''Standards for Audit of Government Organizations, Programs, Activities, and Functions''.

*2. Closeout Procedures*

A. When project construction is complete, the final inspection has been completed, and the Recipient has accepted the project from the contractor, the Recipient can begin the closeout process. This should include notifying EDA of the following actions:

(1) Compliance with all Special Conditions of the EDA grant award, including but not limited to the following:

(2) Securing permanent insurance for above ground facilities.

(3) Results of a review of the project to determine that all changes to the project have been brought to the attention of EDA.

(4) Provisions have been made for the retention for three years of all records pertaining to the project.

(5) Certificate of Final Completion has been prepared, executed and a copy furnished to EDA.

(6) As-built drawings have been received from the contractor and/or the architect/engineer.

(7) A copy of a current Single Audit Act audit of the Recipient has been furnished to EDA. If no Single Audit Act audit is available but is required, the Recipient's plan to secure the audit has been furnished to EDA and approved. If no Single Audit Act audit is required, EDA has been advised and has determined whether an independent audit will be required.

(8) To the knowledge of the Recipient there are no outstanding Davis-Bacon or local labor employment violations.

(9) EDA has been notified of any change, lien, mortgage or other encumbrance relating to the ownership of the project.

(10) EDA has been notified of any unresolved contract/contractor disputes.

(11) If required, a lien or Covenant of Purpose, Use, and Ownership in favor of EDA has been executed and recorded.

(12) A record will be maintained by the Recipient of the useful life of the facility as determined by EDA during which period the Recipient may not alienate its ownership or change the use and purpose of the EDA assisted facility without EDA's written permission.

B. Recipients shall submit, within 90 calendar days after the completion of the project, all financial, performance and other reports as required by the terms and conditions of the grant award.

C. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations

incurred under the grant award no later than 90 calendar days after the funding period or the date of completion, whichever is earlier, as specified in the terms and conditions of the award.

D. When EDA is satisfied that the audit requirement has been met and the actions discussed in paragraphs A, B, and C above have been accomplished, the Recipient may request the final grant disbursement. The request will be will be prepared on EDA Form ED–113, Outlay Report and Request for Reimbursement for Construction Programs. EDA may assist with filling out the form but it is the responsibility of the Recipient to assure that the numbers on the form are correct. The following documentation should accompany the executed form ED–113 when it is sent to the EDA Regional Office unless the documentation has been previously furnished:

(1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the Form ED–113;

(2) A copy of the currently valid Single Audit Act audit if one was performed;

(3) Payroll forms, if any of the cost claimed is for work performed by in-house work forces

(4) Payroll Compliance Certificate;

(5) Civil Rights documents;

(6) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed; and

(7) Specifics of any administrative costs being claimed.

E. The Recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the Recipient, the balance will be paid by electronic transmittal. If the Recipient has received a grant amount in excess of the amount due the Recipient, the Recipient will be requested to refund the excess to EDA payable to the U.S. Treasury.

F. The closeout of an award does not affect any of the following:

(1) The right of EDA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the Recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Requirements for property management, records retention and performance measurement reports.

(4) Audit requirements.

**Section VII—Post Construction Grant Requirements**

*1. Real Property*

A. All property that is acquired or improved with EDA grant assistance shall be held in trust by the grantee for the benefit of the project purposes under which the property was acquired or improved.

B. During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance.

C. EDA may approve the substitution of an eligible entity for a grantee. The original grantee remains responsible for the period it was the grantee, and the successor grantee holds the project property with the responsibilities of an original grantee under the award.

D. The requirements contained in this part apply solely to grant and cooperative agreement award projects.

*2. Definitions*

A. As used in this Section VII:

(1) *Dispose* includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

(2) *Estimated useful life* means that period of years from the time of award, determined by EDA as the expected life-span of the project.

(3) *Grantee* includes any recipient, subrecipient, awardee, or subawardee of grant assistance under the Public Works and Economic Development Act of 1965.

(4) *Owner* includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold.

(5) *Personal Property* means all property other than real property.

(6) *Project* means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs ''project'' includes such programs.

(7) *Property* includes all forms of property, real, personal (tangible and intangible), and mixed.

(8) *Real property* means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

*3. Use of Property*

A. The grantee or owner shall use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project as long as it is needed during the estimated useful life of the project and such property shall not be leased, sold, disposed of or encumbered without the written authorization of EDA.

B. In the event that EDA and the grantee determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, if EDA approves such use.

C. When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination.

D. When acquiring replacement personal property of equal or greater value, the grantee may trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property.

*4. Unauthorized Use*

A. Except as provided in 3B, 3C, or 3D above, whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of without the approval of EDA, or no longer used for the authorized purpose of the project, the Federal Government shall be compensated by the grantee for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR Part 24 and 15 CFR Part 14 or any supplements or successors thereto, as applicable, shall apply.

B. If property is disposed of without approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs A and B of this section, except that the total amount to be recovered shall not exceed the Federal share, plus costs and interest.

*5. Federal Share*

A. For purposes of this Section, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale).

B. Where the grantee's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor shall be considered in determining the percentage of the Federal share.

C. If property is transferred from the grantee to another eligible entity, as provided in paragraph 1C above, the Federal Government shall be compensated the Federal share of any money paid by or on behalf of the successor grantee to or for the benefit of the original grantee, provided that EDA may first permit the recovery by the original grantee of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

D. When the Federal Government is compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use or disposition of the property.

*6. Encumbrances*

A. Except as provided in paragraph 6C below, grantee-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be

used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project.

B. Encumbering such property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in paragraphs 4 and 5 above.

C. EDA may waive the provisions of paragraph 6A above for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the grantee, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The lender/grantor would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/grantee will not default on its obligation.

D. The EDA Assistant Secretary or his/her designee may waive the provisions of paragraphs A and B above as to an encumbrance on property which is financed by an EDA construction grant when he/she determines that the encumbrance arises solely from the provisions of a pre-existing water, sewer or other utility encumbrance which by its terms extends to additional property connected to such facilities. EDA's determination shall make reference to the specific requirements (for example, ''water system and all accessions, additions or improvements thereto'') which extend the terms of the pre-existing encumbrance to the property which is financed and/or improved by the EDA construction grant.

*7. Civil Rights Restriction*

Among other applicable requirements, the Recipient or in the case of a transfer , the transferee, of real property, structures or improvements thereon or interests therein acquired, leased, or improved with EDA assistance may not sell, lease, or otherwise make any part of such premises available for occupancy by any person, firm, or entity unless the Recipient includes in the instrument effecting the sale, lease or transfer a covenant running with the land that assures that the purchaser, lessee or occupant will comply with the nondiscrimination provisions of the Civil Rights Act of 1964, as amended as provided in 15 CFR 8.5(b)(5)(6) and (11).

*8. Performance Reports*

The Government Performance and Results Act of 1993 (GPRA) requires EDA to report the outputs and outcomes of projects (e.g. actual job creation). Recipients are required to submit reports of performance to EDA at the intervals stated in Section I Paragraph 2E of these Requirements for Approved Construction Projects.

*9. Record Retention*

Architect/engineering records and payroll records relating to the project must be retained as described in Section I Paragraph 6 F , Section II Paragraph 14 H, and Section III Paragraph 9 A.

*10. Program Income Earned After the Award Period*

The uses for program income earned after the award period are described in Section IV 6 H.

**Section VIII—Exhibits**

This section contains a copy of the Exhibits cited elsewhere in this Volume and other items which may be helpful to the Recipient as it proceeds through project design, construction, and closeout. The EDA forms shown as exhibits herein are updated and revised as new procedures and requirements become known. Thus, the exhibit may not be the latest version of the form currently in use. The Recipient should check with the EDA regional office to be sure the correct form is being used before the initial use of any of the exhibits. The documents marked with an asterisk (*) are available from the EDA regional office, if needed.

A. Checklists for:
  (1) Architect/Engineer Contracts
  (2) Construction Contracts
  (3) Initial Grant Disbursement
  (4) Project Closeout
B. Supplemental General Conditions
C. Certificate as to Project Site, Rights-of-Way, and Easements (Form ED–152)
D. *Sample Agreement and Mortgage
E. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246)
F. *Sample Contract Documents
  (1) Advertisement for Bid
  (2) Information for Bidders
  (3) Bid for Lump Sum or Unit Price Contracts
  (4) Bid Bond
  (5) Agreement (Construction Contract)
  (6) Performance Bond
  (7) Payment Bond
  (8) General Conditions
  (9) Contractor's Application for Payment (AIA Document #G 702)
  (10) Weekly Payroll Form (use Dept. of Labor's Form WH–347)
  (11) Notice of Award
  (12) Notice to Proceed
  (13) Change Order
G. Recipient's Outlay Report and Request for Reimbursement for Construction Programs (Form ED–113)
H. ACH Vendor/Miscellaneous Payment Enrollment Form (Form SF–3881)
I. Sample Final Acceptance Inspection Report
J. Sample Quarterly Performance Report
K. Sample Architect/Engineer's Certificate
L. Sample Certificate of Grantee/Borrower's Attorney
M. Information Required for EPA Certification as to Adequacy of Treatment
N. Financial Status Report (Form SF269)

**Checklist for Architect/Engineer Contracts**

Although the use of this checklist is not mandatory, its use will expedite EDA's review of the architect/engineer contract. When completed by the Recipient it should be submitted to the EDA regional office soon after the grant award is approved by EDA and accepted by the Recipient if the architect/engineer contract has been previously executed. If the architect/engineer contract has not been executed prior to the Recipient's acceptance of the grant award, this checklist may be completed and sent to the appropriate regional office as soon as the architect/engineer contract is signed and prior to any request for disbursement of EDA grant funds. The appropriate responses should be circled in ink and signed by the authorized representative of the Recipient.

Y N The Recipient has written procurement procedures with which the architect/engineer contract has been found to be in compliance.

Y N The Architect/Engineer was selected competitively by sealed bids (formal advertising) or by competitive proposals. If not, attach an explanation of the selection method and the reason(s) for using that method.

Y N Requests for proposals were publicized and all evaluation factors and their relative importance were identified therein. Any response to publicized requests for proposals were honored to the maximum extent practical.

Y N Proposals were solicited from an adequate number of qualified sources (normally it is sufficient to secure at least three proposals from qualified proposers). If less than 3 qualified proposals were secured, attach an explanation to this document.

Y N The Recipient has a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered.

Y N The Recipient determined the responsible firm whose proposal was most advantageous to the program, with price and other factors considered. Competitor's qualifications were evaluated and the most qualified competitor was selected, subject to negotiation of fair and reasonable compensation.

Y N The Architect/Engineer agreement provides for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

Y N The Architect/Engineer's fee for basic services is either a fixed price or a cost reimbursement with an agreed maximum. (The amount of EDA participation will be based on a determination, subject to audit, that the fee compensation is reasonable)

Y N The architect/engineer contract compensation is not based on the use of the cost-plus-a-percentage-of-cost or percentage of construction cost form of compensation. (These forms of compensation are not eligible for EDA participation).

Y N The Architect/Engineer's fee covers all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, ''as-built'' or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs.

Y N The basic fee does not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services are identified in the agreement. Such additional charges may be approved for grant participation by the EDA if they:

11. Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;

12. Are a proper charge against the project cost; and

c. Are reasonable for the extra services to be rendered.

Y N Regardless of who furnishes the construction inspector, the agreement requires the Architect/Engineer to make sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

Y N If the Architect/Engineer contract(s) price exceeds $100,000 (awarded under small purchase procedures), it includes a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant program) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

Y N The agreement for architect/engineer services provides an adequate basis for the Recipient to require the Architect/Engineer to:

Y N Design the project in accordance with the intent of the Grant Award;

Y N Redesign the project in the event the preliminary cost estimate, the final cost estimate, or the lowest responsive bid less deductive alternates, exceeds the funds available by an amount or percentage to be mutually agreeable to the Recipient and the Architect/Engineer;

Y N Design any sewage treatment or other sewage facility so that a certificate of adequacy of treatment can be obtained as required by Section 106 of the Public Works and Economic Development Act of 1965, as amended;

Y N Include in all contracts and subcontracts with costs in excess of $100,000 a provision which requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) and the Federal Water Pollution Act (33 USC 1251 et seq., as amended). (Violations shall be reported to EDA and to the regional office of the U.S. Environmental Protection Agency).

Y N Include in all contracts and subcontracts in excess of the small purchase threshold of $100,000, provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

Y N Include in all contracts in excess of $10,000 suitable provisions for termination by the Recipient including the manner in which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

Y N Include in all contracts in excess of $10,000 a provision requiring compliance with Executive Order 11246, entitled''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);

Y N Include in all contracts in excess of $2,000 for construction or repair a provision for compliance with the Copeland ''Anti-Kickback''Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. (The Recipient shall report all suspected or reported violations to EDA).

Y N Include in all construction contracts in excess of $2,000 a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. A copy of the current prevailing wage determination issued by the Department of Labor must be included in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. (All suspected or reported violations shall be reported to EDA. Davis-Bacon wage determinations are not applicable to Recipient employed ''Force Account'' workers).

Y N Include in all contracts in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers, a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Work performed by employees of the Recipient (in-house forces) on the EDA-assisted project will be subject to the following:

1. Work performed in excess of eight hours per day will be reimbursed by EDA at the normal rate of pay unless the Recipient can show that a higher rate is required by State or local law or union contract;

2. Work performed in excess of 40 hours per week may be reimbursed by EDA at a higher rate than normal if the Recipient can show that it normally pays for such work at a higher rate. In any case the rate for work in excess of 40 hours per week may not exceed one and one half times the normal hourly rate.

Y N Include a notice in all contracts involving research, developmental, experimental or demonstration work requiring that all patentable processes, discoveries or inventions which arise or are developed in the course of, or under, such contract shall be reported to EDA. The notice will state that the Government has an interest in any such patentable processes, discoveries or inventions corresponding to the percentage of total project cost funded by EDA.

Y N Include in all negotiated contracts (except those awarded by small purchase procedures) a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Y N Include in all contracts a requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor and all other pending matters are closed.

Y N State a specific timetable in the architect/engineer agreement for:

1. Completing preliminary plans and associated cost estimates;

2. Completing final plans, specifications, and cost estimates;

3. Securing required State and local approvals; and
4. Completing proposed contract documents in a form sufficient for soliciting bids for construction of the project.
(If the Recipient has executed an Architect/Engineer agreement without such a requirement for a timetable, EDA shall require that an addendum to the agreement be executed to incorporate this requirement).

Y N Provide surveillance of project construction to assure compliance with plans, specifications, and all other contract documents. If the Recipient chooses to use the Architect/Engineer as the project inspector, the requirements for construction inspection services shall be clearly defined and the amount the Recipient is required to pay for such services shall be stated.

Y N Be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector, if the inspector is furnished by the Architect/Engineer. (EDA recommends that the Architect/Engineer be required to take insurance, when available, to cover liability for such damages).

Y N Supervise any required subsurface explorations such as borings, soil tests, and the like, to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the Architect/Engineer or by others paid by the Recipient.

Y N Attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award.

Y N Review proof of bidder's qualifications and recommend approval or disapproval.

Y N Prepare and submit proposed contract change orders when applicable. There shall be no charge to the Recipient when the change order is required to correct errors or omissions by the Architect/Engineer. (To be eligible for EDA participation the specific change order must have written approval from EDA and must have some form of cost or price analysis performed by the Recipient or the Architect/Engineer).

Y N Submit a report not less frequently than quarterly to the Recipient covering the general progress of the job and describing any problems or factors contributing to delay.

Y N Review and approve the contractor's schedule of amounts for contract payment.

Y N Certify partial payments to contractors.

Y N Assure that a ten percent (10%) retainage is withheld from all payments on construction contracts until final acceptance by the Recipient and approval by the EDA Regional Office, unless State or local law provides otherwise.

Y N Prepare ''as-built'' or record drawings after completion of the project. Reproducible originals will be furnished to the Recipient within 60 days after all construction has been completed and the final inspection has been performed. (One set of copies shall be furnished to the EDA Regional Office only if requested by the Regional Office).

Y N Review and approve the contractor's submission of samples and shop drawings, where applicable.

Y N Comply with all Federal statutes relating to non-discrimination. These include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color, or national origin;
2. Section 112 of PL 92–45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685–1686) which prohibits discrimination on the basis of sex;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) which prohibits discrimination on the basis of handicaps;
4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107) which prohibits discrimination because of age;
5. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93–255), as amended, relating to non-discrimination on the basis of drug abuse;
6. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism;
7. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing;
9. Any other non-discrimination provisions in the specific statute(s) under which the application for Federal assistance is being made; and
10. The requirements of any other non-discrimination statute(s) which may apply.

Y N Incorporate into the proposed construction contract documents a designation of all of the different types of construction which will be used for the project; such as Building, Heavy or Highway in accordance with all local and State laws and practices. For this purpose either the plans, the specifications or both shall clearly delineate where each type stops and another starts.

Y N Consider in the establishment of the compensation any cost savings that may be realized through multiple use of the same design.

Y N Provide in all proposed construction contracts deductive alternates which can be taken, if necessary, to reduce the bid price so that the lowest responsive bid for construction of the project will not exceed the funds available.

Y N Design the facility to comply with the Americans with Disabilities Act (ADA) (P.L. 101–336) and the Accessibility Guidelines for Buildings and Facilities, as amended, (36 CFR Part 191 and Executive Order 12699.

Y N Design for seismic safety in accordance with Executive Order 12699 which imposes requirements that federally assisted facilities be designed and constructed in accordance with the 1991 ICBO Uniform Building Code or 1992 Supplement to the BOCA National Building Code and/or 1991 Amendments to the SBCC Standard Building Code.

Y N Provide sufficient plans, specifications, bid sheets, cost estimates, design analysis, and other contract documents required for the project. The number of copies to be furnished by the Architect/Engineer as part of his/her compensation for basic services shall be specified in the agreement.

Y N Use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond which meet EDA requirements. All proposed contract documents are subject to EDA approval. (Documents contained in ''Contract Documents for Construction of Federally Assisted Water and Sewer Projects'' are acceptable for this purpose).

The name and address of the Architect/Engineer is: _____

Y N The Architect/Engineer will perform project inspection services. If not, provide the name and address of the firm or person that will provide project construction inspection services: _____

The contract price for Basic Services is $ ____
The contract price for Extra Services is $ ____
The contract price for inspection services is $. _____
The number of proposals received were ____
The number of bidders disqualified were __

_____
Recipients Authorized Representative

_____
Date

**Checklist for Construction Contracts**

Although the use of this checklist is not mandatory, its use by the Recipient will expedite EDA's review of the construction contract. When used by the Recipient, it should be submitted to EDA at or before the invitation for construction contract bids is published. EDA reserves the right to perform a pre-award review of the proposed procurement documents or a review of the executed contract documents at any time within the record retention time frame. The appropriate responses should be circled in ink and the authorized representative of the Recipient should sign the form where indicated.

The following documents are included in the invitation for bids:

Y N An index
Y N The advertisement for bids
Y N The information for bidders
Y N The bid form
Y N The contract form
Y N EDA's Supplemental General Conditions (to be furnished by EDA)
Y N The recipient's general conditions
Y N The technical specifications
Y N The working drawings
Y N The applicable wage rates (to be furnished by EDA)
Y N Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (to be furnished by EDA)

The bid documents contain the following provisions:

Y N Details of how the successful bidder will be selected
Y N Actions to be taken by the Recipient if the lowest bid exceeds the funds available
Y N Requirement for 5% bid bond, 100% payment bond and 100% performance bond
Y N The order in which alternates, if any, are to be taken
Y N Provisions for termination of the contract including default of the contractor and conditions beyond the control of the contractor
Y N Provisions for administrative, contractural or legal remedies for contractor breach or violation of contract terms and provision for such sanctions and penalties as may be appropriate
Y N A requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor
Y N A requirement that the bidders submit proof of qualification to do the work called for in the contract
Y N Notice that progress payments will have a 10% retainage ( unless otherwise required by State or local law)
Y N A requirement for the contractor to submit all shop drawings, samples and change orders to the Architect/Engineer and Recipient for approval
Y N A requirement for a construction progress estimate and periodic progress reports from the construction contractor
Y N A procedure for the settlement of disputes between the contractor, the contractor's subcontractors, the Architect/Engineer and the Recipient
Y N A liquidated damages provision for failure of the contractor to meet the specified construction timetable. The amount specified in the proposed contract is $—— per day
Y N The proposed design contains no materials or products specified by brand name without an ''or equal'' provision
Y N A requirement is included for compliance with Federal regulations as listed in EDA's Supplemental General Conditions, EDA's Standard Terms and Conditions to the grant award and the Special Conditions to the grant award
Y N The bidders will be limited to those on a prequalified list maintained by the Recipient. If so, explain on an attached sheet the procedure that is used to place prospective bidders on the list.
Y N Recipient furnished materials and/or equipment will be incorporated into the projects outside the construction contract. If so, attach a list of such materials and/or equipment.

Y N No part of the project construction will be accomplished by the Recipient's own forces or by labor hired directly by the Recipient for this specific project. If so, contact the EDA regional office for further guidance

Y N The contract is solely for the EDA project. If non-EDA work is included, contact the EDA regional office for further guidance.

Y N The land, rights of way and easements required for the construction and operation of the project are owned by the Recipient or otherwise have been appropriately permitted by the responsible authorities.

Y N The Recipient's share of the project cost is on hand or immediately available.

Y N Provisions for construction inspection are in place.

Y N All applicable terms and conditions of the grant award have been satisfied. If not, please explain on an attached sheet.

Y N The scope of work for the project as described in the grant award has not changed.

The construction period specified in the proposed contract is for _____ months.

The Architect/Engineer's cost estimate for construction is $_____.

The advertising period will be from _____ to _____.

_____

Recipient's Authorized Representative

_____

Date

**Checklist for Initial Grant Disbursement**

Grant Recipient: _____

EDA Project # _____

Grant Recipient's Authorized Representative:

Name: _____

Title: _____

This checklist is for guidance on the information the EDA regional office will need before an initial grant disbursement can be approved. The regional office may use their own version of this checklist which may or may not be required to be sent in with the initial grant disbursement request. Use of the checklist will expedite EDA processing of the initial grant disbursement.

Y N NA The EDA grant award/offer was accepted within the 15 day after receipt time limit.

Y N NA Those Special Conditions to the grant award requiring action prior to the initial grant disbursement have been satisfied.

Y N NA An architect/engineer contract has been approved by EDA.

Y N NA An unconditional ''EPA Section 106'' certificate has been secured and a copy furnished to, or received from, EDA.

Y N NA All required land, easements and rights-of-way have been secured and title opinion has been approved by EDA.

Y N NA The proposed bid documents were approved by EDA.

Y N NA The final plans, specifications and contract documents have been approved by EDA.

Y N NA All contracts required for completion of the project have been executed and approved by EDA.

Y N NA If the answer to the previous question is ''N'', a request for phasing has been made to, and approved by, EDA.

Y N NA Bid award of the construction contract was to the lowest bidder.

Y N NA The full firm name and owner's name of all contractors have been furnished to EDA for checking against the Federal debarred and ineligible list.

Y N NA The company listed as surety for the low bidder is listed on Treasury Department Circular 570 and possesses sufficient capability to insure the project.

Y N NA Davis-Bacon wage rates have been incorporated into all construction contracts.

Y N NA EDA's Supplemental General Conditions have been incorporated into all construction contracts.

Y N NA Matching funds for the Recipient's share are on hand or immediately available.

Y N NA A first lien or Property Management Agreement has been executed, recorded and submitted to EDA.

Y N NA A relocation assistance plan as required by the Uniform Relocation Assistance Act has been approved by EDA.

Y N NA Use of force account (workmen hired by the Recipient specifically for the EDA approved project) has been approved by EDA.

Y N NA Use of in-house forces (workmen who are part of the Recipient's current workforce) has been approved by EDA.

Y N NA EDA approval of the start of construction before the award of the EDA grant has been received.

Y N NA All work accomplished by change order which is part of the claim for the initial grant disbursement has been approved by EDA.

Y N NA All proposed or actual changes to the EDA approved budget have been approved by EDA.

Y N NA All project activities to the date of the initial grant disbursement request have been accomplished within the approved time schedule or EDA approved extension.

Y N NA Currently due project performance reports have been submitted to EDA.

Y N NA Tabulation of bids, bid form of the low bidder (and bid form of any bidder to whom the Recipient has made, or proposes to make to other than the lowest bidder) and certified minutes of the bid opening have been submitted to EDA.

**Checklist for Project Closeout**

Grant Recipient: _____

EDA Project # _____

Grant Recipient's Authorized Representative:

Name: _____

Title: _____

This checklist is for the Recipient's guidance on the information the EDA regional office will need to close out the EDA assisted project. Although its use is not mandatory, using it will expedite EDA's processing of the final grant disbursement.

Y N NA All of the Special Conditions to the EDA grant award have been satisfied and approved by the EDA regional office.

Y N NA A final inspection was performed by the Architect/Engineer and the completion of the project with all deficiencies corrected has been accepted by the Architect/Engineer in writing.

Y N NA The Recipient has accepted the project without deficiencies from the contractor.

Y N NA All currently due project progress reports have been submitted to the EDA regional office.

Y N NA The project was completed on time or an EDA approved time extension is on file.

Y N NA As-built drawings have been received from the Architect/Engineer and are on file.

Y N NA If requested by EDA, photographs of above ground facilities have been submitted to EDA.

Y N NA The Recipient understands that a warranty inspection is to be performed before the warranty expiration date and the results submitted to EDA.

Y N NA All audit issues have been resolved.

Y N NA If occupancy of the facilities by the Recipient was obtained prior to the Recipient's or Architect/Engineer's acceptance of the facility from the contractor evidence of consent of the contractor, the insurance carrier, and the surety is on file.

Y N NA Permanent insurance on the facility has been obtained.

Y N NA The Recipient is aware that project records must be retained for a minimum of three years.

Y N NA The Recipient is aware that for the EDA determined useful life of the EDA assisted facilities, all real property must be used for originally authorized purposes and the Recipient shall not dispose of or encumber its title or other interests. When the facility is no longer needed for the orignally authorized purpose and the useful life has not expired, the Recipient will request instructions from EDA. The instructions will conform to applicable DoC and EDA regulations.

Y N NA All payments due to contractors for construction, services and supplies for the project are current except for contract retainage if project has not been accepted.

Y N NA The first Post Construction Report evaluating the achievement of the Core Performance Measures listed in the Standard Terms and Conditions to the EDA grant has been submitted to EDA.

**Exhibit B—Supplemental General Conditions**

These Supplemental General Conditions are intended for use by Economic Development Administration Grantees. They contain specific EDA and other Federal requirements not normally found in non-Federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with EDA funds.

**Supplemental General Conditions**

S1 Definitions
S2 Federally Required Contract Provisions
S3 Required Provisions Deemed Inserted
S4 Inspection by EDA Representatives
S5 Construction Schedule and Periodic Estimates
S6 Contractor's Title to Material
S7 Inspection and Testing of Materials
S8 ''Or Equal'' Clause
S9 Patents
S10 Claims for Extra Cost
S11 Contractor's and Subcontractor's Insurance
S12 Contract Security
S13 Safety and Health Regulations for Construction
S14 Minimum Wages
S15 Withholding of Payments
S16 Payrolls and Basic Records
S17 Apprentices and Trainees
S18 Subcontracts
S19 Termination and Debarment
S20 Overtime Requirements
S21 Equal Employment Opportunity
S22 Other Prohibited Interests
S23 Employment of Local Labor
S24 Historical and Archeological Data Preservation Act of 1974
S25 Clean Air and Federal Water Pollution Control Act
S26 Use of Lead-Based Paints on Residential Structures
S27 Signs

**Supplemental General Conditions**

*S–1 Definitions*

The following terms as used in these Supplemental General Conditions are respectively defined as follows:

a. ''Contractor'': A person, firm, or corporation with whom this Contract is made by the Owner.

b. ''Subcontractor'': A person, firm, or corporation supplying labor and materials or only labor, for work at the site of the project, for and under separate contract or agreement with the Contractor.

c. ''Work on (at) the project'': Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

d. ''Apprentice'': (1) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau; or (2) a person in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.

e. ''Trainee'': A person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.

*S–2 Federally Required Contract Provisions*

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold—currently fixed at $100,000, see 41 USC 403(11)).

b. Termination for cause and for convenience by the grantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

c. Compliance with Executive Order 11246 of September 24, 1965 entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

d. Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

e. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees).

f. Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

g. EDA requirements and regulations pertaining to reporting.

h. EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

i. EDA requirements and regulations pertaining to copyrights and rights in data.

j. Access by the grantee, EDA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

k. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

l. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $ 100,000).

m. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub L. 94–163, 89 Stat. 871).

*S–3 Required Provisions Deemed Inserted*

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

*S–4 Inspection by Economic Development Representatives*

The authorized representatives and agents of the Economic Development Administration shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

*S–5 Construction Schedule and Periodic Estimates*

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver

to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

*S–6 Contractor's Title to Material*

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

*S–7 Inspection and Testing of Materials*

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended users.

*S–8 ''Or Equal'' Clause*

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties, imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

*S–9 Patents*

The Contractor shall hold and save the owner and its officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the contract documents.

License or Royalty Fee: License and/or royalty fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, directly by the Owner and not by or through the Contractor. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he/she shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his/her Sureties shall indemnify and hold harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract,and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

*S–10 Claims for Extra Costs*

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

*S–11 Contractor's and Subcontractor's Insurance*

The Contractor shall not commence work under this contract until he/she has obtained all the insurance required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

a. Types of insurance normally required are:

1. Workmen's Compensation.
2. Contractor's Public Liability and Property Damage.
3. Contractor's Vehicle Liability.
4. Subcontractors Public Liability, Property Damage and Vehicle Liability.
5. Builder's Risk (Fire and Extended Coverage).

b. Scope of Insurance and Special Hazards. The insurance described above shall provide adequate protection for the Contractor and his/her claims which may arise from operations under this contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazards which may be encountered in the performance of this contract.

c. Proof of Carriage of Insurance The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies.

*S–12 Contract Security Bonds*

If this contract is for an amount in excess of $100,000 the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and also a payment bond in an amount equal to one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, Territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance each bond must be approved by the Economic Development Administration. If this contract is for an amount less than $100,000 the Owner will specify the amount of the payment and performance bonds.

*S–13 Safety and Health Regulations for Construction*

In order to protect the lives and health of his/her employees under the contract, the Contractor shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act, as amended, commonly known as the Construction Safety Act as pertains to health and safety standards; and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his/her plan, equipment, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

*S–14 Minimum Wages*

All mechanics and laborers employed or working on the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to

such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv).

Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

The Owner shall require that any class of laborers and mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformable to the wage determination and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the questions accompanied by the recommendation of the contracting officer shall be referred to the Secretary of Labor for final determination.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, the Owner shall require an hourly cash equivalent to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Owner, shall be referred to the Secretary of Labor for determination.

If the Contractor does not make payments to a trustee or other third person, he/she may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract; provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

*S–15 Withholding of Payments*

The Economic Development Administration may withhold or cause to be withheld from the Contractor as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the Contractor or any subcontractor on the work, the full amount of wages required by the contract in accordance with the Davis-Bacon Act. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee employed or working on the project site or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project, all or part of the wages required by the contract, the Economic Development Administration may, after written notice to the Contractor, sponsor, applicant, or Owner, take action as may be necessary to cause the suspension of any further payment, advance, or guaranty of funds until such violations have ceased.

*S–16 Payrolls and Basic Records*

Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the EDA project site, or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project. Such records shall contain the name and address of each employee, his/her correct classification, rate of pay (including contributions or costs anticipated of the types described in Section 9(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan program described in Section 1(b)(2)(B) of the Davis-Bacon Act the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, plus records which show the costs anticipated or the actual cost incurred in providing such benefits.

The Contractor shall submit weekly a copy of all payrolls to the Owner on DOL Form WH–347 or equivalent. The copy shall be signed on the reverse side by the employer or his/her agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. This submission is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 20 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor shall make the records required under the labor standards clause of the contract available for inspection by authorized representatives of the Economic Development Administration and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

*S–17 Apprentices and Trainees*

Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his/her entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in Section S–1e herein and is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor shall be required to furnish to the Owner written evidence of the registration of his/her program and apprentices as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and when the subparagraph below is applicable, in accordance with the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations.

On contracts in excess of $10,000, the employment of all laborers and mechanics, including apprentices and trainees, as defined in Section 29 CFR 5.5 shall also be subject to the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations. Apprentices and trainees shall be hired in accordance with the requirements of Part 5, Subpart A. The provisions of Sections S–14, S–15, and S–17 shall be applicable to every invitation for bids, and to every negotiation, request for proposals, or request for quotations, for an assisted construction contract, and to every such contract entered into on the basis of such invitation or negotiation. Part 5, Subpart A, Title 29, Code of Federal Regulations shall constitute the conditions of each assisted contract in excess of $10,000, and each Owner concerned shall include these conditions or provide for their inclusion, in each such contract. These ''Supplemental General Conditions'' shall also be included in each such contract.

*S–18 Subcontracts*

The Contractor shall insert in any subcontracts these same ''Supplemental General Conditions.''

*S–19 Termination and Debarment*

A breach of any one of the Sections S–15 through S–18 may be considered by the Owner and by the Economic Development Administration as grounds for termination of the contract and for debarment as provided in 29 CFR 5.6.

*S–20 Overtime Requirements*

No Contractor nor any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic

rate of pay for all hours in excess of forty hours in such workweek.

In the event of any violation of the clause set forth in the subsection above, the Contractor and any subcontractor responsible therefor, shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or territory, to such District of Columbia or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth above in the sum of $10.00 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth above.

The Economic Development Administration may withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth above.

The Contractor shall insert in all subcontracts the clause set forth above in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that may, in turn, be made.

*S–21 Equal Employment Opportunity*

No person in the United States shall, on the grounds of race, color, national origin, age, physical handicap, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance; Reference Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and Section 112 of Public Law 92–65, Age Discrimination Act of 1975 (42 USC 6102) and Section 504 of the Rehabilitation Act of 1973 (26 USC 794).

Form ED–503. The Owner and all Contractors, subcontractors, suppliers, leasees and other parties directly participating in the Recipient's project agree that during and in connection with the associated agreement relating to the Federally assisted program, (i) they will comply, to the extent applicable, as Contractors, subcontractors, lessees, suppliers, or in any other capacity, with the applicable provisions of 13 CFR 311 and the Regulations of the United States Department of Commerce (Part 8 of Subtitle A of Title 15 of the Code of Federal Regulations) issued pursuant to Title VI of the Civil Rights Act of 1964 (P.L. 88–352), and will not thereby discriminate against any person on the grounds of race, sex, color, age, or national origin in their employment practices, in any of their own contractual agreements, in all services or accommodations which they offer to the public, and in any of their other business operations, (ii) they will provide information required by or pursuant to said Regulations to ascertain compliance with the Regulations and these assurances, and (iii) their non-compliance with the nondiscrimination requirements of said Regulations and these assurances shall constitute a breach of their contractual arrangements with the Owner whereby said agreements may be canceled, terminated or suspended in whole or in part or may be subject to enforcement otherwise by appropriate legal proceedings.

Executive Order 11246, 3 CFR 339 (1965) (Equal Opportunity Clause). During the performance of this contract, the Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, handicap, or national origin. The Contractor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Grantee setting forth the provisions of this nondiscrimination clause.

c. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

d. A notice to be provided by the Grantee shall be sent to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract of understanding, advertising the labor union or workers' representative of the Contractor's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and copies of the notice shall be posted in conspicuous places available to employees and applicants for employment.

e. The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the Economic Development Administration and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders. Each Contractor and subcontractor of federally assisted construction work is required to file an Equal Employment Opportunity Employer Information Report (EEO–1) on Standard Form 100, annually on March 31. Forms and instructions are available at the EDA Regional Offices.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed (and remedies involved) as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor shall include the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 203 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Economic Development Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Grantee/Borrower, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

i. Exemptions to Above Equal Opportunity Clause (41 CFR Chap. 60):

(1) Contracts and subcontracts not exceeding $10,000 (other than Government bills of lading) are exempt. The amount of the contract, rather than the amount of the Federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding $10,000 for standard commercial supplies or raw materials are exempt.

**Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246 et seq)**

1. As used in these specifications:

a. ''Covered area'' means the geographical area described in the solicitation from which this contract resulted;

b. ''Director'' means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. ''Employer identification number'' means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.

d. ''Minority'' includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South

American or other Spanish Culture or origin, regardless of race);

2. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

a. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

3. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $l0,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

4. If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

5. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7a through p of these specifications. The goals set for the Contractor in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

6. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

7. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

8. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Regional Director when the union or unions, with which the Contractor has a collective bargaining agreement, have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, Supervisors, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to, and discussing the Contractor's EEO policy with, other Contractors and subcontractors with whom the Contractor anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 14 CFR Part 60–3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from

minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Paragraph 7a through p). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60–4.8.

14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. The goals for minority and female participation in each trade will be furnished by the Economic Development Administration of the U.S. Department of Commerce.

*S–22 Other Prohibited Interests*

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

*S–23 Employment of Local Labor*

a. The maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct Federal grants. Accordingly, every Contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall employ, in carrying out such contract work, qualified persons who regularly reside in the designated area where such project is to be located, or in the case of Economic Development Centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the Economic Development District, except:

(1) To the extent that qualified persons regularly residing in the designated area or Economic Development District are not available.

(2) For the reasonable needs of any such Contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the Contract.

(3) For the obligation of any such Contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of non-resident persons employed under this subparagraph exceed twenty percent of the total number of employees employed by such Contractor and his/her subcontractors on such project.

b. Every such Contractor and subcontractor shall furnish the United States Employment Service Office in the area in which a public works or development facility project is located with a list of all positions for which it may from time to time require laborers, mechanics, and other employees, the estimated numbers of employees required in each classification, and the estimated dates on which such employees will be required.

c. The Contractor shall give full consideration to all qualified job applicants referred by the local employment service, but it is not required to employ any job applicants referred whom the Contractor does not consider qualified to perform the classification of work required.

d. The payrolls maintained by the Contractor shall contain the following information: full name, address, and social security number and a notation indicating whether the employee does, or does not, normally reside in the area in which the project is located, or in the case of an Economic Development Center, in such center or in an adjacent or nearby redevelopment area within the Economic Development District, as well as an indication of the ethnic background of each worker.

e. The Contractor shall include the provisions of this condition in every subcontract for work which is, or reasonably may be, done as on-site work.

*S–24 Historical and Archaeological Data Preservation Act Requirements*

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction, to consult

with the State Historic Preservation Officer for recovery of the items. Reference: National Historic Preservation Act of 1966 (80 Stat 915, 16 USC 470) and Executive Order No. 11593 of May 31, 1971.

*S–25 Clean Air Act of 1970, Et Seq. and Federal Water Pollution Control Act as Amended by the Clean Water Act of 1977*

The Contractor agrees to comply with Federal clean air and water standards during the performance of this contract and specifically agrees to the following:

a. The term ''facility'' means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations; owned, leased, or supervised; by the Contractor and the subcontractors; for the construction, supply and service contracts entered into by the Contractor;

b. Any facility to be utilized in the accomplishment of this contract is not listed on the Environmental Protection Agency's List of Violating Facilities pursuant to 40 CFR, Part 15.20;

c. In the event a facility utilized in the accomplishment of this contract becomes listed on the EPA list, this contract may be canceled, terminated, or suspended in whole or in part;

d. It will comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308, respectively, and all regulations and guidelines issued thereunder;

e. It will promptly notify the Government of the receipt of any notice from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility utilized or to be utilized in the accomplishment of this contract is under consideration for listing on the EPA List of Violating Facilities;

f. It will include the provisions of Paragraphs a. through g. in every subcontract or purchase order entered into for the purpose of accomplishing this contract, unless otherwise exempted pursuant to the EPA regulations implementing the Air or Water Acts above (40 CFR, Part 15.5), so that such provisions will be binding on each subcontractor or vendor;

g. In the event that the Contractor or the subcontractor for the construction, supply and service contracts entered into for the purpose of accomplishing this contract were exempted from complying with the above requirements under the provisions of 40 CFR, Part 15.5 (a), the exemption shall be nullified should the facility give rise to a criminal conviction (see 40 CFR 15.20) during the accomplishment of this contract. Furthermore, with the nullification of the exemption, the above requirements shall be effective. The Contractor shall notify the Government, as soon as the Contractors' or the subcontractors' facility is listed for having given rise to a criminal conviction noted in 40 CFR, Part 15.20.

*S–26 Use of Lead-Based Paints on Residential Structures*

If the work under this contract involves construction or rehabilitation of residential structures, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (see 42 U.S.C. 4831). The Contractor shall assure that paint used on the project on applicable surfaces does not contain lead in excess of the percentages set forth in Paragraphs (a) and (b) of this section. In determining compliance with these standards, the lead content of the paint shall be measured on the basis of the total nonvolatile content of the paint or on the basis of an equivalent measure of lead in the dried film of paint already applied.

a. For paint manufactured after June 22, 1977, paint may not contain lead in excess of 6 one-hundredths of 1 percent (.00006) lead by weight.

b. For paint manufactured on or before June 22, 1977, paint may not contain lead in excess of five-tenths of 1 percent lead by weight.

As a condition to receiving assistance under the Act, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of Federal funds.

Definitions

1. ''Applicable surfaces'' are those exterior surfaces which are readily accessible to children under 7 years of age.

2. ''Residential structures'' means houses, apartments, or other structures intended for human habitation, including institutional structures where persons reside, which are accessible to children under 7 years of age, such as day care centers, intermediate and extended care facilities, and certain community facilities.

*S–27 EDA Signs*

The Contractor shall supply, erect, and maintain a project sign according to the specifications set forth below:

EDA Site Sign Specifications

Size: Sign A: 4′ x 8′ x 1⅞″ Sign B: 4′ x 8′ x ¾″

Materials: Face: Sign A: ¼″ tempered Masonite; Sign B: ¾″ or greater shop sanded (exterior) Plywood (one side only)

Framing: Sign A: 2″ x 4″ nominal on four sides and center cross bracing; Sign B: 2″ x 4″ center cross bracing only

Supports: 4″ x 4″ x 12′ nominal post

Assembly: Sign A: 2″ x 4″ frame to fit 4′ x 8′ board with 2″ x 4″ cross braces; Sign B: To be mounted directly to the 4″ x 4″ post, with cross bracing

Mounting: Signs A and B are to be mounted to the 4″ x 4″ post with a ⅜″ minimum bolt and nut, four on each side of the sign. Each bolt is to have two washers, one between the sign and the head of the bolt and the other between the post and the nut.

Erection: 4″ x 4″ posts are to be set three to four feet deep into concrete 12″ in diameter.

Paint: Face: Three coats outdoor enamel (sprayed); Rear: One coat outdoor enamel (sprayed)

Colors: Crimson Red, Stark White and Royal Blue. Specifically, white background; ''JOBS'' in red; ''for your community'' in blue; ''EDA'' logo and ''PROVIDED BY EQUAL OPPORTUNITY EMPLOYERS, in partnership with the U.S. DEPARTMENT OF COMMERCE—Economic Development Administration'' in black. ''By working together we can provide economic opportunities for Americans'' in black.

Lettering: Silk screen enamels. Lettering sizes and positioning will be as illustrated.

Project signs will not be erected on public highway rights-of-way.

Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area, if any possibility exists for obstruction to traffic line of sight.

If, at the end of the project, the sign is reusable, it shall be disposed of as directed by the EDA Regional Office.

Whenever EDA Site Sign specifications conflict with State law or local ordinances, the EDA Regional Director may modify such conflicting specifications so as to comply with that State law or local ordinance.

BILLING CODE 3510–24–P

**SAMPLE**

U,S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

**CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS**

Part One
Certificate of Engineer

I, the undersigned Engineer, certify that I am familiar with the design of the

_____
(Name/Type of Facility)

being constructed by the _____
(Name of Owner)

as part of EDA Project Number _____ and that all of such facilities will be constructed wholly within the land, leasehold interest and rights-of-way hereinafter described and existing public streets and roads. I further certify that the land, leasehold interest and rights-of-way being purchased as hereinafter described are sufficient but not in excess of actual needs for the Project as planned and approved by the Owner.

1. Fee Title or a long term leasehold interest is required for the following property (Project elements constructed above ground should be on land owned in Fee. Describe each tract, whether presently owned or to be acquired, and indicate what Project element is to be constructed thereon, i.e., tank site, pumping station, treatment plant, etc.; if more space is needed use additional sheets marked 'Exhibit A"):

2. The following easements and rights-of-way will be required for this Project (Describe each easement and right**of-way,** whether presently owned or to be acquired, Describe **by** courses and distances and by name of Owner, including area in acres; if more space is needed use additional sheets marked "Exhibit B'):

3. The following state, railroad, highway or other permits will be required (Describe location and name of permitter; if more space is needed use additional sheets marked 'Exhibit C'):

WITNESS MY HAND, this the _____ day of _____, 19___

_____
Registered Professional Engineer

Telephone No. _____

_____
Address

_____
City State

(TO BE COMPLETED BY ARCHITECT/ENGINEER AND FORWARDED TO OWNER'S ATTORNEY)

**Part Two**
**Title Opinion**

I, _____ Attorney-at-Law,

representing _____
(hereinafter the 'Owner') do hereby certify that:

1. I have examined the public record of _____ County, _____
State
from the period of _____, 19___ to _____ 19___ (which period of time should be at least 40 years). Based upon said examination, I find and am of the opinion that _____ is vested with marketable, fee simple title to the land referenced in Part One hereof as being required in fee, subject only to the following liens, encumbrances and objections (if none write 'None'):

Any encumbrances or objections to the fee simple title listed above will not, in my opinion, restrict or interfere with the contemplated construction, use or purpose of the aforesaid EDA Project.

2. This is to further certify that all easements or rights-of-way described in Part One as being needed for the noted Project have been acquired by the Owner, that all long term leases described in Part One as being needed for the noted Project have been entered into by the Owner, that I have examined the instruments creating the easements, rights-of-way, or long term leases described in Part One, and it is my opinion that said instruments are valid as to form and substance for the purposes intended and provide the Owner with sufficient interest to construct and maintain the Project facilities.

I certify that I have examined the public records for the purpose of ascertaining that said easements and/or rights-of-way have been obtained from the record owner(s).

3. The extent of said title examination,is sufficient for the purpose of establishing the validity of the title to said property and for the purpose of determining outstanding restrictions, liens, encumbrances, and ownership interests pertaining thereto.

4. All permits described in Part One as being needed for this Project have been obtained and I have examined all of said permits and am of the further opinion that said permits are valid as to form and substance for the purposes intended.

5. Remarks and Explanations:

_____ _____
**Date** **Attorney-at-Law**

**Telephone No.** _____

_____ _____ _____
**Address** **City** State

- It is the sole responsibility of the Recipient/Grantee of the EDA grant award to provide a legal opinion verifying that the Recipient/Grantee has good title to all property required for completion of the Project as defined by the grant award.
- A long term leasehold interest is acceptable only if held by the Recipient/Grantee of the EDA grant award for a period not less than the estimated useful life of the Project and only if lease provisions adequately safeguard EDA's interest in the Project.
- Only legal descriptions of the property described herein should be attached to this form.
- If this title opinion is based on a title insurance policy, any exceptions listed on the policy should be explained and resolved in #5 above.
- EDA relies on this title opinion and does not make independent findings regarding title to the property described herein.

BILLING CODE 3510–24–C

Notice

This attached Exhibit D, ''Agreement and Mortgage'' is furnished as a sample. The actual form which the Recipient may be required to sign may differ from the sample dependent upon the type of property, the form of ownership, and the intent of the EDA assisted project (Check with the Regional Attorney in the EDA regional office). Attention is called to the ''useful life'', stated in terms of years, during which period the ''Agreement and Mortgage'' will remain in effect.

**Agreement and Mortgage**

WHEREAS, _____ (hereinafter called ''Mortgagor''), whose address is _____ has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (EDA), whose address is _____ a grant in the amount of _____ and No/100 Dollars ($ ) (Grant Amount) pursuant to a Grant Agreement entered into by the parties on _____, and bearing EDA Project Number ____-____-____ (the Project); and

WHEREAS, pursuant to the application filed by Mortgagor requesting said grant and pursuant to the Grant Agreement, the Grant Amount is to be used for the purpose of making improvements consisting of _____ on the real Property described in Exhibit ''A,'' attached hereto and made a part hereof (the Property); and

WHEREAS, any transfer or conveyance of a Project by an EDA Grantee must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3121, is not authorized to permit transfer or conveyance of a Project to parties which are not eligible to receive EDA grants unless EDA is repaid its share of the fair market value of the Project or unless the authorized purpose of the EDA grant was to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the Project if certain conditions are met; and

WHEREAS, the aforesaid grant from EDA provides that the authorized purpose for which the Grant Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, *inter alia*, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, other than by a lease permitted by the Grant Agreement, or use the Property for purposes other than and different from those purposes set forth in the Grant Agreement and the application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR Part 314, or by 15 CFR Part 24 or by Office of Management and Budget Circular A–110, Attachment N (the OMB Circular); and

WHEREAS, the value of EDA's right to repayment under the terms of 15 CFR Part 24 and OMB Circular A–110 is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Grant Agreement, 15 CFR Part 24, OMB Circular A–110 or 13 CFR Part 314;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Grant Agreement or in violation of the regulations set forth in 13 CFR Part 314, 15 CFR Part 24, or OMB Circular A–110, as such Grant Agreement, regulations or Circular may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect years from the date hereof, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the Grant Amount or the amount actually disbursed or an amount determined pursuant to 13 CFR Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Grant Agreement, 15 CFR Part 24, OMB Circular A-110, or 13 CFR Part 314, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

If the Grant Application and Grant Agreement authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the grant; said lease arrangements will provide adequate employment and economic benefits for the area in which the Property is located; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed Lessee is providing adequate compensation to Mortgagor for said lease. Any lease agreements entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges; Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term ''extended coverage.'' The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its grant percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage in the total cost of the grant program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage—Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagee shall be furnished a confirmed copy of this Mortgage at the time of execution, and after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant

Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the _____ day of _____19, _____.

WITNESS:

_____

_____

_____

By: _____

Mortgagor

Its: _____

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this day of _____ 19_____, by the _____ on behalf of said

_____

Notary Public

My commission expires _____

**Notice of Requirements for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246 and 41 CFR Part 60–4)**

The following notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of $10,000.

The Offerer's or Bidder's attention is called to the ''Equal Opportunity Clause'' and the ''Standard Federal Equal Employment Opportunity Construction Contract Specifications'' set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

| Timetables | Goals for minority participation for each trade | Goals for female participation for each trade |
|---|---|---|
| | * Insert goals for each year. | * Insert goals for each year. |

* Goals to be furnished by EDA.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60–4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60–4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60–4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the appropriate Regional Office of the Office of Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

As used in this notice, and in the contract resulting from this solicitation, the ''covered area'' is (insert description of the geographical area where the contract is to be performed giving the state, county and city, if any).

BILLING CODE 3510–24–P

## ADVERTISEMENT FOR BIDS

_____
Owner

_____
Address

_____

Separate sealed BIDS for the construction of (briefly describe nature, scope, and major elements of the work)_____

_____

will be received by _____

at the office of _____

until _____, (Standard Time -- Daylight Savings Time) _____,

19_____, and then at said office publicly opened and read aloud.

The CONTRACT DOCUMENTS may be examined at the following locations:

_____

_____

_____

_____

Copies of the CONTRACT DOCUMENTS may be obtained at the office of _____

_____ located at_____

upon payment of $ _____ for each set.

Any BIDDER, upon returning the CONTRACT DOCUMENTS promptly and in good condition, will be refunded his payment, and any non-bidder upon so returning the CONTRACT DOCUMENTS will be refunded $ _____.

_____ _____
Date

Exhibit F-1

BILLING CODE 3510–24–C

**Information for Bidders**

BIDS will be received by _____ (herein called the ''OWNER''), at _____ until _____, 19_____, and then at said office publicly opened and read aloud.

Each BID must be submitted in a sealed envelope, addressed to _____ at _____. Each sealed envelope containing a BID must be plainly marked on the outside as BID for _____ and the envelope should bear on the outside the name of the BIDDER, his address, his license number if applicable and the name of the project for which the BID is submitted. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the OWNER at _____.

All BIDS must be made on the required BID form. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. Only one copy of the BID form is required.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the OWNER and the BIDDER.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The OWNER shall provide to BIDDERS prior to BIDDING, all information which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID bond payable to the OWNER for five percent of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the Agreement is executed the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the payment BOND and performance BOND have been executed and approved, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance BOND and a payment BOND, each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and obtain the performance BOND and payment BOND within ten (10) calendar days from the date when the NOTICE OF AWARD is delivered to the BIDDER. The NOTICE OF AWARD shall be accompanied by the necessary Agreement and BOND forms. In case of failure of the BIDDER to execute the Agreement, the OWNER may at his option consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the OWNER.

The OWNER within ten (10) days of receipt of acceptable performance BOND, payment BOND, and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the OWNER and the CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible BIDDER.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to his BID.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the SUPPLEMENTAL GENERAL CONDITIONS.

The low BIDDER shall supply the names and addresses of major material SUPPLIERS and SUBCONTRACTORS when requested to do so by the OWNER.

Inspection trips, for prospective BIDDERS will leave from the office of the

_____

The ENGINEER is _____. His address is _____.

Bid

Proposal of _____ (hereinafter called ''BIDDER''), organized and existing under the laws of the State of _____ doing business as _____.*

To the _____ (hereinafter called ''OWNER'').

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of _____ in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within _____ consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of $_____ for each consecutive calendar day thereafter as provided in section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

_____

_____

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* Insert ''a corporation'', ''a partnership'', or ''an individual as applicable.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or lump sum:

**BID SCHEDULE**

NOTE: BIDS shall include sales tax and all other applicable taxes and fees.

| NO. | ITEM | UNIT | UNIT PRICE | AMOUNT | TOTAL PRICE |
|---|---|---|---|---|---|

TOTAL OF BID .....$ _____
LUMP SUM PRICE (if applicable) .....$_____

Respectfully submitted:

_____ Signature

_____ Address

_____ Title

_____ Date

_____ License Number (if applicable)

_____

(SEAL -- if bid is a corporation)

Attest _____

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____

_____ as Principal, and

_____ as Surety, are hereby held and firmly

bound unto_____ as OWNER in the penal sum of _____

_____

for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 19_____.

The Condition of the above obligation is such that whereas the Principal has submitted to

_____ a certain BID, attached hereto and

hereby made a part hereof to enter into a contract in writing, for the

_____

_____

_____

NOW, THEREFORE,

(a) If said BID shall be rejected, or

(b) If said BID shall be accepted and the Principal shall execute and deliver a con-tract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID,

then, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____ (L.S.)
Principal

_____
Surety

By:_____

IMPORTANT -- Surety companies executing BONDS must appear on the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the project is located.

Exhibit F-4

**AGREEMENT**

THIS AGREEMENT, made this _____day of _____, 19_____, by

and between _____ (hereinafter called "OWNER"),
(Name of Owner), (an Individual)

and _____ doing business as (an individual,) or (a partnership.) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of _____

_____

2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within _____ calendar days after the date of the NOTICE TO PRO-CEED and will complete the same within _____ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR agrees to perform all of the WORK described in the CON- TRACT DOCUMENTS and comply with the terms therein for the sum of $_____, or as shown in the BID schedule.

5. The term "CONTRACT DOCUMENTS" means and includes the following:

(A) Advertisement for BIDS

(B) Information for BIDDERS

(C) BID

(D) BID BOND

(E) Agreement

(F) General Conditions

(G) SUPPLEMENTAL GENERAL CONDITIONS

(H) Payment BOND

(I) Performance BOND

(J) NOTICE OF AWARD

(K) NOTICE TO PROCEED

(L) CHANGE ORDER

(M) DRAWINGS prepared by_____ numbered____

_____through _____, and dated_____, 19_____

(N) SPECIFICATIONS prepared or issued by_____

_____

dated _____, 19_____

(O) ADDENDA:

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (_____) each of which shall be deemed
(Number of Copies)
an original on the date first above written.

OWNER:

_____

BY _____

Name _____
(Please Type)

Title _____

(SEAL)

ATTEST:

_____

Name _____
(Please Type)

Title _____

CONTRACTOR:

_____

BY _____

Name _____
(Please Type)

Address _____

_____

(SEAL)

ATTEST:

_____

Name _____
(Please Type)

_____

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____ (Corporation, Partnership, or Individual) _____, hereinafter called Principal, and

_____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called OWNER, in the penal sum of_____

_____Dollars, ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19___, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ (Number) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 19_____.

ATTEST: _____ Principal

_____ Principal Secretary By _____(s)

(SEAL)

_____ (Witness as to Principal) _____ (Address)

_____ (Address) _____

_____ _____ Surety

ATTEST:

_____ Surety Secretary

(SEAL)

_____ (Witness as to Surety) By _____ Attorney-in-Fact

_____ (Address) _____ (Address)

_____ _____

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

_____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called OWNER, in the penal sum of_____

_____Dollars, ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19___, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW THEREFORE, if the Principal shall promptly make payments to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CON-TRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each
(Number)

one of which shall be deemed an original, this the _____ day of _____ ,

19_____.

ATTEST: _____
Principal

_____ By _____(s)
Principal Secretary

(SEAL)

_____
(Address)

_____

_____
(Witness as to Principal)

_____
(Address)

_____ _____
Surety

ATTEST: By _____
Attorney-in-Fact

_____ _____
(Witness as to Surety) Address

_____ _____
(Address)

_____

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

BILLING CODE 3510–24–C

**General Conditions**

1. Definitions
2. Additional Instructions and Detail Drawings
3. Schedules, Reports and Records
4. Drawings and Specifications
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8. Substitutions
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19. Payments to Contractor
20. Acceptance of Final Payment as Release
21. Insurance
22. Contract Security
23. Assignments
24. Indemnification
25. Separate Contracts
26. Subcontracting
27. Engineer's Authority
28. Land and Rights of Way
29. Guaranty
30. Arbitration
31. Taxes

1. Definitions

1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1.2 ADDENDA—Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3 BID—The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 BIDDER—Any person, firm or corporation submitting a BID for the WORK.

1.5 BONDS—Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

1.6 CHANGE ORDER—A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 CONTRACT DOCUMENTS—The contract, including Advertisement For Bids, Information for Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.8 CONTRACT PRICE—The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.9 CONTRACT TIME—The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.10 CONTRACTOR—The person, firm or corporation with whom the OWNER has executed the Agreement.

1.11 DRAWINGS—The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.12 ENGINEER—The person, firm or corporation named as such in the CONTRACT DOCUMENTS.

1.13 FIELD ORDER—A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD—The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.15 NOTICE TO PROCEED—Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

1.16 OWNER—A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

1.17 PROJECT—The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE—The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS—All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS—A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.21 SUBCONTRACTOR—An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the work at the site.

1.22 SUBSTANTIAL COMPLETION—That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.23 SUPPLEMENTAL GENERAL CONDITIONS—Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

1.24 SUPPLIER—Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.25 WORK—All labor necessary to produce the con struction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.26 WRITTEN NOTICE—Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

2. Additional Instructions and Detail Drawings

2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. Schedules, Reports and Records

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.2.1 The dates at which special detail drawings will be required; and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

4. Drawings and Specifications

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site

conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. Shop Drawings

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

5.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

6. Materials, Services and Facilities

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. Inspection and Testing

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the engineer or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.

7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. Substitutions

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. Patents

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

10. Surveys, Permits, Regulations

10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and

comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. Protection of Work, Property and Persons

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

12. Supervision by Contractor

12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. Changes in the Work

13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. Changes in Contract Price

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

(a) Unit prices previously approved.

(b) An agreed lump sum.

(c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit.

15. Time For Completion and Liquidated Damages

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather: and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. Correction of Work

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and reexecute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. Subsurface Conditions

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS: or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2 The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS

shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. Suspension of Work, Termination and Delay

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery, thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the Contract. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. Payments to Contractor

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER's title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5%) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.

19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably, stored either at or near the site.

19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached lo the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the

CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance, with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. Acceptance of Final Payment as Release

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BONDS.

21. Insurance

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

21.3 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified;

21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than, $500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than $500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than $200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than $200,000 aggregate for any such damage sustained by two or more persons in any one accident.

21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

21.5 The CONTRACTOR shall secure, if applicable, ''All Risk'' type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

22. Contract Security

22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of ''Surety Companies Acceptable on Federal Bonds'' as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. Assignments

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. Indemnification

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury sickness, disease or death, or to injury to or destruction of

tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRAC-TOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. Separate Contracts

25.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the perform-ance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefor as provided in Sections 14 and 15.

26. Subcontracting

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

27. Engineer's Authority

27.1 The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

28. Land and Rights-of-Way

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. Guaranty

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL, COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

30. Arbitration

30.1 All claims, disputes and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 20, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

30.2 Notice of the demand for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and with the American Arbitration Association, and a copy shall be filed with the ENGINEER. Demand for arbitration shall in no event be made an any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

30.3 The CONTRACTOR will carry on the WORK and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

31. Taxes

31.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

BILLING CODE 3510–24–P

# APPLICATION FOR PAYMENT

*AIA DOCUMENT G702*

OWNER ☐
ARCHITECT ☐
CONTRACTOR ☐
FIELD ☐
OTHER ☐

PROJECT:
**(name, address)**

ARCHITECT:

TO: (Owner)

DATE OF APPLICATION:
APPLICATION NO:

PERIOD FROM: TO:

State of:
County of:
The undersigned certifies that the Work herein has been completed in accordance with the Contract Documents, that all amounts have been paid for items which previous Certificates for Payment were issued and payments received, and that the current payment is now due.

Contractor

Address

By Date
Subscribed and sworn before me this
day of , 19

Notary Public:

My Commission Expires:

Application is made for Payment, as shown below, in connection with this Contract.

TOTAL COMPLETED TO DATE (F below) _____
STORED MATERIALS (see attached list) _____
TOTAL COMPLETED & STORED _____
RETAINAGE % _____
TOTAL EARNED LESS RETAINAGE _____
LESS PREVIOUS PAYMENTS _____
CURRENT PAYMENT DUE _____

| ITEM NO. A | DESCRIPTION OF WORK B | SCHEDULED VALUE C | PREVIOUS APPLICATIONS D | THIS APPLICATION E | % | COMPLETED TO DATE F | BALANCE TO FINISH G |
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| | SUB TOTAL OR TOTAL | | | | | | |

**SAMPLE**

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

Form Approved
Budget Bureau No. 44-R1093

**PAYROLL**

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

| Name of Contractor ☐ or Subcontractor ☐ | | | Address | |
|---|---|---|---|---|
| Payroll No. | For Week Ending | | Project and Location | Project or Contract No. |

| (1) Name, Address & SSN of Employee | (2) # of Exempt | (3) Work Classification | OT or Std | (4) Day and Date / HOURS WORKED EACH DAY | | | | | | | (5) Total Hours | (6) Rate of pay | (7) Gross Earned | (8) Deductions FICA | Tax | | | Other | Total Ded. | (9) Net wages |
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FORM WH-347 (1/68) - FORMERLY SOL 184

Date _____

I, _____, _____ do hereby state:
(Name of Signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by _____ on the _____; that during the payroll period commencing on the _____ day of _____, 19____ and ending the _____ day of _____, 19____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948; 63 Stat. 108; 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

_____
_____
_____
_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a state, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

□ -In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

□ - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

| Exception (Craft) | Explanation |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

Remarks:

| Name & Title | Signature |
|---|---|
| | |

The wilful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 231 of Title 31 of the United States code.

**NOTICE OF AWARD**

To: _____

_____

_____

_____

_____

PROJECT Description: _____

_____

_____

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated _____, 19_____, and information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of $ _____.
You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.
If you fail to execute said Agreement and to furnish said BONDS, within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of you BID BOND. The OWNER will be entitled to such rights as may be granted by law.
You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 19_____.

_____
Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by _____,

this the _____ day of _____, 19_____.

By _____

Title _____

**NOTICE TO PROCEED**

To:_____Date: _____

_____Project: _____

_____

_____

_____

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 19 ____, on or before _____, 19 _____, and you are to complete the WORK within _____ consecutive calendar days thereafter. The date of completion of all WORK is therefore _____, 19_____.

_____

Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

by _____

this the _____ dayof _____, 19_____

By _____

Title _____

**CHANGE ORDER**

Order No. _____

Date: _____

Agreement Date: _____

NAME OF PROJECT: _____

_____

OWNER: _____

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE:

Original CONTRACT PRICE $ _____.

Current CONTRACT PRICE adjusted by previous CHANGE ORDER $ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased) (decreased)

by: $ _____.

The new CONTRACT PRICE including this CHANGE ORDER will be $ _____.

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____ calendar days.

The date for completion of all work will be _____ (Date).

Approvals Required:

To be effective this Order must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: _____

Recommended by: _____

Ordered by: _____

Accepted by: _____

Federal Agency Approval (where applicable) _____

**Exhibit G—[Reserved]**

**Exhibit H—[Reserved]**

# FINAL ACCEPTANCE REPORT

EDA Award Number:_____ Contract # _____ of _____ Contracts
Contract Title:_____ Contract Award Date:_____

The following persons were present during the inspection:

Architect/Engineer:_____
Owner:_____
Contractor:_____
Economic Development Representative:_____
Other:_____

RECITAL: The work performed under this contract was inspected on _____ for the purpose of determining acceptability of construction. The Date of Acceptance is hereby established as _____.

Definition of the term "Date of Acceptance": The Date of Acceptance" is the date which the Owner may occupy and/or use the facility for the purpose for which it is intended in accordance with the contract documents and all work for the facility has been completed with the exception of minor cleanup and minor corrective action as shown in the Architect/Engineer's list made during the final inspection.

| _____ | _____ | _____ |
|---|---|---|
| Architect/Engineer | Signature | Date |

The Contractor agrees that the Date of Acceptance is also the date of commencement of all warranties required by the contract documents and that he, the Contractor, has released all liens on the project, including materialmen and mechanics liens or others filed by the Contractor. The Contractor will complete the work on the Architect/Engineer's list of minor cleanup and corrective work within _____ days of the Date of Acceptance.

| _____ | _____ | _____ |
|---|---|---|
| Contractor | Signature | Date |

The Owner accepts the work as complete and will assume full possession thereof at _____ (time) on _____ (date).

| _____ | _____ | _____ |
|---|---|---|
| Owner | Signature | Date |

**SAMPLE**

**QUARTERLY PERFORMANCE REPORT**

This report is for:
EDA Project No._____ Date of report preparation:_____
Period covered by this report:_____ to _____
Report number _____
Grantee: _____ _____
NameAddress
Grantee's Authorized Representative:_____
Name
_____
Title
Grantee's Architect/Engineer:_____
Name
_____
Address

Current status of the project:

| YES | NO | |
|---|---|---|
| ___ | ___ | 1. Is the Grantee's share of expected project cost on hand or immediately available? If not, explain in the Narrative section on the next page why funds are not available and of when the funds give an estimate here, _____ of when the funds are expected to be on hand. |
| ___ | ___ | 2. Has all land, rights-of-way, and easements necessary for the project been acquired? If not, explain in the Narrative section on the next page what is causing the delay and give an estimate here, _____ of when the problem will be resolved. |
| ___ | ___ | 3. Are any problems expected in meeting any of the Special Conditions to the EDA Grant Offer? If so, explain in the Narrative section on the next page giving an estimated date for satisfying each Special Condition if a delay is expected. |
| ___ | ___ | 4. The EDA approved date for completion of design is, _____. Is the design completed? If so, give date of completion, _____. If design is not completed, give date here, _____ of expected completion. If expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA. |
| ___ | ___ | 5. The EDA approved date for start of construction is _____. Has construction started? If construction has started, the date was _____. If construction has not started, the estimated date for start of construction is _____. If the expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA. |
| ___ | ___ | 6. The EDA approved date for completion of construction is _____. Is construction complete? If construction is complete, the date of completion was _____. If construction is not complete, the estimated date for completion is _____ and the percent of completion is ____%. If the estimated date for construction completion is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA. |

If not previously furnished to EDA please include the following date when applicable:

Architect/Engineer Agreement executed: _____
Design started: _____ Design completed: _____
Design approved by EDA: _____
Advertisement for construction bids: _____
Construction bid opening: _____
Construction bid award: _____
Issue of Notice to Proceed: _____
Construction start: _____

Construction completion: _____
Acceptance of facility by Grantee: _____
Warranty start: _____ Warranty end: _____
Final payment request: _____

**NARRATIVE**

PROBLEMS BEING EXPERIENCED:

ACTION TAKEN:

ACTION RECOMMENDED:

NOTE: If more space is needed for the above narrative, attach a separate sheet.

**SAMPLE**

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

**ARCHITECT/ENGINEER'S CERTIFICATE**

Project No. _____

I, _____, Architect/Engineer for the _____ certify that the following plans and specifications (check appropriate item):

Sheets numbered

☐ **Site Plan** _____

☐ **Architectural** _____

☐ **Structural** _____

☐ **Mechanical** _____

☐ **Electrical** _____

☐ **Equipment** _____

☐ **Other (identify)** _____

(a) Are adequate and suitable for, and are in conformity with, the project contemplated in the approved application.
(b) Comply with applicable State and local laws, ordinances, and regulations pertaining to standards of construction and safety, and have been approved by:

**AUTHORITYDATE OF APPROVAL**

_____

_____

_____

_____

_____

Approved:

_____
Architect/EngineerOwner

_____
License NumberAddressDate

**SAMPLE**

Form ED-126 (Rev. 4-4-72)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

## CERTIFICATE OF GRANTEE/BORROWER'S ATTORNEY

I, the undersigned, _____, the duly authorized and

acting legal representative of _____ do hereby certify

as follows:

I have examined the attached contracts and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

_____

Date: _____

**Information Normally Required for**
**EPA/State Certification as to Adequacy of Treatment**

Applicant:_____ EDA Award No.:_____

Contact:_____ Telephone: _____

Project Description:

_____
_____
_____

**Sanitary Sewage Contribution**

Estimate of flows: _____

Type of sewage: _____

**Storm Sewer Contribution**

Estimate of flows: _____

**Projection of Type of Tenants for Industrial Developments**

Type of Tenants: _____

Quantity of flows: _____

Strength of flows: _____

**Receiving Sewage Treatment Plant**

Name of Receiving Plant: _____

NPDES Number: _____

Design Capacity: _____

Effluent Disposal Capacity: _____

Current Flows: _____

**CORE PERFORMANCE MEASURES REPORT** **Page 1 of 2**

Federal Sponsoring Agency: **Economic Development Administration**

Program: **TITLE I PUBLIC WORKS AND DEVELOPMENT FACILITIES & TITLE IX IMPLEMENTATION CONSTRUCTION PROJECTS**

*EDA Project No.*:_____. Reporting Period: ☐ Project Completion ☐3 years ☐ 6 years

*Approval Date:*_____. *Short Project Description*:_____

I. GRANTEE ORGANIZATION: (*Information in italics will be generated from OPCS - do not enter)*

1. *Grantee Name*: _____
2. *Address*: _____
3. *Telephone:* _____
4. Fax: _____
5. E-mail Address: _____
6 Contact Person: Name:_____ Title:_____
7. Project Location: _____ *County/* *State/* Zip Code
8. GIS Coordinates if available for Project Location: _____

II. EDA PROJECT BUDGET:

1. EDA Project Budget:

| | *Approved* | *Final (Actual)* |
|---|---|---|
| *EDA Funds* | $_____ | $_____ |
| *Applicant* | $_____ | $_____ |
| *Local Funds* | $_____ | $_____ |
| *State* | $_____ | $_____ |
| *Other Federal* | $_____ | $_____ |
| *Other* | $_____ | $_____ |
| *Total Project Dollars:* | $_____ | $_____ |

III. OUTCOMES (ACTUAL) REPORTED AT PROJECT COMPLETION ONLY:

| *1. Construction Schedule:* | *Estimated* | *Final (Actual)* |
|---|---|---|
| *a. Start Dates:* | _____ | _____ |
| *b. Completion Dates:* | _____ | _____ |
| 2. Construction Jobs Created: | _____ | _____ |

**CORE PERFORMANCE MEASURES REPORT**
**TITLE I/TITLE IX CONSTRUCTION FACILITIES** *EDA Project No.:* _____

IV. OUTCOMES (ACTUAL) REPORTED AT PROJECT COMPLETION AND AT 3 YEARS AND 6 YEARS AFTER PROJECT COMPLETION.

1. Permanent Jobs

| | Direct | Indirect |
|---|---|---|
| a. Created: | _____ | _____ |
| b. Retained (saved): | _____ | _____ |
| c. Total jobs: | _____ | _____ |

d. If you used a multiplier to determine indirect jobs, show the multiplier here: ( ).

2. Additional dollars invested:

| | Direct | Indirect |
|---|---|---|
| a. Private sector: | $_____ | $_____ |
| b. Local public: | $_____ | $_____ |
| c. State: | $_____ | $_____ |
| d. Other Federal: | $_____ | $_____ |
| e. Totals: | $_____ | $_____ |

f. If you used a multiplier to determine indirect investment, show multiplier here: ( ).

3. Increase in Local Real or Business Property Tax Base:

a. Enter value of increase in tax base (prior to any abatement): $_____
b. If you used a multiplier to determine increased tax base show multiplier here: ( ).

4. Local Capacity Anticipated and Actual Results:

| Local Capacity | Percent Anticipated: | Actual Results (Scale of 1-10, with 10 being highest): |
|---|---|---|
| a. Created infrastructure to support private investment: | ____ | ____ |
| b. Created infrastructure to stimulate economic development: | ____ | ____ |
| c. Stabilized and maintained the local economic base: | ____ | ____ |
| d. Diversified the local economy: | ____ | ____ |
| e. Other non-quantifiable benefits | ____ | ____ |

Specify: _____:
Note: Attach brief explanation of results.

V. Please submit a good quality photograph of the EDA project and/or businesses assisted.

AUTHORIZED CERTIFYING OFFICIAL

Signature: _____ Date Report Submitted: _____

Typed or Printed Name & Title: _____ Telephone: _____

BILLING CODE 3510–24–C

**Instructions for Completion of EDA'S Core Performance Measures Report for Title I/IX Construction Facilities**

The instructions below are in outline form and correspond to identical items in the Core Performance Measures Report. Complete the report by filling in the spaces and responding to the questions. If there is not sufficient space on the report for a response, please respond on an attachment to the report. On page one of the Report, indicate the EDA Project Number and the Reporting Period.

*Part I: Grantee Organization*

1. *Grantee Name:* Enter the legal name of the Grantee.
2. *Address:* Enter the physical address of the Grantee.
3. *Telephone:* Enter the telephone number, including area code, of the Grantee.
4. *Fax:* Enter the facsimile number, including area code, of the Grantee.
5. *E-mail Address:* Enter the Internet address of the Grantee.
6. *Contact Person & Title:* Name the person to contact on matters related to this report. Also, provide the contact person's telephone number, including area code, if different from the Grantee's telephone number.
7. *Project Location:* Enter the county, state and zip code of project location.
8. *GIS Coordinates:* Provide geographic mapping coordinates for project location, if available.

*Part II: EDA Project Budget*

Enter the project budget as estimated at time of approval.

Enter the actual project budget at time of project completion and close-out.

Enter only dollars used as part of the EDA total project cost for the construction project (scope of work and eligible costs defined in the grant agreement).

*Part III: Outcomes (Actual) Reported at Project Completion Only*

1. Compliance With Construction Schedule

a. *Construction start date:* Ener the estimated date (specified in the Special Award Conditions) for starting construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for starting construction on the EDA project.

b. *Construction completion date:* Enter the estimated date (specified in the Award Conditions) for completing construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for completing construction on the EDA project.

2. Construction Jobs Created (Please provide information on construction jobs for all construction projects, not just PWIP)

a. *Construction jobs created:* Enter the estimated number of construction jobs at the time of project approval and the actual number of construction jobs at project completion (Part-time construction jobs which were created during the construction phase of the EDA project should be converted to FTE.). If estimated/actual figures are not available, please provide the average annual construction wage for your area $_____ and the proportion of total project costs allocated to labor for this or similar projects of this type _____%.

*Part IV: Outcomes (Actual) Reported at Project Completion and at 3 Years and 6 Years After Project Completion.*

1. Permanent Jobs:

a. *Created jobs:* Enter the number of private sector jobs created by project beneficiaries as a result of the EDA construction project. In tallying direct jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Indirect jobs should be reported separately in the space provided.

1. *Direct Jobs:* These are jobs that are created at the project site by the identified beneficiaries, and other directly-related jobs created by subsequent employers as a result of the project. For some projects (e.g., roads, water and sewer lines), direct jobs may include those created by firms that which were not originally anticipated as part of the project, but which located or expanded in the area as a result of the project.

2. *Indirect Jobs:* These are jobs that are created within the local labor market area by the EDA project through increased supplier or consumer demand—commonly referred to as spin-off jobs resulting from increased employment by local suppliers and increased commercial/retail jobs due to increased wages generated by direct jobs. (For the purpose of this report, there is no need to distinguish between indirect and induced effects).

b. *Retained (saved) jobs:* Enter the number of private sector jobs retained or saved by project beneficiaries as a result of the EDA construction project. In tallying jobs, follow the instructions for created jobs in the paragraph (IV.1.a.) above.

c. *Total jobs:* Add the number of created jobs in IV.1.a. and the number of retained jobs in IV.1.b. and enter the total jobs here in IV.1.c.

**Note:** A list of the employers showing the number of jobs created or saved by each should be maintained as part of the supporting data in the Grantee's project files.

2. Additional Dollars Invested:

(Note: Dollars should be separated between: (1) dollars invested in the EDA construction project; and (2) dollars directly related to, but not a part of, the EDA construction project. Dollars invested in the EDA construction project are the non-Federal matching funds that were identified at the time of EDA grant approval and are included in the total project costs for the construction project shown in Section II above. Do not double count these dollars below.)

Additional dollars invested include dollars that support project objectives, but are not included as part of the EDA project costs. Though occasionally difficult to quantify these directly-related investments, an attempt should be made to identify them on this report. Examples are investments in facilities occupied by project beneficiaries or employers that were constructed with other public or private funds as a result of the EDA project. Also include investments by firms using residual capacity of EDA-financed infrastructure (notably water and sewer services).

Indirect investments are those associated with the location or expansion of spin-off commercial business and/or wholesalers resulting from increased demand for goods and services generated by the project, or new investment in retail and consumer services.

If you cannot determine indirect jobs or investment, estimate the number of firms which located or expanded in the area as result of the increased supplier/consumer demand generated by the project below: Estimated number of firms creating indirect jobs _____ and/or investment _____.

a. *Private Sector:* Enter the total dollars from private sector investors, employers and other private sector sources such as the local financing institutions, and private donors. Include private investment in plant and equipment.

b. *Local public:* Enter the total dollars from local public sources such city/county appropriations, G.O./revenue bond issues, and economic development sales taxes.

c. *State:* Enter the total dollars from state sources such as state appropriations and CDBG funds to the state.

d. *Other Federal:* Enter the total dollars from other Federal sources as HUD, Agriculture, and Transportation funds.

e. *Totals:* Add the other dollars from IV.2.a through IV.2.d. and enter the total dollars on IV.2.e.

3. Increase in Local Tax Base:

Enter here on IV.3 the dollar increase in the local tax base (the taxable real and business personal property) attributable to the EDA project. Please check whether these are actual dollars of dollars computed using a multiplier. Please provide the multiplier, if applicable.

4. Local Capacity Anticipated and Actual Results:

An evaluation should be made regarding how well the EDA construction project has met the initial objectives listed in IV.4.a through IV.4.e below. Indicate by percentages, that portion of the project which was initially envisioned as the justification for the project under one or more of the listed categories. Individual ratings (with 10 being the ''best'' (i.e., the project has totally met the objective in every conceivable way) and 1 being the ''worst'' (i.e., the project has not met the objective in any way at all). As an example, a project may have initially been intended to support a single private business (100%), but may actually have resulted in creating jobs associated with other businesses, perhaps diversified the local economy, or provided other community benefits. Thus, a rating would be warranted for those categories as well as for the first category.

Not all objectives listed here may apply to the EDA project. Please mark ''NA'' if a given result was not anticipated or achieved. A narrative explaining the results or any unique situations associated with the project would also be useful.

V. Please submit a photograph of the project and/or business activity assisted by the project.

## PART 306—PLANNING ASSISTANCE

Sec.
306.1 Purpose and scope.
306.2 Application evaluation criteria.
306.3 Award requirements.
306.4 Award conditions.

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

### § 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. 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.

### § 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 is,

(i) 50 percent, except as supplemented as provided in § 301.4(b), or

(ii) 75 percent, if that is greater than the maximum supplemented grant rate provided in § 301.4(b), and the project meets the criteria of paragraph (b)(2) of this section.

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that,

(i) The project is intended to address problems arising from actual or threatened severe unemployment, significantly low per capita income, or a special need that qualifies an area for eligibility under § 301.2(b),

(ii) The project is in substantial part devoted to activities addressing the needs of the most economically distressed parts of the total area served by the applicant,

(iii) The applicant is uniquely qualified to address the major causes of actual or threatened economic distress in the area served by the applicants, and

(iv) The applicant cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (b)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

(c) As a condition of the receipt of assistance by a State under this part 306:

(1) The State must have or develop a CED Strategy;

(2) Any State plan developed with such assistance must be developed cooperatively by the State, political subdivisions of the State, and the economic development districts located wholly or partially within the State;

(3) Any overall State economic development planning assisted under this section shall be a part of a comprehensive planning process that shall consider the provision of public works to:

(i) Promote economic development and opportunity,

(ii) Foster effective transportation access,

(iii) Enhance and protect the environment, and

(iv) Balance resources through the sound management of physical development;

(4) Upon completion of the State plan, the State must,

(i) Certify to EDA that, in the development of the State plan, local and economic development district plans were considered and, to the maximum extent practicable, the State plan is consistent with the local and economic development district plans; and

(ii) Identify any inconsistencies between the State plan and the local and economic development district plans and provide a justification for each inconsistency; and

(5) The State must submit to EDA an annual report on the planning process so assisted.

### § 306.4 Award conditions.

Financial, performance and progress reports, and project products will be as specified in the Special Award Conditions of the grant.

## PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND EVALUATION

**Subpart A—Local Technical Assistance**

Sec.
307.1 Purpose and scope.
307.2 Application evaluation criteria.
307.3 Award and grant rate requirements.

**Subpart B—University Center Program**

307.4 Purpose and scope.
307.5 Application evaluation criteria.
307.6 Award and grant rate requirements.

**Subpart C—National Technical Assistance, Training, Research, and Evaluation**

307.7 Purpose and scope.
307.8 Application evaluation criteria.
307.9 Award and grant rate requirements.

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

## Subpart A—Local Technical Assistance

### § 307.1 Purpose and scope.

Local Technical Assistance projects are intended to:

(a) Determine the causes of excessive unemployment, underemployment, low per capita income, or high poverty rates in areas and regions of the Nation;

(b) Assist in formulating and implementing new economic development tools, models, and innovative techniques that will raise employment and income levels; and

(c) Assist distressed communities in formulating and implementing new economic development programs to increase the technology and human capacity of the communities. Local Technical Assistance funds may not be used to start or expand a private business.

### § 307.2 Application evaluation criteria.

EDA selects local technical assistance projects for grant awards according to

the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Strengthens the local capacity to undertake and promote effective economic development programs targeted to people and areas of distress;

(b) Benefits distressed areas;

(c) Helps to diversify distressed economies;

(d) Demonstrates innovative approaches to stimulating economic development in distressed areas;

(e) Is consistent with the CED Strategy or other strategy accepted by EDA for the area in which the project is located; and

(f) Presents a reasonable, itemized budget.

### § 307.3 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(c) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that,

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the service area and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (d)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

## Subpart B—University Center Program

### § 307.4 Purpose and scope.

The University Center technical assistance program is designed to help improve the economies of distressed areas. It helps institutions of higher education (or other applicants) use their own and other resources to address the economic development problems and opportunities of areas serviced.

### § 307.5 Application evaluation criteria.

EDA selects University Center projects for grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Has the commitment of the highest management levels of the sponsoring institution;

(b) Provides evidence of adequate non-Federal financial support, either from the sponsoring institution or other sources;

(c) Outlines activities consistent with the expertise of the proposed staff, the academic programs, and other resources available within the sponsoring institution;

(d) Presents a reasonable budget;

(e) Documents past experience of the sponsoring institution in operating technical assistance programs; and

(f) Balances the geographic distribution of University Centers across the country. Only the Assistant Secretary has the authority to approve the selection for grant assistance of a University Center that has not received University Center assistance for the previous year.

### § 307.6 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b), or

(ii) 75 percent, if that is greater, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

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

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (e)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

## Subpart C—National Technical Assistance, Training, Research, and Evaluation

### § 307.7 Purpose and scope.

(a) The purposes of National Technical Assistance, Training, Research, and Evaluation projects are:

(1) To determine the causes of excessive unemployment, underemployment, outmigration or other problems indicating economic distress in areas and regions of the Nation;

(2) To assist in formulating and implementing new economic development tools and national, State, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions;

(3) To evaluate the effectiveness and economic impact of programs, projects, and techniques used to alleviate economic distress and promote economic development, and

(4) To assist in disseminating information about effective programs,

projects and techniques that alleviate economic distress and promote economic development.

(b) EDA may during the course of the year, identify specific national technical assistance, training, research or evaluation projects it wishes to have conducted. Ordinarily, EDA specifies these projects in a NOFA, which also provides the appropriate point of contact and address.

(c) National technical assistance, research, training, and evaluation funds may not be used to start or expand a private business.

### § 307.8 Application evaluation criteria.

EDA selects projects for national technical assistance, training, research or evaluation grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Does not depend upon further EDA or other Federal funding assistance to achieve results;

(b) Strengthens the capability of local, State, or national organizations and institutions, including nonprofit economic development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(c) Benefits severely distressed areas;

(d) Helps to diversify distressed economies; and

(e) Demonstrates innovative approaches to stimulating economic development in distressed areas.

### § 307.9 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work. Normally, this does not exceed twelve months.

(b) If the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 100 percent when the applicant is able to demonstrate that

(i) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(ii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

## PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

Sec.
308.1 Purpose and scope.
308.2 Criteria.
308.3 Use of economic adjustment grants.
308.4 Selection and evaluation factors.
308.5 Applicant requirements.
308.6 Post-approval requirements.

**Appendix A to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund; Plan Guidelines.**

**Appendix B to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Standard Terms and Conditions.**

**Appendix C to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Administrative Manual.**

**Appendix D to Part 309—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Audit Guidelines**

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

### § 308.1 Purpose and scope.

(a) The purpose of economic adjustment grants is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including but not limited to those caused by:

(1) Military base closures or realignments, defense contractor reductions in force, or Department of Energy defense-related funding reductions,

(2) Disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*),

(3) International trade,

(4) Fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under sec. 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)),

(5) Long-term economic deterioration, or

(6) Loss of a major community employer.

(b) Economic Adjustment grants are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help organize and carry out a CED Strategy;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the strategy;

(4) Enable communities to plan and coordinate: The use of Federal and other resources available to support economic recovery, development of regional economies, or recovery from natural or other disasters; and

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

### § 308.2 Criteria.

(a) A grant may be made under this part only when the project will help the area to meet a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe changes in economic conditions; and the area for which a project is to be carried out has a strategy and the project is consistent with the strategy, except that the strategy requirement shall not apply to planning projects.

(b) The term ''special need'' in paragraph (a) of this section means conditions of unemployment, per capita income, or special need that qualify an area for eligibility under § 301.2(b).

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

### § 308.3 Use of economic adjustment grants.

(a) Grants may be used to pay for developing a strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to pay for a project in implementation of such a strategy.

(1) Strategy grants may support developing, updating, or refining a strategy.

(2) Implementation grants support activities identified in an EDA-approved strategy. Specific activities may be funded as separate grants or as multiple elements of a single grant. Examples of implementation activities include:

(i) Infrastructure improvements, such as site acquisition, site preparation,

construction, rehabilitation and/or equipping of facilities;

(ii) Provision of business or infrastructure financing through the funding of locally administered Revolving Loan Funds (RLFs), which may include interest rate buy downs;

(iii) Market or industry research and analysis;

(iv) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(v) Public services;

(vi) Training (provided that it does not duplicate Department of Labor, Department of Education or other Federally-supported training programs), and

(vii) Other activities as justified by the strategy which meet statutory and regulatory requirements.

(b) Economic Adjustment grants may be spent directly by the grantee or redistributed to other entities.

(1) Redistribution in the form of grants may only be to eligible recipients of grants under part 308.

(2) Redistribution in the form of loans, loan guarantees, or equivalent assistance may be to public or private entities, including private for-profit entities.

(c) Revolving Loan Fund (RLF) applicants must submit an RLF Plan in accordance with this part and RLF guidelines, Appendix A of this part, displayed at EDA's web site, http://www.doc.gov/eda. A copy of the RLF guidelines is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

### § 308.4 Selection and evaluation factors.

(a) Projects will be selected in accordance with part 304 of this chapter and the additional criteria as provided in subsections (b) and (c), as applicable.

(b) *Strategy grants.* EDA will review strategy grant applications for:

(1) Proper authority, mandate, and capacity of the applicant to lead and manage the planning process and strategy implementation;

(2) Representation of the public and private sectors in the development of the strategy's objectives. Representation may include: Public program and service providers, trade and business associations, educational and research institutions, community development corporations, minorities, labor, low-income, etc.; and

(3) The proposed scope of work for the strategy focuses on the structural economic problem(s) and includes provisions for undertaking appropriate research and analysis to support a realistic, market-based, adjustment strategy.

(c) *Implementation Grants.*

(1) EDA will review implementation grant applications for the extent to which,

(i) The strategy shows

(A) An understanding of the economic problems being addressed;

(B) An analysis of the economic sectors that constitute the community's economic base, including particular strengths and weaknesses that contribute to or detract from a community's current and potential economic competitiveness;

(C) Strategic objectives that focus on stimulating investment in new and/or existing economic activities that offer good prospects for revitalization and growth; and

(D) Identified resources and plans for coordinating such resources to implement the overall strategy; and

(ii) The proposed project is identified as a necessary element of or consistent with the strategy.

(2) *Revolving Loan Fund (RLF) Grants.* For applicants asking to capitalize or recapitalize an RLF, EDA will review the application for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and/or locations described in the strategy;

(ii) The types of financing activities anticipated; and

(iii) The capacity of the RLF organization to manage lending, create networks between the business community and other financial providers, and contribute to the adjustment strategy.

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

### § 308.5 Applicant requirements.

Each application for a grant under part 308 must:

(a) Include evidence of area and applicant eligibility (see part 301);

(b) Include, or incorporate by reference, if so approved by EDA, a strategy, as provided in § 301.3 (except that a strategy is not required when a funding request is for planning assistance, i.e., a strategy grant);

(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 § 308.2.

### § 308.6 Post-Approval requirements.

(a) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

(b) Projects involving construction shall comply with the provisions of subpart B of part 305.

(c) RLF Supplemental Requirements and Guidelines—RLF grants are subject to the requirements set forth in this part and the publications: EDA's RLF Standard Terms, EDA's RLF Administrative Manual, and EDA's RLF Audit Guidelines, Appendixes B–D of this part displayed at EDA's web site, http://www.doc.gov/eda. A copy of these documents is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

## Appendix A to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund; Plan Guidelines

OMB Approval No. 0610–0095.
Approval expires 07/31/99

### Burden Statement for Revolving Loan Fund Plan

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 40 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

#### Purpose

EDA requires Revolving Loan Fund (RLF) grantees to manage their RLFs in accordance with a plan. The Plan must be approved by EDA prior to the grant award, but may be modified subsequently, with EDA approval,

as provided for in the RLF Administrative Manual (Section X.D.). These guidelines are designed to assist grant applicants prepare and document an RLF Plan that (1) is tailored to supporting implementation of the area's Economic Adjustment Strategy, (2) provides for administrative clarity, continuity and consistency, and (3) is acceptable to EDA.

**EDA Evaluation Criteria**

EDA will use the following criteria in evaluating RLF Plans:

1. The Plan flows from and is consistent with the Economic Adjustment Strategy for the area, as approved by EDA.
2. It is internally consistent, i.e., it is a coherent statement of the strategic purpose of the particular RLF and the various considerations influencing the selection of its financing strategy, policies and loan selection criteria.
3. The financing strategy demonstrates a knowledgeable analysis of the local capital market and the financing needs of the targeted businesses.
4. The financing policies and portfolio standards are consistent with EDA policy and requirements.
5. The strategic objectives defined are sufficiently meaningful, though not necessarily quantified, so that progress toward them can be assessed over time.
6. The administrative procedures for operating the RLF are consistent with generally accepted prudent lending practices for public lending institutions.

**Format and Content**

The format for the Plan provides for two distinct parts: the Revolving Loan Fund Strategy and the Operational Procedures. Each part contains a number of sections designed to facilitate the orderly and logical presentation of the required information. However, the organization of the material and the level of detail provided in the subsections of Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

The title page of the Plan document should show the grant recipient organization's name and the date the Plan was approved. Normally, approval is required to be by resolution of the organization's governing board. States are exempted from this requirement.

**Part I: The Revolving Loan Fund Strategy**

The RLF strategy is the approach selected by the grant recipient organization for using RLF financing as part of the broader business development strategy designed to support achievement of the goals and objectives established through the area/community's economic adjustment or development planning process. The sequence of the subsections of this Part are designed to lead the reader from the general to the more specific, providing the reader with an understanding of how the RLF strategy was arrived at, and establishing the strategic, organizational and programmatic context for the proposed use of the RLF.

*A. Economic Adjustment Program Overview*

A short description of the area's economic adjustment program, i.e., the strategy and the full range of activities planned and being implemented, should be provided. The following topics must be included:

1. The nature and scale of the economic adjustment problem(s) underlying the economic distress statistics that resulted in the area becoming eligible for Section 209 assistance.
2. The process through which the Economic Adjustment Strategy was developed. Was it an outgrowth of an ongoing economic development program, such as the Overall Economic Development Program (OEDP) required for other forms of EDA assistance, or a special initiative undertaken in-house or by a consultant? What community organizations and interest groups were, and continue to be, involved in further refining the strategy and overseeing its implementation?
3. Area resources/assets (potential or actual growth industries, industries that could be more productive, work force skills, natural resources, etc.) on which the strategy is designed to build. What specific opportunities have been identified for expanding or strengthening existing economic activities and/or creating new activities?
4. The strategic adjustment goals and objectives derived from the conclusions described above and an assessment of the capacity of the community to invest in pursuing the opportunities identified.
5. The implementation programs and activities, both underway and planned, that support the strategic objectives. Note that while business development activities should be identified here, in addition to other activities, Section B requires a detailed discussion of the business development strategy.
6. The organizational structure and distribution of responsibility for managing the on-going adjustment program. What agency is responsible for maintaining the adjustment strategy, evaluating results and updating it as needed? What agencies/organizations manage or coordinate implementation of key elements in the overall strategy, in particular, the business development strategy of which the RLF is to be a component.

*B. The Business Development Strategy*

As emphasized in EDA's guidelines for preparing an Economic Adjustment Strategy, a key element of any community's adjustment program should be its business development strategy. A community's business development strategy will depend on the particular opportunities identified for stimulating business investment and productivity. Participation of the business community in the development of the strategy is essential, as is a firsthand knowledge of the characteristics of firms within the targetted economic sectors and their individual needs for assistance.

It is the experience of working with the business sector in designing and implementing a business development strategy that enables the community to (1) determine the need for an RLF, and (2) define the types of RLF investments that will be most effective in complementing other types of business assistance in supporting the objectives of the adjustment program.

If the business development strategy is already well documented in the community's Economic Adjustment Strategy, it need only be summarized sufficiently to provide a bridge between the adjustment strategy and the RLF financing strategy. If not well documented, it should be described in more detail. The following features of the strategy should be addressed:

1. The objectives of the business development strategy, for example, increase the capacity of local firms to supply parts and services to a major local manufacturer, encourage creation of firms to develop and commercialize products that add value to a local resource, assist small manufacturing firms incorporate new production technologies and/or develop new markets, etc.
2. The pertinent characteristics of the businesses or prospective businesses in the economic sectors targeted by the strategy; for example, their size, age, ownership, management, products, markets, competitiveness, production processes, capital, etc.
3. The types of assistance needed by these businesses and would-be entrepreneurs to take advantage of the opportunities identified; for example, access to technical information (market data, new technologies and production processes, exporting), hands-on management and technical assistance, financing, incubator space, etc. How were and are these needs being identified: surveys, on-site interviews, business forums, etc.?
4. The programs/activities being undertaken by the public sector and/or development organizations to address the identified needs. Are there other sources of assistance available; for example, a technical college, business development center, industrial extension service, SCORE program, an SBA Small Business Development Center and/or a Certified Development Corporation, etc.? Are there private sector organizations, industry and/or business associations that promote information exchange and technical support?

*C. The Financing Strategy*

The community's financing strategy should take into account all the sources of financing, public and private, available to support its business development objectives, and should identify the best and appropriate sources to meet the differing creditworthiness and needs of the types of businesses targeted for investment. Analysis of the characteristics of the demand for and supply of financing will determine the appropriate financing niche for the RLF. This should be discussed in terms of the following:

1. The current types of financing needs and opportunities in the targeted business sectors and specific types of firms within them. What further needs and opportunities are expected to emerge as implementation of the strategy progresses?
2. The current availability of public and private financing in the area. What are the prevailing commercial lending policies/restrictions? What role is anticipated for the public and private lenders in supporting the community's business development strategy?

3. The characteristics of the financing niche that the RLF would occupy.

a. Types of businesses/firms?

b. Types of financing?

c. Types of terms?

4. The impact RLF financing is anticipated to have on accomplishing the community's economic adjustment objectives in the next 3–5 years. For example, with respect to:

a. Restructuring/strengthening the local economy.

b. Stimulating private investment, both through leveraging commercial financing and ''showing the way to other investors.''

c. Enhancing job opportunities.

*D. Financing Policies*

Consistent with the role identified for the RLF in the community's financing strategy, and with due consideration for the need to manage and protect the RLF capital, the specific policies designed to govern RLF financing should be discussed as follows:

1. The standard lending terms, and any concessionary or special financing techniques that the RLF will entertain to accomplish the objectives of the business development strategy. Discuss the key factors that will determine how such techniques might be employed.

a. The range of allowable interest rates the RLF will charge borrowers.

b. Requirements for equity or cash injections to be provided by the RLF borrower.

(1) Will the policy be the same for new as opposed to established businesses?

(2) Will any deviations be allowed, e.g., for working capital loans?

c. The standard repayment terms for both working capital and fixed asset loans, and any deviations.

(1) If the RLF anticipates moratoria on principal payments, specify the maximum moratorium period.

(2) What key factors will determine when any deviations will be employed?

2. The types of collateral to be required of borrowers.

3. The minimum and maximum loan sizes that the RLF will entertain.

*E. Portfolio Standards and Targets*

RLF portfolio standards and targets are used by EDA as surrogate measures for the economic performance of an RLF. They should be established as follows:

1. The anticipated percentage of RLF investments in each of the following:

a. Industrial/commercial/Service businesses (Show any subcomponents, if significant and if identified in the business development strategy.)

b. New businesses/expansion/retention

2. The anticipated percentage of the RLF portfolio that will be targeted towards working capital loans and fixed asset loans (note that EDA allows a maximum of 50 percent for working capital loans during the grant disbursement phase of the RLF)

3. Private investment leveraging ratio for the portfolio overall. Sources of private investment that may be included are: financing from other lenders (e.g., banks, investment companies, etc.) or private investment on the part of the borrower or other firms in conjunction with the RLF financing.

4. Cost per job for the portfolio overall.

*F. RLF Loan Selection Criteria*

In addition to the required selection criterion that financing is not otherwise available, what ''economic impact'' criteria will be used to evaluate proposed loans?

*G. Performance Assessment Process*

Describe the process and factors that the grant recipient will use (1) to periodically assess the performance of the RLF in accomplishing its stated economic adjustment objectives, and (2) to modify the RLF Plan as needed.

**Part II: Revolving Loan Fund Operational Procedures**

This part of the RLF Plan is designed to cover in detail the specific operational procedures to be followed by the grant applicant/recipient in administering the RLF.

Section A requires an overview of the organizational distribution of responsibility for the key elements in operating the RLF. Sections B. through E. require, for each item indicated, a short description of (1) how it will be addressed, the procedure/requirement to be used, if any, (2) the documentation that will be used, (3) the party(ies) responsible for carrying out the requirement, and (4) the time frame within which it is to be implemented.

*A. Organizational Structure*

1. Provide an overview of the organizational structure within which the RLF will be operated. For each of the functions critical to the conduct of the RLF's lending activities, identify the responsible parties including any from outside the organization. Use a schematic diagram if helpful.

Critical operational functions include: identification and development of appropriate financing opportunities; provision of business assistance and advisory services to prospective and actual borrowers (identify the types and sources of services available); environmental reviews; and loan management (loan processing, credit analysis, loan write-ups and recommendations, closings, collections and servicing, handling defaulted loans and foreclosures, and compliance with grant requirements). Note that a more detailed description of how some of these functions will be handled is requested in sections below.

2. Describe the size and general composition of the organization's RLF loan board; include experience and occupational requirements. Describe its duties and responsibilities, membership terms and quorum requirements.

An RLF loan board must be responsible for approving loans, all major loan modifications (or waivers), and loan foreclosure actions. It must also be responsible for at least recommending RLF loan policy (actual approval of loan policy may take place at a higher level). The loan board should include members with business experience (representation of targeted industries and/or business sectors is desirable provided it will not cause a conflict of interest), members with financing experience, members from both the public and private sectors and minority members representative of the community. At least one member with financing experience (similar to the type of loans to be made under the RLF program) must be present for each loan decision.

*B. Loan Processing Procedures*

1. Standard Loan Application Requirements—include a list of items or a checklist showing the items to be required of RLF loan applicants. [It is acknowledged that not all items will apply to each loan applicant and that certain situations may require additional items not on the list.]

2. Credit Reports.

3. Appraisal Reports.

4. Environmental Reviews.

5. Standard Collateral Requirements—include requirements for personal guarantees and insurance (hazard, keyman life, flood, and title).

6. Standard Equity Requirements—when listing equity requirements, differentiate between existing and new companies, and fixed asset and working capital loans. Note that an allowable requirement for a working capital loan may simply require a borrower to have a certain net working capital position. Equity is defined as an amount or percentage of capital (or lien free assets) that is required to be added to a project from borrower or investor sources.

7. Loan Write-up—indicate the items to be addressed in the RLF loan write-up. At a minimum, a loan write-up must discuss how the proposed RLF loan is not replacing private lender funding sources—refer to Section IV.B.3. of the RLF Administrative Manual. Other items should include a summary of the firm's history, management, product, production capability, market conditions, financing, collateral, repayment ability, consistency with the RLF's financing policy and whether there are any environmental problems associated with the project. A Loan Write-up summarizes the key aspects of a loan; it is prepared by the RLF grant recipient and is usually provided to the RLF loan board prior to the loan decision.

8. Procedures for loan approvals, documentation of loan board decisions, and notification of borrowers.

*C. Loan Closing and Disbursement Procedures*

1. General Closing Requirements—include documentation required to confirm any needed equity injection and private lender financing.

2. Loan Closing Documentation Requirements—provide a checklist of the standard documents that will be required for the types of loans to be made under the RLF. Indicate any special timing requirements, e.g., Uniform Commercial Code (UCC) searches prior to and/or subsequent to a UCC filing on personal property.

3. Loan Disbursement Requirements—indicate borrower requirements for drawing loan funds, i.e., is a borrower required to provide any evidence (e.g., an invoice) that it has ordered an asset prior to receiving loan funds to ensure that funds are ordered only when actually needed and that they will be

used as agreed in the loan agreement, any pre-disbursement requirements for working capital loans, any special requirements for construction financing, and any other disbursement procedures that are necessary to protect RLF assets.

*D. Loan Servicing Procedures*

1. Loan Payment and Collection Procedures—indicate the standard method(s) of loan payment by RLF borrowers, e.g., payment coupon books, automatic payment withdrawals, or other methods. Indicate any procedures for protection and timely deposit of RLF loan payments. Note that unused RLF funds must be Federally insured if deposited in a financial institution.

2. Loan Monitoring Procedures—indicate the standard procedures for monitoring loan conditions, including requirements/procedures for financial statements, annual insurance renewals, UCC refilings, borrower site visits, tickler files, and compliance with any Federal requirements of the grant.

3. Late Payment Follow-up Procedures—indicate the standard procedures for handling loans that are in arrears up to 90 days and discuss any late penalty requirements (which should be stated in the note).

4. Procedures for Handling Loans over 90 days in arrears.

5. Write-off Procedures—indicate how the RLF will account for loan write-offs.

*E. Administrative Procedures*

1. Procedures for Loan Files and Loan Closing Documentation—indicate what should be included in an RLF loan file, e.g., the application, loan commitment letters, copy of private lender loan agreement, financial statements, annual insurance certifications, annual site visit reports, general correspondence, job reports, etc. Indicate any procedures for safekeeping loan documents, particularly the loan closing documents. At a minimum, all original notes, loan agreements, personal guarantees and security agreements should be placed in a fireproof facility or container.

2. Procedures for Complying with EDA Reporting Requirements—provide an overview of how RLF loan payments and RLF Income sources will be tracked and accounted for in order to meet EDA reporting requirements. [RLF Income sources including interest from loans and from accounts holding idle RLF funds, loan fees, late payment fees, and any other sources of RLF revenue.]

3. Grantee control procedures for ensuring compliance with all grant requirements and for monitoring the RLF portfolio.

Prior to the initial grant disbursement, the grant recipient must also certify that the basic loan documents are in place and that these documents have been reviewed by counsel for adequacy to protect the interests of the RLF. The minimum documents required are:

—Note
—Loan Agreement
—Security Agreement(s)
—Deed of trust or Mortgage
—Agreement of Prior Lienholder

## Appendix B to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Standard Terms and Conditions

Approval expires 07/31/99.

### Burden Statement for Revolving Loan Fund Standard Terms and Conditions

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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### A. Program Statement

These Standard Terms and Conditions apply to all Economic Adjustment Program awards for revolving loan fund activities funded under Section 209 of the Public Works and Economic Development Act of 1965, P.L. 89–136, as amended (42 U.S.C. 3121, *et seq.*).

For the purpose of these Standard Terms and Conditions, (a) the term ''Government'' refers to the Economic Development Administration (EDA); (b) the term ''Recipient'' refers to the undersigned recipient of Government funds under the Agreement to which this attachment is made a part; © the term ''Department'' refers to the Department of Commerce; (d) the term ''Regional Office'' refers to the appropriate Regional Office of the Economic

Development Administration; (e) the term ''Federal Program Officer'' refers to the Regional Director of the appropriate EDA Regional Office (the Federal Program Officer is responsible for programmatic and technical aspects of this award); (f) the term ''Grants Officer'' refers to the Assistant Secretary for Economic Development or his or her designated representative (the Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards); (g) the term ''Project'' refers to the activity for which the Government grant was awarded; and (h) ''RLF'' refers to this revolving loan fund grant project.

**B. Overall Statutory and Executive Order Requirements**

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations issued by a Federal agency and published in the Code of Federal Regulations. To the extent that it is a summary, such term or condition is not in derogation of, or an amendment to, the statute or regulation.

The Recipient shall comply, and require any contractor which provides services on behalf of the Recipient to comply with all applicable Federal, state, territorial, and local laws, in particular, the following Federal public laws, the regulations issued thereunder, Executive Orders and OMB Circulars, and the requirements listed in Section D. herein:

*.01 EDA Statute and Regulations:* Applicable provisions of the Public Works and Economic Development Act of 1965, P.L. 89–136, as amended (42 U.S.C. 3121, *et seq.*)and regulations in 13 CFR, Chapter III.

*.02 Administrative Requirements:* Administrative requirements for grants, OMB Circular No. A–110, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' and its attachments, as amended or as superseded in the Department's regulations, or those found in 15 CFR Part 24, ''Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments,'' as applicable. In the event of inconsistency or conflict between the administrative requirements and EDA's enabling legislation or regulations, the latter shall prevail;

*.03 Civil Rights Requirements:* Title VI of the Civil Rights Act of l964, as amended (42 U.S.C. 2000d–2000d–4); 15 CFR Part 8; Executive Orders 11246 and 11375; 4l CFR Part 60–4; P.L. 92–65, Section 112, prohibiting sex discrimination on programs under the Public Works and Economic Development Act; 13 CFR Part 317 imposing civil rights requirements on recipients; regulations issued pursuant to the Age Discrimination Act of 1965 (42 U.S.C. 6101 *et seq.*) 15 CFR Part 20; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the implementing regulations of the Department of Commerce in 15 CFR 8b, prohibiting discrimination against and providing fair and equitable treatment of the handicapped under programs or activities receiving Federal financial assistance; and such other civil rights legislation, regulations, and Executive Orders as applicable;

*.04 Hatch Act:* Recipient will comply with the provisions of the Hatch Act (5 U.S.C. Section 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment is funded in whole or in part with Federal funds.

**C. General Requirements**

*.01 Grant Terms and Conditions:* The Recipient and any consultant/contractor providing services on behalf of the Recipient shall comply with the Grant Award and all terms and conditions thereto. The decision of the Government in interpreting the terms and conditions of this grant shall be final.

*.02 Compliance with EDA Instructions:* The Recipient shall comply with EDA Revolving Loan Fund guidelines, manuals and other instructions as may be issued from time to time by the Government in connection with the assistance herein offered. All such instructions are to be applied on the effective date of the award.

*.03 Exclusion from Certification and Disclosure requirements:* An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide (preferably in an attorney's opinion) the Government with the citation of the provision or provisions of Federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of Section 319 of Public Law No. 101–121.

*.04 Duplication of Work:* The purpose and scope of work for which this award is made shall not duplicate programs for which monies have been received, committed, or applied for from other sources, public or private. The Recipient shall submit full information about related programs that may be initiated within the award period. The Recipient shall immediately provide written notification to the Federal Program Officer in the event that other Federal financial assistance is received during the award period relative to the scope of work of this award.

*.05 Reimbursement of Costs Prior to Award:* Funds provided under this award shall not be used to pay for the cost of any work started or completed prior to the effective date of this award.

*.06 Other Funding Sources:* Federal-share funds budgeted or awarded for this Project shall not be used to replace any financial support previously provided or assured from any other source. The Recipient agrees that the general level of expenditure by the Recipient for the benefit of program area and/or program designated in the Special Terms and Conditions of this award, or any amendment or modification thereto, shall be maintained and not reduced as a result of the Federal-share funds received under this Project.

*.07 Availability of Information:* The Recipient agrees that all information resulting from its activities and not exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 522, shall be made freely available to the public. This requirement is exclusive to the Recipient and is not applicable to confidential information disclosed or obtained in the normal borrower/lender relationship.

*.08 Procurement Standards & Use of Consultants/Contractors:* The procurement standards and procedures set forth in 15 CFR Part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' Section 24.36 or OMB Circular No. A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' Attachment O or its implementing Department regulation, as appropriate, shall apply to all awards. For all proposals and contracts where costs are expected to exceed the simplified acquisition threshold, the scope of work (request for proposal) and the cost of such must be submitted to and approved by the Government prior to employment of such consultants or contractors. The Recipient shall ensure that any consultant or contractor paid from funds provided under this award either directly or through program income is bound by all applicable award terms and conditions. The Government shall not be liable hereunder to a third party nor to any party other than the Recipient.

*.09 Program Performance Notification:* The Recipient shall inform the Government as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions that materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any EDA assistance needed to resolve the situation.

b. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

*.10 Attorney and Consultant Fees:* The Recipient hereby agrees that no funds made available from this grant shall be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing this grant or other grants or cooperative agreements from EDA.

*.11 Suspension and Termination of Grant:*

a. When a Recipient has failed to comply with the grant award stipulations, standards, or conditions, EDA may, on reasonable notice to the Recipient, suspend the grant and withhold further payments, or prohibit the Recipient from incurring additional obligations of grant funds, pending corrective action by the Recipient or a decision to terminate in accordance with the following paragraphs. EDA shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension, provided they meet the provisions of applicable OMB cost principles and the grant terms and conditions.

b. Whenever the Recipient shall fail in its fiduciary responsibilities, or shall be unable

or unwilling to perform, as trustee of this grant to serve the purpose of the Economic Adjustment program for which it was made, EDA may suspend, terminate or transfer this grant to an eligible successor Recipient, with jurisdiction over the Project area, to administer it as such trustee. The Recipient shall cooperate with EDA in accomplishing the transfer of this grant to such successor Recipient.

c. EDA may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the grant (termination for cause). EDA shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the Federal sponsoring agencies under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties. Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.

d. In accordance with subsections (a) (b) and (c) above, EDA may suspend or terminate any grant for cause based on, but not limited to, the following: (1) failure to make loans in accordance with the RLF Plan, including the time-schedule for loan closings; (2) failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF, as specified in the RLF Administrative Manual, as amended; (3) failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement; (4) failure to comply with prohibitions against conflict-of-interest for any transactions involving the use of RLF funds; (5) failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.

e. EDA or the Recipient may terminate this grant in whole or, in part, when the parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds (termination for convenience). The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the Recipient for the Federal share of the noncancelable obligations, properly incurred by the Recipient prior to termination.

f. If there is a partial termination of the EDA grant, the full amount of the original nonfederal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by the Government.

g. Other grant closeout procedures set forth in 15 CFR, Part 24, or OMB Circular No. A–110, or its implementing Department regulation, as applicable, shall also apply.

**D. RLF Requirements for Recipients and Borrowers**

*.01 Prudent Lending Practices:* The Recipient agrees to administer the RLF in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures and recovery actions. The Recipient agrees to follow local laws and filing requirements to perfect and maintain security interests in RLF collateral.

*.02 Inclusion of requirements in RLF Loan Documents:* The Recipient agrees to incorporate applicable Federal requirements described herein in RLF loan agreements to ensure borrower compliance.

*.03 Annual RLF Plan Certifications:* The Recipient agrees to certify annually to the Government that the RLF is being operated in accordance with the RLF Plan (as referenced in the Special Terms and Conditions of the grant, as amended); and that the RLF Plan is consistent with, and supports, implementation of the current Economic Adjustment Strategy for the project area.

*.04 RLF Plan Modifications:* The Recipient agrees, because economic conditions change and new approaches to stimulating economic adjustment may be needed, to seek EDA approval of such modifications to the RLF Plan as may be required for the RLF to continue to be fully supportive of the area's Economic Adjustment Strategy, as updated and approved by EDA. The Recipient further agrees to request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

*.05 Eligible Area:* The Recipient shall use the RLF only in the areas eligible for Section 209 assistance as approved by the Government and defined in the Special Terms and Conditions of the grant. To add a new eligible area to a previously awarded RLF grant, the Recipient shall obtain the prior written approval of the Government. To ensure that the economic benefits of RLF loans remain within eligible lending areas, the Recipient shall include a *provision* in RLF loan documents to call loans if the economic activity financed is moved outside the eligible lending area.

*.06 Relocation:* The Recipient agrees that RLF funds shall not be used to relocate jobs from one commuting area to another. The Recipient shall include a *provision* in RLF loan documents to call loans if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area or (b) the economic activity financed is moved to another commuting area to the detriment of local workers.

*.07 Grant Disbursement Schedule:* The Recipient agrees, unless otherwise specified in the Special Terms and Conditions of the grant award, to make loans in the initial round of lending at a rate such that no less than 50 percent of the grant funds are disbursed within 18 months, 80 percent within two years and 100 percent within three years of the date of the grant award. The Recipient acknowledges that if it fails to meet any of these disbursement deadlines, the Government will not disburse additional grant funds unless (1) the funds are required to close loans approved prior to the deadline and which will be fully disbursed to the borrower(s) within 45 days, or (2) the funds are required to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) the Government has approved in writing an extension of the deadline. In no event, will the time permitted for full disbursement of the grant funds extend beyond September 30, of the fifth year after the fiscal year of the grant award. Funds not disbursed in accordance with the foregoing will automatically be retained by the Federal Government.

*.08 Capital Utilization Standard:* Subsequent to full disbursement of the grant funds, the Recipient agrees to manage its repayment and lending activities to maintain 75 percent or more of the RLF capital loaned out or committed at all times, unless a different standard has been agreed to in writing by the Government. The Recipient agrees to comply with Government sanctions if the applicable capital utilization standard is not met within a reasonable time period.

*.09 Civil Rights:* The Recipient agrees that RLF funds will be made available on a nondiscriminatory basis and that no applicant will be denied a loan on the basis of race, color, national origin, religion, age, handicap, or sex. The Recipient agrees to market the RLF program to prospective minority and women borrowers. The Recipient shall include a *provision* in the RLF loan documents that prohibits borrowers from discriminating against employees or applicants for employment or providers of goods and services. The Recipient agrees to monitor borrower compliance with civil rights laws.

*.10 Environment:* The Recipient shall develop and implement an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91–190), as implemented by the ''Regulations'' of the President's Council on Environmental Quality (40 CFR Parts 1500–1508).

In addition, the Recipient shall indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of site(s) or construction, renovation or repair of any facility or site(s), if applicable, to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property;

The Recipient shall adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan shall provide for disapproval of any loan project which would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. In administering the RLF, the Recipient shall adopt procedures to comply with applicable laws and statutes including, but not limited to, the following:

a. The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

b. The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*);

c. The Coastal Zone Management Act of 1972, P.L. 92–583, as amended (16 U.S.C. 1451, *et seq.*);

d. Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued thereunder by the Economic Development Administration;

e. Executive Order 11990, Protection of Wetlands (May 24, 1977);

f. The Endangered Species Act of 1973 P.L. 93–205, as amended (16 U.S.C.1531, *et seq.*);

g. The Safe Drinking Water Act, P.L. 93–523, as amended (42 U.S.C. 300f–300j–9);

h. The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, *et seq.*);

I. The Resource Conservation and Recovery Act of 1976, P.L. 94–580, as amended (42 U.S.C. 6901);

j. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96–510, as amended, by Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601, *et seq.*) [As deemed necessary, the Recipient shall require compliance with EDA policy and procedures regarding the identification of hazardous and toxic waste on real property affected by RLF activities in accordance with EDA Directive 17.01, promulgated to reduce liabilities for environmental cleanup under CERCLA and SARA. This will require a certification to demonstrate a ''due diligence'' examination of project site(s) and for any environmental contamination that may affect real property for which EDA might be placed in the chain of title, or that is affected by EDA assisted construction activities.];

k. The National Historic Preservation Act P.L. 89–665 (16 U.S.C. 470, *et seq.*), (36 CFR Part 800);

l. Coastal Barriers Resources Act P.L. 97–348 (16 U.S.C. 3501, *et seq.*); and

m. All state and local environmental review requirements with all applicable Federal, state and local standards. The Recipient shall ensure that potential borrowers' environmental submittal is reviewed. Should a proposed RLF project require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement/Report (EIS/EIR) in response to Federal, state or local requirements, the Recipient shall be responsible for ensuring compliance with the requirement prior to providing any loan assistance under the RLF.

*.11 Earthquake Requirements:* For use in new building construction projects: The Recipient is aware of and intends to comply with one of three model Codes outlined by the Committee on Seismic Safety in Construction (ICSSC): 1991 ICBO Uniform Building Code; 1992 Supplement to the BUCA National Building Code; or 1991 Amendments to the SBCC Standard Building Code.

*.12 Flood Hazard Insurance:* Where applicable, the Recipient shall require RLF borrowers to obtain flood hazard insurance pursuant to the Flood Disaster Protection Act of 1973, P.L. 93–234, as amended (42 U.S.C. 4002, *et seq.*);

*.13 Davis-Bacon:* The Recipient shall require borrowers to comply with the Davis-Bacon Act, as amended [40 U.S.C. 276a–276a–5); 42 U.S.C. 3222], when construction is financed in whole or in part by the RLF and when any related construction contract exceeds $2,000.

*.14 Contract Work Hours and Safety Standards Act & Anti-Kickback Act:* The Recipient shall require borrowers to comply, where applicable, with the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327–333) and with the Anti-Kickback Act, as amended (40 U.S.C. 276(c); 18 U.S.C. 874);

*.15 Access for the Handicapped:* The Recipient shall ensure that if the RLF is used in whole or in part to finance a building or facility intended for use by the public or for the employment of physically handicapped, it must be accessible to the physically handicapped, pursuant to Public Law 90–480, as amended (42 U.S. C. 4151, *et seq.*), and the regulations issued thereunder;

*.16 Conflict of Interest:*

a. The Recipient shall not make RLF funds available to a business entity if the owner of such entity or any owner of an interest in such entity is related by blood, marriage, law or business arrangement to the Recipient or an employee of the Recipient or any member of the Recipient's Board of Directors, or a member of any other Board (hereinafter referred to as ''other Board'') which advises, approves, recommends or otherwise participates in decisions concerning loans or the use of grant funds.

b. No officer, employee, or member of the Recipient's Board of Directors, or other Board, or person related to the officer, employee, or member of the Board by blood, marriage, law, or business arrangement shall receive any benefits resulting from the use of loan or grant funds, unless the officer, employee, or Board member affected first discloses to the Recipient on the public record the proposed or potential benefit and receives the Recipient's written determination that the benefit involved is not so substantial as to affect the integrity of the Recipient's decision process and of the services of the officer, employee or board member.

c. An officer, employee or board member of the Recipient shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.

d. Former board members and/or officers are ineligible to apply for or receive loan or grant funds for a period of one year from the date of termination of his/her services.

**E. Financial Requirements**

*.01 Budget:* The line item budget for this award is found in the budget summary of the grant award. Funds budgeted under the RLF portion of a grant shall be used for loan projects and, if specified, for audit costs related to the RLF, but shall not be used for other administrative costs related to the RLF.

*.02 Method of Payment:* Payments will be made by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) System which transfers funds directly to a Recipient's bank account without regard to dollar amount. Initially, the Recipient must complete the Payment Information Form ACH Vendor Payment System (SF 3881) and return it to the EDA Regional Office. The award number must be included on the first line of the COMPANY INFORMATION section. The SF 3881 should first be forwarded to the Recipient's bank so that the bank can fill in the FINANCIAL INSTITUTION INFORMATION section before returning the SF 3881 to the EDA Regional Office.

The completed SF 3881 shall be submitted together with the completed Request for Advance or Reimbursement (SF 270), to the EDA Regional Office. Subsequently, only a completed SF 270 is necessary to request a transfer of funds unless information on the original SF 3881 has changed. *Note:* When completing SF 270 for an ACH/EFT transfer of funds, *type* ''ACH/EFT'' in Item No. 10 of the form to indicate a transfer of funds through the Automated Clearing House Electronic Funds Transfer System.

*.03 Request For Budget Change:* Request for budget changes must be submitted to the Federal Program Officer for approval. However, a budget change involving a reduction in the line item for audit costs for an equal increase in the RLF capital requires only written notification to the Government to be effective.

*.04 Matching and Cost Sharing:* a. Local Share: In affirming this award, the Recipient certifies that the non-Federal share of project costs is committed and is available as needed for the project, that the non-Federal share is from sources which can be used as match for the EDA project and that the non-Federal share is not encumbered or otherwise conditional.

b. To the extent applicable to this award, cash contributions by the Recipient are expected to be paid out at the same general rate as the Federal share, but in no event shall the Federal share be paid out at a faster rate than the Recipient's contribution. Any exceptions must be approved in writing by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash contributions.

c. The approved budget for this award is predicated normally upon a sharing of allowable costs. In the event allowable costs are less than the approved budget, the Federal share of this award will be limited to the Federal pro-rata share of the total allowable costs not to exceed the total Federal dollar amount reflected on the award document. However, consistent with Section C.11.f, the full amount of the nonfederal matching share will be expected to remain for use in the RLF unless otherwise provided for.

*.05 Program Income:* Program Income includes repayments of RLF loan principal and RLF Income (defined in Section E.06 below). Program Income, with the *exception* of current RLF Income, may be used only for relending and must be used by the Recipient (1) prior to requesting a disbursement of EDA grant funds, or (2) concurrently with the proceeds of such a disbursement.

*.06 RLF Income:* RLF Income is defined as interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The Recipient may use RLF Income only to capitalize the RLF and/or to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Special Terms and Conditions of the grant.

If RLF Income will be used to pay for RLF administrative expenses, the Recipient agrees (1) to use RLF Income only for those administrative expenses incurred during the same twelve-month period in which it is earned, and (2) to add any RLF Income remaining unexpended at the end of each period to the RLF capital base. RLF Income added to the RLF capital base may not be withdrawn, other than for lending purposes, without the prior written consent of the Government. The Recipient should refer to current EDA administrative instructions regarding specification of the twelve-month accounting period, the format for documenting income and expenses and such reporting requirements as may be applicable.

*.07 Indirect Costs:* a. The Recipient may use indirect costs as an eligible administrative expense chargeable against RLF Income *if* the indirect costs reflect an established indirect cost rate negotiated and approved by a cognizant Federal agency prior to the year end in which the costs are charged, subject to the limitation in subparagraph b. below.

b. The Department's acceptance of negotiated rates as provided in this section is subject to total indirect costs not to exceed 100 percent of total direct costs charged against RLF Income. Where the indirect cost rate exceeds 100 percent, a 100 percent rate shall be used to compute the dollar amount of indirect costs.

c. Excess indirect costs will not be used to offset unallowable or disallowed direct costs when the total allowable costs are determined.

d. If the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable OMB costs principles and the following subparagraphs:

1. The Office of Inspector General (OIG) is authorized to negotiate indirect cost rates on behalf of the Department for those organizations which the Department is cognizant. The OIG will negotiate only fixed rates. The Recipient is required to submit to the OIG (with a copy of its transmittal letter provided to the Grants Officer) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates 90 days prior to the year end in which indirect costs will be charged. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income for that year will not be allowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

2. When a Federal agency other than the Department of Commerce has responsibility for establishing an indirect cost rate, the Recipient is required to submit to that Federal agency (with a copy of its transmittal letter provided to the Grants Officer and the Department of Commerce OIG) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates within the Recipient's fiscal year during which indirect costs will be charged against RLF Income. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income will be unallowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

*.08 Additional Funding and/or Extension of Award:* The Government has no obligation to provide any additional funding in connection with this award. Any renewal of this award to increase funding or to extend the period of performance is at the sole discretion of the Government.

*.09 Debts:* a. Any debts determined to be owed the Federal Government shall be paid promptly by the Recipient. A debt will be considered delinquent if it is not paid within 30 days of the due date. If the debt is not paid by the stated due date, the Recipient shall be subject to late payment charges imposed by the Federal Government. The late payment charges are as follows:

1. Interest charge on the delinquent debt. As established by the Debt Collection Act of 1982, the minimum annual rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. The interest charge shall accrue from the date of the letter which notifies the debtor of the debt and the interest requirements. This rate is published in the **Federal Register** by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness;

2. A penalty charge on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent; and

3. An administrative charge to cover processing and handling of the amount due.

b. State and local governments are not subject to subparagraphs .11 a.2 and 3 above.

c. Once an account receivable has been established or a repayment agreement to pay the debt has been approved, failure to pay the debt by the due date on the billing may result in the suspension of payments to the Recipient under any current Department of Commerce awards and/or placement of the Recipient on a Reimbursement *Only* by Treasury Check method of payment until the debt is paid.

d. If a debt is over 30 days old, any Department of Commerce awards to the Recipient may be suspended and the Recipient may be suspended or debarred from further Federal financial and non financial assistance and benefits, as provided in 15 CFR Part 26, until the debt has been paid in full or until a repayment agreement has been approved and payments are made in accordance with the agreement. Failure to pay the debt or establish a repayment agreement by the due date will also result in the referral of the debt for collection action.

e. Payment of the debt may not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made during future program visits and audits.

*.10 Interest-Bearing Accounts:* All RLF grant funds disbursed to reimburse Recipients for loan obligations already incurred must be held in interest bearing accounts until disbursed to the borrower. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the Recipient's account. Interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of $100 per year which may be retained for administrative expenses by states, local governments and Indian tribes per 15 CFR Part 24, and $250 for those subject to OMB Circular A–110 or its implementing Department regulation) and shall be remitted promptly, but no less frequently than quarterly. All checks submitted should state ''EDA'' on their face and the award number followed by the word INTEREST in order to identify the check in question as remittance of interest income. Checks will be sent to the address below: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

*.11 Bonding and Payment of Funds:* Prior to payment of funds hereunder, the Recipient shall provide evidence to the Government that it has fidelity bond coverage of persons authorized to handle funds under this award in an amount determined by the Government sufficient to protect the interests of the RLF and the Government.

*.12 Grant Violations and Ineligible Costs:* The Recipient hereby agrees that the Government may, at its option, withhold disbursement of any award funds if the Government learns, or has knowledge, that the Recipient has failed to comply in any manner with any provision of the award. The Government will withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs which were paid from award funds. If a violation occurs or an ineligible expenditure is made subsequent to full disbursement of the grant, the Government, at its option, may elect to have the Recipient repay the RLF for the amount of any ineligible cost incurred. Failure to remedy an ineligible expenditure or grant violation will be grounds for suspension and/or termination.

**F. Reporting Requirements**

Financial and Performance Reports must be submitted according to the schedule indicated below. Failure to submit required reports in a timely manner may result in (1) withholding payments under this award, (2) deferring the processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s), (3) establishing an account receivable for the difference between the total Federal share of Outlays last reported and the amount

disbursed, and/or, (4) suspending or terminating the grant in whole, or in part.

*.01 Financial and Performance Reports:* The Recipient shall submit financial and status reports to the EDA Regional Office semiannually unless otherwise instructed by the Government. The reports will be in a form prescribed by the Government and shall be submitted for a minimum of one year following full disbursement of the grant. Subsequently, the Recipient may be eligible for graduation to a shortened, annual reporting format at the discretion of the Federal Program Officer. Graduation to the annual report will be based on an assessment of the Recipient's track record and on current RLF operations. The Recipient must obtain written authorization from the Government to convert to the annual reporting option.

Subsequently, the Recipient shall submit annual reports for the duration of the RLF unless the Federal Program Officer determines that more frequent and/or detailed reporting is necessary due to grant violations or other problems. Following remedial action, the Recipient may request the Federal Program Officer to convert back to annual reporting.

a. *Initial Semiannual Report:* Except for recapitalization awards, the Recipient shall submit the initial semiannual report on April 30, covering loan activity for the period ending March 31, (if the grant was awarded from April 1, through September 30), and on October 31, covering loan activity for the period ending September 30, (if the grant was awarded from October 1, through March 31).

b. *Subsequent Semiannual Reports:* Following the initial report, other than for recapitalization awards, the Recipient shall submit subsequent semiannual reports on either April 30, or October 31, covering RLF activity for the periods ending March 31, and September 30, respectively.

c. *Annual Reports:* If authorized by the Government, the Recipient shall submit annual reports in place of semiannual reports as instructed by the Government.

d. *Performance Measures:* The Recipient agrees to submit to EDA as part of the semiannual or annual reports referenced in F.01. (a.), (b.) and (c.) above, the information identified as the Core Performance Measures listed below. EDA will advise the Recipient in writing, not less than 90 days prior to the time for submission, in the event there are any modifications in the information required to be submitted.

*A. Performance and Outcomes at the Completion of the Initial Round of Funding* [1]

- Compliance with implementation schedule for disbursement of RLF dollars.
- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.

1. Private sector dollars.
2. Other dollars leveraged.

- RLF Capital Base (total RLF funding + program income − loan writeoffs).

[1] Full disbursement of the grant award.

*B. Project Outcomes after Full Disbursement of Grant*

- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.

1. Private sector dollars.
2. Other dollars leveraged.

- RLF Capital Base (total RLF funding + program income − loan writeoffs).

*.02 Other Reports:* The Recipient agrees to submit other reports, as may be required from time to time, to the Government.

*.03 Subcontracting Reports:* Recipients of awards which involve both Federal financial assistance valued at $500,000 or more and procurement of supplies, equipment, construction or services shall be required to submit the SF–334, ''MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance.'' Reports shall be submitted on a quarterly basis for the period ending March 31, June 30, September 30, and December 31. Reports are due no later than 30 days following the end of the reporting period during which any procurement in excess of $10,000 is executed under this award. The report should be submitted in duplicate to the EDA Regional Office.

**G. Administrative Cost and Loan Records Retention**

*.01 Administrative Cost Records:* Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three years from the date of disposition, replacement, or transfer of the equipment.

*.02 Loan Records:* Loan files and related documents and records shall be retained over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties, and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

*.03 General:* If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year (or five-year) period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year (or five-year) period, whichever is later.

The record retention periods described in this section (Administrative Cost and Loan Records Retention) are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three years old, unless fraud is an issue.

**H. Audit**

The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

*.01 Requirements:* a. Federal Audit: Under the Inspector General Act of 1978, as amended, 5 USC App. I, section 1 *et seq.*, an audit of this award may be conducted at any time. The Office of Inspector General usually will make the arrangements to audit this award, whether the audit is performed by Inspector General personnel, an independent accountant under contract with the Department, or any other Federal, State or local audit entity.

*b. Recipient Audit:* 1. For awards to institutions of higher education, and other nonprofit organizations, the Recipient is subject to the audit requirements found at 15 CFR Part 29b; for awards to governmental entities, the Recipient is subject to the audit requirements found at 15 CFR Part 29a.

2. Any audit report performed in compliance with the requirements of 15 CFR Part 29a or Part 29b shall be sent to the cognizant Federal agency and to the Federal Program Officer. A copy of the transmittal letter to the cognizant Federal agency should be provided to the Grants Officer. If the Department of Commerce is the cognizant Federal agency, the audit report should be sent to the following address: Federal Audit Clearinghouse, Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

c. For awards where a special award condition stipulates that an audit be conducted of this particular award, the Recipient shall arrange for an audit of the award in accordance with Governmental auditing standards.

*.02 Establishment and Collection of Audit-Related Debts:* a. An audit of this award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due the Government. For this reason, a Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed and the Recipient has the opportunity to comment.

b. A Recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. Unless the Inspector General determines otherwise, the Recipient will be given 30 days from the transmittal of the *draft* audit report in which to submit written comments and documentary evidence.

2. The Recipient will be given 30 days from the transmittal of the *final* audit report in which to submit written comments and documentary evidence. There will be no

extension of this deadline. Based on all of the evidence available at the expiration of this time period, the Department will make a decision on the actions it will take as a result of the final audit report.

3. The Government's decisions to disallow costs under the award and to establish a debt (as well as its decisions on non financial issues) will be sent to the Recipient in an Audit Resolution Determination letter. The Recipient will be given 30 days from the transmittal of this letter in which to pay any debt. This letter will contain information on the procedures to be followed by the Recipient to appeal the Department's decisions. An appeal does not preclude the Recipient's obligation to pay the debt nor does the appeal preclude the accrual of interest on the debt. The appeal must be submitted to the Grants Officer and the Office of Inspector General within 30 days after receipt of the Audit Resolution Determination letter. There will be no extension of this deadline. This appeal is the last opportunity for the Recipient to submit to the Department arguments and evidence that dispute the validity of the audit-related debt.

4. After the opportunity to appeal has expired, or after the final decision on reconsideration has been made, the Department will not accept any submissions from the Recipient concerning its dispute of the Department's decisions on the settlement of costs under the award. If the debt is not paid, the Department will undertake other collection action but will not thereafter reconsider the legal validity of the debt.

c. There are no other administrative appeals available in the Department of Commerce concerning this matter.

**I. Miscellaneous Items**

*.01 Programmatic Changes:* All requests by the Recipient for programmatic changes must be submitted to the Government which will notify the Recipient in writing of the determination.

*.02 Name Check Review:*

a. A name check review shall be performed by the Office of Inspector General on key individuals associated with non profit organizations. b. The Department reserves the right to take any of the actions described in subparagraph H.02 c. below if one of the following occurs as a result of the name check review:

1. Any of the key individuals associated with non profit organizations who are not exempt from the name check review fails to submit the Form CD–346 and, if required, the Form FD–258;

2. The Recipient, key individual, or any other person associated with this award made an incorrect statement or omitted a material fact on the Form CD–346 or Form FD–258; or

3. Significant adverse findings result from the name check review that reflect on the integrity or responsibility of the Recipient and/or key individual.

c. In the event of significant adverse findings from the name check review, the Government, at its discretion, may take one or more of the following actions:

1. Terminate the award immediately for cause;

2. Require the removal from association with the management of and/or implementation of the Project any person or persons and, if appropriate, require that the Grants Officer be afforded the right of final approval of any person or persons to replace any individual removed as a result of this condition; and/or

3. Make appropriate provisions or revisions at the Government's discretion with respect to method of payment and/or financial reporting requirements.

*.03 Prohibition Against Assignment:* Notwithstanding any other provision of this award, the Recipient shall not transfer, pledge, mortgage, or otherwise assign this award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

*.04 Covenant Against Contingent Fees:* Unless otherwise specified in the Special Award Conditions, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial, or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of the warrant, the Government shall have the right to cancel this award without liability or, at its discretion, to deduct from the award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

*.05 Officials Not To Benefit:* No member of or delegate to Congress or resident Federal Commissioner shall be admitted to any share or part of this award or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this award if made to a corporation, education, or nonprofit institution for its general benefit.

*.06 Sub-Award and/or Contract to Other Federal Agencies:* a. The Recipient, subrecipient, contractor and/or subcontractor shall not sub-grant or subcontract the Project in whole or in any part to any agency of the Department of Commerce.

b. The Recipient, subrecipient, contractor and/or subcontractor, shall not sub-grant or subcontract any part of the Project to any other Federal department, agency or instrumentality, without the advance written approval of the Grants Officer.

*.07 Property Management:* The Recipient may utilize RLF Income generated from loan activities to acquire property necessary to administer the RLF. Neither grant funds nor match funds shall be used to purchase property for RLF administration. RLF Income (defined in Section E.06) can only be used to acquire necessary RLF property to the extent of the benefits received.

Eligible property for RLF activities will normally include (1) Expendable Personal Property (which includes all tangible personal property, including supplies, other than nonexpendable property), and (2) Nonexpendable Personal Property (which includes tangible personal property, including equipment).

Title to Expendable and Nonexpendable Personal Property acquired in whole or in part with RLF Income for use in the RLF shall vest with the Recipient. The Recipient shall not encumber its title or other interests in RLF property without prior written approval from the Government. The Recipient shall use and manage nonexpendable personal property as long as needed and shall maintain nonexpendable personal property records, control systems and physical inventories.

a. Disposition of Personal Property: In the ordinary course of business, the Recipient may dispose of personal property for upgrading purposes or when no longer needed for the project activity. The RLFs share of the proceeds from any disposition shall be treated as a contribution to RLF Income and may be returned to the RLF for lending or used for RLF administrative expenses.

b. Disposition of Expendable and Nonexpendable Property Under RLF Termination: If the RLF is terminated, the Recipient shall submit a request for disposition instructions to the Federal Program Officer who shall provide the Recipient with disposition instructions. Disposition may include one of the following:

1. If the total aggregate fair market value of unused personal property at the termination of the RLF is $1,000 or less for awards subject to OMB Circular A–110 or any Department rule superseding such Circular, or $5,000 or less for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain or sell the expendable personal property without compensating the Government.

2. If the total aggregate fair market value of personal property at the termination of the award exceeds $1,000 for awards subject to OMB Circular A–110 or any Department rule superseding such Circular, or $5,000 for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain, sell, or otherwise dispose of the property and shall compensate the Government for its share.

3. The following apply only to the disposition of nonexpendable personal property:

(a) The Recipient shall submit a completed form CD–281, ''Report of Government Property in Possession of Contractor'' along with the request for disposition instructions.

(b) The Government's disposition instructions may additionally include the following: (1) The Recipient may be instructed to ship the nonexpendable personal property elsewhere. The Recipient may receive the nonfederal share of the market value plus shipping costs; or (2) for awards subject to the provisions of OMB Circular A–110 or Department regulation superseding such Circular, the Government reserves the right to transfer title to the Federal Government or to a third party named by the awarding agency if the nonexpendable personal property had a unit acquisition cost of $1,000 or more. For awards subject to 15 CFR Part 24, the Government reserves the right to transfer title to the Federal Government or to a third party

named by the awarding agency for any nonexpendable personal property. When title is transferred, the Recipient shall be compensated for its share.

c. Disposition of Real Property Under RLF Termination: If the RLF is terminated and the Recipient holds title to real property through foreclosure or other legal actions, the Recipient shall request disposition instructions from the Regional Program Officer. Disposition may include one of the following:

1. The Recipient shall retain title after it compensates the Federal Government for its share;

2. The Recipient shall sell the property and pay the Federal Government for its share after the deduction of any actual and reasonable selling and fix-up expenses, if any, from the sales proceeds; or

3. The Recipient shall transfer title to the property to the Federal Government provided that in such cases the Recipient shall be entitled to compensation computed by applying the Recipient's percentage of participation in the cost of the project to the current fair market value of the property.

d. Debt Instruments Under RLF Termination: If the RLF is terminated, the Recipient shall request disposition instructions from the Regional Program Officer for disposition of debt instruments in the RLF portfolio.

*.08 Rights to Inventions Made by Nonprofit Organizations and Small Business Firms:* The policy and procedures set forth in Department of Commerce regulations 37 CFR Part 401, Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements, published in the **Federal Register** on March 18, 1987, shall apply to all grants and cooperative agreements made where the purpose is experimental, developmental, or research work.

Pursuant to Executive Order 12899, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its financial assistance Recipients, without making a patent search, knows ( or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner.

To ensure proper notification, if the Recipient uses or has used patented technology under this award without a license or permission from the owner, the Recipient must notify the Department Patent Counsel at the following address, with a copy to the Grants Officer: U.S. Department of Commerce, Office of Chief Counsel for Technology, Patent Counsel, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The notification shall include the following information:

a. The award number.

b. The name of the Department awarding agency.

c. A copy of the patent.

d. A description of how the patented technology was used.

e. The name of the Recipient contact, including an address and telephone number.

*.09 Executive Order 12432, Minority Business Enterprise:* In support of Executive Order 12432, signed by the President on July 14, 1983, the Department of Commerce encourages all Recipients to utilize minority firms and enterprises in contracts under grants and cooperative agreements. The Office of Program Development, Minority Business Development Agency, will assist Recipients in matching qualified minority enterprises with contract opportunities. For further information contact: U.S. Department of Commerce, Minority Business Development Agency, Office of Program Development, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

*.10 Internal Revenue Service (IRS) Information:* a. A Recipient classified for tax purposes as an individual, partnership, proprietorship, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number or employer identification number as applicable) on Form W–9, ''Payer's Request for Taxpayer Identification Number.''

Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. The Recipient should submit the form to the Grants Officer within 60 days of the effective date of award.

The Department provides the Recipient's TIN to the IRS on Form 1099–G, ''Statement for Recipients of Certain Government Payments.'' Applicable Recipients who either fail to provide their taxpayer identification number or provide an incorrect number may not be eligible for funding or have funding suspended until the requirement is met.

b. Privacy Act Statement—Mandatory Disclosure, Authority, Purpose, and Uses: Disclosure of your social security number or employer identification number is mandatory for Federal income tax reporting purposes under the authority of 26 U.S.C., Section 6011 and 6109(d), and 26 CFR Part 301, Section 301.6109–1. This is to ensure the accuracy of income computation by the Internal Revenue Service. This information will be used to identify an individual who is compensated by funds of the Department of Commerce or paid interest under the Prompt Payment Act. A Recipient who either fails to provide the taxpayer identification number or provides an incorrect number may not be eligible for funding or have funding suspended until requirement is met. This information is being provided to the Internal Revenue Service on Form 1099.

*.11 Government wide Debarment, Suspension and Other Responsibility Matters (Nonprocurement):* a. This award is subject to Executive Order 12549, Debarment and Suspension, and 15 CFR Part 26, ''Government wide Debarment and Suspension (Nonprocurement).'' A person (as defined at 15 CFR § 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized in writing by the Department.

b. The Recipient shall provide immediate notification to the Grants Officer if at any time the Recipient learns that its certification, Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' was erroneous when submitted or has become erroneous by reason of changed circumstances. Subrecipients in lower tier transactions shall provide the same updated notice to the Recipient.

c. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§ 26.215, 26.220, and/or 26.625, the Recipient of this award shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR Part 26.215. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate.

d. The Recipient shall require each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the $100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over) at any tier under this award to file a certification, Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' without modification, for it and its principals in any proposal/solicitation submitted in connection with the lower tier covered transaction. Certifications shall be retained by the Recipient.

e. The Recipient shall include the following provisions regarding debarment and suspension in all subtier covered transactions:

1. This lower tier covered transaction is subject to Executive Order 12549, ''Debarment and Suspension,'' and 15 CFR Part 26, ''Government wide Debarment and Suspension (Nonprocurement).'' Unless authorized by the Department in writing, a person (as defined at 15 CFR § 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized by the Department.

2. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§ 26.215, 26.220, and/or 26.625, the Recipient of this lower tier covered transaction shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient of this sub-award shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR § 26.215.

f. The Recipient shall include the following provision in each application and in each bid for a lower tier covered transaction at any tier under this award:

Each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the $100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over the award) at any tier under this Federal award must file Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' without modification, at the time of application/bid.

Applicants/bidders should review the instructions for certification included in the regulations before completing the certification. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Certifications shall be retained by the Recipient.

*.12 Restrictions on Lobbying (applicable to awards exceeding $100,000 in Federal funding):* a. This award is subject to Section 319 of Public Law 101–121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. The Recipient of this award and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

b. The Recipient shall require each person who requests or receives from the Recipient a sub-grant, contract, or subcontract exceeding $100,000 of Federal funds at any tier under this award, to file Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' without modification, and, if applicable, SF–LLL, ''Disclosure of Lobbying Activities,'' form regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient, who shall forward all disclosure forms to the Grants Officer.

c. The Recipient shall include the following provision in all contracts, subcontracts, or sub-grants:

This contract, subcontract, or sub-grant is subject to Section 319 of Public Law 101–121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. Each bidder/applicant/recipient of this contract, subcontract, or sub-grant and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

d. The Recipient shall include the following contract clauses regarding lobbying in each application for a sub-grant and in each bid for a contract or subcontract exceeding $100,000 of Federal funds at any tier under the Federal award:

Each applicant/recipient of a subgrant and each bidder/applicant/recipient of a contract or subcontract exceeding $100,000 of Federal funds at any tier under the Federal award must file Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' and Standard Form–LLL, ''Disclosure of Lobbying Activities,'' regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the Federal award, who shall forward all disclosure forms to the Grants Officer.

Each subgrantee, contractor, or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form within 15 days of the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the Federal award (grant), who shall forward all disclosure forms to the Grants Officer.

## Appendix C to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Administrative Manual

OMB Approval No. 0610–0095
Approval expires 07/31/99

**Burden Statement for Revolving Loan Fund Administrative Manual:**

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**I. Purpose**

This Manual describes the compliance, reporting, grant record keeping and other administrative requirements and procedures that apply to Revolving Loan Fund (RLF) grants funded by the Economic Development Administration (EDA) under Section 209 of the Public Works and Economic Development Act of 1965, as amended. These requirements apply to new RLFs and to the future actions of all RLFs funded prior to the Manual's effective date. The requirements apply to RLFs funded under the Sudden and Severe Economic Dislocation (SSED) and the Long-Term Economic Deterioration (LTED) components of Section 209. They also apply to the revolving phases of RLFs funded for the initial purpose of providing financing to one or more identified business firms.

**II. Authority**

A. *Grant Recipients as Trustees:* Recipients of EDA grants to operate RLFs hold RLF funds in trust to serve the purpose of the Economic Adjustment program for which the grant award was made. The grant recipient's obligation to the Federal Government continues as long as the Federal interest in EDA RLF assets, in the form of cash, receivables, personal and real property, and notes or other financial instruments developed through the use of the funds, continues to exist. If EDA determines that a grant recipient is failing to meet this obligation, the Agency will assert its equitable reversionary interest in the RLF assets. However, EDA's nonassertion of its interest does not constitute a waiver thereof.

B. *Grantor Authority to Change Policies:* EDA, as the Federal agency charged with implementing the program, is obligated to promulgate policies and procedures applicable to all RLF grant recipients to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote effective use of the funds in accomplishing the purpose for which they were granted.

Pursuant to this obligation, grant terms and conditions require grant recipients to comply with changes in regulations and other requirements and policies that EDA may issue from time-to-time. Such changes apply to actions taken by all grant recipients, existing and prospective, after the effective date of the changes. Loans made by grant recipients prior to the effective date of the changes are not affected unless so required by law.

As a matter of policy, EDA will subject proposed RLF changes to public review when practicable.

EDA's policy is to administer RLF grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic adjustment problems, requests for variances to the requirements of this Manual will be considered if they are consistent with the goals of the Section 209 program and with an RLF's strategy, make sound economic and financial sense, and do not conflict with applicable legal requirements.

C. *Precedence of Grant Documents and Published Regulations:* The Grant Award, executed by EDA and the recipient, together with the Budget, Special Terms and Conditions and the Standard Terms and Conditions, as may be amended, and the current regulations, published at 13 CFR Part 308, constitute the requirements, hereinafter referred to as ''Terms and Conditions,'' applicable to an EDA RLF grant. This Manual is designed to clarify and administratively implement those requirements. In the event of conflict, the aforementioned documents take precedence over this Manual.

**III. Grantee Responsibilities**

A. *Prudent Lending Practices:* RLF grant recipients are required to operate RLFs in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, servicing and administrative procedures, as outlined in the current RLF Plan Guidelines.

B. *Protection of RLF Assets:* RLF grant recipients are required (1) to obtain adequate and appropriate collateral from borrowers, and (2) to act diligently to protect the interests of the RLF, through collection, foreclosure, or other recovery actions on defaulted loans.

C. *Federal Requirements Applicable to Grant Recipients:* Grant recipients are responsible for complying with the Federal laws and regulations, Executive Orders and Office of Management and Budget (OMB) Circulars which are referenced in the Terms and Conditions, as may be amended, for RLF grants. These include administrative and audit requirements, cost principles, and other laws, regulations and Executive Orders pertaining to requirements from civil rights to lobbying restrictions.

D. *Federal Requirements Applicable to RLF Borrowers:* Grant recipients are responsible for ensuring that prospective borrowers are aware of, and comply with, the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. The most common of these requirements relate to environmental protection, civil rights, Davis-Bacon wage rates and handicap access on construction projects, and the prohibited use of RLF funds for businesses that relocate jobs from one commuting area to another.

Grant recipients are responsible for developing an appropriate review process in accordance with the intent of the National Environmental Policy Act of 1969, (P.L. 91–190) as amended, as implemented by the ''Regulations'' of the President's Council on Environmental Quality. The process shall include disapproval of loan projects which would adversely (without mitigation) impact floodplains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. Grant recipients are also responsible for openly marketing the RLF to prospective minority and women borrowers, and monitoring borrower compliance with civil rights requirements that prohibit borrowers from discriminating against employees or applicants for employment, or providers of goods and services. These and the other Federal requirements described in the Terms and Conditions of each grant should be included, as applicable, in each RLF's standard loan agreement to ensure borrower compliance where necessary. Grant recipients are expected to act diligently to correct instances of noncompliance, including the recall of loans, if necessary.

**IV. Revolving Loan Fund Restrictions**

The following restrictions apply generally to RLFs:

*A. Lending Area Restrictions*

1. *Eligible Lending Area:* The economic activity and the benefits of RLF loans must be located within the eligible areas identified in the grant award.

2. *Modification of the Eligible Area:* Areas within the operational jurisdiction of the grant recipient that were not identified in the grant award, but that meet or may subsequently meet the Agency's criteria for eligibility under Section 209, may qualify to be added to an RLF's eligible lending area. To ascertain qualification, a grant recipient must make a written request to EDA to determine whether a new area is eligible for assistance under existing grant terms. Area eligibility data are updated quarterly and eligibility lists are maintained by EDA's Regional Offices. Unless stipulated otherwise in the grant award, once an area's eligibility is approved by EDA, that area retains its eligibility indefinitely.

3. *Recapitalization Rule:* If EDA funds are used to recapitalize an existing RLF, the new grant funds may be used only in areas eligible for assistance at the time the recapitalization grant is invited (and in areas that become eligible between the time of invitation and the grant award). Areas that were eligible under the previous EDA grant award but not under the new award may continue to receive RLF assistance under the previous grant award only. Areas which become eligible subsequent to the grant award require EDA approval as discussed above in Section IV.A.2.

If a grant recipient has received EDA funds to recapitalize an existing RLF and the respective grants serve different eligible lending areas, the grant recipient is responsible for maintaining adequate accounting records to substantiate that each grant is being used in the appropriate eligible lending area.

*B. Borrower Restrictions*

1. *Eligible Lending Area:* An RLF borrower must retain the activity financed in the eligible lending area for the term of the loan. The RLF's standard loan agreement should include a provision to call the loan if the activity financed is moved from the eligible lending area.

2. *Relocation:* RLF financing may not be used by a borrower for any activity that serves to relocate jobs from one commuting area to another. This applies both to a

business which uses RLF financing to relocate jobs into an eligible area from a different commuting area, and to a business which relocates jobs, created as a result of RLF financing, to a different commuting area. An RLF's standard loan agreement should include a provision for calling the loan if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area, or (b) the activity financed was subsequently moved to a different commuting area to the detriment of local workers. The commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.

3. *Credit Otherwise Available:* A borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions which would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The grant recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up. A loan write-up must include a discussion of the particular features of the local capital market and/or of the individual borrower or project to be financed that result in the need for RLF financing. It should also briefly describe the key aspects of the business and the loan including a discussion of the prospective borrower's ability to repay.

The grant recipient is also responsible for obtaining supplemental evidence, as appropriate, to support the need for RLF financing. This may include the following:

a. A commitment letter from a participating bank stating the loan terms, the maximum amount to be extended by the bank, and the need for the RLF's participation; and/or

b. Bank rejection letter(s), if obtainable, listing the proposed loan terms.

*Exception to Credit Test:* RLF financing may also be used as an incentive, through favorable loan terms, to attract a new business or a business expansion into an eligible area. The business may be credit worthy but would otherwise not locate in the area without RLF financing as an incentive. To undertake this type of project, the grant recipient must sufficiently document the need for RLF assistance and should obtain certification from the company, stating that it would not locate the proposed project at the intended location without RLF assistance. Grant recipients are cautioned that failure to document adequately the need for an RLF loan may be grounds for declaring a loan ineligible and requiring the grant recipient to repay any outstanding loan balance to the RLF, or return the Federal share to EDA.

4. *Public and Quasi-Public Borrowers:* A public or quasi-public organization is not eligible to receive RLF financial assistance unless (a) the activity financed directly benefits or will directly benefit identifiable business concerns, and (b) there is reasonable assurance that the activity financed will result in increased business activity in the near term.

5. *Private Developers:* Private developers are not eligible for RLF assistance unless the activity financed is non-speculative, consistent with the strategic and lending objectives of the RLF, and directly benefits or will directly benefit identifiable business concerns.

6. *Other:* A grant recipient shall not use its RLF to make a loan to itself or to a related organization.

*C. Financing Restrictions*

1. Loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF are prohibited. To preclude ineligible uses of RLF funds, the purpose of each RLF loan should be clearly stated in the RLF loan agreement.

2. For initial RLF grants, the total dollar amount of loans for working capital purposes may not exceed 50% of the total RLF capital prior to the full disbursement of grant funds, unless otherwise stipulated in the grant agreement. (''*RLF capital*'' consists of the funds which capitalized the RLF plus such earnings and fees generated by RLF activities as may be added to the RLF capital base to be used for lending.) For recapitalization grants and for initial grants after the grant funds are fully disbursed, the portfolio working capital percentage may, with EDA's prior written approval, exceed 50 percent. In reviewing requests to increase the 50 percent limit on working capital loans, EDA will consider, among other things, the grant recipient's experience with working capital loans and whether the request is consistent with the area's Economic Adjustment Strategy and the RLF Plan.

3. RLF capital may not be used to:

a. Acquire an equity position in a private business;

b. Subsidize interest payments on an existing loan;

c. Provide the equity contribution required of borrowers under other Federal loan programs;

d. Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified, and documented in the loan write-up (referenced in IV.B.3 above). Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure or acquiring it to expand it with increased investment. In any case, the resulting economic benefits should be demonstrably consistent with the strategic objectives of the RLF;

e. Refinance existing debt unless:

(1) There is sound economic justification and the grant recipient sufficiently documents in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or

(2) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lienholder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within a reasonable time period (18 months) from the sale of assets sufficient to cover an RLF's expenses plus a reasonable portion of the outstanding loan obligation.

(Note: Since a grant recipient will be required to repay the amount of an ineligible loan, it is recommended that EDA be contacted for clarification or written confirmation if there is any question regarding either of the refinancing exceptions described above.)

4. Prior to full disbursement of grant funds, the grant recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full disbursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the Recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The plan for any loan guarantee activities should include the following information:

a. The maximum guarantee percentage that will be offered;

b. A certification from the RLF attorney that the guarantee agreement is acceptable by local standards. At minimum, the guarantee agreement must include the following: the maximum reserve requirement; the rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults; foreclosures; bankruptcies; collateral disposition and the call provisions of the guarantee; and interest income and loan fees, if any, which will accrue to the RLF.

*D. Interest Rates*

A grant recipient can make loans and loan guarantees to eligible borrowers at interest rates and under conditions determined by the Recipient to be most appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under State law, whichever is lower, but in no event may the interest rate be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if to do so would compromise the ability of the RLF to implement its financing strategy.

*E. Private Leveraging*

Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. This leveraging requirement applies to the portfolio as a whole rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with an RLF loan as part of the same business development project and may include (1) capital invested by the borrower or others, (2) financing from private entities, and (3) 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans. Private investments do not include equity build-up in a borrower's assets or prior capital investments by the borrower unless made within nine months of the RLF loan and with the concurrence of the RLF Recipient. If a grant recipient can

demonstrate that the 2:1 leverage requirement is too restrictive for its lending area and that it impedes the purpose for which the grant was made, it may request EDA to waive or modify the grant agreement.

## V. RLF Capital

### *A. RLF Capitalization*

The original sources of capital for EDA RLFs are normally EDA grant funds and a nonfederal cash matching share. The EDA grant funds and the nonfederal matching funds can be used only for the purpose of making loans under an RLF, unless otherwise provided for in the grant agreement and grant budget, e.g., budgeted audit costs. Costs associated with the preparation of the grant application are not eligible expenses and are not reimbursable from the funds invested as RLF capital.

### *B. Nonfederal Matching Share*

The grant agreement specifies the amount of nonfederal cash share required for an RLF grant. This is usually not less than 25% of the total RLF capital investment. The nonfederal share funds must be loaned either before or proportionately with EDA funds. Upon repayment, the nonfederal share funds are treated the same as EDA funds, repayments of principal must be placed in the RLF for relending and interest payments must be used either for relending or for eligible RLF administrative costs. The nonfederal matching share must be available when needed for lending and must be under the control of the grant recipient (or its designee) for the duration of the RLF for use in accordance with the terms of the grant.

### *C. Partial Termination and Deobligation*

In the event that a portion of the EDA grant is terminated and deobligated (refer to Section XII. below) and is no longer available to a grant recipient due to its failure to meet the terms of a grant, the nonfederal matching share shall remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

## VI. RLF Administrative Costs

### *A. General Requirements*

Grant recipients are responsible for the administrative costs associated with operating an RLF. Evidence of sufficient and reliable sources of funds to cover RLF administrative expenses is a key factor in project selection. As grant funds are disbursed for loans and an RLF begins to generate income from lending activities, such income (referred to as ''RLF Income'' and defined in Section VII.A.), as distinguished from principal repayments, may be used to cover eligible, reasonable, and documented administrative costs necessary to operate the RLF. When RLF Income is used for RLF administrative expenses, rather than added to the RLF capital base for lending, grant recipients are required to complete an RLF Income and Expense Statement as discussed in Section VII.C.2.

### *B. Auditing Costs*

The grant budget accompanying the grant award lists the maximum amount of grant funds that may be used to defray the costs of audits required under the terms of the grant. In addition to funds budgeted in the grant award, audit costs may be reimbursed from RLF Income and from resources of the grant recipient. Audit costs are chargeable against the grant award if permitted in the grant budget and RLF Income to the extent that the costs charged are equitably distributed and reflect the benefits received. Grant funds budgeted for audit costs that are unused may be reallocated to the RLF capital base without EDA's permission. Additional information on grant audits is discussed in Section XI.B. and in EDA's Revolving Loan Funds Grants Audit Guidelines (RLF Audit Guidelines).

### *C. Other Eligible RLF Administrative Costs*

Costs eligible for reimbursement from RLF Income must be consistent with the cost principles outlined in the appropriate OMB cost principle circular (OMB A–21, A–87 or A–122) and with the RLF Audit Guidelines. The requirements for using RLF Income are discussed in detail in Section VII.

Some of the common administrative costs that may be charged against RLF Income include RLF staff salaries and fringe benefits, RLF-related training, travel, marketing, general administration, business counseling and management assistance, portfolio management, materials and supplies, equipment rental and acquisitions prorated based on RLF usage, building rent, outside professional services, insurance, loan closing costs and the costs to protect collateral subsequent to foreclosure.

RLF administrative costs may be separated into direct and indirect costs. Direct costs are those that can be identified specifically with a particular cost objective, such as an RLF program; indirect costs are those that are incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable. All costs charged against RLF Income must be supported by formal accounting records and source documentation. All indirect and joint costs charged against RLF Income must additionally be supported by a cost allocation plan approved by the cognizant Federal agency.

## VII. RLF Income

### *A. Definition*

RLF Income includes interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. (Note that the definition of RLF Income does not include repayments of loan principal because RLF principal repayments represent the return of capital and not ''income''. Consequently, RLF Income is a narrower definition of income than ''program income'' in the Uniform Administrative Requirements For Grants And Cooperative Agreements To State And Local Governments in 15 CFR Part 24.25, which includes principal repayments).

In accounting for RLF Income, any proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be treated as repayments of RLF principal and placed in the RLF for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF Income.

### *B. Eligible Uses*

While RLF Income can be used to pay for eligible and reasonable administrative costs as discussed above, RLF grant recipients are expected to add a reasonable percentage of RLF Income to the RLF capital base to compensate not only for loan losses and the effects of inflation over time, but also to maintain a minimum funding level for the future borrowing needs within the eligible lending area. To determine the appropriate amount of RLF Income to return to an RLF, RLF operators should consider the costs necessary to operate an RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) commitment to the RLF, and the anticipated demand for RLF loans.

(Note: RLF Income that is not used for administrative purposes during the twelve month period in which it is earned must be added to the RLF capital base for lending purposes by the end of the twelve month period (see Section VII.C.2. below for selection of the twelve month period). Only RLF Income earned during a current period may be used for current administrative expenses. RLF Income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.)

### *C. Administrative Requirements*

Grant recipients electing to use RLF Income to cover all or part of a RLF's administrative costs must comply with the following provisions:

1. *Accounting Records:* Grant recipients must (a) maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs, and (b) comply with applicable OMB cost principles and with the RLF Audit Guidelines when charging costs against RLF Income. Records must be retained by grant recipients for at least three years. If fraud is an issue, records must be retained until the issue is resolved.

2. *RLF Income and Expense Statement:* The Recipient must complete the RLF Income and Expense Statement (RLF Income Statement) located in Exhibit A, within 90 days of the twelve month period ending either September 30 or the Recipient's fiscal year end, whichever period is selected by the Recipient. The Recipient shall notify EDA of its selection in its first report to EDA. Once the period is selected, it may not be changed without prior written permission of EDA.

In lieu of completing an RLF Income Statement, the grant recipient may substitute information contained in an independent audit report provided it is in substance and in detail comparable to that provided in the RLF Income Statement. Should an audit report be used, the grant recipient will have to provide additional information certifying certain employee information requested in the RLF Income Statement.

3. *Reporting Requirements:* Grant recipients using fifty (50) percent or more or $100,000 or more of RLF Income for RLF administrative expenses during the selected twelve month period must submit the completed RLF Income Statement to the EDA Regional Office within 90 days of the period ending date. Grant recipients whose RLF Income usage is under 50 percent and less than $100,000 shall retain the RLF Income Statement for three years. The grant recipient shall make it available to EDA personnel upon request.

4. *Ineligible Costs:* For any costs determined by EDA to have been an ineligible use of RLF Income, the grant recipient shall reimburse the RLF or EDA. EDA will notify the grant recipient of the time period allowed for, and the manner in which to make, reimbursement.

**VIII. Revolving Loan Fund Plan**

*A. Purpose*

Grant recipients are required by the terms and conditions of the grant agreement to manage RLFs in accordance with an RLF Plan (Plan) generally approved prior to the grant award. The Plan serves two purposes. First, it summarizes how the RLF will be used to support implementation of the area's economic adjustment strategy, a statutory prerequisite to award of a Section 209 Implementation grant. Second, it documents the operating procedures established by the grant recipient to ensure consistent administration of the RLF in accordance with the Terms and Conditions of the grant and prudent public lending practices.

*B. Format and Content*

The Plan has two distinct parts. Part I, ''The RLF Strategy,'' summarizes the area's economic adjustment strategy, including the business development objectives, and describes the RLF's financing strategy, policies and portfolio standards. Part II, ''RLF Operating Procedures,'' serves as the internal operating manual for the RLF. The grant recipient is required to address a number of topics specifically identified by EDA, but otherwise has considerable discretion in designing and documenting operating procedures appropriate to the relative scale and complexity of its financing function. The required format and content for the two parts of the Plan are described in EDA's RLF Plan Guidelines.

*C. EDA Approval*

Unless specifically otherwise permitted by EDA, the Plan must be approved by EDA prior to the grant award.

*D. Annual Plan Certification*

Grant recipients are required to certify annually with the submission of the program report for the period ending September 30 (see Section XI.A), that the RLF loan board and the grant recipient's governing board have reviewed the RLF's performance for the preceding year relative to the area's adjustment strategy and the RLF Plan and have determined that:

1. The RLF Plan is consistent with and supportive of the area's current economic adjustment strategy; and

2. The RLF is being operated in accordance with the policies and procedures contained in the RLF Plan, and the loan portfolio meets the standards contained therein.

With the exception of States, the certification should normally be in the form of a resolution passed by the grant recipient's governing board. Certification by State grantees should be by an authorized State official.

*E. Plan Modifications*

Approval of modifications to Part I of the Plan may be requested at any time the grant recipient or EDA determines that the Plan is either outdated relative to the current adjustment needs and objectives of the area or specific lending policies and/or requirements are impeding effective use of the RLF as a strategic financing tool. Prerequisites for EDA's consideration of proposed modifications to Part I of the Plan include the following:

1. When the modification request is based on a significant redirection of an area's economic adjustment strategy, it must be accompanied by a copy of the current strategy. The strategy submitted must:

a. Have been prepared or reviewed and updated, as necessary and appropriate, within the last 12 months by the grant recipient or area organization responsible for its preparation and maintenance;

b. Address, for the purposes of EDA, the same geographic/jurisdictional area covered by the original strategy, unless the eligible area has been/is being expanded as provided for by the terms and conditions of the grant;

c. Include the information specified in EDA's current guidelines for preparing and documenting an economic adjustment strategy, including evidence of the continuing need for the RLF; and

d. Provide sufficient evidence that the proposed modifications are necessary and justified.

2. When the proposed modification is designed to permit more effective use of RLF financing in support of its unchanged strategic objectives, the grant recipient must submit adequate written justification for the proposed change(s). Submission of a current adjustment strategy is not required.

3. Certification that the proposed revisions are consistent with EDA policy and do not violate the terms and conditions of the grant.

4. Certification that the purpose and scope of the RLF as a financing tool for supporting implementation of the area's economic adjustment strategy remain unchanged.

5. Certification that prudent management of the RLF assets would not be compromised.

Grant recipients funded prior to the effective date of this Manual are encouraged but not required, unless determined otherwise by EDA, to comply with the new RLF Plan format when modifying any part of their plan.

Operational procedures, as documented in Part II of the Plan, so long as consistent with EDA requirements and the terms and conditions of the grant award, may be modified with the approval of the grant recipient's governing board. A copy of any revisions to Part II should be submitted for the EDA file within 30 days of approval. For grant recipients other than States, Plan modifications should be approved by resolution of the organization's governing board.

**IX. Disbursement of Grant Funds**

*A. Pre-Disbursement Requirements*

1. The grant recipient is required to provide evidence that it has fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of EDA and the RLF. Such insurance coverage must exist at all times during the life of the RLF.

2. The grant recipient is required to provide a certification by an independent accountant familiar with the grant recipient's accounting system that its accounting system is adequate to identify, safeguard, and account for all RLF funds, including RLF Income.

3. The grant recipient is required to certify that the standard RLF loan documents necessary for lending are in place and that these documents have been reviewed by legal counsel for adequacy and compliance with the terms and conditions of the grant. The standard loan documents must include at a minimum, the following: Loan Application, Loan Agreement, Promissory Note, Security Agreement(s), Deed of Trust or Mortgage, and Agreement of Prior Lien Holder.

*B. Disbursement Procedures*

The grant recipient is required to draw grant funds electronically by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) system. A grant recipient may request disbursements only at the time and in the amount immediately needed to close a loan or disburse funds to a borrower. RLF grant funds are considered to be made available to grant recipients on a reimbursement basis (as an obligation is incurred by the grant recipient at the time of loan approval and loan announcement). Grant funds should be requested only for immediate use, i.e., when the intent is to disburse the funds within 14 days of receipt. If grant funds are requested and the loan disbursement is subsequently delayed, a grant recipient may hold the funds up to 30 days from the date of receipt, but should return the funds if disbursement of the grant funds is unlikely within the 30 day period. Returned funds will be normally available to the grant recipient for future drawdown. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency—''EDA'' followed by the grant award number and the words ''Premature Draw.'' The grant recipient may also indicate, if a cover letter is sent, that a credit in the amount of the check is to be made to the grant award number for future drawdown. Checks should be submitted to: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

As stated above, the nonfederal matching share must be disbursed either proportionately with the EDA grant funds or at a faster rate. Interest earned on prematurely drawn grant funds must be returned to EDA at least quarterly for deposit in the U.S. Treasury. (Note: Grantees may deduct and retain a portion of such earned

interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable). Returned interest payments should indicate on the face of the check ''EDA'' followed by grant award number and the word ''Interest''. Checks for interest should be submitted to the same Atlanta, Georgia address as above.

To request a grant disbursement by the ACH/EFT method, a grant recipient must submit a completed Request For Advance or Reimbursement, Standard Form 270 to the EDA Regional Office using the attached Special Instructions (Exhibit B) which are specific to RLF grants. Grant recipients may generally expect to have funds available for subsequent disbursement from five to ten working days after the EDA Regional Office receives the SF 270.

*C. Principal Repayments During Grant Disbursement Phase*

Principal repayments from active RLF loans that are received by the grant recipient must be placed immediately in the loan fund to be available for relending only. As each new loan is made, the grant recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF Income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant (refer to Section V.B. for matching fund requirements). However, RLF Income received during the current period (as defined in Section VII.C.2.) may be held for the duration of the period to cover eligible administrative expenses, and need not be disbursed in order to draw additional grant funds.

*D. Loan Closing/Disbursement Schedule*

RLF loan activity must be sufficient to draw down grant funds in accordance with the prescribed time schedule for loan closings and disbursements to eligible RLF borrowers. Unless otherwise stated in the grant agreement, the time schedule requires that the initial round of lending (i.e., the grant disbursement phase) be completed within three (3) years of the grant award with no less than 50 percent of the grant funds, and of the nonfederal matching share, disbursed within eighteen months and 80 percent within two years.

Should the grant recipient substantially fail to meet any of the prescribed deadlines, additional grant funds will not be disbursed unless (1) funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline, (2) funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) EDA has approved a time schedule extension.

(Note: An approved loan is defined as a loan that has been approved by the RLF loan board but has not been closed. A loan is closed when the loan agreement and note have been signed by the borrower. The full amount of a loan may be disbursed to the borrower at the time of loan closing, or may be disbursed in installments and under conditions specified in the loan agreement.)

*E. Time Schedule Extensions*

Grant recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet any of the required disbursement deadlines. Except under the conditions described, a grant recipient is required to submit a written request for continued use of grant funds beyond the missed deadline. Extension requests must provide good reason for the delay and demonstrate that (1) the delay was unforeseen or generally beyond the control of the Recipient, (2) the need for the RLF still exists, (3) the current or planned use, and anticipated benefits of the RLF remain consistent with the current adjustment strategy and RLF Plan, and (4) achievement of a new proposed time schedule is reasonably possible and why no further delays are foreseen. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA will deobligate (terminate) all or part of the unused portion of grant.

By law, grant funds remain available to EDA for disbursement only until September 30 of the fifth year after the fiscal year of the grant award. No time extensions will be granted beyond that time and any undisbursed funds remaining will be deobligated.

## X. Capital Utilization Standard

*A. Definition*

During the revolving phase, grant recipients are expected to manage their repayment and lending schedules to maximize the amount of capital loaned out or committed at all times. Under normal circumstances, at least 75 percent of an RLF's capital should be in use. [RLF Income earned during the current period (as defined in Section VII.C.2) is not included as RLF capital.] EDA may recognize exceptions for RLFs whose Plan calls for making loans that are large relative to the size of the capital base. RLFs with capital bases in excess of $4 million are expected to maintain a proportionately higher percentage of their funds loaned out. The percentage will be determined by EDA on a case-by-case basis.

When the percentage of capital loaned out falls below the applicable standard, the dollar amount of the funds equivalent to the difference between the actual percentage of capital loaned out and the standard is referred to as ''excess funds.''

*B. Deviation*

In the event that there are excess funds at the time a semiannual report is due, the grant recipient must submit an explanation of the situation with the report, and if there is a significant deviation from the standard, as determined by EDA, the grant recipient must describe the remedial action to be taken.

*C. Sequestration of Excess Funds*

At any time subsequent to a second consecutive report showing that the applicable standard has not been met, EDA may require the grant recipient to deposit excess funds in an interest bearing account; that portion of the interest earned on that account, attributable to the EDA grant, will be remitted to the U.S. Treasury. EDA approval will be required to withdraw sequestered funds.

*D. Persistent Noncompliance*

EDA will normally give the grant recipient a reasonable period of time to loan the excess funds and achieve the standard. However, when a grant recipient fails to achieve the applicable standard after a reasonable period of time, as determined by EDA, the grant will be subject to sanctions for suspension and/or termination as described in Section XII of this Manual.

## XI. Monitoring

EDA monitors grant recipients for compliance with the Terms and Conditions of the grant, for performance against national norms and individual portfolio standards, and for the contribution of the RLF to the area's economic adjustment process. Monitoring and performance assessments are based on periodic reports submitted by the grant recipients, organizational and Federal audits, and site visits by EDA staff.

*A. Reports*

1. *Grant Status Reports:* Grant recipients are required to submit standard Federal grant status reports to EDA during the grant disbursement phase as specified in the Terms and Conditions of the grant agreement. These include: (a) Standard Form 270, Request for Advance or Reimbursement, which is submitted each time a grantee needs to draw Federal funds (see Section IX.B. and Exhibit B); and (b) Standard Form 272, Federal Cash Transactions Report (Exhibit C), which is due within 15 days following the end of each calendar quarter and shows the status of grant funds. Failure to submit a Standard Form 272, when due, will prevent a grant recipient from obtaining funds until the form is submitted.

2. *Financial and Performance Reports:* All grant recipients are required to complete and submit Financial and Performance Reports (Exhibit D) semiannually unless otherwise notified by EDA.

a. Initial Report: For grants, other than recapitalizations, awarded between October 1, and March 31, the initial report due date is the following October 31. For grants awarded between April 1 and September 30, the initial report due date is the following April 30.

b. Subsequent Reports: After the initial report, the semiannual report is due on October 31, for the period of loan activity ending September 30, and April 30, for the period ending March 31.

Generally, RLF grant recipients will be required to submit reports to the EDA Regional Office every six months for a minimum of one year after disbursement of all grant funds, after which a grant recipient may be eligible for ''graduation'' to a shorter, annual reporting format (Exhibit E). Grant recipients must request this in writing. Recipients of recapitalization grants shall report on the full amount of their RLF funds in each subsequent semiannual or annual report submitted.

3. *Annual Reports:* For grant recipients graduated to an annual reporting schedule, the report covers the twelve month period ending September 30, and is due October 31. The annual reporting requirement continues through the life of an RLF unless EDA determines that more frequent or detailed reports are needed for closer monitoring of grant violations or other problems. Note that the annual report requires documentation of capital utilization at semiannual intervals pursuant to the requirements of Section X.

4. *Special Reports:* Special reports to enable EDA monitoring of compliance issues arising from audits, site visits, or other reviews may be requested from the grant recipient in writing on a case by case basis.

First time grant recipients may be required to submit periodic reports on their progress in initiating RLF activity, prior to the due date of the first semiannual report.

*B. Audits*

Grant recipients are subject to the following audit requirements for the duration of the RLF.

1. In accordance with the terms and conditions of the grant award, the grant recipient shall arrange for a Single Audit as referenced in the RLF Audit Guidelines and OMB Circular A–133. Such audits should be conducted by an independent auditor who meets the general standards specified in generally accepted government auditing standards. With the exception of newly awarded grants and limited circumstances described in the RLF Audit Guidelines, the majority of RLF grant recipients will require an annual audit.

Pursuant to the Single Audit Act Amendments of 1996 (P.L. 104–156), and OMB Circular A–133, as codified in DOC Regulations found at 15 CFR Part 29, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least $300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. The cost principles to be followed are contained in OMB Circulars A–21, A–87 or A–122, as applicable.

Audit requirements for RLF's are summarized in the EDA RLF Audit Guidelines which should be made available to the auditor prior to the audit engagement. Failure to comply with these requirements could result in an unacceptable audit.

2. The U.S. Department of Commerce Office of Inspector General (OIG) may audit, inspect, or investigate an RLF grant at any time.

*C. Site Visits*

EDA will periodically schedule site visits to review the grant recipient's operating procedures, monitor progress and evaluate the effectiveness of the RLF in supporting the area's economic adjustment process and strategic objectives.

**XII. Noncompliance With the Grant Terms**

*A. Suspension*

EDA may suspend RLF lending activity when EDA determines that a grant recipient has failed to comply with the grant terms. Before suspending a grant, EDA may give the grant recipient a reasonable period of time in which to take the necessary corrective action to comply with the grant terms. However, should it appear that the grant recipient had not taken or will not take the necessary action, and/or that continued operation of the RLF would place the assets at risk, EDA may suspend the grant immediately. Upon suspension, the grant recipient will be prohibited from any new lending activity, although normal loan servicing and collection efforts will continue. In addition, the grant recipient may be subject to restrictions on the use of RLF Income and specific actions to protect the RLF assets may be required.

In the event that the compliance problems are not resolved during the suspension period, EDA will attempt to resolve the issues through means including working with the Recipient to identify a successor to assume responsibility for administering the RLF in accordance with the terms of the original grant agreement. If issues cannot be resolved, EDA will initiate proceedings to terminate the grant for cause.

*B. Termination for Cause*

EDA may terminate an RLF grant for cause with or without prior suspension of lending activity.

*C. Partial Termination*

When EDA determines, after a reasonable period of time, that a grant recipient is unable or unwilling to use the full amount of the grant funds or of the RLF capital and RLF Income thereby generated, EDA may partially terminate the grant if EDA determines that the remaining capital is sufficient to support continuation of an effective RLF operation.

When a grant recipient fails to complete the initial round of lending in the time schedule provided in the grant agreement, the unused grant funds may be deobligated and the grant award amended to reflect the reduced grant amount. The nonfederal matching share will be expected to remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

Grant recipients in the revolving phase who persistently fail to make maximum use of the available RLF capital, as defined by the applicable capital utilization standard in Section X, will be required to return excess funds, in an amount determined by EDA, to the U.S. Treasury. This amount will not be greater than EDA's proportionate share of the excess funds sequestered at the time. The grant award will be amended to reflect the reduced amount of EDA's participation.

**XIII. Termination for Convenience**

A grant recipient has the right to request termination for convenience of the grant, in whole, or in part, at any time. Termination is undertaken without prejudice to the grant recipient upon agreement of both parties that the purpose of the grant would not be served by further expenditure of funds, and in the case of a partial termination, EDA determines that sufficient funds remain to permit an effective RLF operation. The Federal share of the funds must be returned to the U.S. Treasury as described below in Section XIV.

**XIV. Recovery of EDA Interest in the RLF Assets**

In case of termination, for cause or convenience, EDA has the responsibility, on behalf of the Federal Government, to recover its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EDA's fair share is the amount computed by applying the percentage of EDA participation in the total capitalization of the RLF to the current fair market value of the assets thereof; provided that with EDA's approval the Recipient may use for other economic development purposes that portion of such RLF property which EDA determines is attributable to the payment of interest on RLF loans and not used by the Recipient for administrative or other allowable expenses. In addition, EDA has the right to compensation, over and above its share of the current fair market value of the assets, when it is determined that the value of such assets has been reduced by the improper/illegal use of grant funds.

**XV. Sale or Securitization of Loans**

Grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or securitization of the loan portfolio to generate money to be used for additional loans as part of the RLF. A grant recipient contemplating such an action is advised to consult with EDA prior to development of a formal proposal.

In the event of the sale, collection, or liquidation of loans, any proceeds, net of repaid principal and reasonable administrative costs incurred, up to the amount of the outstanding loan principal, must be returned to the RLF for relending. Any net proceeds from loan sales above the outstanding loan principal is considered RLF Income and must either be added to the RLF capital base for lending or used to cover eligible costs for administering the RLF in accordance with the rules for use of RLF Income.

**XVI. Appendix**

The following reference materials and required or sample reporting formats are available from EDA:

*OMB Circulars and CFR'S (List of Reprints)*

15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

OMB Circular A–87, Cost Principles for State and Local Governments

15 CFR Part 29a, Audit Requirements for State and Local Governments

15 CFR Part 29b, Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations

OMB Circular A–133, Audits of States, Local Governments and Nonprofit Organizations

OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations Uniform Administrative Requirements

OMB Circular A–122, Cost Principles for Nonprofit Organizations

OMB Circular A–21, Cost Principles for Educational Institutions

48 CFR Part 31, Contract Cost Principles and Procedures

15 CFR Part 26, Governmentwide Debarment and Suspension and Governmentwide Requirements for Drug Free Workplace

*EDA Reference Materials and Reporting Formats*

EXHIBIT A: RLF Income and Expense Statement with Instructions

EXHIBIT B: Request for Advance or Reimbursement (SF–270) with EDA Special Instructions

EXHIBIT C: Federal Cash Transaction Report (SF–272)

EXHIBIT D: Semiannual Report for RLF Grants with Instructions

EXHIBIT E: Annual Report for RLF Grants with Instructions

**BILLING CODE 3510–24–P**

**EXHIBIT A**

## RLF INCOME AND EXPENSE STATEMENT

For The (Most Recent) 12 Month
Period Ended:_____

| | Most Recent Period | Prior Period |
|---|---|---|
| 1. RLF INCOME | $ | $ |
| 2. EXPENSES CHARGED TO RLF INCOME | | |
| a. Employee Salaries | $ | $ |
| b. Employee Fringe Benefits | $ | $ |
| c. RLF-related Travel | $ | $ |
| d. Loan Processing/Closing Costs | $ | $ |
| e. Professional Services | $ | $ |
| f. Marketing | $ | $ |
| g. RLF Staff Training | $ | $ |
| h. Equipment - Rental | $ | $ |
| - Acquisition | $ | $ |
| i. Space (rent) | $ | $ |
| j. Audit | $ | $ |
| k. Indirect Costs | $ | $ |
| l. Other (Specify) | $ | $ |
| 3. **TOTAL EXPENSES** (sum 2.a thru 2.l) | $ | $ |
| 4. **NET RLF INCOME** (1 minus 3) | $ | $ |
| 5. Cumulative **NET RLF INCOME** | $ | $ |
| 6. EXPENSES as % of RLF INCOME (3/1) | % | % |

7. For the current 12 month period, provide an estimate of projected RLF Income and the percentage expected to be used for RLF administrative expenses.
Projected RLF Income: $_____ % for Administration: _____ %

8. On a separate page, list all personnel positions which were funded partially or in full with RLF Income for the most recent period only; list the aggregate dollar amount for salaries and fringe benefits for each listed position, and the amount and percent which were funded by RLF Income.

CERTIFICATION OF AUTHORIZED REPRESENTATIVE (designated RLF Administrator or Chief Financial Officer): I certify that the above information and any attachments thereto are complete and accurate to the best of my knowledge.

By:_____ Date: _____

Name and Position: _____

BILLING CODE 3510–24–C

**Exhibit A (back)—Instructions for RLF Income and Expense Statement**

The RLF INCOME AND EXPENSE STATEMENT is to be used by recipients of revolving loan fund (RLF) grants provided by the Economic Development Administration (EDA), U.S. Department of Commerce. The Statement is to be completed for each year in which a grantee uses income generated from RLF activities to pay for RLF administrative expenses. It should be completed within 90 days of a grant recipient's fiscal year end or September 30. The period will be selected by the grant recipient; once selected, it may not be changed without the prior approval of EDA. Instructions for submitting the Statement are included in the EDA Administrative Manual, Section VII. Expenses charged to RLF income sources must be eligible under the terms of the grant and must comply with applicable OMB cost principles and the EDA RLF Audit Guide. For grantees completing the Statement for the first time, or which did not charge any expenses against RLF income sources in a prior period, complete only the second column marked ''Most Recent Period'' and answer questions 7. And 8.

Except for the items explained below, all items on the Statement are self-explanatory or are adequately addressed in the RLF Audit Guide and applicable OMB Cost Principles.

Item and Entry

1 ''RLF INCOME'' includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, and loan fees and other loan-related earnings.

2d Enter the amount of grantee out-of-pocket costs which were necessary to process and close RLF loans. These costs may include such costs for credit reports, title insurance, Uniform Commercial Code searches, filing fees, appraisals, etc., which are recorded in the grantee's accounting records. Any costs not recorded in the grantee's accounting records, e.g., those paid directly by a borrower to a third party, or those that were netted against loan fees (thereby reducing reported income), need not be reported here.

2g Enter the costs charged to RLF Income for RLF-related training for employees involved in RLF operations. These costs may include training materials, textbooks, tuition and registration fees. Any training-related travel costs should be reported in Item 2c.

5 ''Cumulative NET RLF INCOME'' includes all RLF Income earned during the life of the RLF that was not used for RLF administrative expenses. The amount reported should be inclusive of the NET RLF INCOME reported in Item 4. (The Cumulative NET RLF INCOME for the most recent period should equal the sum of the amounts in Item 5 for the prior period and in Item 4 for the most recent period.

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## EXHIBIT B

| REQUEST FOR ADVANCE OR REIMBURSEMENT (See Instructions on back) | OMB Approval NO. 0348-0004 | Page | of Pages |
|---|---|---|---|
| 1. TYPE OF PAYMENT REQUESTED | A. "X" ONE OR BOTH BOXES ☐ Advance ☐ Reimbursement<br>b. "X" the applicable box ☐ Final ☐ Partial | 2. BASIS OF REQUEST ☐ CASH. ☐ ACCRUAL | |
| 3. FEDERAL SPONSORING AGENCY AND ORGANIZATION ELEMENT TO WHICH THIS REPORT IS SUBMITTED | 4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY | 5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST | |
| 6. EMPLOYER IDENTIFICATION NUMBER | 7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER | 8. PERIOD COVERED BY THIS REQUEST<br>FROM *(mont, day, year)* | TO *(month, day, year)* |
| 9. RECIPIENT ORGANIZATION<br>NAME:<br>NUMBER AND STREET:<br>CITY, STATE and ZIP CODE | 10. PAYEE (where check is sent is different than item 9)<br>NAME:<br>NUMBER AND STREET:<br>CITY, STATE and ZIP CODE | | |

**11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED**

| PROGRAMS/FUNCTIONS/ACTIVITIES | (a) | (b) | (c) | TOTAL |
|---|---|---|---|---|
| a. Total Program - Outlays to Date *(as of date)* | $ | $ | $ | $ |
| b. *Less:* Cumulative program income | | | | |
| c. Net program outlays *(Line* **a** *minus line* **b**) | | | | |
| d. Estimated net cash outlays for advance period | | | | |
| e. Total *(Sums of lines c & d)* | | | | |
| f. Non-Federal share of amount on line **e**. | | | | |
| g. Federal share of amount on line **e**. | | | | |
| h. Federal payments previously requested | | | | |
| I. Federal share now requested *(Line* **g** *minus line* **h**) | | | | |
| j. Advances required by month, when requested by Federal grantor Agency for use in Making prescheduled advances — 1st month | | | | |
| 2nd month | | | | |
| 3rd month | | | | |

**12. ALTERNATE COMPUTATION FOR ADVANCES ONLY**

| | |
|---|---|
| a. Estimated Federal cash outlays that will be made during period covered by the advance | $ |
| b. *Less:* Estimated balance of Federal cash on hand as of beginning of advance period | |
| c. Amount requested *(Line* **a** *minus line* **b**) | $ |

AUTHORIZED FOR LOCAL REPRODUCTION

*(Continued on Reverse)*

*STANDARD FORM 270 (REV. 2-92)*
*PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET*
*Cir. NO. A-102 AND a-110*

## EXHIBIT B

### CERTIFICATION

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

Signature of Authorized Certifying Official | Date Request Submitted

Typed or Printed Name and Title | Telephone (Area Code, Number, Extension

This Space for Agency Use

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the OFFICE of Management and Budget, Paperwork Reduction Project (0348-0004), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

### INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self explanatory; specific instructions for other items are as follows:

| Item | Entry |
|---|---|
| 2. | Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis. |
| 4 | Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement. |
| 6 | Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency. |
| 7 | This space is reserved for an account number or other identifying number that may be assigned by the recipient. |
| 8 | Enter the month, day and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested. |
| Note: | The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, bu not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports. |
| 11 | The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right: however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. |
| 11a | Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees. |
| 11b | Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement. |
| 11d | Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance. |
| 13 | Complete the certification before submitting this request. |

STANDARD FORM 270 BACK (Rev. 2-92)

BILLING CODE 3510–24–P

**Exhibit B (Revised 12/98)—Special Instructions for Completion of Standard Form 270 for EDA Revolving Loan Fund Grants**

These instructions apply to revolving loan fund (RLF) grants funded by the Economic Development Administration (EDA). U.S. Department of Commerce, under Section 209 of the Public Works and Economic Development Act of 1965, as amended. RLF grant recipients are required to use Standard Form 270 to draw grant funds when needed to disburse to RLF borrowers. Funds may be drawn only for immediate use (i.e., when the intent is to disburse the funds within 14 days of receipt), and only to the extent that the recipient does not have funds on hand from loan repayments and certain RLF income sources to cover the proposed disbursement request. (See below and EDA's RLF Administrative Manual, Section IX, for further details.) Grant funds not disbursed within 30 days of receipt must be returned to EDA. Items 1b, 3, 9, 11c, 11e, and 11i are self-explanatory; specific instructions for other items follow:

Item and Entry

1a Indicate whether the request is for a reimbursement or an advance. (Note the RLF disbursements are normally considered reimbursement as a reimbursable obligation is created at the time of loan approval. A request for an advance may be requested under special circumstances.

2 Disregard.

4 Enter the Federal grant number or other identifying number assigned by EDA. If the reimbursement or advance is for more than one grant or other agreement, insert N/A; then show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.

5 Enter in numerical order the number of this disbursement request. Begin with the number ''1'' for each new grant.

6 Enter the employer identification number assigned by the US Internal Revenue Service, or the FICE (institution) code if requested by EDA.

7 This space is reserved for an account number or other identifying number that may be assigned by the grant recipient.

8 Disregard.

10 Enter ''ACH/EFT'' for funds disbursement by the Automated Clearing House Electronic Funds Transfer System. For further details, refer to Section E.02 of the RLF Standard Terms and Conditions.

11 The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate the page number in the space provided in upper right; if more than one column is used, the summary totals of all programs, functions, or activities should be shown in the ''total'' column on the first page.

11a Enter in ''as of date'', the month, day and year of the ending of the accounting period to which this amount applies. Enter the amount of cumulative outlays for RLF loans from the following sources: EDA RLF grant funds, matching funds, and program income (defined in Section VII.A of the RLF Administrative Manual).

Include actual, pending (previous outlays requests that have not yet been disbursed) and proposed (those proposed under this request) outlays. For recapitalized RLF's—those where a subsequent EDA RLF grant was made to the same recipient—treat cumulative outlays as beginning with the inception of the RLF.

11b Cumulative Program Income, as defined below, must be used before or concurrent with the disbursement of new grant funds (pursuant to Section IX of the RLF Administrative Manual). Cumulative Program Income is a net figure computed, as follows:

+Cumulative Principal Repaid*
+Cumulative RLF Income Received**
−*Cumulative Administrative Cost Expensed to RLF Income****

Footnotes:

*This is the cumulative RLF loan principal that has been repaid from inception of the RLF.

**This includes all RLF Income earned and received from inception of the RLF. Current period RLF Income on hand may be excluded from this amount if any portion of it is anticipated to be used during the remainder of the current period. Note that failure to exclude these funds here will increase Cumulative Program Income (line 11b) which will lower the amount of grant funds to be requested for disbursement (line 11i). Any RLF Income available at the end of a period is required to be added to the RLF capital base for lending.

***Enter all administrative costs Expensed to RLF Income from Inception of the RLF.

Definitions

Program Income—is the sum of all RLF principal repayments plus RLF Income (defined below).

RLF Income—includes all RLF-generated income from loan fees, interest earned on loans and on accounts holding idle RLF funds, and other loan-related earnings.

Period—refers to the 12-month reporting period by each grant recipient; it may end on either September 30 or the grantee's fiscal year-end date. (Refer to Section VII.C.2. of RLF Administrative Manual.

11d Enter ''0'' unless an advance of grant funds is being requested—see Item 1a above.

11f Enter the total amount of the matching funds previously expended plus matching funds to be disbursed as part of this request (and any previous pending request, if applicable). When calculating this amount, note that the matching funds amount in 11f as a percent of the amount on line 11c may not be less than the percentage relationship between the aggregate of matching funds and of total project costs indicated in the grant award(s). Matching funds must be expended either before or at least proportionately with EDA grant funds.

11g Enter the EDA share of the amount on line 11e. This should be the difference between the amounts on lines 11e and 11f.

11h Enter the amount of EDA funds previously requested. This should be equal to the amount reported in Item 11g of the previous SF 270 submitted by the recipient.

12 Disregard.

13 In the space indicated for ''agency use'' or on a separate page, provide the following disbursement information:

a. Indicate whether the RLF identified in Section 4 is an ''initial'' or ''recapitalization'' RLF grant. If an initial grant, show the EDA grant funds expended as a percent of total expenditures by dividing the amount reported in Item 11g by the amount reported in Item 11e. If a recapitalization grant, show both the EDA and the matching fund dollar outlays (including actual and proposed outlays) for the grant disbursement; also show the percentage of EDA dollar outlays to total dollar outlays for the grant under disbursement.

b. If any previously requested grant funds have been received but not disbursed, list the date of receipt and the amount remaining to be disbursed. If not applicable, type ''NA''.

c. List the RLF borrowers and the respective RLF dollar amounts anticipated to be disbursed under this request.

BILLING CODE 3510–24–P

## EXHIBIT C

| **FEDERAL CASH TRANSACTIONS REPORT** | **OMB APPROVAL NO. 0348-0003** | |
|---|---|---|
| ***(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)*** | 1. Federal sponsoring agency and organizational element to which this report is submitted. | |
| 2. **RECIPIENT ORGANIZATION**<br>*Name:*<br>*Number and Street:*<br>*City, State and Zip Code:* | 4. Federal grant or other identification number. | 5. Recipient's account number or identifying number. |
| | 6. Letter of credit number | 7. Last payment voucher number |
| | *Give total number for this period.* | |
| | 8. Payment Vouchers credited to your account. | 9. Treasury checks received *(whether or not deposited).* |
| | 10. **PERIOD COVERED BY THIS REPORT** | |
| 3. **FEDERAL EMPLOYER IDENTIFICATION NO.** ▶ | From *(month, day, year)* | TO: *(month, day, year)* |

| | | |
|---|---|---|
| 11. STATUS OF FEDERAL CASH *(See Specific Instructions On Back)* | a. Cash on hand beginning of reporting period | $ |
| | b. Letter of credit withdrawals | |
| | c. Treasury check payments | |
| | d. Total receipts *(Sum of lines* **b** *and* **c***)* | |
| | e. Total cash available *(Sum of lines* **a** *and* **d***)* | |
| | f. Gross disbursements | |
| | g. Federal share of program income | |
| | h. Net disbursements *(Line* **f** *minus line* **g***)* | |
| | I. Adjustments of prior periods | |
| | j. Cash on hand end of period | $ |
| 12. The AMOUNT SHOWN ON LINE 11j. ABOVE. REPRESENTS CASH REQUIREMENTS FOR THE ENSUING DAYS | 13. **OTHER INFORMATION** | |
| | a. Interest income | $ |
| | b. Advances to subgrantees or subcontractors | $ |

14. REMARKS *(Attach additional sheets of plain paper, if more space is required.)*

| 15. **CERTIFICATION** | | | |
|---|---|---|---|
| I certify to the best of my knowledge and belief that this report is true in all aspects and that all disbursements have been made for the purpose and conditions of the grant or agreement | **AUTHORIZED CERTIFYING OFFICIAL** | SIGNATURE | DATE REPORT SUBMITTED |
| | | TYPED OR PRINTED NAME AND TITLE | TELEPHONE *((Area Code, Number, Extension)* |

THIS SPACE FOR AGENCY USE

NSN 7540-01-016-5435

STANDARD FORM 272 (REV. 2-92)
PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET

BILLING CODE 3510–24–C

**Instructions**

Public reporting burden for this collection of information is estimated to average 120 minutes per response, including timer for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0003), Washington, DC 20503.

Please *do not* return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Please type of print legibly, Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item and Entry

3 Enter employer identification number assigned by the U.S. Internal Revenue Service or the FIC (institution) code.

If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of federal Cash Transactions—Continued; otherwise;

4 Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.

5 This space reserved for an account number or other identifying number that may be assigned by the recipient.

6 Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter ''NA'' for not applicable and leave items 7 and 8 blank.

7 Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.

11a Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.

11b Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.

11c Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.

11f Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's Share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.

11g Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.

11i Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under ''Remarks''. Use plain sheets of paper if additional space is required.

11j Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line 3, less line h, plus or minus line I).

12 Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under ''Remarks'' as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.

13a Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under ''Remarks''. Do not report interest earned on advances to States.

13b Enter amount of advance to secondary recipients included in item 11h.

14 In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

BILLING CODE 3510–24–P

**EXHIBIT D** (Rev. 12/98)



## SEMIANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

| | |
|---|---|
| Grantee Name: | Period Ending: |
| Project No.: | Contact Person: |
| | Phone: |

## PART I: PORTFOLIO STATUS (000'S)

**A. Status of Direct Loans**

| | (1) | (2) | (3) | |
|---|---|---|---|---|
| | # | RLF $ Loaned | RLF Principal Outstanding | |
| 1. Total Loans Made | | $ | $ | |
| 2. Fully Repaid | | $ | $ | |
| 3. Current | | $ | $ | |
| 4. Delinquent (<60 Days) | | $ | $ | |
| 5. In Default (>60 Days) | | $ | $ | |
| 6. Total Active Loans (Add lines 3. 4 & 5) | | $ | $ | |
| 7. Total Written Off | | $ | $ | (Amount Lost) |

**B. Status of Loan Guarantees:**

| | # | RLF$ Reserved | Total Amount Guaranteed | Current Exposure |
|---|---|---|---|---|
| 1. Total Loans Guaranteed | | $ | $ | |
| 2. Fully Repaid | | $ | $ | |
| 3. Current | | $ | $ | $ |
| 4. Delinquent (<60 Days) | | $ | $ | $ |
| 5. In Default (>60 Days) | | $ | $ | $ |
| 6. Total Active Guarantees (Add lines 3. 4 & 5) | | $ | $ | $ |
| 7. Total Written Off | | | $ | $ |
| | | | | (Amount Lost) |

**EXHIBIT D** (Rev. 12/98)



## PART II: PORTFOLIO SUMMARY

**A. Summary of Loan Activities**: Provide information below on **Total Loans** and **Active Loans** closed to date. This section provides an overview of the RLF's Progress in Meeting program and grant objectives as well as identifying results of **Core Performance Measures** outlined in Section F.01. of the RLF Standard Terms and Conditions. It also shows trends by comparing the total and active loan portfolios.

| | Total Loans | Active Loans |
|---|---|---|
| 1. # RLF Loans: | | |
| 2. RLF $$ Loaned: | $ | $ |
| 3. Non-RLF $$ Leveraged by RLF: | | |
| a. Private | $ | $ |
| b. Other | $ | $ |
| c. Total Leveraged $$ (a + b) | $ | $ |
| 4. Total Project Financing (2 + 3c) | $ | $ |
| 5. Private Sector Jobs: | | |
| a. Created (Actual) | | |
| b. Saved | | |
| c. Actual + Saved (a + b) | | |
| 6. RLF $$ Loaned for Fixed Assets: | $ | $ |
| 7. RLF $$ Loaned for Working Capital: | $ | $ |
| 8. RLF $$ Loaned for: | | |
| a. Start-up | $ | $ |
| b. Expansion | $ | $ |
| c. Retention | $ | $ |
| 9. RLF $$ Loaned for: | | |
| a. Industrial | $ | $ |
| b. Commercial | $ | $ |
| c. Service | $ | $ |
| 10. RLF $$ Loaned to Minority Businesses: | $ | $ |
| 11. RLF $$ Loaned to Women-Owned Businesses: | $ | $ |
| 12. Other Targets (Specify): | $ | $ |

**EXHIBIT D** (Rev. 12/98) 

**B. Comparison of RLF Portfolio to RLF Plan:** In column one below, fill in the spaces by providing information from the "Targeting", "Standards" and "Financing" sections of the RLF Plan. If an item is not included in the RLF Plan, and therefore not applicable, indicate this by placing N/A in column one. In columns two and three, use the figures obtained in Part II.A. above to compute the ratios and percentages for Total and Active Loans, respectively. Formulas for the computations are indicated in the brackets next to each item. Discuss any significant deviations between columns one and two.

| | RLF Plan | Total Loans | Active Loans |
|---|---|---|---|
| 1. Cost per Job (A2/A5c) | $ | $ | $ |
| 2. Non-RLF Leverage Ratios: | | | |
| a. Private (A3a/A2) | : | : | : |
| b. Private & Other (A3c/A2) | | : | : |
| 3. % Working Capital Loans (A7/A2) | % | % | % |
| 4. % Loans in Eligible Target Area | 100 % | % | % |
| 5. RLF Portfolio Targeting | | | |
| a. % Start-ups (A8a/A2) | % | % | % |
| b. % Industrial (A9a/A2) | % | % | % |
| c. % Minority Owned (A10/A2) | % | % | % |
| d. % Women-Owned (A11/A2) | % | % | % |
| e. % Other (A12/A2) | % | % | % |

## PART III: PORTFOLIO FINANCIAL STATUS

| | |
|---|---|
| **A. RLF Funding Sources** | |
| 1. EDA | $ |
| 2. Grantee | $ |
| 3. Other - Specify: | $ |
| 4. Total RLF Funding (sum of 1-3) | $ |
| **B. Program Income Earned to Date:** | |
| 5. Interest Earned on Loans: | $ |
| 6. Earnings from Accounts: | $ |
| 7. Fees Charged: | $ |
| 8. Total Program Income (sum of 5-7) | $ |
| 9. How much of Total Program Income (line 8) has been used to cover administration costs to date? | $ |
| 10. How much of Total Program Income has been added to the RLF for lending (line 8 minus line 9)? | $ |

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| **C. Status of RLF Capital:** | | |
|---|---|---|
| 11. Total RLF Funding (line 4): | $ | |
| 12. Program Income Added to RLF for lending (line 10): | $ | |
| 13. Losses on Loans & Guarantees (amount lost from Part I.A.7 & b.7): | $ | |
| 14. Current level or RLF Base Capital (sum of lines 11 & 12, less line 13): | $ | |
| | | |
| **D. Current Balance Available for New Loans:** | | |
| 15. RLF Principal Outstanding on Loans (from Part I.A.6): | $ | |
| 16. RLF $$ Reserved for Loan Guarantees (from Part I.B.6): | $ | |
| 17. Current Balance Available (deduct amounts shown on lines 15 & 16 from Current level of Base Capital (line 14): | $ | |
| 18. RLF $$ committed but not disbursed: | $ | |
| 19. Current Balance Available (deduct amount on line 18 from line 17): | $ | |
| 20. Current Balance Available (line 19) as a Percent of RLF Base Capital (line 14) - applies only to fully disbursed RLFs, otherwise enter N/A: | | % |
| 21. Same calculation as in line 20 above, but for preceding six month period (see prior Semiannual Report): | | % |
| | | |
| *Note: If lines 20 and 21 both exceed 25%, see instructions.* | | |
| | | |

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## PART IV: PORTFOLIO LOAN LIST

Provide the following information for each RLF loan closed:

| Loan Recipient | Loan Type & Description | Financing By Source (Specify) |
|---|---|---|
| 1. Borrower Name<br>2. Location (include city, county & state)<br>3. SIC Code - 4 Digit<br>4. Minority Owned<br>5. Woman Owned | 1. Direct/Guaranty<br>2. Fixed Asset/Working Capital<br>3. Start-up, Expansion or Retention | 1. RLF $<br>2. Other Public $<br>3. Private $<br>4. New Equity $<br>5. Total $<br>6. Amount Guaranteed $ |

| Closing Date & Loan Terms | Loan Status | Repayment Status |
|---|---|---|
| 1. Date Close<br>2. Term: Years<br>3. Interest Rate<br>4. Total Fees | 1. Fully Repaid: Date<br>2. Current as of: Date<br>3. Delinquent: Days<br>4. Default: Days<br>5. Write-Off: Date | 1. Principal Repaid<br>2. Interest Paid<br>3. Amount Delinquent<br>4. Amount Default<br>5. Amount Written-Off |

| Job Impact | |
|---|---|
| 1. Pre-Loan jobs<br>2. Jobs Created<br>3. Jobs Saved<br>4. Minority jobs (Created/saved)<br>5. Women jobs (Created/Saved) | |

## PART V: MISCELLANEOUS INFORMATION & CERTIFICATION

**A. Recent Loan Activity (Last 12 Months Only)**

| | |
|---|---|
| 1. # Applications Received: | |
| 2. # Applications Received from minority-owned firms: | |
| and Women-owned firms: | |
| 3. # Loans closed: | |
| 4. # Loans closed from Minority-owned firms: | |
| and Women-owned firms: | |

**EXHIBIT D** (Rev. 12/98)



| **B. Capital Utilization (Section X. of RLF Administrative Manual)** | | | |
|---|---|---|---|
| | Complete as appropriate | | |
| 5. On page 4 of this Semiannual Report, if the percentages calculated in **both** D.20 and D.21 are greater than 25%, is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand? *(Check one)* | | YES | NO |
| 6. If both D.20 and D.21 on page 4 of this Semiannual Report are greater than 25%, list the amount of excess funds subject to sequestration. | $ | | |
| 7. List any amount in #6 that has been sequestered in a separate account. | $ | | |

| **C. RLF Income and Expenses (Section VII of RLF Administrative Plan)** | | | |
|---|---|---|---|
| | Complete as appropriate | | |
| 8. Enter the month and day of the accounting period which has been selected for reporting of RLF Income and Expenses in accordance with Section VII.C. of the RLF Administrative Manual. | | | |
| 9 Enter the amount of RLF Income earned during the most recent 12 month period, which was designated in #8. | $ | | |
| 10. Enter the amount of RLF Income that was used for administrative costs during the most recent 12-month period, which was designated in #8. | $ | | |
| 11. Divide the administrative costs reported in #10 by the RLF Income reported in #9 and enter the percentage figure. | | | % |
| 12. If the percentage in #11 is larger than 50%, or the amount in #10 is greater than $100,000, was an Income and Expense Statement submitted to EDA as required in Section VII.C.2. of the RLF Administrative Manual. *(Check One)* (If applicable and not sent, submit an Income and Expense Statement with this report.) | YES | NO | N/A |

| **D. Administration** | | | |
|---|---|---|---|
| | Complete as appropriate | | |
| 13. Any key Staff Turnover in the last 12 months? *(Check One)* List position(s): | | YES | NO |
| 14. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender. | | | |
| 15. Enter the ending date of the most recent independent Audit covering the recipient and indicate type of Audit, i.e., "Single" or "Program Specific". | | | |

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| | | | |
|---|---|---|---|
| 16. Attach the Audit referenced in #15 if it was not previously submitted to EDA. | | | |
| 17. If the Audit referenced in #15 did not cover either the most recent or prior fiscal year end period. is an explanation attached? *(Check One)* | | YES | NO |
| **E. ANNUAL RLF PLAN CERTIFICATION (Section VIII of the RLF Administrative Manual and Section D.03 of the Standard Terms and Conditions)** | | | |
| 18. Is the required ANNUAL RLF Plan Certification attached? *(Check One)* If "no," indicate the date it will be submitted: | | YES | NO |
| **F. COMPLIANCE WITH IMPLEMENTATION SCHEDULE (To be completed only if grant is not fully disbursed)** | | | |
| 19. Is the actual grant implementation/disbursement progress in accordance with the schedule set forth by the Implementation Special Condition (or an EDA approved amendment thereto) required as a part of this grant award? *(Check One)* if "no," attach explanation. | | YES | NO |

CERTIFICATION: I hereby certify on this ____ day of _____, 19 ___, that the information provided in this Semiannual Report is true and correct to the best of my knowledge.

_____

NAME AND TITLE OF AUTHORIZED OFFICIAL

_____

SIGNATURE (Authorized Official)

Check Attachments Submitted:

____ Capital Utilization (#5 above)

____ Current Loan Board Membership (#14)

____ Copy of Audit (#16)

____ Audit Explanation (#17)

____ Annual RLF Plan Certification (#18)

BILLING CODE 3510–24–C

**Instructions for Completion of EDA's Semiannual Reports for Revolving Loan Fund Grants**

The instructions below are in outline form and correspond to identical items in the Semiannual Report. Complete the Semiannual Report by filling in the spaces and responding to the questions. On page one of the Report, indicate the reporting period in the upper right hand corner. The reporting periods end on September 30 and March 31, and all data entries are to be effective with these ending dates. Submit completed Reports to the EDA regional office by November 1 and May 1, respectively. DO NOT INCLUDE IN PARTS 1–3 OF THE REPORT ANY DATA ON INITIAL LOANS UNDER A SECTION 209 SSED GRANT/LOAN; LIST THESE ITEMS SEPARATELY IN PART 4 ONLY.

**Part I: Portfolio Status**

A. *Status of Direct Loans:* Show the current status of all direct RLF loans that have been closed. DO NOT include approved loans that have not been closed. In column two, ''RLF $ Loaned,'' include only the funds loaned by the RLF, including EDA and grantee matching funds, NOT the financing provided by other lenders.

1. *Total Loans Made:* Enter the total number and dollar amount of all RLF loans closed to date. Under column two, ''RLF $ Loaned,'' the amount should always represent the original loan amount.

2. *Fully Repaid:* Enter the number and original dollar amount of RLF loans that have been fully repaid.

3. *Current Loans:* Enter the number and original dollar amount of RLF loans that are current on RLF loan payments. In column three, ''RLF Principal Outstanding,'' enter the principal balance outstanding for current RLF loans.

4. *Delinquent:* Enter the number and original dollar amount of RLF loans that are delinquent. For this report, a ''delinquent'' loan is defined as one that is up to 60 days past due. Enter also the principal balance outstanding on the delinquent loans. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

5. *In Default:* Enter the number and original dollar amount of RLF loans that are in default. For this report, a ''default'' is defined as any loan that is over 60 days past due but not written off. (An RLF grantee may, at its option, classify a loan as defaulted if it is under 60 days past due. If a previously defaulted loan has been rewritten and/or the borrower is now current, the loan should be shown as current). Enter the principal balance outstanding on defaulted loans.

6. *Total Active Loans:* On line 6, enter the sum of lines 3, 4, and 5 to obtain the number, amount and principal outstanding for Total Active Loans. (Total Active Loans are defined as loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

7. *Total Written Off:* Enter the aggregate number and original amounts of defaulted loans that have been written off. Enter also the principal balance outstanding on loans written off or the actual amount lost, whichever is smaller.

B. *Status of Loan Guarantees:* The same criteria as above apply to the Status of Loan Guarantees. In column two, note that the ''RLF $ Reserved'' are the RLF dollars that are actually set aside and held in reserve to cover any losses on guaranteed loans. In column three, ''Total Amount Guaranteed'' is the amount of the original loan that is/was guaranteed by the RLF. In column four, ''Current Exposure'' is the dollar amount of the RLF's contingent liability as of the date of the current report; this amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

**Part II: Portfolio Summary**

A. *Summary of Loan Activities:* For each listed item, provide information on both Total and Active RLF loans closed to date. Total Loans include loans that are current, delinquent and in default, as well as those that have been fully repaid and written off. Active Loans include only current delinquent and defaulted loans, specifically those included in A.3–5. and B.3–5., Part I, page one, of the Semiannual Report.

1. *# RLF Loans:* Enter the number of RLF loans closed for both Total Loan (I.A.6. and I.B.6., page one) categories. Be sure to include the number of both direct and guaranteed loans closed.

2. *RLF $$ Loaned:* Enter the amount of RLF dollars loaned for both Total Loan (I.A.1. and I.B.1., page one) and Active Loan (I.A.6. and I.B.6., page one) categories. For loan guarantees, use column three, ''Total Amount Guaranteed,'' for the RLF dollar amount loaned.

3. *Non-RLF $$ Leveraged by RLF:*

a. *Private:* Enter the Private Dollars Leveraged for both Total and Active Loan categories. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the ''project'' in which the RLF is an integral component. A ''project'' is defined as an activity consisting of interrelated components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered ''leveraged dollars''.

b. *Other:* Enter any Other investments Leveraged for both Total and Active Loan categories by the RLF loan in the ''project'', including other public financing (e.g., HUD–CDBG, USDA–IRP loans, etc.).

4. *Total Project Financing:* Enter the sum of RLF dollars loaned and non-RLF dollars leveraged by the RLF, items II.A.2. plus II.A.3.c.

5. *Private Sector Jobs:* Enter the number of jobs created and the number of saved jobs for both Total and Active loan categories. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a. *Actual Created Jobs:* A job is counted as ''created (actual)'' if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) as actually created. Jobs are usually verified by requesting the borrower to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. Other job data should also be requested from the borrowers in order to complete Part IV of the Report. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months. Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next semiannual reporting period.

b. *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost:* If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Semiannual Report only if they were maintained for a minimum of 18 months prior to the loss.

6. *RLF $$ Loaned for Fixed Assets:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for the purchase, installation or construction of fixed assets. If a single RLF loan was used jointly for fixed asset and working capital purposes, only the fixed asset amount should be reported on this line. For a guaranteed loan that was used jointly for fixed assets and working capital, multiply the percent of the original loan that is/was guaranteed by the amount of the loan that was used for fixed assets.

7. *RLF $$ Loaned for Working Capital:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for working capital purposes as defined by generally accepted accounting principles. Consistent with item II.A.6. above, include on this line only the amount or portion of a RLF loan that was actually used for working capital purposes. (The amounts on this line plus the amounts in II.A.6. should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively).

8. *RLF $$ Loaned for Start-up, Expansion & Retention:* Enter for both Total and Active loan categories, the amount of RLF loans that were used for Start-up loans, Expansion loans and Retention loans. Each loan in the RLF portfolio is to be categorized as either a Start-up, an Expansion or a Retention loan. A Start-up loan is one to a new business that has limited or no prior operating history. An Expansion loan involves an existing operating company that will expand operations and create jobs. A Retention loan is where the existing jobs of the company are ''saved'' as a direct result of the RLF assistance. [The sums of these loan categories (8.a. + 8.b. + 8.c.) should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively].

9. *RLF $$ Loaned for Industrial, Commercial & Service:* Enter for both Total and Active loan categories, the dollar amount of closed RLF loans that went to Industrial, Commercial and Service projects. All RLF loans should be placed in one of these three categories, which are defined below and which utilized the Standard Industrial Classification (SIC) Manual as a guide:

Industrial projects include manufacturing, agriculture, forestry, fishing, mining, and construction businesses—essentially businesses engaged in the production of a product.

Commercial projects include retail and wholesale trade businesses.

Service projects include businesses which provide a service to individuals or businesses, i.e., those not engaged in the production of a product or the sale of merchandise.

10. *RLF $$ Loaned for Minority Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to minority-owned businesses. To be considered minority-owned, a company must be at least 51 percent owned by African-Americans, Hispanics, Asians and/or Indians.

11. *RLF $$ Loaned for Women-owned Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to women-owned businesses. Include only firms with at least 51 percent ownership by women.

12. *Other:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to a targeted use identified in the RLF Plan but not included above.

B. *Comparison of RLF Portfolio to RLF Plan:* As indicated in the narrative in the Semiannual Report, use the RLF Plan to obtain the applicable ratios and percentages for completing the first column. For column two (Total Loans) and column three (Active Loans), use the appropriate figures from Part II.A. to compute the ratios and percentages requested. The formula for each item is listed in the brackets next to that item. [As an example, item #1—Cost per Job, is computed by dividing the figures on line A.2. by those on line A.5.d. (from Part II) for both Total and Active loans, respectively].

**Part III: Portfolio Financial Status**

A. *RLF Funding Sources:*

1.–3. Enter on lines one through three the total funds committed to the RLF by funding source, regardless of whether the funds have been drawn into the RLF. Outside of the EDA funds, the funding categories will include either funds provided solely by the grantee or from ''other'' sources, e.g., CDBG, state, or private donations for the specific use of the RLF. Specify the funding source if ''other''.

4. Enter the sum of all funding sources, items III.A.1. through III.A.3. inclusive.

B. *Program Income Earned to Date:*

5. Enter the total interest earned directly from RLF loans. This amount should equal the aggregate interest earned from individual loans which are listed in Part IV.

6. Enter interest earned from deposits and investments of:

a. RLF loan payments, including principal and interest;

b. RLF loan fees, including origination, servicing and processing fees, late fees and penalties; and

c. Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned thereon must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable).

7. Enter the aggregate of all fees earned from RLF loans from processing, servicing, closing, late fees and any other loan-related earnings.

8. Enter the sum of III.B.5. through III.B.7., inclusive.

9. Enter the amount from III.B.8. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). Inasmuch as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

10. Subtract the amount on line III.B.9. from III.B.8. and enter the difference here. Do not deduct amounts set aside for future administrative expenses. Lines III.B.8 less line III.B.9. should equal the amount of line III.B.10; if not, explain on separate page. Note that if the grant recipient anticipates using any of the available RLF income earned in the current period during the remainder of the period, it may deduct this from the amount otherwise reported in the space. Conversely, if the recipient is certain that it will not need any of the available RLF income during the remainder of the period, it should include this amount in the figure reported as RLF Income added to the RLF for Lending. Any RLF income on hand at the end of a period must be added to the RLF Capital Base for lending purposes.

(Note: References to Program Income in B.8. through B.10. should be interpreted to mean RLF Income as used in the RLF Administrative Manual).

C. *Status of RLF Capital:*

11. Self-explanatory (enter the amount from III.A.4.).

12. Self-explanatory (enter the amount from III.B.10.).

13. Self-explanatory (enter the sum of the amounts lost from direct loans and guaranteed loans, from I.A.7. and I.B.7., page 1 respectively).

14. Self-explanatory (enter the sum of III.C.11. and III.C.12., less III.C.13).

D. *Current Balance Available for New Loans:*

15. Self-explanatory (enter the RLF principal outstanding from I.A.6., page 1).

16. Self-explanatory (enter the total RLF dollars reserved for loan guarantees, which are not available for lending, from I.B.6., page 1).

17. Self-explanatory (deduct amounts shown in III.D.15. and III.D.16. from III.C.14.).

18. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

19. Self-explanatory (enter the amount in III.D.17. less III.D.18.).

20. Current Balance Available Percentage—applies only to RLF's that have been fully disbursed. Enter the percent that is obtained by dividing the amount in III.D.19. by the amount in III.C.14.

21. Insert the Current Balance Available Percentage (same calculation as in #20 above), but for the preceding six month period obtained from the previous Semiannual Report.

(Note: The percentages obtained in III.D.20. and III.D.21. are used to evaluate compliance with EDA's Excess Retention Policy established in 1988. If the percentages in III.D.22. and in III.D.23. both exceed 25 percent, the grantee is in violation of the policy and is required to submit an addendum to the report explaining the reasons for the violation and the steps it proposes to take to reduce the percentage below 25 percent. Subsequently, the grantee may be required to submit the EDA share of any amount over 25 percent, which normally will be made available to the grantee for a time period established by EDA. Funds not used during this time period may become permanently unavailable to the grantee).

**Part IV: Portfolio Loan List**

Self-explanatory.

**Part V: Miscellaneous Information & Certification**

A. *Recent Loan Activity:*

1.–4. Self-explanatory.

B. *Capital Utilization:* (Section X. of RLF Administrative Manual)

5.–7. Self-explanatory.

C. *RLF Income & Expenses:* (Section VII. of RLF Administrative Plan)

8.–12. Self-explanatory.

D. *Administration:*

13.–17. Self-explanatory.

E. *Annual RLF Plan Certification:* (Section VIII. of the RLF Administrative Manual and Section D.03. of the Standard Terms and Conditions)

18. Self-explanatory (Required only once a year).

BILLING CODE 3510–24–P

EXHIBIT E (Rev. 12/98)



# ANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

**Grantee Name:**_____ **Period Ending**_____

**Project No.**_____ **Contact Person:**_____

**Phone:**_____

| A. PORTFOLIO FINANCIAL STATUS | | |
|---|---|---|
| 1. Total RLF Funding (EDA + Matching funds) | $ | |
| 2. Total RLF Income Earned | $ | |
| 3. Total RLF Income Expended for Administrative Costs | $ | |
| 4. RLF Income in #2 that is set aside for Current Period Expenses | $ | |
| 5. Total Losses on Direct and Guaranteed Loans | $ | |
| 6. RLF Capital Base [(1+2) less (3+4+5)] | $ | |
| 7. RLF Loan Principal Outstanding | $ | |
| 8. RLF $$ Reserved for Guarantees | $ | |
| 9. RLF Loan Commitments Not Disbursed | $ | |
| 10. RLF Capital Utilized [7+8+9] | $ | |
| 11. RLF Capital Utilization Rate [10 / 6] | | % |
| 12. Same as #11 but for Preceding 6-Month Period | | % |

| B. RECENT LOAN ACTIVITY (Last 12 Months Only) | |
|---|---|
| 13. # Applications Received | |
| 14. a. # Applications Received from Minority-owned firms<br>b. # Applications Received from Women-owned firms | |
| 15. # Loans Closed | |
| 16. a. # Loans Closed from Minority-owned Firms<br>b. # Loans Closed from Women-owned Firms | |

**EXHIBIT E** (Rev. 12/98)



| **C. Portfolio Status** | | |
|---|---|---|
| *DIRECT LOANS:* | | |
| 17. a. Total RLF $$ Loaned | $ | |
| b. Total # Loans made by the RLF | | |
| 18. Total Active Loans | $ | |
| 19. Principal Outstanding | | |
| a. Current Loans | $ | |
| b. Delinquent Loans (<60 days) | $ | |
| c. Delinquent Loans (>60 days) | $ | |
| 20. Total Written-Off | $ | |
| 21. Total Non-RLF $$ Leveraged by RLF & Leverage Ratios | | |
| a. Private | $ | |
| b. Other | $ | |
| c. Total Leveraged (Private + Other) | $ | |
| *GUARANTEED LOANS:* | | |
| 22. Current RLF $$ Exposed (*active loans only*) | $ | |
| 23. RLF $$ Reserved (*active loans only*) | $ | |
| | | |
| 24. Total # of Actual Jobs Created and Saved | | |

| **D. ADMINISTRATION** | **circle or complete as appropriate** |
|---|---|
| 25. Any key Staff Turnover last 12 Months? List position(s): | Yes No |
| 26. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender. | |
| 27. Indicate the ending period of the most recent independent Audit covering the recipient and whether Single or Program Specific Audit. | |
| 28. Attach the Audit in #27 if it was not previously submitted to EDA | |
| 29. If the Audit in #27 did not cover either the most recent or the prior fiscal-year period, is an explanation attached? *(Circle One)* | Yes No Not Applicable |

**EXHIBIT E** (Rev. 12/98)



| **D. ADMINISTRATION** | circle or complete as appropriate |
|---|---|
| 30. Enter the ending date of the accounting period which has been selected to determine the amount reported in #4 above in accordance with Section VII.C. of the RLF Administrative Manual. | |

| **E. CAPITAL UTILIZATION (Section X of RLF Administrative Manual)** | circle or complete as appropriate | |
|---|---|---|
| 31. If the percentages in both #11 and #12 above are less than 75%, is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand? | Yes | No |
| 32. If both #11 and #12 are less than 75%, list the amount of excess funds subject to sequestration. | $ | |
| 33. List any amount in #31 that has been sequestered in a separate account. | $ | |

| **F. ANNUAL RLF PLAN CERTIFICATION (Section VIII of RLF Administrative Manual and Section D.03 of Standard Terms and Conditions)** | circle or complete as appropriate | |
|---|---|---|
| 34. Is the required *ANNUAL* RLF Plan Certification attached? If "no," indicate the date it will be submitted: _____ | Yes | No |

CERTIFICATION: I hereby certify on this ____ day of _____, 19___, that the information provided in this Annual Report is true and correct to the best of my knowledge.

_____

NAME AND TITLE OF AUTHORIZED OFFICIAL

_____

SIGNATURE (Authorized Official)

Check Attachments Submitted:

____ Capital Utilization (#31 above)

____ Current Loan Board Membership (#26)

____ Copy of Audit (#28)

____ Audit Explanation (#29)

____ Annual RLF Plan Certification (#34)

BILLING CODE 3510–24–P

**Instructions For Completion of EDA's Annual Reports For Revolving Loan Fund Grants**

These instructions are for completion of the Annual Report form for EDA revolving loan fund (RLF) grants. The Annual Report is an abbreviated version of the Semiannual Report. RLF grantees that are reporting on a semiannual basis are eligible to apply for graduation to this streamlined report one year after full disbursement of the initial round of RLF capital.

**A. Portfolio Financial Status and Capital Utilization**

1. Enter the total funds committed to the RLF. Outside of EDA funds, matching funds may include funds provided solely by the grantee or from other sources, e.g., CDBG, state or private donations for the specific use of the RLF. Exclude any funding commitments that may have been removed from the RLF, as approved by EDA.

2. Enter the Total RLF Income earned by the RLF to date. RLF Income, as defined in Section VII. of the RLF Administrative Manual, includes:

a. Total interest earned directly from RLF loans.

b. Interest earned from deposits and investments of:

- RLF loan payments, including principal and interest;
- RLF loan fees, including origination, servicing and processing fees. late fees and penalties; and
- Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned therein must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable.

3. Enter the amount from A.2. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). In as much as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

4. Enter the amount of any available RLF Income earned in a current period which may be set aside for future administrative costs incurred over the remainder of the period. If, however, the selected period ends on September 30, funds can not be set aside without EDA approval since any RLF Income that is not used for administrative costs during the period in which it is earned must be added to the RLF Capital Base at the end of the period.

5. Enter the cumulative Losses on Direct and Guaranteed Loans for those loans written-off.

6. Calculate the current level of the RLF's Capital Base by adding the amounts entered in #1 and #2, and subtracting from this sum the amounts in #3, #4 and #5. The RLF Capital Base represents the aggregate amount of capital potentially available for lending.

7. Enter the amount of Loan Principal Outstanding on Direct RLF Loans.

8. Enter the amount of RLF dollars that are required to be set aside or reserved for RLF guarantees of other loans. If not applicable, enter N/A.

9. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

10. Calculate the amount of RLF Capital Utilized, i.e., RLF capital outstanding and committed, by summing the amounts in #7, #8 and #9.

11. Calculate the RLF Utilization Rate by dividing #10 (RLF Capital Utilized) by #6 (RLF Capital Base). This indicates the percentage of RLF capital in use for comparison with the Capital Utilization Standard as discussed in Section X. of the Administrative Manual. Persistent noncompliance with the Standard could require sequestration of excess funds, remittance of interest earned on sequestered funds, and eventual loss of excess funds if not placed in use within a reasonable period of time.

12. The RLF Capital Utilization Rate is calculated every six months for the periods ending March 31 and September 30, in accordance with Section X.C. of the RLF Administrative Manual.

**B. Recent Loan Activity**

13–16. As appropriate, enter the number of applications received and loans closed for the last 12 month period. Also enter the number of applications received and the number of loans closed from Minority-owned and Women-owned firms. Ownership is defined as controlling interest of 51% or more. A loan is considered closed when all loan documents have been signed.

**C. Portfolio Status**

17. Enter the total number and original dollar amount of all RLF loans made to date.

18. Enter the amount of principal outstanding for Total Active Loans. (Total Active Loans are defined as direct loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

19. For active loans only, enter the principal outstanding on direct loans that are current and those that are delinquent. Segregate delinquent loans into two categories, those less than or equal to 60 days past due and those more than 60 days past due. For this report, a ''delinquent'' loan is defined as one that is up to 60 days past due. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

20. Enter the total principal balance outstanding on direct loans written-off or the actual amount lost, whichever is smaller.

21. Enter the total non-RLF dollars leveraged (Private & Other) and corresponding leverage ratios in conjunction with the RLF direct loans. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the ''project'' in which the RLF is an integral component. A project is defined as an activity consisting of interrelated components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7 (a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered ''leveraged dollars'.

Other investments leveraged by the RLF in the project may include other non-RLF dollars such as HUD–CDBG, USDA–IRP loans, etc.

22. For active loans provided by other lenders and guaranteed by the RLF, enter the contingent liability of the RLF on outstanding loan principal, i.e., the current RLF exposure on all active RLF guarantees. This amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

23. For active loans provided by other lenders and guaranteed by the RLF, enter any amounts of RLF funds that are actually set aside and held in reserve to cover any losses on guaranteed loans.

24. Enter the total number of jobs created and saved over the life of the RLF. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a: *Actual Created Jobs:* A job is counted as ''created (actual)'' if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months.

Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next annual reporting period.

b: *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost:* If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Annual Report only if they were maintained for a minimum of 18 months prior to the loss.

**D. Administration**

25–30. Self-explanatory.

**E. Capital Utilization**

31–33. Self-explanatory (Refer to Section X. of the RLF Administrative Manual).

**F. RLF Plan Certification**

34. Self-explanatory (See Section VIII. of the RLF Administrative Manual and Section D.03. of the RLF Standard Terms and Conditions for additional details).

## Appendix D to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Audit Guidelines

OMB Approval No. 0610–0095 Approval expires 07/31/99

**Burden Statement for Revolving Loan Fund Audit Manual**

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. The reason for collecting this information is to enable the Economic Development Administration to monitor revolving loan fund projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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**Section 209 Economic Adjustment Program Revolving Loan Fund Grants Audit Guidelines**

**I. Purpose**

This document describes the audit requirements for revolving loan fund (RLF) grants funded under the Section 209 Economic Adjustment Program of the Economic Development Administration (EDA). It provides an overview of relevant Office of Management and Budget (OMB) circulars and other Federal regulations as they relate to administrative and audit requirements for EDA RLF grants. It also discusses costs that may be eligible under an RLF grant program and requirements for records retention. It is intended to supplement applicable OMB circulars and Federal regulations. If there is a conflict between information contained in this document and the OMB circulars or Federal regulations, the latter shall prevail. In the absence of a conflict, EDA reserves the right to limit Federal standards.

This document is intended for grant recipients and for independent auditors as an aid in understanding the audit and compliance requirements for EDA RLF grants. Each recipient of an EDA RLF grant is responsible for reading this document and providing it to the independent auditor prior to the start of an audit. Failure to make this information available to the independent auditor could result in an unacceptable audit report.

**II. Program Objectives**

RLF grants are administered under EDA's Section 209 Program, which was created in 1974 by an amendment to the Public Works and Economic Development Act of 1965 (PWEDA), to provide grant assistance to help communities adjust to sudden and severe economic dislocations (SSED) and long-term economic deterioration (LTED). EDA Section 209 grants may be used for business development assistance, planning, research, technical assistance, training, infrastructure, and other development activities which meet the purpose of the program.

RLF grants provide capital for loan pools which finance business development activities consistent with local economic development strategies. Loan repayments, plus interest and other related income, create a revolving source of capital to finance other business enterprises. RLF loans are used to stimulate economic activity and to provide financing to businesses when private credit is unavailable to complete a project.

**III. Program Procedures**

Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress. Proposals are evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs, and the applicant's ability to manage the grant effectively. Each approved RLF grant is operated in accordance with an RLF Plan which is part of the grant agreement. The RLF Plan summarizes the RLF's strategic objectives and the operational procedures to carry out the purpose of the grant.

**IV. Program History**

EDA awarded its first RLF grant in 1975. To date, the Agency has awarded more than 700 grants aggregating in excess of $500 million for the establishment or recapitalization of RLFs nationwide. In turn, RLF grantees have made more than 7,200 loans to private sector businesses, which loans have either leveraged or have the potential for leveraging in excess of $1.9 billion private capital based on a private investment to total RLF monies loaned ratio of 3.83:1. There are generally two types of RLF grants, those established as RLFs from the initial disbursement of grant funds, and those established only after repayments are received from business loans originally funded from grants. Most RLF grants are of the first type.

RLF programs are operated by local governments, regional development corporations, States and other non-profit organizations. EDA RLF grants normally require a matching contribution from local sources. Historically, the local match contribution has averaged 25% of an RLF's capitalization, but waivers have been extended in special situations such as natural disasters. The average EDA RLF grant was

capitalized at just over $1 million in total assets. While the size of individual loans extended by these grant recipients vary markedly, the typical RLF loan has averaged $70,000 over time.

**V. Frequency of Audits**

Each RLF grant recipient shall have an audit performed annually for the duration of the RLF program except in the following limited circumstances which may permit biennial audits:

—A state or local government recipient that adopted a mandatory, constitutional or statutory requirement for less frequent audits prior to January 1, 1987, which requirement still remains in effect; or

—A non-profit recipient that had biennial audits for all biennial periods ending between July 1, 1992 and January 1, 1995.

**VI. When an Audit Is Required**

Pursuant to the Single Audit Act Amendments of 1996 (P.L 104–156) and OMB Circular A–133, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least $300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. With the exception of newly awarded grants and limited circumstances listed in Paragraph V. herein, the majority of RLF grant recipients will require an annual audit.

To calculate the total RLF expended, follow the information provided in the box below. Note that only the Federal share (exclude the matching fund share) of the amount calculated should be used for the determination of an audit. Audit procedures, however, must encompass both the Federal and any matching funds which comprise an RLF.

—The year's beginning balance of outstanding RLF loans; plus

—RLF loan expenditures during the fiscal year; plus

—The amount of RLF Income [1] earned and expended on eligible administrative expenses during the fiscal year.

**VII. Types of Audits**

Entities which spend $300,000 or more in Federal awards will be required to have either (I) a program-specific audit or (ii) a single audit. An entity can elect a program-specific audit if all funds expended come from only one Federal program. An entity must have a single audit in a fiscal year in which it spends funds from more than one Federal program. These guidelines are not intended to be a complete manual of procedures, nor are they intended to supplant the auditor's judgment of the work required for either the program-specific audit or a single audit which includes coverage of an EDA RLF. The auditor should refer to OMB Circular A–133 for a detailed listing of requirements for these types of audits. These guidelines are designed to discuss special considerations for audits of RLFs.

*A. Program Specific Audit*

A program-specific audit is an audit of one program performed in accordance with Federal laws and regulations and any audit guides available for that program. There is not a program-specific audit guide written for the RLF program. Since a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the RLF program as they would have for an audit of a major program in a single audit. Section VIII of these guidelines describes some special considerations for auditing an EDA RLF. OMB Circular A–133, Section 235 provides instructions for completing a program-specific audit.

*B. Single Audit*

A single audit covers all Federal awards received and expended during an organization's fiscal year. Unlike the program specific audit, this type of audit requires a financial statement audit of the grant recipient. A single audit is performed by an independent auditor who meets the general standards specified in generally accepted government auditing standards.

Attachment I provides a current list of applicable audit-related documents with which the auditor should become familiar. Since accounting requirements and reference materials are subject to periodic revisions, grant recipients and auditors are responsible for utilizing the most current reference information available.

**VIII. Special Considerations for Single Audits of RLFs**

*A. Schedule of Expenditures of Federal Awards*

The auditee is required to report certain information in this schedule including: (1) the identity of all Federal award programs by program title and by catalogue number listed in the Catalog of Federal Domestic Assistance (CFDA) and (2) the total expenditures for each Federal award program by grantor agency. For EDA RLF grants, the program title is ''Special Economic Development and Assistance Programs—[either Sudden and Severe Economic Dislocation (SSED) or Long-Term Economic Deterioration (LTED)] Revolving Loan Fund.'' The CFDA number is ''11.307'' for both SSED and LTED grants. To assist program officials, it is helpful to include the number of each EDA RLF grant in the schedule. The method for calculating the total Federal expenditure amount to be reported on the schedule is shown in Section VIII.C. below.

Note that in the third and fourth digits of each grant number, an SSED grant is denoted by the number ''19'', and an LTED grant by the number ''39''. Exceptions include numerical identification of defense or disaster-related RLFs which may have several variations as determined by fiscal year or specific disaster program appropriations.

*B. Criteria for Determining Major Programs*

Federal award programs must be identified as Major Programs through a risk-based approach described in OMB Circular A–133. Prior to the issuance of the revised OMB Circular A–133, a Major Program was defined solely in monetary terms. The new risk-based approach also requires that the auditor consider the current and prior audit results and the inherent risk of the program in making a determination of Major Programs subject to audit. Major Programs require more extensive audit procedures than Other Federal Programs.

*C. Calculating ''Total Federal Expenditures'' For RLF Grants*

For RLF grants, ''Total Federal expenditures'' normally includes only the Federal share of an RLF's expenditures. It is calculated as shown in the box below using only the Federal share of each component.

Determining Total Federal Expenditures [2]:

—The year's beginning balance of outstanding RLF loans; plus

—RLF loan expenditures during the fiscal year; plus

—The amount of RLF Income [3] earned and expended on eligible administrative expenses during the fiscal year.

*D. Footnote Disclosure (Schedule)*

In addition to reporting the Federal expenditures for an RLF program on the schedule of expenditures of Federal awards, a footnote to the schedule should disclose the value of the loans outstanding at the end of the year.

**IX. Use of Another Entity for Program Administration**

A grant recipient may employ the services of another organization to perform certain duties and responsibilities under a grant. In delegating responsibilities, the grant recipient may be responsible for ensuring that the other entity is audited in accordance with OMB Circular A–133 and complies with the grant terms and conditions. The degree of responsibility delegated is the key factor in determining whether another entity is a subrecipient or vendor (and whether an audit is required). Subrecipients are normally required to have an audit performed while vendors would not usually be audited unless program compliance requirements apply to the vendor.

An organization is a subrecipient if it receives or is responsible for RLF funds, and some or all of the following characteristics exist. It is responsible for (I) applicable grant compliance requirements; (ii) programmatic decisions including, but not limited to, approving RLF lending policies, final lending decisions including eligibility determinations, major amendments to loans, and/or foreclosure actions; and/or (iii) its performance is measured against meeting objectives of the program.

[1] RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

[2] If the Federal share of an RLF's total expenditures cannot be readily determined, the total RLF expenditures (including both Federal and matching funds) may be used in lieu of ''total Federal expenditures'' provided the inclusion of matching funds is disclosed.

[3] Defined in footnote 1, page 3.

An organization is a vendor if it provides services in support of an RLF grant and has the following distinguishing characteristics. It provides agreed services within its normal business operations and provides similar services to other purchasers, it operates in a competitive environment, and program compliance requirements usually do not directly pertain to the services provided. If grant compliance requirements apply to the vendor's activities, the grant recipient is responsible for ensuring compliance by the vendor. This may require monitoring the vendor's activities or requiring an audit of vendor activities as may be appropriate under the circumstances. A vendor is normally responsible only for compliance within the terms of its contract.

An example of a vendor would be a bank or collection company which provides services to the grant recipient merely for the collection of loan payments. This would be considered a vendor relationship because the entity under contract would not be involved with any major program decisions. However, if this entity had expanded responsibilities, such as the final approval authority for loans and foreclosure actions, it would be considered a subrecipient due to the nature and degree of its responsibilities. It would be required to be audited in accordance with OMB Circular A–133, and to comply with the terms and conditions of the grant.

**X. Reporting Entity**

The definition of a financial reporting entity is based upon the concept of accountability. A reporting entity may consist of a primary unit and component units. The decision to include a component unit in the reporting entity is based on whether (1) the primary unit is financially accountable for the component unit, and (2) the nature and significance of the relationship between the primary unit and the component unit is such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

While it is management's responsibility to define the reporting entity, one of the initial tasks performed by the auditor is to independently determine whether management has properly defined the reporting entity, pursuant to the Government Accounting Standards Board's (GASB) Statement No. 14, The Financial Reporting Entity.

**XI. Audit Report Due Dates**

The audit must be completed and the report package submitted within 9 months following the end of the period audited, unless a longer period has been agreed to in advance. However, for fiscal years ending on or before June 30, 1998, auditees shall have 13 months after the end of the audit period to submit the reporting package. In either case, the required reporting package shall be submitted within 30 days after issuance of the auditor's report to the auditee.

**XII. Distribution of the Audit Report**

The reporting package should be submitted to the Federal Clearinghouse in accordance with the requirements of OMB Circular A–133, Section 320. In addition, an auditee shall submit the reporting package, leaving out the data collection form which is strictly for the Clearinghouse's use, to the EDA regional office responsible for monitoring the RLF.

**XIII. Auditor Selection**

In arranging for audit services, grant recipients are required to follow the administrative requirements and procurement standards prescribed in the applicable Federal administrative document found at 15 CFR, Part 24, or OMB Circular A–110. In addition, guidance in selection of an auditor is available in a document entitled ''How to Avoid a Substandard Audit: Suggestions for Procuring an Audit.'' This document was developed by the National Intergovernmental Audit Forum and is available from the General Accounting Office at telephone number (202) 512–6000.

**XIV. Compliance Guidelines**

For both program specific audits and single audits, the auditor is required to determine whether the grant recipient has complied with applicable laws and regulations. Compliance testing involves (1) the testing of specific requirements for individual Federal programs, as available, and (2) the testing of general requirements which are applicable to all Federal programs. In addition, there may be other laws and regulations listed in the grant terms which may apply to both the grant recipient and to the RLF loan recipients.

OMB has issued a provisional compliance supplement for use with the revised OMB Circular A–133. The provisional compliance supplement addresses 14 types of compliance areas that are generic to all programs. It also addresses specific requirements for about 100 programs. It is not clear whether the RLF program will be included in the compliance supplement.

*A. Specific Compliance Requirements*

DOC's proposed compliance requirements and suggested audit procedures for EDA Section 209 RLF grants are provided in Attachment 2. Independent auditors should follow these procedures in testing for specific compliance requirements for RLF grants. Comments and suggestions on this material are welcome and should be submitted to the U.S. Department of Commerce, Office of Inspector General, 401 W. Peachtree Street, N.W., Suite 2342, Atlanta, GA 30308.

*B. General Compliance Requirements—Supplemental Information*

The OMB Compliance Supplements list fourteen general requirements and suggested auditing procedures which are applicable to all Federal assistance awards. For the general requirement listed as ''Allowable Costs And Cost Principles,'' supplemental information is provided below. This information should be considered when testing general compliance requirements.

1. Background

*Eligible Costs For RLF Grants:* EDA grant funds and matching funds for an RLF must be used in accordance with the purposes specified in the grant agreement. Eligible uses generally include RLF loans and any specified costs listed in the grant agreement (e.g., budgeted audit costs). Unless specifically stated in the grant, the costs to administer an RLF program are not eligible for reimbursement from either the EDA grant or the matching funds.

*RLF Income:* RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees and other income generated from RLF activities. RLF Income may be used only for RLF loans or for eligible expenses necessary to operate an RLF program. RLF Income that is used for RLF administrative expenses is subject to applicable OMB cost principles and to the requirements described below.

Only current period expenses may be expensed against current period RLF Income. Any exceptions to this require EDA approval. The accounting period for determining compliance with this requirement is selected by the grant recipient and may be either the recipient's or the Federal fiscal year. The accounting period selected is submitted to EDA in the annual or semiannual reports. (Refer to Section VII. of the prevailing EDA RLF Administrative Manual for additional details.)

RLF program funds (including initial grant and matching funds and the repayments of loan principle and RLF Income) should be separately accounted for in the accounting system of each grant recipient. When possible, expenses charged to an RLF program should be categorized in detail at least at the level indicated in the RLF Income and Expense Statement (see Exhibit A of EDA's prevailing RLF Administrative Manual).

*Cost Principles:* The applicable OMB Cost Principles are found in either OMB Circular A–21, A–87, or A–122. Administrative costs that may be charged against RLF Income will be classified as either direct or indirect costs. Direct costs include those that can be identified specifically with a particular cost objective, such as an RLF program. Indirect costs are those incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable.

*Cost Allocation Plans:* Costs may be allocated against RLF Income only to the extent that they can be distributed in reasonable proportion to the benefits received, and are supported by a cost allocation plan and formal accounting records which will substantiate the propriety of charges. Indirect costs may not exceed 100% of allowable direct costs as reflected in the cost allocation plan.

Cost allocation plans, which include indirect cost rate proposals, normally must be approved by the cognizant Federal agency. Local governments (OMB Circular A–87 organizations) are required to retain cost allocation plans and/or indirect cost rate proposals at the local level unless the cognizant agency requests submittal for negotiation and approval. All cost allocation plans and/or indirect cost rate proposals must be approved at the local level and must be available to the cognizant agency, if requested. The independent auditor is responsible for reviewing cost allocation plans and/or indirect cost rate proposals to

determine the reasonableness and validity of costs charged against different cost objectives or programs.

The Office of Inspector General, U.S. Department of Commerce (OIG), is designated the cognizant agency responsible for the audit, approval and negotiation of cost allocation plans and/or indirect cost rate proposals for most EDA economic development districts, as defined in Title IV of PWEDA. When an EDA district organization allocates costs requiring a cost allocation plan and/or an indirect cost rate proposal, the organization is not required to submit either of these to the OIG unless the OIG is the cognizant agency and requests submittal, or the cost allocation plan and/or the indirect cost rate proposal is the initial one for the organization. Cost allocation plans and indirect cost rate proposals must be available for review upon demand, if requested.

2. Common RLF Administrative Costs

A description of common administrative costs that may be charged against RLF Income include, but are not limited to, the following:

*Advertising/Marketing:* Allowable costs for advertising and marketing include costs for media services to recruit RLF personnel, market the RLF program, solicit RLF loan prospects, procure RLF-related goods and services, and sell RLF assets. Eligible costs may also include the cost of printing RLF brochures and travel and other expenses directly related to the promotion of an RLF program.

*Audits:* The costs of audits conducted in accordance with the grant audit requirements are allowable. The charges may be treated as either direct or indirect costs consistent with the applicable OMB cost principles. Grant and matching funds may be used for audit costs only to the extent listed in the approved grant budget or grant terms. In addition, auditing costs charged against an RLF program may not exceed an RLF's equitable share of the cost.

*Bonding:* The costs of premiums for fidelity bonds covering employees who handle RLF funds are allowable to the extent that such costs are reasonable and distributed equitably in proportion to the RLF's share of the costs.

*Building Space:* Rent for building space or the utilization of depreciation or use allowances is an allowable expense subject to the provisions of the applicable OMB cost principles. Maintenance costs are eligible expenses to the extent that they are not otherwise included in rental or other charges for space. See also ''Lease Transactions'' below.

*Capital Expenditures:* In accordance with current OMB cost principles, capital expenditures for equipment and other capital assets require prior EDA approval. For state and local governments (OMB Circular A–87), equipment is defined as tangible, personal property having a useful life of more than one year and an acquisition cost which equals the lesser of the capitalization level established by the organization or $5,000. For nonprofits (OMB Circular A–122 organizations), equipment is defined as tangible, personal property having a useful life of more than two years and an acquisition cost of more than $500 per unit. The dollar amount for nonprofits is expected to increase when OMB Circular A–122 is revised. In the interim, nonprofits may request EDA to approve an amendment to the grant terms to allow for purchases of capital equipment up to the lesser of the capitalization level established by the organization or $5,000.[4]

Where appropriate, an analysis should be made of lease vs. purchase alternatives to determine which would be the most economical and practical procurement method. To be an allowable charge against RLF Income, a capital expenditure must be reasonable and essential for the operation and administration of an RLF program. Such charges must reflect an RLF's use of the equipment based upon an equitable allocation method.

Alternatively, grant recipients may be compensated for the use of equipment and other nonexpendable personal property through depreciation or use allowances subject to the provisions of the applicable OMB cost principles and the requirements herein.

Procurement transactions must be conducted in a manner which provides, to the maximum extent practical, open and free competition consistent with the procurement standards published at 15 CFR Part 24 or in OMB Circular A–110, as applicable. When acquired personal property is no longer needed for RLF activities or is disposed of for upgrading purposes, the RLF should be compensated for its share of the disposition proceeds. Procedures should be established and followed to provide for the highest possible return on property disposition.

*Employee Salaries & Fringe:* Allowable employee salaries and fringe includes the compensation for personal services including, but not limited to salaries, wages and fringe benefits. Payrolls must be supportable by time and attendance or equivalent records for individual employees. Salaries, wages and fringe benefits of employees chargeable to more than one grant program or other cost objective must be supportable by appropriate time distribution records, or a cost allocation plan, and distributed equitably in reasonable proportion to the benefits received. Compensation for employee services may include only those services performed during the grant period.

The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivisions thereof, are considered a cost of general government and are unallowable as an expense against RLF Income. The salary and expenses of an executive director of an EDA economic development district are allowable, provided such costs are allocated equitably relative to the benefits derived and the total costs charged against all grant programs does not exceed 100% of the cost item being allocated. Compensation of members of an RLF loan board is discussed under ''RLF Loan Board Compensation'' below.

*Leasing Transactions:* The accounting and financial reporting treatment for lease agreements depend on whether the lease is classified as a capital lease or an operating lease.

An *operating lease* is a rental agreement requiring periodic payments for the use of an asset during a given period of time. An operating lease does not transfer a material equity in the property leased. The rent payments under an operating lease are allowable to the extent that the lease rate is reasonable when compared with area market conditions.

A *capital lease* is a rental agreement where the lessee acquires a substantial portion of the rights to an asset. In substance, a capital lease represents the purchase of the asset. Financial Accounting Standards Board (FASB) Statement Number 13, Accounting for Leases, as amended, provides guidelines for capital lease transactions. The periodic payments under a capital lease are reimbursable up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed. For example, reimbursable expenses could include depreciation or use allowances, maintenance, taxes and insurance, but excluding any unallowable costs.

For lease agreements between *related parties*, a determination must be made whether the related parties are required to prepare financial reports as a single reporting entity. If reporting as a single entity is required for financial reporting purposes, the assets of the organizations shall be combined, and any reimbursable expenses between the parties shall be computed based upon the cost of ownership. Specific financial statement disclosures pertaining to related parties are required by FASB 57, Related Party Disclosures.

*Materials & Supplies:* The costs of materials and supplies used during the accounting period for RLF-related activities are allowable expenses.

*Outside Professional Services:* The costs of RLF-related services necessary and appropriate to prudently administer and protect RLF assets are allowable. Examples of professional service providers include independent accountants, attorneys, appraisers and others who advise RLF operators and who are not officers or employees of the grantee organization or part of the grantee's department (if the grantee is a governmental entity). Professional service providers generally include those who provide loan packaging, underwriting, closing, monitoring, collections, recovery, sale, and/or protection of collateral services. Costs for professional services are eligible for reimbursement provided they are consistent with the purpose of the grant and allocated equitably based on the benefits derived. (See applicable OMB cost principles for additional information on professional services.)

*RLF Loan Board Compensation:* RLF loan board members, including advisory board members, who are not employees of the grant

[4] A request for a grant amendment would allow the use of current period RLF Income for current purchases (up to $5,000 per unit) for equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets and which are essential for the operations and administration of the grantee's RLF program.

recipient, are not eligible for compensation from RLF Income except as may be provided for in the reimbursement of travel costs consistent with the grant recipient's travel policies or in accordance with Federal Travel Regulations (see ''Travel'' below). Since RLF loan board members usually serve as representatives of their profession or employer organizations, compensation for other than travel-related expenses is not normally allowed. However, if there are exceptional circumstances that warrant consideration of a waiver, EDA approval may be requested.

*Training:* The costs of training materials, textbooks, fees charged by educational institutions, and travel costs for part-time education of employees to improve their skills and performance in the management, administration and operation of an RLF are allowable. Extended or full-time training is unallowable except when specifically authorized by EDA in advance. Travel costs to attend meetings and professional conferences are allowable when the primary purpose of the meeting or conference is the dissemination of technical information relating to the grant program.

*Travel:* The costs for transportation, lodging, subsistence and related items incurred by employees who are on travel status for official business related to RLF activities are allowable. Typical travel expenses might include the costs associated with visiting or meeting potential borrowers, servicing and monitoring loan projects, and meeting with bankers, accountants, attorneys and others affiliated with existing or potential RLF borrowers. It may also include the travel costs associated with marketing the RLF program or hiring RLF program personnel.

Travel costs expensed to RLF Income must be applied consistent with the travel provisions established by the grant recipient in its regular operations and with the applicable OMB cost circular. Organizational travel provisions should be documented in a policy manual. In the absence of formal travel policies, the ''Federal Travel Regulations'' as published in the Code of Federal Regulations shall apply.

For additional information on allowable costs, refer to applicable OMB cost principles or contact the Office of Inspector General, U.S. Department of Commerce, or EDA's Regional or Headquarter's Office.

**XV. Securitization**

RLF grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or Securitization [5] of its loan portfolio. Auditors should determine whether Securitization has occurred, and if so, whether EDA consent was obtained.

**XVI. Administrative Cost and Loan Records Retention**

*A. Administrative Cost Records*

Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three (3) years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three (3) years from the date of disposition, replacement or transfer of the equipment.

*B. Loan Records*

Loan files and related documents and records shall be retained over the life of the loan and for a three (3) year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

*C. General*

If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year or five-year period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year or five-year period, whichever is later.

The record retention periods described in this section are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three (3) years old. However, if fraud is an issue, records must be retained until the issue is resolved.

**Attachment 1—Circulars, Regulations & Other Documents For Audits of EDA RLF Grants**

The OMB circulars and Federal regulations relevant to RLF grant recipients are listed in the table below for the different types of RLF grant recipients, i.e., governments, nonprofits or universities. Since these and the other documents listed on page ii are updated periodically, users must be careful to utilize the most current version available.

| Circular or regulation | Government | Nonprofit | University |
|---|---|---|---|
| **Administrative Requirements** | | | |
| 15 CFR Part 24 | X | | |
| OMB Circular A–110 | | X | X |
| **Cost Principles** | | | |
| OMB Circular A–21 | | | X |
| OMB Circular A–87 | X | | |
| OMB Circular A–122 | | X | |
| **Audit Requirements** | | | |
| OMB Circular A–133 | X | X | X |

The regulations for EDA Section 209 (RLF) grants are found in Title 13 of the Code of Federal Regulations (CFR), Part 308. The Department of Commerce regulations implementing the OMB audit requirements are found in 15 CFR, Part 29.

Other duties and responsibilities of grant recipients are defined in the Special Terms and the Standard Terms and Conditions of each EDA RLF grant. Each RLF should have an RLF Plan which is included as part of the Special Terms and Conditions. The RLF Plan summarizes the RLF's lending strategy, the loan standards and the operational procedures under which an RLF will be administered.

In addition, all RLF grant recipients are required to follow policies and procedures as prescribed by EDA. The most recent are included in the prevailing EDA RLF

[5] Securitization is a financing technique of securing the investment of new capital with the stream of income generated by one or more (usually a large group of) existing loans. For EDA's purposes, the term intentionally encompasses a wide variety of techniques to access investor capital by securing those investments with the value of an existing RLF economic development loan portfolio. This deliberately broad definition covers a number of actual and potential schemes to access investor capital that appear to deviate from the more traditional definition and yet provide flexible alternatives to RLF operators for raising additional funds.

Administrative Manual and in the RLF Standard Terms and Conditions. Both documents apply to all EDA RLF grants.

*Additional Guidance for State and Local Governmental Entities Audits*

American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, Audits of State and Local Governmental Units, issued May 1, 1996.

AICPA Audit and Accounting Guide, The Not-for-Profit Organizations, issued June 1, 1996.

Government Auditing Standards, issued by the Comptroller General of the United States, 1994 revision (Yellow Book).

OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations, issued June 30, 1997.

OMB Provisional Compliance Supplement for Single Audits (expected to be issued in late 1997).

*Additional Guidance for Non-Profit Entities Audits*

AICPA, Statement of Position 92–9, Audits of Not-for-Profit Organizations Receiving Federal Awards, issued December 1992. (Note: Because of significant changes to Government Auditing Standards and OMB Circular A–133, much of this is outdated. AICPA is developing a new SOP to supersede SOP 92–9).

AICPA Statement of Auditing Standards No. 74, Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance, issued February 1995.

**Attachment 2—Economic Development Administration Section 209 Revolving Loan Fund Grants (CFDA 11.307)**

**I. Program Objectives**

Revolving loan fund (RLF) grants for business development assistance are available under Section 209 of the Public Works and Economic Development Act of 1965 (PWEDA). These grants are administered by the Economic Development Administration (EDA) to help communities adjust to sudden and severe economic dislocations and long-term economic deterioration. RLF grants provide capital to establish loan pools which finance business activities and stimulate economic development in accordance with local development strategies. RLFs typically provide financing that is not otherwise available. Loan repayments plus interest and other income replenish RLF capital to provide a revolving resource for additional loans.

**II. Program Procedures**

RLF grants are made to EDA designated economic development districts established under Title IV of PWEDA, Indian tribes, states, cities or other political subdivisions, consortia of political subdivisions, Community Development Corporations defined in 42 U.S.C. 9802, nonprofit organizations determined to be representative of a redevelopment area, and certain specified governments. Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress.

**III. Compliance Requirements and Suggested Audit Procedures**

*A. Types of Services Allowed or Unallowed*

Compliance Requirement

*Allowed Services:* RLF grant and matching funds may be used only for purposes specified in the grant budget and grant agreement. Eligible uses normally include disbursements for RLF loans and the audit costs of RLF activities. Unlike grant and matching funds, RLF Income [1] may be used for RLF loans as well as for eligible RLF administrative expenses (see Section C. Earmarking below for additional details).

Suggested Audit Procedure

Review grant budget and grant agreement, and determine whether RLF funds were used for specified purposes.

*B. Eligibility*

Compliance Requirement

*Eligibility:* Eligibility for RLF assistance is based upon the following: (1) the activity financed being located in an eligible lending area (usually defined in the Special Terms and Conditions of the grant, as may be amended); and (2) the borrower being unable to obtain credit in the private capital market on terms and conditions which would permit the completion and/or successful operation of the project to be financed.

*Ineligible Recipients:* The RLF grant recipient cannot make a loan to itself, to related parties, or to entities that would violate the conflict of interest provisions of the grant agreement (see Section D.16. of the Standard Terms and Conditions).

Suggested Audit Procedure

Review the Special Terms and Conditions and any amendments thereto, and scan the current addresses of selected RLF borrowers to determine whether borrowers are located within the eligible lending area.

On selected borrowers, test for borrower's inability to obtain private credit by verifying the existence of a loan write-up [2] in the grant recipient's files. If there is a potential violation, check the RLF Administrative Manual, Section IV.B.3., for exceptions; this Section also discusses the loan write-up. No other tests are necessary.

Review the conflict of interest provisions in the Standard Terms and Conditions, review any procedures that the grant recipient may have to avoid conflicts of interest, scan loan documentation, and determine whether RLF loans were made to ineligible recipients as defined above.

*C. Matching, Level of Effort, and/or Earmarking Requirements*

Matching

Compliance Requirements

A matching share of nonfederal funds required is specified in the grant agreement. Matching funds must be loaned either before or proportionately with EDA grant funds. When loans are repaid, both the matching and the EDA funds must remain in the control of the grant recipient (or subrecipient) for the duration of the RLF.

Suggested Audit Procedures

Determine through the grant documents and recipient accounting records that required levels of matching were met.

Determine that the funds used for matching have been retained in the RLF.

Level of Effort (Capital Utilization)

Compliance Requirements

During the revolving phase [3] of an RLF grant, the grant recipient is expected to manage its RLF so at least 75 percent of the RLF's capital is in use. The size of the RLF may justify a variation from this standard percentage. Variations require EDA approval.

Suggested Audit Procedures

Determine that the percentage of outstanding loan dollars to total RLF capital complies with the prescribed usage level in the revolving phase. If the resultant percentage does not comply with the requirement, determine the duration or number of consecutive reporting periods of noncompliance. (See Section X., Capital Utilization Standard, of the EDA RLF Administrative Manual for details, and note that the reporting periods end on September 30 and March 31 of each year.)

Earmarking

Compliance Requirements

Pursuant to the prevailing EDA RLF Administrative Manual, RLF Income [4] earned in a period may be used for lending or for RLF administrative expenses of the same period only. Any RLF Income remaining at the end of a period must be permanently added to the RLF's capital base to be used for lending. Any exceptions require EDA approval.

(Note: Prior to March 15, 1993, RLF Income was not required to be added to the RLF capital base at the end of a period. The accounting period is selected by the grant recipient and ends on either its fiscal year end or the Federal fiscal year end. Repayments of loan principal may be used only for re-lending.)

Suggested Audit Procedures

Verify that any RLF Income earned within the period has been used for such period's RLF administrative expenses, for loans, or that any unexpended RLF Income earned in the period has been added to the RLF capital base.

[1] RLF Income includes the interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

[2] A loan write-up is a written record prepared by the RLF administrator which discusses, at a minimum, the need for providing RLF financing to a borrower. It may be supported by third party supplemental evidence as applicable and obtainable.

[3] The revolving phase begins after all available grant and matching funds have been initially disbursed.

[4] Defined in Footnote 1, Page ii.

D. Special Reporting Requirements

Compliance Requirements

Grant recipients electing to use RLF Income to cover all or part of an RLF's administrative expense must annually complete an ''RLF Income and Expense Statement.'' (If the grant recipient uses more than fifty percent or more than $100,000 of a period's RLF Income for RLF administrative expenses, the statement is submitted to EDA within 90 days of the period ending date.)

Suggested Audit Procedures

Review the procedures for preparing the report (See Section VII. of EDA RLF Administrative Manual) and evaluate for adequacy.

*E. Special Tests and Provisions*

Compliance Requirements

RLF grant recipients are expected to follow lending practices generally accepted as prudent for public lending programs.

Suggested Audit Procedures

Review the grant recipient's RLF Plan for loan disbursement and collection procedures. Determine whether these procedures are being followed.

During the Disbursement Phase [5] of an RLF grant, a grant recipient must demonstrate there is sufficient RLF loan activity to draw grant funds within the approved period allotted. This usually is in accordance with the following schedule: 50% of grant and matching funds disbursed within 18 months of the grant award, 80% within two (2) years, and 100% within three (3) years. Any time extensions require EDA's approval. By law, grant funds remain available for disbursement by EDA only until September 30 of the fifth year after the fiscal year of the grant award.

*F. Preservation of Government's Interest in Assets*

Compliance Requirements

In instances where RLF grant recipients elect to Securitize their loan portfolios, EDA's prior written consent must be obtained and the value of the Federal Government's reversionary interest in assets retained.

Suggested Audit Procedures

Review grant recipients records where Securitization may have occurred and determine whether grantee obtained EDA's written consent as required.

## PARTS 309–313—[RESERVED]

## PART 314—PROPERTY

**Subpart A—In General**

Sec.
314.1 Federal interest, applicability.
314.2 Definitions.
314.3 Use of property.
314.4 Unauthorized use.
314.5 Federal share.
314.6 Encumbrances.

[5] The Disbursement Phase is defined as the approved time period for drawing all EDA grant funds.

**Subpart B—Real Property**

314.7 Title.
314.8 Recorded statement.

**Subpart C—Personal Property**

314.9 Recorded statement—title.
314.10 Revolving loan funds.

**Subpart D—Release of EDA's Property Interest**

314.11 Procedures for release of EDA's property interest.

**Authority:** 42 U.S.C. 3211; 19 U.S.C. 2341–2355; 42 U.S.C. 6701; 42 U.S.C. 184; Department of Commerce Organization Order 10–4.

### Subpart A—In General

#### § 314.1 Federal interest, applicability.

(a) Property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the purposes of the project under which the property was acquired or improved. Limited exceptions to this requirement are listed in § 314.7(c).

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance, except for the exceptions listed in § 314.7(c).

(c) EDA may approve the substitution of an eligible entity for a recipient. The original recipient remains responsible for the period it was the recipient, and the successor recipient holds the project property with the responsibilities of an original recipient under the award.

#### § 314.2 Definitions.

As used in this part 314 of this chapter:

*Dispose* includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

*Estimated useful life* means that period of years, determined by EDA as the expected lifespan of the project.

*Owner* includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold or leased.

*Personal Property* means all property other than real property.

*Project* means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs as provided in § 314.3(b), ''project'' includes such programs.

*Property* includes all forms of property, real, personal (tangible and intangible), and mixed.

*Real property* means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

*Recipient* includes any recipient of grant assistance under the Public Works and Economic Development Act of 1965, as amended, prior to or as amended by Public Law 105–393, or under Title II, Chapters 3 and 5 of the Trade Act of 1974, Title I of the Public Works Employment Act of 1976, the Public Works Employment Act of 1977, or the Community Emergency Drought Relief Act of 1977, and any EDA-approved successor to such recipient.

#### § 314.3 Use of property.

(a) The recipient or owner must use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project and such property must not be leased, sold, disposed of or encumbered without the written authorization of EDA.

(b) However, in the event that EDA and the recipient determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, but only if EDA approves such use.

(c) When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided it is for adequate consideration and the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination and environmental compliance. The term ''adequate consideration'' means consideration that is fair and reasonable under the circumstances of the sale or lease, and may include money, services, property exchanges, contractual commitments, or acts of forbearance.

(d) When acquiring replacement personal property of equal or greater value, the recipient may, with EDA's approval, trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be

subject to the same requirements as the original property.

**§ 314.4 Unauthorized use.**

(a) Except as provided in §§ 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Federal Government must be compensated by the recipient for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.

(b) If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.

**§ 314.5 Federal share.**

(a) For purposes of this part, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

(b) Where the recipient's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor will be considered in determining the percentage of the Federal share.

(c) If property is transferred from the recipient to another eligible entity, as provided in § 314.1(c), the Federal Government must be compensated the Federal share of any money or money equivalent paid by or on behalf of the successor recipient to or for the benefit of the original recipient, provided that EDA may first permit the recovery by the original recipient of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

(d) When the Federal Government is fully compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use, or disposition of the property.

**§ 314.6 Encumbrances.**

(a) Except as provided in § 314.6(c), recipient-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project. This provision does not prevent projects from being developed on previously encumbered property, if the requirements of § 314.7(b) are met.

(b) Encumbering project property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in §§ 314.4 and 314.5.

(c) EDA may waive the provisions of § 314.6(a) for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the recipient, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The grantor/lender would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/recipient will not default on its obligation.

(d) EDA may waive the provisions of § 314.6(a) as to an encumbrance on property which is acquired and/or improved by an EDA grant when EDA determines that the encumbrance arises solely from the requirements of a pre-existing water or sewer facility or other utility encumbrance which by its terms extends to additional property connected to such facilities.

## Subpart B—Real Property

**§ 314.7 Title.**

(a) The recipient must hold title to the real property required for a project, except in limited cases as provided in paragraph 314.7(c) of this section. Except in those limited cases, the recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property required for a project (other than property of the United States) is vested in the recipient, and that such easements, rights-of-way, State permits, or long-term leases as are required for the project have been or will be obtained by the recipient within an acceptable time as determined by EDA.

(b)(1) The recipient must disclose to EDA all:

(i) Liens,

(ii) Mortgages,

(iii) Other encumbrances,

(iv) Reservations,

(v) Reversionary interests, or

(vi) Other restrictions on title or the recipient's interest in the property.

(2) No such encumbrance or restriction will be acceptable if, as determined by EDA, the encumbrance or restriction will interfere with the construction, use, operation or maintenance of the project during its estimated useful life.

(c) EDA may determine that a long-term leasehold interest for a period not less than the estimated useful life of the project, or an agreement for the recipient to purchase the property, will be acceptable, but only if fee title is not obtainable and the lease or purchase agreement provisions adequately safeguard the Federal Government's interest in the project. Also, EDA may permit the following exceptions to the requirement that the recipient hold title to the real property required for a project.

(1) When a project includes construction within a railroad's right-of-way or over a railroad crossing, it may be acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate and maintain that portion of the project, if required by the railroad, and provided that this is a minor but essential component of the project.

(2) When a project includes construction on a State-owned or local government-owned highway, it may be acceptable for the State or local government to own, operate and maintain that portion of the project, if required by the State or local government, provided that this is a minor but essential component of the project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA:

(i) That the State or local government will operate and maintain the improvements for the useful life of the project as determined by EDA;

(ii) That the State or local government will not sell the improvements for the useful life of the project, as determined by EDA; and

(iii) That the use of the property will be consistent with the authorized purpose of the project.

(3) When the authorized purpose of the project is to construct facilities to

serve industrial or commercial parks or sites owned by the recipient for sale or lease to private parties, such sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the recipient has title to the park or site prior to such sale or lease.

(4) When the authorized purpose of the project is to construct facilities to serve privately owned industrial or commercial parks or sites for sale or lease, such ownership, sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the private party has title to the park or site prior to such sale or lease, and may condition the award of project assistance upon assurances by the private party relating to the sale or lease that EDA determines are necessary to assure consistency with the project purposes.

### § 314.8 Recorded statement.

(a) For all projects involving the acquisition, construction or improvement of a building, as determined by EDA, the recipient shall execute a lien, covenant or other statement of EDA's interest in the property acquired or improved in whole or in part with the funds made available under the award. The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of this part 314. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with local law.

(c) Facilities in which the EDA investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

## Subpart C—Personal Property

### § 314.9 Recorded statement—Title.

For all projects which EDA determines involve the acquisition or improvement of significant items of tangible personal property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, the recipient shall execute a security interest or other statement of EDA's interest in the property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with local law, with continuances refiled as appropriate. Whether or not a statement is required by EDA to be recorded, the recipient must hold title to the personal property acquired or improved as part of the project, except as otherwise provided in this part.

### § 314.10 Revolving loan funds.

(a) With EDA's consent, recipients holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such property as part of a securitization of the RLF portfolio. The net transaction proceeds must be used for additional loans as part of the RLF project;

(b) When a recipient determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the recipient must compensate the Federal Government for the Federal share of the value of the RLF property. The Federal share is that percentage of the capitalized RLF contributed by EDA applied to all RLF property, including the present value of all outstanding loans. However, with EDA's prior approval, upon termination the recipient may use for other economic development purposes that portion of such RLF property that EDA determines is attributable to the payment of interest.

## Subpart D—Release of EDA's Property Interest

### § 314.11 Procedures for Release of EDA's Property Interest.

(a) Before the expiration of the estimated useful life of the grant project, EDA may release, in whole or in part, any real property interest, or tangible personal property interest, in connection with a grant after the date that is 20 years after the date on which the grant was awarded. (The term ''tangible personal property'' excludes debt instruments, currency, and accounts in financial institutions.) Except as provided in paragraph (b) of this section, such release is not automatic; it requires EDA's approval, which will not be withheld except for good cause. The release may be unconditional, or may be conditioned upon some activity of the recipient intended to be pursued as a consequence of the release.

(b) EDA hereby releases all of its real and tangible personal property interests in projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94–369) and under that act as amended by the Public Works Employment Act of 1977 (Pub. L. 95–28).

(c)(1) Notwithstanding §§ 314.11(a) and (b), in no event, either before or after the release of EDA's interest, may project property be used:

(i) In violation of the nondiscrimination requirements of the project award, or

(ii) For religious purposes prohibited by the holding of the U.S. Supreme Court in *Tilton* v. *Richardson*, 403 U.S. 672 (1971).

(2) Such use voids the release, and is an unauthorized use of the property, as provided in § 314.4.

# PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS

**Subpart A—General Provisions**

Sec.
315.1 Purpose and scope.
315.2 Definitions.
315.3 Confidential business information.
315.4 Eligible applicants.
315.5 Selection process.
315.6 Evaluation criteria.
315.7 Award requirements.

**Subpart B—Trade Adjustment Assistance Centers**

315.8 Purpose and scope.

**Subpart C—Certification of Firms**

315.9 Certification requirements.
315.10 Processing petitions for certification.
315.11 Hearings, appeals and final determinations.
315.12 Termination of certification and procedure.
315.13 Loss of certification benefits.

**Subpart D—Assistance to Industries**

315.14 Assistance to firms in import-impacted industries.

**Authority:** 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; 42 U.S.C. 5141; E.O. 12372; Department of Commerce Organization Order 10–4.

## Subpart A—General provisions

### § 315.1 Purpose and scope.

The regulations in this part implement certain changes to responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et. seq.*) (Trade Act), concerning adjustment assistance for firms. The statutory authority and responsibilities of the Secretary of Commerce relating to adjustment assistance are delegated to EDA. EDA has the duties of certifying firms as eligible to apply for adjustment assistance, providing technical adjustment assistance to eligible recipients, and providing assistance to organizations representing trade injured industries.

**§ 315.2 Definitions.**

As used in this part 315 of this chapter:

*Adjustment assistance* is technical assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

*Adjustment proposal* means a certified firm's plan for improving its economic situation.

*Certified firm* means a firm which has been determined by EDA to be eligible to apply for adjustment assistance.

*Confidential business information* means information submitted to EDA or TAACs by firms that concerns or relates to trade secrets for commercial or financial purposes which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

*Decreased absolutely* means a firm's sales or production has declined:

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the firm.

*Directly competitive* means:

(1) Articles which are substantially equivalent for commercial purposes, i.e., are adapted to the same function or use and are essentially interchangeable; and

(2) Oil or natural gas (exploration, drilling or otherwise produced).

*Firm* means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a firm owns or controls other firms as described below, for purposes of receiving benefits under this part, the firm and such other firms may be considered a single firm when they produce like or directly competitive articles or are exerting essential economic control over one or more production facilities. Such other firms include:

(1) Predecessor;

(2) Successor;

(3) Affiliate; or

(4) Subsidiary.

*A group of workers threatened with total or partial separation* means there is reasonable evidence that such total or partial separation is imminent.

*Like articles* means articles which are substantially identical in their intrinsic characteristics.

*Partial separation* means either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

*Person* means individual, organization or group.

*The record* means:

(1) A petition for certification of eligibility to qualify for adjustment assistance;

(2) Any supporting information submitted by the petitioner;

(3) Report of the EDA investigation in regard to the petition; and

(4) Any information developed during the investigation or in connection with any public hearing held on the petition.

*Recipient* means a firm, Trade Adjustment Assistance Center or other party receiving adjustment assistance or through which adjustment assistance is provided under the Trade Act.

*A significant number or proportion of workers* means 5 percent of the firm's work force or 50 workers, whichever is less. An individual farmer is considered a significant number or proportion of workers.

*Substantial interest* means a direct, material, economic interest in the certification or noncertification of the petitioner.

*Technical Assistance* means assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

*A totally separated worker* means an employee who has been laid off or whose employment has been terminated by his/her employer for lack of work.

**§ 315.3 Confidential business information.**

EDA will follow the procedures set forth in 15 CFR § 4.7, and submitters should so designate any information they believe confidential.

**§ 315.4 Eligible applicants.**

(a) Trade Adjustment Assistance Centers (TAACs) are eligible applicants. A TAAC can be:

(1) A university affiliate;

(2) State or local government affiliate;

(3) Non-profit organization.

(b) Firms;

(c) Organizations assisting or representing industries in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under sections 223 or 251 of the Trade Act including the following:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

**§ 315.5 Selection process.**

(a) TAACs are selected in accordance with the following:

(1) Currently funded TAACs are invited by EDA to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous and/or current conditions in their cooperative agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a cooperative agreement does not assure funding by EDA; and

(2) New TAACs will be invited to submit proposals, and if they are acceptable, EDA will invite an application on a form approved by OMB. An application will be accompanied by a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(b) Firms are selected in accordance with the following:

(1) Firms may apply for certification generally through a TAAC by filling out a petition for certification. The TAAC will provide technical assistance to firms wishing to fill out such petitions;

(2) Once firms are certified in accordance with the procedures described in §§ 315.9 and 315.10, an adjustment proposal is usually prepared with technical assistance from a party independent of the firm, usually the TAAC, and submitted to EDA;

(3) Certified firms which have submitted acceptable adjustment proposals within the time limits described in § 315.13 below, may begin implementation of such proposal, generally through the TAAC and often with Technical Assistance from the TAAC, by submitting a request to the TAAC to provide assistance in implementing an accepted adjustment proposal; and

(4) EDA determines whether or not to provide assistance for adjustment proposals based upon § 315.6(c)(2).

(c) Organizations representing trade injured industries must meet with an EDA representative to discuss the industry problems, opportunities and assistance needs, and if invited by EDA may then submit an application as

approved by OMB, as well as a scope of work and proposed budget.

**§ 315.6 Evaluation criteria.**

(a) Currently funded TAACs are generally evaluated based on the following:

(1) How well they have performed under cooperative agreements with EDA and if they are in compliance with the terms and conditions of such cooperative agreements;

(2) Proposed scope of work, budget and application or amended application; and

(3) The availability of funds.

(b) New TAACs are generally evaluated on the following:

(1) Demonstrates competence in administering business assistance programs;

(2) Background and experience of staff;

(3) Proposed scope of work, budget and application; and

(4) The availability of funding.

(c) Firms are generally evaluated based on the following:

(1) For certification, firms' petitions are selected strictly on the basis of conformance with requirements set forth in § 315.9 below;

(2) An adjustment proposal is evaluated on the basis of the following:

(i) The proposal must be submitted to EDA within 2 years after the date of the certification of the firm; and

(ii) The adjustment proposal must include a description of any technical assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(A) An analysis of the firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(B) If EDA so determines, an acceptable adjustment proposal can be prepared on the basis of other available information.

(iii) The adjustment proposal must be evaluated to determine that it:

(A) Is reasonably calculated to contribute materially to the economic adjustment of the firm, i.e., that such proposal will be a constructive aid to the firm in establishing a competitive position in the same or a different industry;

(B) Gives adequate consideration to the interests of a sufficient number of separated workers of the firm, by providing for example that the firm will:

(*1*) Give a rehiring preference to such workers;

(*2*) Make efforts to find new work for a number of such workers; and

(*3*) Assist such workers in obtaining benefits under available programs.

(C) Demonstrates that the firm will make all reasonable efforts to use its own resources for economic development, though under certain circumstances, resources of related firms or major stockholders will also be considered.

(d) Organizations representing trade injured industries must demonstrate that the industry is injured by increased imports and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

(1) The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority.

(2) It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

**§ 315.7 Award requirements.**

(a) Award periods are as follows:

(1) TAACs are generally funded for 12 months;

(2) Firms are generally provided assistance over a 2-year period; and

(3) Organizations representing trade injured industries are generally funded for 12 months.

(b) Matching requirements are as follows:

(1) There are no matching requirements for certification assistance provided by the TAACs to firms or for administrative expenses for the TAACs;

(2) All adjustment proposals and implementation assistance must include not less than 25% nonfederal match, provided to the extent practicable, by firms being assisted; and

(3) Contributions of at least 50% of the total project cash cost, in addition to appropriate in kind contributions, are expected from organizations representing trade injured industries.

## Subpart B—Trade Adjustment Assistance Centers

**§ 315.8 Purpose and scope.**

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas can be obtained from EDA. See the annual FY NOFA for the appropriate point of contact and address.

(b) Prior to submitting a request for technical assistance to EDA, a firm should determine the extent to which the required technical assistance can be provided through a TAAC. EDA will provide technical assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for technical assistance will normally be made through TAACs.

(c) TAACs generally provide technical assistance to a firm by providing the following:

(1) Assistance to a firm in preparing its petition for certification;

(2) Assistance to a certified firm in diagnosing its strengths and weaknesses and developing an adjustment proposal for the firm; and

(3) Assistance to a certified firm in the implementation of the adjustment proposal for the firm.

## Subpart C—Certification of Firms

**§ 315.9 Certification requirements.**

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

(b) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(c) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports.

**§ 315.10 Processing petitions for certification.**

(a) Firms are encouraged to consult with a TAAC or EDA for guidance and

assistance in the preparation of their petitions for certification.

(b) A firm seeking certification shall complete a petition (OMB Control Number 0610–0091) in the form prescribed by EDA with the following information about such firm:

(1) Identification and description of the firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, subsidiaries or affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported articles like or directly competitive with those produced;

(4) Data on its sales, production and employment for the two most recent years;

(5) Copies of its audited financial statements, or if not available, unaudited financial statements and Federal income tax returns for the two most recent years;

(6) Copies of unemployment insurance reports for the two most recent years;

(7) Information concerning its major customers and their purchases; and

(8) Such other information as EDA may consider material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Immediately thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected and the resubmission will be treated as a new petition.

(d) A notice of acceptance of a petition shall be published in the **Federal Register**.

(e) An investigation shall be initiated by EDA to determine whether the petitioner meets requirements set forth in section 251(c) of the Trade Act and § 315.9 above. The investigation can be terminated at any time for failure to meet such requirements. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(f) A petitioner may withdraw a petition for certification if a request for withdrawal is received by EDA before a certification determination or denial is made. Such firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.9.

(g) Following acceptance, EDA shall decide what action to take on petitions for certification as follows:

(1) Make a determination based on the record as soon as possible after all material has been submitted. In no event may the period exceed 60 days from the date on which the petition was accepted; and

(2) Either certify the petitioner eligible to apply for adjustment assistance or deny the petition, and in either event EDA shall promptly give notice of the action in writing to the petitioner. A notice to the petitioner or any parties requesting notice as specified in § 315.10(d) of a denial of a petition shall specify the reasons upon which the denial is based. If a petition is denied, the petitioner shall not be entitled to resubmit its petition within one year from the date of the denial. At the time of the denial of a petition EDA may waive the 1-year limitation for good cause.

**§ 315.11 Hearings, appeals and final determinations.**

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final determination shall be determined under § 315.10(g).

(b) A firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) EDA will hold a public hearing on an accepted petition not later than 10 days after the date of publication of the Notice of Acceptance in the **Federal Register** if requested by either the petitioner or any other person found by EDA to have a substantial interest in the proceedings, under procedures, as follows:

(1) The petitioner and other interested persons shall have an opportunity to be present, to produce evidence, and to be heard;

(2) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a person other than the petitioner shall contain:

(i) The name, address, and telephone number of the person requesting the hearing; and

(ii) A complete statement of the relationship of the person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(3) If EDA determines that the requesting party does not have a substantial interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(4) EDA shall publish a notice of a public hearing in the **Federal Register**, containing the subject matter, name of petitioner, and date, time and place of hearing;

(5) EDA shall appoint the presiding officer of the hearing who shall determine all procedural questions;

(6) Procedures for requests to appear are as follows:

(i) Within 5 days after publication of the Notice of Public Hearing in the **Federal Register**, each party wishing to be heard must file a request to appear with EDA. Such request may be filed by:

(A) The party requesting such hearing;

(B) Any other party with substantial interest; or

(C) Any other party demonstrating to the satisfaction of the presiding officer that it should be allowed to be heard.

(ii) The party filing the request shall submit the names of the witnesses and a summary of the evidence it wishes to present; and

(iii) Such requests to appear may be approved as deemed appropriate by the presiding officer.

(7) Witnesses will testify in the order and for the time designated by the presiding officer, except that the petitioner shall have the opportunity to make its presentation first. After testifying, a witness may be questioned by the presiding officer or his/her designee. The presiding officer may allow any person who has been granted permission to appear to question the witnesses for the purpose of assisting him/her in obtaining relevant and material facts on the subject matter of the hearing;

(8) The presiding officer may exclude evidence which s/he deems improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but copies of such exhibits must be provided in reduced size for submission as evidence. Two

copies of all documentary evidence must be furnished to the presiding officer during the hearing;

(9) Briefs may be presented to the presiding officer by parties who have entered an appearance. Three copies of such briefs shall be filed with the presiding officer within 10 days of the completion of the hearing; and

(10) Procedures for transcripts are as follows:

(i) All hearings will be transcribed. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Commerce in Washington, D.C., or purchase copies as provided in 15 CFR part 4, Public Information; and

(ii) Confidential business information as determined by EDA shall not be a part of the transcripts. Any confidential business information may be submitted directly to the presiding officer prior to the hearing. Such information shall be labeled Confidential Business Information. For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

### § 315.12 Termination of certification and procedure.

(a) Whenever EDA determines that a certified firm no longer requires adjustment assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register**. The termination will take effect on the date specified in the Notice.

(b) EDA shall immediately notify the petitioner and shall state the reasons for such termination.

### § 315.13 Loss of certification benefits.

A firm may fail to obtain benefits of certification, regardless of whether its certification is terminated for any of the following reasons:

(a) Failure to submit an acceptable adjustment proposal within 2 years after date of certification. While approval of an adjustment proposal may occur after the expiration of such 2-year period, an acceptable adjustment proposal must be submitted before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for adjustment assistance consistent with its adjustment proposal within 6 months after approval of the adjustment proposal and 2 years have elapsed since the date of certification. If the firm anticipates that a longer period will be required to submit documentation, such longer period should be indicated in its adjustment proposal. If the firm becomes unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) If the firm's request for adjustment assistance has been denied, the time period allowed for the submission of any documentation in support of such request has expired, and 2 years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved adjustment proposal, and 2 years have elapsed since the date of certification.

## Subpart D—Assistance to Industries

### § 315.14 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the firms in such industry, assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such firms.

(b) EDA may provide technical assistance, on such terms and conditions as EDA deems appropriate for the establishment of industry wide programs for new product development, new process development, export development or other uses consistent with the purposes of this part.

(c) Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as EDA deems appropriate.

## PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Sec.

316.1 Environment.
316.2 Excess capacity.
316.3 Nonrelocation.
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316.12 Fees for paying attorneys and consultants.
316.13 Economic development information clearinghouse.
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316.15 Maintenance of standards.
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316.17 Acceptance of certifications by applicants.
316.18 Reports by recipients.
316.19 Project administration by districts.

**Authority:** 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; Department of Commerce Organization Order 10–4.

### § 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) Requirements under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, as amended, 42 U.S.C. 4321 *et seq.* as implemented under 40 CFR parts 1500 *et seq.* including the following:

(i) The implementing regulations of NEPA require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b); and

(ii) Depending on the project location, environmental information concerning specific projects can be obtained from the Environmental Officer in the appropriate Washington, D.C. or regional office listed in the NOFA;

(2) Clean Air Act, Pub. L. 88–206 as amended, 42 U.S.C. 7401 et. seq.;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 et. seq.;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96–510, as amended, 42 U.S.C. 9601 et. seq. and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Pub.L. 94–580 as amended, 42 U.S.C. 6901 *et seq.*;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86–523, as amended, 16 U.S.C. § 469a–1 et. seq.;

(9) National Historic Preservation Act of 1966, Pub. L. 89–665, as amended, 16 U.S.C. § 470 et. seq.;

(10) Endangered Species Act of 1973, Pub. L. 93–205, as amended, 16 U.S.C. § 1531 et. seq.;

(11) Coastal Zone Management Act of 1972, Pub. L. 92–583, as amended, 16 U.S.C. § 1451 et. seq.;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, 42 U.S.C. § 4002 et seq.;

(13) Safe Drinking Water Act of 1974, Pub. L. 92–523, as amended, 42 U.S.C. § 300f-j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90–542, as amended, 16 U.S.C. § 1271 et seq.;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97–98, as amended, 7 U.S.C. § 4201 et seq.; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

**§ 316.2 Excess capacity.**

(a) *Definitions*. For purposes of this section only the following definitions apply:

*Beneficiary* means a firm or group of firms, enterprise or organization (public or private) that provides a commercial product or service and that benefits from an EDA-assisted project.

*Capacity* means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

*Commercial product or service* means a product or service that competes with other providers of the same kinds of product or service.

*Demand* means the actual quantity of a commercial product or service that users are willing to purchase in the market area served by the intended beneficiary of the EDA assisted project.

*Efficient capacity* means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs, and technologies.

*Existing competitive enterprise* means an established operation which either produces or delivers the same kind of commercial product or service to all or a substantial part of the market area served by the intended beneficiary of the EDA assisted project.

*Firm* means any enterprise which produces or sells a commercial product or service.

*Market Area* means the geographic area within which commercial products or services compete for purchase by customers.

*Product or service* means a good, material, or commodity, or the availability of a service or facility.

Section 208 means section 208 of PWEDA.

(1) A section 208 study is a detailed economic analysis/evaluation of competitive impact.

(2) A section 208 report is a summary of supply/demand factors.

(3) A section 208 exemption may apply to a project having one or more of the characteristics listed in paragraph (e) of this section.

(b) Under section 208:

(1) No financial assistance under PWEDA shall be extended to any project when the result would be to increase the production of products or services when there is not sufficient demand for such products or services, to employ the efficient capacity of existing competitive commercial or industrial enterprises; and

(2) When EDA considers extending assistance for a project that benefits a firm or industry that provides a commercial product or service, the beneficiary is subject to a 208 report, study, or exemption, resulting in a finding that the project will or will not violate section 208. A section 208 study or report is required, except as provided in paragraph (e) of this section.

(c) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 208 study or report:

(1) The beneficiary shall submit, as early as possible, the following information with regard to each commercial product or service affected by the project:

(i) A detailed description of the commercial product or service;

(ii) Current and projected amount and value of annual sales or receipts;

(iii) Market area; and

(iv) Name of other suppliers and amount of commercial product or service presently available in the market area.

(2) If the beneficiary has conducted or commissioned a relevant market study, it shall be made available to EDA as early as possible, for possible use by EDA in the 208 study or report.

(d) A section 208 report will form an acceptable basis on which to make a section 208 compliance finding when the beneficiary's projected new or additional annual output is less than one percent of the last recorded annual output in the market area, or when it is otherwise apparent that a 208 study is not required to determine that the project will not violate section 208.

(e) Unless EDA determines that circumstances require a section 208 study or report, EDA will make a finding of compliance with section 208 without doing a section 208 report or study for those projects which have one or more of the following characteristics:

(1) The project is primarily for the use and benefit of the community as a whole without contributing to a new or significantly expanded output of commercial products or services;

(2) The project will not contribute directly to the production or distribution of new or expanded output of commercial products or services, to any significant degree;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster, without contributing to significant expansion of the previously existing supply of the same kinds of commercial products or services;

(4) The project will assure the retention of physical capacity and/or employment without significantly expanding the existing supply of commercial products or services;

(5) The project will assure the reopening of facilities closed within two years of the date of reopening, if the facility will provide the same kinds of products or services as previously provided, without a significant increase in output;

(6) The project will replace, rebuild or modernize, within the same labor market area, facilities which within the previous two years have been, or are to be, displaced by official governmental action, without a change in the kind or significant increase in output of the commercial product or service previously provided;

(7) The project assures completion of a project previously assisted by EDA, where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(8) The project is wholly or primarily for planning, technical assistance, research, evaluation, other studies, or for the training of workers, and not for the benefit of a firm or industry that produces a commercial product or service; or

(9) No firm benefitted by the project will use 50 percent or more of any EDA-financed service or facility.

**§ 316.3 Nonrelocation.**

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area (''area'') is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of the applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

**§ 316.4 Procedures in Disaster Areas.**

When non-statutory EDA administrative or procedural conditions for financial assistance awards cannot be met by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

**§ 316.5 Project servicing for loans and loan guarantees.**

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans under any programs administered by EDA. This includes but is not limited to loans under PWEDA prior to the effective date of Public Law 105–393, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

(b) Borrowers/lenders shall submit to EDA any requests for modifications of their agreements with EDA. EDA shall, in accordance with applicable laws and policies, including the Federal Credit Reform Act of 1990 (2 U.S.C. 661c(e)), consider and respond to such modification requests.

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased, EDA may:

(1) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) Take any and all other actions determined by it to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased.

**§ 316.6 Public information.**

The rules and procedures regarding public access to the records of the Economic Development Administration are found at 15 CFR part 4.

**§ 316.7 Relocation assistance and land acquisition policies.**

Recipients of EDA financial assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits as applicable) are subject to requirements set forth at 15 CFR part 11.

**§ 316.8 Additional requirements; Federal policies and procedures.**

Recipients, as defined under § 314.2 of this chapter, are subject to all Federal laws and to Federal, Department of Commerce, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 15 CFR part 14, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Other Non-Profit and Commercial Organizations, whichever is applicable.

**§ 316.9 Amendments and changes.**

(a) Requests by recipients for amendments to a grant shall be submitted in writing to EDA for approval, and shall contain such information and documentation necessary to justify the request.

(b) Any changes made without approval by EDA are made at grantee's own risk of suspension or termination of the project.

(c) Changes of project scope after the time the project grant funds could be obligated will not be approved by EDA. In most cases, project grant funds cannot be obligated after September 30 of the fiscal year the grant is awarded.

**§ 316.10 Preapproval award costs.**

Project activities carried out before approval of an application by EDA are carried out at the sole risk of the applicant. Such activity could result in rejection of such project application, the disallowance of costs, or other adverse consequences as a result of non-compliance with Federal requirements, including, but not limited to, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation or related requirements.

**§ 316.11 Intergovernmental review of projects under EDA's public works, economic adjustment, planning, local technical assistance, and university center programs.**

(a) When the applicant is not a State, Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate general purpose local governmental authority of the area a minimum of 15 days in which to review and comment on the proposed project. The applicant shall furnish with the application a copy of such comments, or a statement of the efforts made to obtain them together with an explanation of the actions taken to address any comments received.

(b) Applicants as appropriate, must also give State and local governments a reasonable opportunity to review and comment on the proposed project if the State has a Single Point of Contact review process, including comments from areawide planning organizations in

metropolitan areas as provided for in 15 CFR part 13.

**§ 316.12 Fees for paying attorneys and consultants.**

Grant funds must not be used directly or indirectly to pay for attorney's or consultant's fees in connection with obtaining grants and contracts for projects funded under PWEDA.

**§ 316.13 Economic development information clearinghouse.**

EDA will provide assistance and information as follows:

(a) Maintain a central information clearinghouse on matters relating to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal and State governments, including political subdivisions of States;

(b) Assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal, State, and local laws in locating and applying for the assistance; and

(c) Assist areas described in § 301.2(b) and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas.

**§ 316.14 Project administration, operation, and maintenance.**

EDA shall approve Federal assistance under PWEDA only if satisfied that the project for which Federal assistance is granted will be properly and efficiently administered, operated, and maintained.

**§ 316.15 Maintenance of standards.**

In accordance with sec. 602 of PWEDA all laborers and mechanics employed by contractors or subcontractors on public projects assisted by EDA under PWEDA shall be paid in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5).

**§ 316.16 Records and audits.**

(a) Each recipient of Federal assistance under PWEDA shall keep such records as the Secretary shall require, including records that fully disclose—

(1) The amount and the disposition by the recipient of the proceeds of the assistance;

(2) The total cost of the project in connection with which the assistance is given or used;

(3) The amount and nature of the portion of the cost of the project provided by other sources; and

(4) Such other records as will facilitate an effective audit.

(b) Access to books for examination and audit—The Secretary, the Inspector General of the Department, and the Comptroller General of the United States, or any duly authorized representative, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that relate to assistance received under PWEDA.

**§ 316.17 Acceptance of certifications by applicants.**

EDA will accept an applicant's certifications, accompanied by evidence satisfactory to EDA, that the applicant meets the requirements of PWEDA. Each applicant must include in such evidence satisfactory information that any non-Federal funds (or eligible Federal funds) required to match the EDA share of project costs are committed to the project and will be available as needed.

**§ 316.18 Reports by recipients.**

(a) In general, each recipient of assistance under PWEDA must submit reports to EDA at such intervals and in such manner as EDA shall require, except that no report shall be required to be submitted more than 10 years after the date of closeout of the assistance award.

(b) Each report must contain an evaluation of the effectiveness of the economic assistance provided in meeting the need that the assistance was designed to address and in meeting the objectives of PWEDA

**§ 316.19 Project administration by District organization.**

When an Economic Development District is not a recipient or co-recipient of an award for a project involving construction, the District organization may administer the project for such recipient if the following conditions are met, as determined by EDA:

(a) The recipient has requested (either in the application or by separate written request) that the district organization for the area in which the project is located perform the project administration;

(b) The recipient certifies and EDA finds that:

(1) Administration of the project is beyond the capacity of the recipient's current staff to perform and would require hiring additional staff or contracting for such services,

(2) No local organization/business exists that would be able to administer the project in a more efficient or cost-effective manner than the staff of the district, and

(3) The staff of the district would administer the project themselves, without subcontracting the work out;

(c) EDA approves the request either by approving the application in which the request is made, or by separate specific written approval; and

(d) The allowable costs for the administration of the project by the district organization staff will not exceed the customary and reasonable amount that would be allowable if the district were the recipient.

## PART 317—CIVIL RIGHTS

Sec.
317.1 Civil rights.

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

**§ 317.1 Civil rights.**

(a) Discrimination is prohibited in programs receiving federal financial assistance from EDA in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000d *et seq.* (proscribing discrimination on the basis of race, color, or national origin), and the Department of Commerce's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex);

(3) 29 U.S.C. 794, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 8b (proscribing discrimination on the basis of disabilities);

(4) 42 U.S.C. 6101, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 20; and

(5) Other Federal statutes, regulations and Executive Orders as applicable.

(b) Definitions:

(1) Other Parties means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(c) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with Department of Commerce and EDA regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data in such form and manner as determined by EDA;

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin, age, education and job-related criteria must be retained by employers.

(d) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects which provide service benefits, in addition to requirements listed in paragraph (c) of this section, applicants are required to submit any other information EDA may deem necessary for such determination.

(e) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and OEDP Committees to take appropriate steps to ensure that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and OEDP Committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(f) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8(b), 8(c), and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

## PART 318—EVALUATIONS OF UNIVERSITY CENTERS AND ECONOMIC DEVELOPMENT DISTRICTS

Sec.

318.1 University Center performance evaluations.
318.2 Economic Development District performance evaluations.

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

### § 318.1 University Center performance evaluations.

(a) EDA will evaluate the performance of each University Center. EDA will:

(1) Evaluate each University Center at least once every three years;

(2) Assess the University Center's contribution to providing technical assistance, conducting applied research, and disseminating project results, in accordance with the scope(s) of work funded during the evaluation period; and

(3) For peer review, ensure the participation of at least one other University Center, as appropriate, in the evaluation.

(b) The purpose of the evaluations of University Centers is to determine which centers are performing well and are worthy of continued grant assistance from EDA, and which should not receive continued assistance, so that university centers that have not previously received assistance may receive EDA assistance.

### § 318.2 Economic Development District performance evaluations.

EDA will evaluate the performance of each Economic Development District. EDA will:

(a) Evaluate each Economic Development District at least once every three years;

(b) Assess the Economic Development District's management standards, financial accountability, and program performance in accordance with the current instructions for Economic Development District performance appraisals; and

(c) For peer review, ensure the participation of at least one other Economic Development District organization, as appropriate, in the evaluation.

Dated: January 20, 1999.

**Phillip A. Singerman,**

*Assistant Secretary, Economic Development Administration.*

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