

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 661
GENERAL CONDITIONS OF GRANTS FOR THE FINANCING AND
CONSTRUCTION OF PUBLIC WATER SUPPLY FACILITIES

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AUTHORITY: Implementing and authorized by Sections 4(k), 4(x)(1), and 4(x)(2) of the Illinois Environmental Protection Act [415 ILCS 5/4(k), 415 ILCS 5/4(x)(1), and 415 ILCS 5/4(x)(2)].

SOURCE: Emergency rules adopted at 11 Ill. Reg. 19709, effective November 20, 1987, for a maximum of 150 days; adopted at 12 Ill. Reg. 8926, effective May 17, 1988; amended at 14 Ill. Reg. 2055, effective January 18, 1990; amended at 41 Ill. Reg. 13243, effective October 20, 2017.

NOTE: CAPITALIZATION DENOTES STATUTORY LANGUAGE.

SUBPART A: INTRODUCTION

Section 661.101 Purposes

- b) Sections 4(k), 4(x)(1), and 4(x)(2) of the Environmental Protection Act [415 ILCS 5/4(k), 415 ILCS 5/4(x)(1), 415 ILCS 5/4(x)(2)] authorize the Illinois Environmental Protection Agency (“Agency”) *to distribute grants, subject to appropriation by the general assembly, to units of local government for financing and construction of public water supply facilities. With respect to all monies appropriated from the Build Illinois Bond Fund or the Build Illinois Purposes Fund for public water supply grants, such grants shall be made in accordance with rules promulgated by the Agency.*
- c) The rules set forth in this Part constitute conditions that apply to any grant to units of local government for financing and construction of public water supply facilities.
- d) (Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.102 Definitions

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act.
- b) For purposes of this Part and 35 Ill. Adm. Code 660, the following definitions apply:

“Act” means the Environmental Protection Act [415 ILCS 5].

“Addenda” means written or graphic instruments issued prior to the execution of the agreement that modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications, or corrections.

“Agency” means the Illinois Environmental Protection Agency.

“Applicant” means grant applicant.

“Bid” means the offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.

“Bidder” means any person, firm or corporation submitting a bid for the

work.

“Change order” means 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.

“Construction” means any one or more of the following: surveys, designs, plans, working drawings, specifications, erection, building, acquisition (of equipment, supplies, or components), alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

“Contract documents” means the contract, including advertisement for bid, information for bidders, bid, bid bond, agreements, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications, and addenda.

“Contract price” means the total monies payable to the contractor under the terms and conditions of the contract documents.

“Contract time” means the number of calendar days stated in the contract documents for the completion of all the work including punch list items.

“Contractor” means the person, firm or corporation with whom the owner has executed a subagreement.

“Director” means the Director of the Illinois Environmental Protection Agency.

“Drawings” means the part of the contract documents that shows the characteristics and scope of the work to be performed and that has been prepared by or approved by the engineer based upon the engineer’s professional judgment.

“Engineer” means the person, firm or corporation named as such in the contract documents.

“Field order” means 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.

“Force account work” means work performed or a purchase made by a grantee in lieu of such work being performed or purchase being made by a

person other than the grantee.

“Generally accepted accounting principles” or “GAAP” has the meaning provided in accounting standards issued by the Government Accounting Standards Board and the Financial Accounting Standards Board.

“Generally accepted auditing standards” means generally accepted government auditing standards issued by the Comptroller General of the United States that are applicable to financial audits.

“Grant” means a grant under Section 4(x)(1) of the Act.

“Grant agreement” means the written agreement between the Agency and a grant recipient (applicant) in which the terms and conditions governing the grant are stated and agreed to by both parties.

“Grant applicant” means the unit of local government which has applied for a grant under Section 4(x)(1) of the Act.

“Grantee” or “Owner” means the unit of local government which has received a grant under Section 4(x)(1) of the Act.

“Grant procedures” means the procedures for issuing grants under Section 4(x)(1) of the Act.

“Initiation of operation” means the date specified by the grant recipient on which use of the project begins for the purposes that it was planned, designed and built.

“Notice of award” means the written notice of the acceptance of the bid from the owner to the successful bidder.

“Notice to proceed” means written communications issued by the owner to the contractor authorizing him to proceed with the work and establishing the date of commencement of the work.

“Professional judgment” means the use of those engineering principles and practices used by engineers when fulfilling their requirements and duties consistent with the specific requirements of this Part and as certified by a Professional Engineer licensed under the Illinois Professional Engineering Act [225 ILCS 325].

“Project” means the undertaking to be performed as provided in the grant agreement.

“Resident project representative” means the authorized representative of the owner who is assigned to the project site or any part of the project site.

“Responsible bidder” means a bidder who meets all of the criteria for responsibility established by the grantee or contractor in the invitation for bid or proposal and, in addition, meets all of the criteria set forth in Section 661.301(j)(1).

“Responsive bidder” means a bidder who complies with the invitation for bid or proposal in all material respects as to the method, substance and timeliness of submission.

“Shop drawings” means all drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the contractor, subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the work shall be fabricated or installed.

“Specifications” means a part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

“Subagreement” means a written agreement between the grant recipient and another party and any agreement thereunder for the furnishing of services, supplies or equipment necessary to complete the project for which a grant was awarded, including contracts for personal and professional services and purchase orders.

“Subcontractor” means 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.

“Substantial completion” means the date certified by the engineer when the construction of the project or a specified part of the project is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be utilized for the purpose for which it is intended.

“Supplier” means 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.

“Unit of local government” means a county, municipality, township, municipal or county water or utility authority, municipal public water

district, improvement authority or municipal subdivision whose primary purpose is to construct, operate and maintain public water supply facilities.

“Work” means all labor necessary to produce the construction required by the contract documents, and all materials and equipment incorporated or to be incorporated in the project.

“Written notice” means any notice to any party of the agreement relative to any part of this agreement in writing. Written notice shall be considered delivered and the service of that notice completed, when posted by certified or registered mail to the said party at his or her last given address or delivered in person to said party or his or her authorized representative on the work.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.103 Severability

If any provision of this Part or the application thereof to any person or in any circumstance is adjudged invalid, such adjudication shall not affect the validity of this Part as a whole or any provision thereof not adjudged invalid.

SUBPART B: LIABILITIES AND REMEDIES FOR FAILURE TO COMPLY WITH GRANT CONDITIONS

Section 661.201 Noncompliance with Grant Conditions

- a) In the event of noncompliance with any condition imposed pursuant to a grant, the Director shall take one or more of the following actions:
 - 1) Commence legal action in a court of competent jurisdiction (e.g., to obtain an injunction or to recover in fraud);
 - 2) Annul the grant and recover all grant funds pursuant to the Illinois Grant Funds Recovery Act [30 ILCS 705];
 - 3) Terminate the grant pursuant to Section 661.203;
 - 4) Suspend all or part of the project work pursuant to Section 661.202; or
 - 5) Take other action as provided by law, including, but not limited to, reducing the amount of the grant by the amount of misused funds or disallow costs in accordance with Section 661.701.

- b) No action shall be taken under this general condition without prior consultation with the applicant.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.202 Stop-Work Order

- a) The Agency may, for any violation of this Part or for any violation of a special condition set forth in the grant, by written order to the grantee, require the grantee to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop-work order issued pursuant to this clause. Any such order shall include a list of the project activities to which the stop-work order shall apply. Upon receipt of such an order, the grantee shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of not more than 30 days of the date of the stop-work order, or within any extension of that period to which the parties shall have agreed, the Agency shall either:
 - 1) Cancel the stop-work order upon the resolution of the violations leading to the stop-work order; or
 - 2) Terminate the work covered by such order as provided in Section 661.203 if the violations are not resolved.
- b) If a stop-work order issued under this condition is canceled or the period of the order or any extension thereof expires, the grantee shall resume work. An adjustment shall be made in the grant period or the project period, and the grant instrument shall be amended accordingly, if:
 - 1) The stop-work order results either in an increase in the time required for, or in the grantee's cost properly allocable to, the performance of any part of the project; and
 - 2) The grantee asserts a written claim for such adjustment within 30 days after the end of the period of work stoppage. The written claim shall set forth the factual basis for the Grantee's claim that the stop-work order results either in an increase in the time required for, or in the Grantee's cost properly allocable to, the performance of any part of the project. Such claim must be submitted prior to final payment under the grant.

- c) Costs which are incurred by the grantee after the receipt of a stop-work order, or within any extension of the stop-work order period to which the Agency and the grantee shall have agreed, shall be allowable only if so defined by Section 661.701 and only to the extent that funds under the existing grant are available.

Section 661.203 Termination

- a) **Grant Termination by Agency**
The Agency, by written notice and after consultation with the grantee, may terminate the grant. Cause for termination shall include, but not be limited to: default (inability or unwillingness to perform under this Part) by the grantee, failure by the grantee to comply with the terms and conditions of the grant, lack of adequate funding, or advancements in the state of the art. Upon termination, the grantee shall refund to the State of Illinois any unexpended grant funds, except that portion required by the grantee to make payment for materials and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination and further provided that those costs are otherwise allowable under Section 661.701 and under the conditions of the grant.
- b) **Project Termination by Grantee**
The grantee may not terminate a project for which the grant has been awarded, except for good cause. Good cause for termination shall include, but not be limited to, realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancement in the state of the art. If the Agency finds that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, it shall enter into a termination agreement or unilaterally terminate the grant, effective with the date of termination of the project by the grantee. Any termination agreement shall include special conditions for the termination of the grant. If the Agency finds that the grantee has terminated the project without good cause, then the grant shall be annulled and all grant funds previously paid or owing to the grantee shall be returned to the State of Illinois.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.204 Waiver of Conditions

- a) Except as provided otherwise in subsection (b), if the requirement waived is not considered by the Director to be necessary to insure the integrity of the project, upon written request of the grantee, the Director shall waive any or all of the conditions required by this Part, either in whole or in part, with respect to any grant offer, by a statement made in writing to the grantee as a special condition of the grant offer and the waiver made subject to such additional conditions as the Director may deem necessary based upon the waiver.

- b) The Director may not waive any conditions set forth in Section 661.407 and Section 661.705.

Section 661.205 Covenant Against Contingent Fees

The grantee must warrant that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

SUBPART C: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS OF GRANTEE

Section 661.301 General Conditions for all Subagreements

The following conditions shall apply to all subagreements entered into between the grantee and any other party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which the grant is awarded, including contracts and subcontracts for personal and professional services, and for construction and purchase orders.

- a) Local preference

Local laws, ordinances, regulations or procedures which are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be employed in evaluating bids or proposals for subagreements under a grant.

- b) Competition

It is the policy of the Agency to encourage free and open competition appropriate to the type of project work to be performed.

- c) Profits

- 1) Only fair and reasonable profits may be earned by contractors in subagreements under Agency grants.
- 2) Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 661.302 is presumed to be reasonable.
- 3) For determining a fair and reasonable profit for negotiated subagreements, the factors to be considered shall include material acquisition, labor costs, associated management costs, contract risks, capital investments, degree of

independent development, and cost control and recordkeeping efforts. The determination of a fair and reasonable profit for negotiated contracts or agreements shall not be based solely upon the application of a predetermined percentage factor.

d) Grantee responsibility

The grantee is responsible for the administration and successful accomplishment of the project for which Agency grant assistance is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements entered into under the grant. This includes but is not limited to issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters.

e) Privity of contract

Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts), nor to any solicitation or request for proposals thereunder.

f) General requirements

Subagreements must:

- 1) Be necessary for and directly related to the accomplishment of the project work based upon the Agency's professional judgement as defined in Section 661.102(b);
- 2) Be in the form of a bilaterally executed written agreement (except for small purchases of \$10,000 or less);
- 3) Be for monetary or in-kind consideration; and
- 4) Not be in the nature of a grant or gift.

g) Documentation

- 1) Procurement records and files for purchases in excess of \$10,000 shall include the following:
 - A) Basis for contractor selection;
 - B) Justification for lack of competition if competition appropriate to the type of project work to be performed is required but not obtained; and
 - C) Basis for award cost or price.

- 2) Procurement documentation as described in subsection (g)(1) shall be retained by the grantee or contractors of the grantee for the period of time required under Section 661.502.

h) Specifications

- 1) Nonrestrictive specifications

No specification for bids or statement of work in connection with work performed under this grant shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance (as determined by the Agency based upon the Agency's professional judgement as defined in Section 661.102(b)), unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least one brand name or trade name of comparable quality or utility are listed and followed by the words "or equal". The single base bid method of solicitation for equipment and parts for determination of a low, responsive bidder may not be utilized. With regard to materials, if a single material is specified, the applicant must be prepared to substantiate the basis for the selection of the material.

- 2) Standard or proven production techniques

Project specifications shall provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques (consistent with 35 Ill. Adm. Code: Subtitle F), methods, and processes, except to the extent that advanced technology may be utilized if approved by the Agency (based upon the Agency's professional judgement as defined in Section 661.102(b)) by the issuance of a construction permit or authorization to construct.

- 3) Sole source restriction

A specification shall not require the use of structures, materials, equipment, or processes which are known to be available only from a sole source, unless such use has been justified in writing by the grantee's engineer as meeting the needs of the particular project.

- 4) Experience clause restriction

The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases in which the grantee justifies any such requirement in writing. The Agency's acceptance of the justification shall be based upon the Agency's professional judgement as defined in Section 661.102(b). Where such justification has been made, submission of a bond or deposit shall be permitted in lieu of a specified experience period, and the period of time for which such bond or deposit is required may not exceed the experience period specified.

i) Force account work

1) The grantee must request and secure prior written approval of the Agency for utilization of the force account method in lieu of subagreement.

2) The Agency's approval shall be based on its determination that:

A) All of the following conditions are met:

i) The grantee possesses the necessary competence and resources to accomplish the project work, as determined by the Agency based upon the Agency's professional judgement as defined in Section 661.102(b); and

ii) The work can be accomplished more economically by the use of the force account method, as determined by the Agency based upon the Agency's professional judgement as defined in Section 661.102(b); and

iii) The grantee can document and support the costs incurred for the project work, as determined by the Agency based upon generally accepted accounting principles and generally accepted auditing standards as defined in Section 661.102(b); or

B) Emergency circumstances (i.e., conditions that threaten the safety or adequacy of the water supply) so dictate.

j) No subagreement shall be awarded to any person or organization which does not:

1) Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities, or a firm

- commitment, arrangement, or ability to obtain such (including proposed subagreements);
- 2) Have resources sufficient to comply with the proposed or required completion schedule for the project;
 - 3) Have a satisfactory record of integrity, judgment, and performance, including in particular any prior performance under grants and contracts with the federal or state government;
 - 4) Have a financial management system and audit procedure which complies with generally accepted accounting principles and with American Institute of Certified Public Accountant's Professional Standards. (666 Fifth Avenue, N.Y., N.Y. 10019, June 1, 1987). (This incorporation contains no later amendments or editions.)
 - 5) Maintain a standard of procurement in accordance with this Part;
 - 6) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding and deposition of all property; and
 - 7) Conform to the civil rights, equal employment opportunity, and labor laws of the State of Illinois.
- k) Fraud and other unlawful or corrupt practices
- 1) The award and administration of grants by the State of Illinois, and of subagreements awarded by grantees under those grants, must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
 - 2) The grantee must effectively pursue available state or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee shall advise the Agency immediately when any such allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any such matter.
- l) Negotiation of subagreements

Negotiation of subagreements (i.e., award of subagreements by any method other than formal advertising) is authorized if one or more of the following conditions exist:

- 1) Public exigency, as evidenced by governmental declaration will not permit the delay incident to advertising (e.g., an emergency procurement);
- 2) The material or service to be procured is available from only one person or firm, and the Agency has given prior written approval of the justification submitted under subsection (h)(3);
- 3) The aggregate amount involved does not exceed \$2,500;
- 4) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution;
- 5) No responsive, responsible bids at acceptable price levels have been received after formal advertising, and the Agency has given advance written approval. The Agency shall give such approval upon a showing by the grantee that no responsive, responsible bids were received;
- 6) The procurement is for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for highly perishable materials, resale, or for technical or specialized supplies requiring substantial initial investment for manufacture. Any negotiated procurement under this subsection other than for perishable materials, must be approved in advance by the Agency based upon the Agency's professional judgement as defined in Section 661.102(b).

m) Small purchase

- 1) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed \$10,000. The small purchase limitation of \$10,000 applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should logically be grouped together. Reasonable competition shall be obtained and shall be evidenced by submission of price quotations to the grantee

- 2) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like may be utilized in the interest of minimizing paperwork. Retention in the purchase files of these documents and of written quotations received, or references to written catalogs or printed price lists used, will suffice as the record supporting the price paid.
- 3) All small purchases must be done in accordance with state and local laws.

n) Agency Review of Subagreements

The Agency retains the right to review and approve in accordance with this Part any subagreement to be entered into by the grantee in furtherance of the administration of the grant prior to execution of that subagreement.

Section 661.302 Construction Contracts of Grantee

- a) This Section shall apply to construction contracts (subagreements) awarded by the grantee.
- b) The project work shall be performed under one or more contracts awarded by the grantee to private firms, except for force account work authorized by the Agency under Section 661.301(i).
- c) Each contract shall be either a fixed-price (lump-sum) contract or fixed-rate (unit price) contract, or a combination of the two, unless the Agency gives advance written approval (based upon the Agency's professional judgment as defined in Section 661.102(b)) for the grantee to use some other acceptable type of contract (such as, but not limited to, per diem contracts as discussed under Section 661.303(b)(5)). The cost-plus-a-percentage-of-cost type of contract shall not be used.
- d) For each construction contract to be awarded by the grantee, the grantee shall require a:
 - 1) Bid bond for 5% of the bid price;
 - 2) Performance bond for 100% of the contract price; and
 - 3) Payment bond for 100% of the contract price.
- e) The grantee must obtain written Agency approval prior to formal advertising. The Agency shall provide approval if the grantee has complied with this Part and the

conditions of the grant. Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 661.301(1). Formal advertising shall be in accordance with the following:

- 1) Adequate public notice
The applicant will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation statewide, inviting bids on the project work, and stating the method by which bidding documents may be obtained and examined. When the estimated prospective cost of construction is ten million dollars or more, the notice must be published in trade journals of nationwide distribution. The applicant must in addition solicit bids directly from bidders, if it maintains a bidders list.
- 2) Adequate time for preparing bids
Not less than 30 days must be allowed between the date when public notice pursuant to subsection (e)(1) is first published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when the notice is first published.
- 3) Adequate bidding documents
Bidding documents (invitations for bid) shall be prepared by the grantee and shall be furnished upon request on a first-come, first-served basis. A complete set of bidding documents shall be maintained by the grantee and shall be available for inspection and copying by any party. The bidding documents shall include:
 - A) A complete statement of the work to be performed, including necessary drawings and specifications, and a completion schedule. Drawings and specifications may be made available for inspection instead of being furnished;
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;
 - D) A copy of all the general conditions, special conditions, assurances, agreements and terms of the grant;
 - E) Responsibility requirements or criteria that will be employed in evaluating bidders; provided, that an experience requirement may

not be utilized unless justified under Section 661.301(h)(4);

F) The following statement:

“Any contract awarded under this Invitation for Bids is expected to be funded in part by a grant from the State of Illinois. Neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this Invitation for Bids or any resulting contract.”;

G) A copy of subsection (e)(3)(H) shall be in the proposal form to be used by bidders and shall constitute a representation and certification to be considered part of the bid. The grantee shall not award any contract to a bidder who has deleted or modified the language contained in subsection (e)(3)(H), as set forth in the proposal form;

H) By submission of the bid, each bidder certifies, and in the case of a joint bid each party thereto certifies as to his or her own organization, that in connection with the bid:

- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
- ii) Unless otherwise required by law, the prices that have been quoted in the bid have not knowingly been disclosed by the bidder, prior to opening, directly or indirectly to any other bidder or to any competitor; and
- iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition; and

I) Each person signing the bid shall certify that:

- i) He or she is the person in the bidder's organization responsible within that organization for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (e)(3)(H); or
- ii) He or she is not the person in the bidder's organization

responsible within that organization for the decision as to the prices being bid, but that he or she has been authorized to act as agent for the persons responsible for the decision in certifying that they have not participated, and will not participate, in any action contrary to subsection (e)(3)(H), and as their agent shall so certify; and shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (e)(3)(H).

- 4) **Sealed Bids**
The grantee shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.
- 5) **Amendments to bidding documents**
If the grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the amendments shall be communicated in writing to all firms who have obtained bidding documents in time to be considered prior to the bid opening time. The period for submission of bids shall be extended when necessary to assure fair and open competition.
- 6) **Bid modifications**
A firm that has submitted a bid shall be allowed to modify or withdraw its bid prior to the time of bid opening.
- 7) **Public opening of bids**
The grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.
- 8) **Award to the low responsive, responsible bidder.**
 - A) After bids are opened, they shall be evaluated by the grantee in accordance with the methods and criteria set forth in the bidding documents.
 - B) The grantee may reserve the right to reject all bids. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the grantee. The Agency's approval shall be based upon a review of the bidding documents, and the grantee's recommendation, for compliance with the grant conditions and this Part.

- C) If award is intended to be made to a firm that did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed not responsive or not responsible.
 - D) Local laws, ordinances, regulations or procedures that are designed or operate to give local or in-state bidders preference over other bidders shall not be employed in evaluating bids.
- f) Negotiations of contract amendments (change orders)
- 1) Grantee responsibility
The grantee is responsible for negotiation of construction contract change orders. This function may be performed by the grantee directly or by the consulting engineer, if authorized by the grantee.
 - A) During negotiations the grantee shall:
 - i) Provide the contractor with a detailed description of the scope and extent of work to be performed;
 - ii) Require the contractor to demonstrate that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - iii) Require a fair and reasonable price for the work.
 - B) For each change order the grantee shall maintain a written summary of all negotiations and an independent cost estimate prepared by the grantee's consulting engineer.
 - 2) Changes in contract price or time
The contract price or time may be changed only by a change order. Negotiations shall be conducted in accordance with this subsection (f). The value of any work covered by a change order, or the value of claim for increases or decreases in the contract price, shall be determined by whichever method set forth in this subsection (f)(2) is the most advantageous to the grantee:
 - A) Unit prices
 - i) Original bid items: Unit prices set forth in the original bid are acceptable for pricing change orders. However, when

changes in quantities exceed 15% of the original bid quantity, the unit price shall be reviewed by the grantee to determine if a new unit price should be negotiated.

- ii) New items: Unit prices of new items shall be negotiated.
- B) A lump sum to be negotiated.
 - C) Cost reimbursement
The actual cost for labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work plus an amount to be agreed upon to cover the cost of general overhead and profit to be negotiated.
- 3) For each change order, the contractor shall submit to the grantee cost and pricing data to enable the grantee to determine if the costs are fair and reasonable. The data shall include:
- A) As a minimum, proposed change order costs shall be presented in summary format as prescribed by the Agency and shall be supported by a certification executed by the contractor that proposed costs reflect complete, current and accurate cost and pricing data applicable to the data of the change order.
 - B) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price change orders and a specific total dollar amount of profit will be set forth separately in the cost summary for cost reimbursement change orders.
 - C) More detailed cost data than that set forth by the summary format may be required to enable the grantee to determine if the costs are fair and reasonable.
 - D) For costs under cost reimbursement change orders, the contractor shall have an accounting system that accounts for the costs in accordance with GAAP. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable change orders. The contractor shall propose and account for allowable change order costs in a manner consistent with these accounting procedures.
 - E) Change orders awarded on the basis of review of a cost element summary and a certification of complete, current, and accurate cost

pricing data shall be subject to downward renegotiation or recoupment of funds when subsequent audit pursuant to this Part substantiates that the certification was not based on complete, current and accurate cost and pricing data and on costs allowable under these regulations at the time of the change order execution.

- 4) Agency review

For any change order, the grantee shall submit the following to the Agency for review to determine compliance with this Part:

 - A) The cost and pricing data submitted by the contractor;
 - B) A certification of review and acceptance of the contractor's cost or price; and
 - C) A copy of the change order with a justification describing the need and reasonableness of the change order.

- 5) Profit

For the purpose of negotiated change orders to construction contracts under Agency grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. The estimate of profit is to be reviewed by the grantee as are all other elements of price.

- 6) Allowability

Allowability of costs for change orders shall be determined in accordance with Section 661.701.

- g) Progress payments to contractors
 - 1) Policy

Except as may be otherwise required by law, prompt progress payments shall be made by grantees to prime contractors and by prime contractors to subcontractors and suppliers for eligible construction, material, and equipment costs, including those of undelivered specifically manufactured equipment, incurred under a contract under an Agency construction grant.

 - 2) Protection of progress payments made for specifically manufactured equipment

The grantee shall assure protection of the State's interest in progress payments made for specifically manufactured equipment. This protection must be in a manner or form acceptable to the grantee and shall take the form of recordation under the Uniform Commercial Code [810 ILCS 5],

adequate to protect the interest of the grantee and the State.

- 3) **Limitations on progress payments**
In no case may progress payments for undelivered equipment or items be made in any amount greater than 75% of the cumulative incurred costs allocable to contract performance with respect to the undelivered equipment or items. Submission of a request for any progress payments shall be accompanied by a certification furnished by the fabricator of the equipment or item that the amount of progress payment claimed constitutes not more than 75% of cumulative incurred costs allocable to contract performance, and in addition, in the case of the first progress payment request, a certification that the amount claimed does not exceed 15% of the contract or item price quoted by the fabricator.
 - 4) A subcontractor or supplier that is determined by the Agency to have frustrated the intent of the provisions regarding progress payments for major equipment or specifically manufactured equipment through failure to deliver the equipment shall be determined nonresponsible.
 - 5) **Contract provisions**
Appropriate provisions regarding progress payments must be included in each contract and subcontract.
 - 6) The foregoing progress payments policy shall be implemented in invitations for bids under construction grants.
- h) **Retention from progress payments**
- 1) The grantee may retain a portion of the amount otherwise due the contractor. Except as provided in subsection (h)(1)(D), the amount retained by the grantee shall be limited to the following:
 - A) The withheld amounts shall be not more than 10% of the payment claimed until the work is 50% complete.
 - B) When work is 50% complete, the withheld amount shall be reduced to 50% of the dollar value of all work satisfactorily completed to date if the contractor is making satisfactory progress and there is no specific cause for greater withholding (as determined by the grantee).
 - C) When the work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below 5% to only the amount necessary to assure completion.

- D) The grantee may reinstate up to 10% withholding if the grantee determines, at its discretion, that the contractor is not making satisfactory progress or there is other specific cause for withholding (as determined by the grantee).
 - 2) The foregoing retention policy shall be implemented with respect to all construction projects for which plans and specifications are approved. Appropriate provision to assure compliance with this policy shall be included in the bid documents for such projects initially or by addendum prior to the bid submission date, and as a special condition in the grant agreement or in a grant amendment.
 - 3) A grantee who delays disbursement of grant funds shall be required to credit to the State all interest earned on those funds.
- i) Required construction contract provisions
- Each construction contract shall include the “General Conditions of Construction Contract Document” as set forth in Appendix A. In addition, each construction contract shall include the following provisions:
- 1) Audit; access to records:
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on grant work under this agreement in accordance with generally accepted accounting principles and with American Institute of Certified Public Accountants’ Professional Standards (666 Fifth Avenue, New York City, New York 10019; June 1, 1987). (This incorporation contains no later amendments or editions.). The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of any cost submissions required under subsection (f) and a copy of the cost summary submitted to the owner. The Auditor General, the owner, the Agency, or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The contractor will provide proper facilities for such access and inspection.
 - B) If this contract is a formally advertised, competitively awarded, fixed price contract, the contractor agrees to include the language set forth in subsection (i)(1) in all contract amendments or negotiated change orders in excess of \$10,000, which affect the contract price. In the case of all other prime contracts, the

contractor agrees to include language set forth in Section 661.303(i)(1) in all his or her contracts and all tier subcontracts or change orders directly related to project performance that are in excess of \$10,000.

- C) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
- D) The contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to subsection (i)(1)(A). When the audit concerns the contractor, the auditing agency will afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- E) Records under subsection (i)(1)(A) shall be maintained and made available pursuant to Section 661.501 during performance on Agency grant work under this agreement and until three years from the date of final grant payment for the project. In addition, those records that relate to any dispute or litigation or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of that dispute, appeal, litigation, claim, or exception.

2) Price reduction for defective cost or pricing data

- A) This clause is applicable only to:
 - i) any negotiated prime contract in excess of \$10,000;
 - ii) negotiated contract amendments or change orders affecting the price of a formally advertised, competitively awarded, fixed price contract; or
 - iii) any subcontract or purchase order under a prime contract other than a formally advertised, competitively awarded, fixed price contract.
- B) This clause is not applicable for contracts or subcontracts to the extent that they are awarded on the basis of effective price competition.

- C) If the Agency determines that any price (including profit) negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant sums because the contractor or any subcontractor furnished incomplete or inaccurate costs or pricing data or data not current as certified in his or her certification of current cost or pricing data, then that price or cost or profit shall be reduced accordingly and the contract shall be modified in writing to reflect the reduction.
 - D) Failure to agree on a reduction shall be subject to 35 Ill. Adm. Code 661. Appendix A, Article 30.
- 3) **Covenant against contingent fees**
The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty the owner shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.
- 4) **Gratuities**
- A) The owner shall, by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found, after notice and hearing, by the owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor or any agent or representative of the contractor, to any official or employee of the owner or of the State of Illinois with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this contract: provided that, if the existence of the facts upon which the owner makes such findings are in issue, they shall be reviewed in proceedings pursuant to 35 Ill. Adm. Code 661. Appendix A, Article 30.
 - B) In the event this contract is terminated as provided in subsection (i)(4)(A) the owner shall be entitled to pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor.
 - C) The rights and remedies of the owner provided in this clause shall not be exclusive and are in addition to any rights and remedies

provided by law or under this contract.

- j) Subcontracts under construction contracts
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor in awarding or executing subcontracts shall comply with all provisions of federal, State and local law, including but not limited to all provisions set forth in this Part relating to:
- 1) Fraud and other corrupt practices; and
 - 2) Access to facilities and records, and audit of records.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.303 Contracts for Personal and Professional Services - Consulting Engineering Agreements

- a) Scope of Application
The provisions of subsections (a) through (i) apply to all subagreements of grantees for architectural or engineering services in which the aggregate amount of services involved is expected to exceed \$10,000. When \$10,000 or less of services (e.g., for consultant or consultant subcontract service) is required, the provisions of Section 661.301(m) shall apply.
- b) Type of Contract (Subagreement)
- 1) General
Cost reimbursement, fixed price or per diem types of contracts or combinations of those contracts may be negotiated for architectural or engineering services.
 - 2) Contracts prohibited
The cost-plus-percentage-of-cost and the percentage-of-construction-cost types of contract are prohibited.
 - 3) Fixed price contracts
A fixed price contract is one that established a guaranteed maximum price that may not be increased except to the extent that a contract amendment increases the scope of work. A fixed price contract may be used only if the scope and extent of work to be performed are clearly defined.
 - 4) Cost reimbursement contracts
Each cost reimbursement contract must clearly establish a cost ceiling that

the engineer may not exceed without formally amending the contract and a fixed dollar profit that may not be increased except in case of a contract amendment which increases the scope of the work.

5) Per diem contracts

Per diem agreements should be used only when the first task under the grant involves establishing the scope and cost of succeeding tasks, or for incidental services, such as expert testimony or other intermittent or professional services. Resident engineer and resident inspection services shall be compensated under a fixed price contract or a cost reimbursement contract as described in subsections (b)(3) and (b)(4), respectively.

6) Compensation procedures

If, under either a cost reimbursement or fixed price contract, the grantee desires to utilize a multiplier type of compensation, all of the following must apply:

A) The multiplier and the portions of the multiplier allocable to overhead and allocable to profit have been specifically negotiated;

B) The portion of the multiplier allocable to overhead includes only allowable items of cost under the cost principles set forth in Section 661.701;

C) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract; and

D) The fixed price contract includes a guaranteed maximum price for completion of the specifically defined scope of work: the cost reimbursement contract includes a fixed dollar profit that may not be increased except in a case of a contract amendment that increases the scope of work.

c) Negotiation

1) Grantees are responsible for negotiation of their contracts for architectural or engineering services. Contract procurement including negotiation may be performed by the grantee directly or by another non-state governmental body, person or firm retained for the purpose.

2) Negotiation shall be conducted in accordance with State and local laws. If State laws conflict with this Part, State laws shall take precedence over this Part. This Part shall have precedence over local ordinances.

- 3) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proceed contract. The grantee and the candidate shall discuss, at a minimum:
 - A) The scope and extent of work;
 - B) Identification of the personnel and facilities to accomplish the work within the required time, including where needed, employment of additional personnel, subcontracting, joint ventures, etc;
 - C) Provision of the required technical services in accordance with regulations and criteria established for the project; and
 - D) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations set forth in subsections (d) and (e), and payment provisions.
- d) Cost and Price Considerations
 - 1) General

It is the policy of the Agency that the cost and price of all subagreements and amendments to those subagreements must be considered. For each subagreement in excess of \$10,000, but not greater than \$100,000, grantees shall use the procedures described in subsection (g)(3) or an equivalent process.
 - 2) Subagreements over \$100,000

For each subagreement expected to exceed \$100,000, or for two subagreements that aggregate more than \$100,000 awarded to an engineer for work on one project, or when the renegotiation or amendment itself is in excess of \$100,000, the provisions of this subsection (d)(2) shall apply.

 - A) The candidates selected for negotiation shall submit to the grantee cost and pricing data described in subsection (d)(3) to enable the grantee to determine if the costs are fair and reasonable.
 - B) The grantee shall submit to the Agency for review:
 - i) The cost and pricing data submitted by the selected engineer;
 - ii) A certification of review and acceptance of the selected engineer's cost or price; and

- iii) A copy of the proposed subagreement document.
 - C) The Agency will review the complete subagreement action and approve the grantee's compliance with this Part prior to the award of the subagreement. The grantee shall be notified upon completion of the review.
- 3) Cost Review
- A) A review of proposed subagreement costs shall be made by the grantee.
 - B) As a minimum, proposed subagreement costs shall be presented in summary format prescribed by the Agency and shall be supported by a certification executed by the selected engineer that proposed costs reflect complete, current and accurate cost and pricing data applicable to the date of anticipated subagreement award.
 - C) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price contracts and a maximum total dollar amount of profit shall be set forth separately in the cost summary for cost reimbursement contracts.
 - D) More detailed cost data than that set forth in the summary format may be required to enable the grantee to determine if the costs are fair and reasonable.
 - E) The engineer's actual costs, direct and indirect, allowable for State participation shall be determined in accordance with the terms and conditions of the subagreement and in accordance with this Part.
 - F) The engineer shall have an accounting system which accounts for costs in accordance with GAAP. This system shall provide for the identification, accumulation and segregation of allowable and unallowable project costs among projects in accordance with Section 661.701. The engineer must propose and account for costs in a manner consistent with normal accounting procedures.
 - G) Subagreements awarded on the basis of review of a cost element summary and a certification of complete, current and accurate cost, and pricing data shall be subject to downward renegotiation or recoupment of funds where the Agency determines that the

certification was not based on complete, current and accurate cost and pricing data at the time of award.

- e) **Profit**
The objective of negotiations shall be the determination of a fair and reasonable profit as defined in Section 661.301(c). For the purpose of subagreements under State grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. Where cost review is performed, the estimate of profit should be reviewed by the grantee as are all other elements of price.
- f) **Award of Subagreement**
After the close of negotiations and after review and approval by the Agency if required pursuant to subsection (d)(2), the grantee may award the contract. Unsuccessful candidates should be notified promptly.
- g) **Required Solicitation and Subagreement Provisions**
 - 1) **Required solicitation statement**
 - A) Requests for qualification or proposals must include the following statement, as well as the proposed terms of the subagreement.

“Any contract or contracts awarded under this request for (qualifications/professional proposals) are expected to be funded in part by a grant from the Illinois Environmental Protection Agency. This procurement will be subject to the requirements of the grant offer.”
 - B) Neither the State of Illinois nor the Illinois Environmental Protection Agency is nor will be a party to this request for (qualifications/professional proposals) or any resulting contract.
 - 2) **Content of subagreement**
 - A) Each subagreement must define:
 - i) The scope and extent of project work;
 - ii) The time for performance and completion of the contract work, and dates for completion of significant project tasks;
 - iii) Personnel and facilities necessary to accomplish the work within the required time;

- iv) The extent of subcontracting and consultant agreements.
- B) If any of these elements cannot be defined adequately for later tasks at the time of contract execution, the subsequent tasks or steps shall be included in the contract at a time specified in the contract.
- 3) Required subagreement provisions
Each consulting engineering contract must include the provisions set forth in Appendix B. The grant will not be awarded unless each consulting engineering contract includes the provision set forth in Appendix B.
- h) Subagreement Payments – Architectural or Engineering Services
 - 1) Grantee payments to consulting engineers for work done during construction will be made periodically throughout the construction period.
 - 2) Upon satisfactory completion by the engineer of the work called for under the terms of a contract, and upon acceptance of that work by the grantee, with the concurrence of the Agency based upon the Agency’s professional judgment as defined in Section 661.102(b), the engineer will be paid the unpaid balance of any money due for that work, including any retained percentages relating to this portion of the work.
 - 3) Payment may not be withheld for professional services, except as provided in the contract for professional services. Any withholding should be limited to only that amount necessary to assure contract compliance.
- i) Subcontracts under subagreements for architectural or engineering services
 - 1) The award or execution of subcontracts under a prime contract for architectural or engineering services awarded to an engineer by a grantee, and the procurement and negotiation procedures used by the engineer in awarding subcontracts are not required to comply with any of the provisions selection procedures, policies or principles set forth in Section 661.301 or Section 661.303, except those specifically stated in subsection (i)(2).
 - 2) The award or execution of subcontracts in excess of \$10,000 under a prime contract for architectural or engineering services and the procurement procedures used by the engineer in awarding such subcontracts must comply with the following:

- A) Section 661.301(a) (Local preference);
- B) Section 661.303(d) (Cost and Price Considerations); and
- C) Section 661.303(e) (Profit).

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.304 Equal Opportunity

In each contract relating to the project, the grantee and each subcontractor shall include the Equal Employment Opportunity Clause set forth in 44 Ill. Adm. Code 750. Appendix A.

Section 661.305 Compliance with Procurement Requirements

- a) **Grantee responsibility**
The grantee is responsible for selecting the low, responsive, and responsible bidder or other contractor in accordance with State or local laws or ordinances, and the grant agreement directly affecting procurement, and for the initial resolution of complaints based upon alleged violations. The grantee shall promptly determine each complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected to state in writing or at a conference the basis for his or her views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering and legal opinion, providing a justification for its determination.
- b) **Arbitration**
Disputes between the grantee and any party adversely affected by the determination of the grantee made pursuant to subsection (a) shall be resolved by binding arbitration by a single arbitrator, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (140 W. 51st Street, N.Y., N.Y., 10020, 1986). (This incorporation contains no further amendments or editions.) This agreement to arbitrate shall be specifically enforceable under the Uniform Arbitration Act [710 ILCS 5]. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in any court having jurisdiction thereof. A copy of the arbitration award shall be provided to the Agency immediately upon its issuance.
- c) **Time limitations**
Complaints under subsection (a) shall should made in writing to the grantee, with a copy to the Agency, as early as possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the

procurement process. A complaint authorized by subsection (a) must be mailed by certified mail (return receipt requested) or delivered to the grantee, with a copy to the Agency, no later than five working days after the bid opening. A request for arbitration pursuant to subsection (b) must be made to the American Arbitration Association within one week after the complaining party received the grantee's adverse determination.

- d) **Deferral of procurement action**
When the grantee has received a written complaint pursuant to subsection (a), it must defer issuance of its solicitation or award or notice to proceed under the contract (as appropriate) for ten days after mailing or delivery of any written adverse determination. If a determination is made by either the grantee or the arbitrator that is favorable to the complainant, the terms of the solicitation must be revised or the contract must be awarded (as appropriate) in accordance with this determination.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.306 Disputes

- a) Only the grantee may appeal to the Agency under this provision with respect to its subagreements for its own name and benefit. Neither a contractor nor a subcontractor of a grantee may prosecute an appeal under the disputes provision of a grant in its own name or interest.
- b) Any dispute arising under this grant that is not disposed of by agreement shall be decided by the Director or the Director's duly authorized representative, who shall reduce his or her decision to writing and mail or otherwise furnish a copy to the applicant. The decision of the Director shall be based upon the application of State law and this Part to the fact presented by the Agency and the grantee. The decision of the Director shall be final and conclusive.
- c) This Section does not preclude consideration of questions of law in connection with decisions provided for in subsection (b).

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.307 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, hold harmless and defend the State of Illinois and the Agency from all claims for

any loss, damage, injury or death whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise consistent with the provisions of the Construction Contract Indemnification for Negligence Act [740 ILCS 35]. The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of the contract or satisfaction of any and all claims arising under the contract.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

SUBPART D: REQUIREMENTS APPLICABLE TO INITIATION, AMENDMENT, COMPLETION AND OPERATION OF PROJECT

Section 661.401 Project Initiation

- a) Any obligation of the State of Illinois and the Agency to make any payment of grant funds shall terminate absolutely unless the project is initiated no later than one calendar year from the date of acceptance by the grantee of the project grant offer.
- b) A project shall be deemed to have been initiated on the issuance of an authorization to award a construction contract, or, if authorization is not required, execution of the construction contract.
- c) In accordance with Section 661.302(e)(8)(B), the Agency must review and approve the bidding information submitted by the grantee prior to initiation of construction.

Section 661.402 Project Changes

- a) Prior approval by the Agency, based upon the Agency's professional judgment as defined in Section 661.102(b), is required for project changes which:
 - 1) Increase the amount of State funds needed to complete the project, except that no change will be approved which either exceeds the grant offered or which exceeds the limitation provided for approvable contingencies;
 - 2) Alter the design or scope of the project;
 - 3) Alter the type of treatment to be provided;
 - 4) Extend any contractual or grant completion date for the project; or
 - 5) Substantially alter the location, size, capacity or quality of any major item of equipment.

- b) The grantee shall notify the Agency in writing of all proposed project changes. Such notice shall include the change order and supporting documentation. Failure on the part of the grantee to give timely notice of proposed project changes or disapproval of a proposed project change by the Agency shall result in:
 - 1) Disallowance of costs incurred which are attributable to the change; or
 - 2) Termination of the grant.
- c) Approval of a project change shall not commit or obligate the State of Illinois or the Agency to any increase in the amount of the grant or payments thereunder and nothing herein shall operate to increase the amount of the grant.
- d) Notwithstanding the provisions of subsections (a) through (c), prior Agency approval is not required for changes having a cost of less than \$500.00.
- e) The Agency will not fund any changes in the project scope which causes the project contingency to exceed 5%.

Section 661.403 Supervision

The grantee will provide and maintain engineering supervision and inspection of the project to ensure that the construction conforms with the approved plans and specifications for any project involving construction.

Section 661.404 Project Sign

The grantee shall erect and display at the project site a sign acknowledging the source of funds for the project. The sign, in form and style to be furnished by the Agency, shall be erected at the start of construction at a location for public viewing and shall be maintained until the project is completed.

Section 661.405 Final Inspection

- a) The grantee must notify the Agency of the completion of project construction. The Agency shall cause final inspection to be made within 60 days of the receipt of the notice provided that the grantee has fully complied with the following sections;
 - 1) Section 661.402 (Project changes);
 - 2) Section 661.406 (Operation and Maintenance); and
 - 3) Section 661.407 (User Charges)
- b) In the event that compliance with the sections listed in subsection (a) is not achieved until after completion of construction, final inspection will be made within 60 days after the

final act of compliance. Upon completion of the final inspection and upon determination by the Agency that the project has been constructed in accordance with the grant and this Part, the Agency shall make final payment in accordance with the provisions of Section 661.704.

- c) In the event that the grantee has not fully complied with the sections listed in subsection (a) within 6 months after completion of construction, this grant agreement shall be terminated pursuant to Section 661.203, and all funds paid out under this grant agreement shall be refunded to the State of Illinois.

Section 661.406 Operation and Maintenance

- a) The grantee shall provide economic, effective, and efficient operation and maintenance of all grant funded treatment, storage, and transmission facilities. The Agency's approval shall be based upon the Agency's professional judgment as defined in Section 661.102(b).
- b) The Agency shall not pay more than 90% of the State share of any project unless the applicant has certified that the following training and documents have been provided for the operation and maintenance of the equipment and process units included in the project:
 - 1) Training by the manufacturer or the grantee's consulting engineer pertaining to the proper operation and maintenance of the equipment and process units included in the project; and
 - 2) An operation and maintenance reference library which includes, but is not limited to approved shop drawings, manufacturers literature, and warranties as well as a maintenance schedule for the equipment and process units included in the project.
- c) The requirements of this Section shall not apply to grants which fund only water main piping.

Section 661.407 User Charges

- a) Each applicant must develop a system of user charges prior to grant approval. The system of user charges must be enacted and enforced prior to initiation of operation of the project for which the grant was awarded.
- b) The user charge system shall be consistent with the following criteria:
 - 1) The user charge system must generate sufficient revenue to offset the cost of all public water supply operation, maintenance and replacement of all equipment with a replacement life of less than 20 years required to be provided by the grantee.

- 2) The user charge system must be enacted into law.
 - 3) For the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon experience for the existing public water supply or shall be based upon a cost estimate provided by the grantee's engineer.
 - 4) The grantee shall review user charges annually and revise the rates periodically to reflect actual public water supply operation, maintenance and replacement costs.
- c) Upon a written determination by the Agency that the grantee's system of user charges complies with the conditions of the grant and this Part, the implementation and maintenance of the approved system and the implementation schedules shall become a condition of the grant subject to the provisions of Section 661.201.
 - d) The grantee must maintain such records as are necessary to document compliance. The grantee shall maintain records in accordance with the provisions of the Local Records Act [50 ILCS 205], except that no records may be destroyed for a period of 30 years unless microfilm reproduction is made.
 - e) The Agency or any authorized representative shall have access to any books, documents, papers, and records of the grantee that are applicable to the grantee's systems of user charges for the purpose of making audit, examination, excerpts, and transcriptions to ensure compliance with the provisions of subsection (b).

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.408 Flood Plain Insurance

- a) If the project includes insurable structures which will be located within a designated flood plan area (Zone A on the Federal Emergency Management Agency (FEMA) Flood Hazardous Maps) the grantee must furnish written evidence that it is participating in the National Flood Insurance Program or the construction areas have been given official exclusion from the flood insurance requirements by FEMA.
- b) The grantee (or construction contractor, as appropriate) shall acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, and maintain such insurance for the entire useful life of the insurable structures.
- c) The amount of insurance required is the total project cost, excluding facilities which are uninsurable under the National Flood Insurance Program (such as bridges, dams, water and sewer lines, and underground structures), or the maximum limit of coverage made

available to the grantee under the National Flood Insurance Act of 1968 (42 USCS Section 4001 et seq., as amended) whichever is less.

- d) The required insurance premium for the period of construction is an allowable project cost.

SUBPART E: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS

Section 661.501 Access

- a) The Agency and any persons designated by the Agency shall have access to the premises where any portion of the project for which the grant was awarded is being performed. Subsequent to cessation of grant support, Agency personnel or any authorized representative shall have access to the project records as described in Section 661.502 and to the project site, to the full extent of the grantee's right to access, during normal business hours.
- b) Any contract entered into by the grantee for work and any subagreement thereunder, shall provide that representatives of the Agency will have access to the work as described in subsection (a) and that the contractor or subcontractor will provide proper facilities for such access and inspection. Such contract or subagreement must also provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records of the contractor or subcontractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.
- c) Any failure by the grantee or any contractor or subcontractor of the grantee to provide access, as provided herein, after 10 days' written notice from the Agency shall be cause for termination of the grant pursuant to Section 661.203, and refund to the State of Illinois of any unexpended grant funds in the hands of the grantee, and in addition thereto, refund of any grant funds previously expended by the grantee, contractor, or subcontractor found in noncompliance with this Section.

Section 661.502 Audit and Records

- a) The grantee shall maintain books, records, documents, reports and other evidentiary material and accounting procedures and practices that conform to GAAP to properly account for:
 - 1) The receipt and disposition by the grantee of all assistance received for the project, including both State assistance and any matching share or cost sharing; and
 - 2) The costs charged to the project, including all direct and indirect costs of

whatever nature incurred for the performance of the project for which the grant has been awarded. The foregoing constitutes “records” for the purposes of this condition.

- b) The grantee’s facilities, or facilities as may be engaged in the performance of the project for which grant has been awarded, and the grantee’s records shall be subject to inspection and audit by the Agency or any authorized representative at the times specified in Section 661.501.
- c) The grantee shall preserve and make his or her records available to the Agency or any authorized representative:
 - 1) Until expiration of 3 years from the date of final payment under this grant, and
 - 2) For such longer period, if any, as is required by applicable statute or lawful requirement, or by subsections (d) or (e).
- d) If this grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.
- e) Records that relate to appeals under Section 661.306, litigation or the settlement of claims arising out of the performance of the project for which this grant was awarded, or costs and expenses of the project as to which exception has been taken by the Agency or any of its duly authorized representatives, shall be retained until all appeals, litigation, claims or exceptions have been disposed.
- f) Any failure by the grantee or any contractor or subcontractor of the grantee to make records available to the Agency as required by this Section after 10 days’ written notice from the Agency, shall be cause for termination of the grant, pursuant to Section 661.203, and refund to the State of Illinois of any unexpended grant funds in the hands of the grantee, and in addition, refund of any grant funds previously expended by the grantee, contractor or subcontractor found in noncompliance with this Section.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

SUBPART F: INCORPORATED REQUIREMENTS

Section 661.601 Statutory Conditions

- a) All grants are awarded subject to State law, including but not limited to the requirements of the following Illinois statutes:

- 1) The Illinois Architecture Act of 1989 [225 ILCS 305] relating to the practice of architecture.
- 2) The Adjacent Landowner Excavation Protection Act [765 ILCS 140] relating to the duty of an owner or occupant of land upon which excavations are made in reference to the furnishing of lateral and subjacent support to adjoining lands and structures on those lands.
- 3) Section 18f of the Rivers, Lakes, and Streams Act [615 ILCS 5/18f] relating to flood plains.
- 4) The Public Construction Bond Act [30 ILCS 550] relating to bonds of contractors entering into contracts for public construction.
- 5) The Public Works Employment Discrimination Act [775 ILCS 10] relating to the prohibition of discrimination and intimidation on account of race, creed, color, sex or national origin in employment under Contracts for Public Works.
- 6) The Prevailing Wage Act [820 ILCS 130] relating to the regulation of laborers, mechanics and other workmen employed in any public works by the State, county, city or any public body or any political subdivision or by anyone under contract for public works.
- 7) The Health and Safety Act [820 ILCS 225] relating to the health and safety of persons employed and vesting in the Worker's Compensation Commission power to make reasonable rules relating to health and safety.
- 8) The Workers' Compensation Act [820 ILCS 305] relating to providing compensation for accidental injuries or death suffered in the course of employment within this State, and outside the State when the contract of employment is made within this State.
- 9) The Medical Examination of Employees Act [820 ILCS 235] relating to forbidding employers to require employees or applicants for employment to pay the cost of medical examinations required as a condition of employment.
- 10) The Workers' Occupational Diseases Act [820 ILCS 310] relating to providing remedies for injuries suffered or death resulting from occupational diseases incurred in the course of employment.
- 11) The Employment of Illinois Workers on Public Works Act [30 ILCS 570]

relating to employment of Illinois laborers only during periods of excessive unemployment in Illinois.

- 12) The Professional Engineering Practice Act of 1989 [225 ILCS 325] relating to the practices of professional engineering.
 - 13) The Notice By Publication Act [715 ILCS5] relating to publication of notices.
 - 14) Sections 3 and 4 of the Public Officer Prohibited Activities Act [50 ILCS 105/3 and 50 ILCS 105/4] relating to the prevention of fraudulent and corrupt practices in the making or accepting of contracts by public officers.
 - 15) The Open Meetings Act [5 ILCS 120] relating to meetings.
 - 16) The Environmental Protection Act [415 ILCS 5] and regulations thereunder.
 - 17) The Structural Engineering Practice Act of 1989 [225 ILCS 340] relating to the practice of structural engineering.
 - 18) The Illinois Grant Funds Recovery Act [30 ILCS 705] concerning grant funds in the State of Illinois.
- b) The grantee is solely responsible for assuring compliance with all applicable federal and State statutory and regulatory requirements.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.602 Incorporation of Documents

The declarations, assurances, representatives, and statements made or to be made by the grantee in any of the following documents, which pertain to the project, and all terms and conditions contained in such documents, are hereby incorporated by reference and made a part of the agreements, terms and conditions of this offer:

- a) The grant application for the public water supply project;
- b) Any application for a permit under 35 Ill. Adm. Code 602, plus supporting and supplementary documents; and
- c) Any permit issued by the Agency under the Act, plus supporting and supplementary documents.

SUBPART G: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

Section 661.701 Determination of Allowable Costs

a) The grantee will be paid, upon request, in accordance with Section 661.704 for the State share of all necessary costs within the scope of the approved project not to exceed the total grant offer and determined to be allowable in accordance with the criteria set forth in this Section.

b) Allowable project costs.

Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

- 1) Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in subsection (c)(7);
- 2) Costs under construction contracts;
- 3) Professional and consultant services;
- 4) Landscaping;
- 5) Supervision of construction work;
- 6) Removal and relocation or replacement of utilities for which the grantee is legally obligated to pay;
- 7) Materials acquired, consumed, or expended specifically for the project;
- 8) An inventory of laboratory chemicals and supplies necessary to initiate plant operations;
- 9) Flood plain insurance; and
- 10) Project identification signs.

c) Unallowable costs

Costs which exceed the total amount of the grant offer or which are not necessary for the completion of the work authorized by the grant agreement are unallowable. Such costs include, but are not limited to:

- 1) Costs relating to service connections;

- 2) Bonus payments not legally required for completion of construction in advance of a contractual completion date;
- 3) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;
- 4) Fines and penalties resulting from violations of, or failure to comply with, federal, state, or local laws;
- 5) Costs outside the scope of the approved project;
- 6) Interest on bonds or any other form of indebtedness required to finance the project costs;
- 7) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in subsection (d);
- 8) Site acquisition;
- 9) Costs for which payment has been or will be received under another state or federal assistance program;
- 10) Costs of equipment or material procured in violation of any provisions of this Part;
- 11) Costs of special funds (i.e., industry advancement funds; funds to reimburse bidding costs to unsuccessful offerors, etc.) financed by contractors, contributions in the construction industry for methods and materials research, public and industry relations, market development, labor-management matters, wage negotiations, jurisdictional disputes, defraying of all or part of unsuccessful offerors bidding costs, or similar purposes;
- 12) Costs for resident inspection where such costs are incurred after the expiration of the applicable contractual completion date, even if the contractual completion date is subsequently extended by the grantee, unless such extension has been approved by the Agency in accordance with Section 661.402;
- 13) Personal and professional services costs (including but not limited to professional engineering costs) arising under a cost-plus-percentage of cost type of agreement (including the multiplier contract where profit is included in the multiplier) or a percentage-of-construction-cost type of contract;

- 14) Personal and professional services costs (including but not limited to professional engineering costs) when the Agency has been refused access to the books and records of the contractor or the contractor has refused to renegotiate a personal or professional services contract in accordance with the provisions of Section 661.303;
- 15) Increase in personal and professional services contract fees which are based solely on a percentage of an increased construction cost notwithstanding the contractual liabilities of the grantee under such contract; and
- 16) Personal and professional service costs, either direct or indirect, relating to entertainment, interest on borrowed capital, or bad debts.

d) Design allowance

The grant shall provide for a design allowance determined in accordance with Appendix C. The grantee shall not otherwise be reimbursed for costs incurred for project design.

e) Disputes concerning costs

The grantee shall seek to resolve questions relating to costs in accordance with Section 661.306.

f) Limitation upon project costs incurred prior to grant award

Payment will not be authorized for costs incurred prior to the date of the grant award except as in accordance with the following:

- 1) Advance acquisition of equipment items requiring long lead times, or advance construction of portions of the project, in emergencies or instances where delay could result in significant cost increases, shall not be approved by the Agency unless the grantee:
 - A) Submits a written request for approval that demonstrates:
 - i) Advance acquisition of equipment items requiring long lead times, or advance construction of portions of the project were necessary due to an emergency or because a delay could result in significant cost increases; and
 - ii) All provisions set forth in this Part relating to procurement have been met; and
 - B) Obtains written approval by the Agency prior to the initiation of the advance acquisition or advance construction.

- 2) The approval of advance acquisition of equipment or advance construction will not constitute a commitment for approval of grant assistance for a project, but will allow payment for the previously approved costs as allowable project costs only upon subsequent award of grant assistance, if requested prior to grant award. In instances where such approval is obtained, the applicant proceeds at its own risk, since payment for such costs will not be made until grant assistance for the project is awarded.

Section 661.702 Amount of Grant-Percentage of Approved Allowable Costs

- a) The commitment and obligation of the State of Illinois and the Agency to the grantee by this grant for the project is limited to and shall not exceed the total amount of the grant. Nothing herein, including the provisions of Section 661.402, shall operate to commit or obligate the State of Illinois or the Agency to any increase in the total amount of percentage of the grant or of the grant offer.
- b) The amount of the grant shall not exceed the State share of the approved allowable cost of the project as set forth in the grant offer and special conditions thereof. In the event the actual allowable cost of the project, as determined by the Agency pursuant to audit under Subpart E, is less than the estimated allowable cost, such actual eligible cost shall be used to determine the amount of the grant and the grant shall be reduced as necessary to conform with the limitations hereinabove described.

Section 661.703 Use of Grant and Payment of Non-Allowable Costs

- a) The grant shall be expended solely for approved allowable costs incurred in the design and construction of the project.
- b) The grantee agrees to pay the non-allowable associated with the project and all allowable costs of the project which exceed the amount of the grant offer and shall construct the project, or cause it to be constructed to final completion in accordance with the plans and specifications approved by the Agency for the project.
- c) The grantee commits itself to complete the construction of the project.

Section 661.704 Grant Payment Schedule

- a) General

The grantee shall be paid the state share of allowable costs incurred within the scope of an approved project not to exceed the total grant, subject to the limitations of the conditions of the grant. Such payments must be in accordance with this Section, the payment schedule provided by the grantee, and the grant amount set forth in the grant award or any amendments thereto. The payment schedule shall not provide for payment more frequently than monthly.

b) Initial request for payment

Upon award of grant assistance, the grantee may request payment for the unpaid state share of actual or estimated allowable project costs incurred prior to grant award subject to the limitations of the conditions of the grant under this Part, and payment for such costs shall be made in accordance with the payment schedule included in the grant. This request may include payment for 50 percent of the State share of the estimated design allowance (as set forth in Appendix C).

c) Payment for the final design allowance

Final payment of the State share of the final design allowance (as set forth in Appendix C) may be requested after the grantee has awarded all prime subagreements for the construction of the project.

d) Interim requests for payment

The grantee may submit requests for payments for allowable costs incurred in accordance with the payment schedule. Upon receipt of a request for payment, subject to the limitations set forth in the conditions of the grant under this Part, the Agency shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of state payments to the grantee for the project is equal to the state share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment.

e) Adjustment

The Agency shall cause all request(s) for payment to be reviewed or audited. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment may be reduced for overpayments or increased for underpayments on preceding requests for payment.

f) Refunds, rebates, credits, etc.

The state share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee has been paid under a grant, must be paid to the State of Illinois.

g) Final payment

- 1) Upon completion of final audit by the Agency and the final inspection pursuant to Section 661.405 and approval of the request for payment designated by the grantee as the "final payment request" and upon compliance by the grantee with all applicable requirements of the grant, the Agency shall cause to be disbursed to the grantee any balance of approved allowable project cost which has not been paid to the grantee.
- 2) Prior to final payment under the grant, the grantee must:
 - A) Execute and deliver a certified check made payable to the Treasurer, State of Illinois, of the state share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the State under the grant, and a release discharging the State of Illinois, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to such exceptions which may be specified in the release; and
 - B) Submit to the Agency a certified copy of the grantee's enacted users charge ordinance.
- h) Schedule of payments

Payments for project work will be paid in accordance with the schedule of payments established by a special condition of this grant, subject to appropriation of funds by the Illinois General Assembly.

Section 661.705 Maximum Grant Share

- a) The total percentage of State grant funding for allowable project costs, as described in Section 661.701, is subject to any local match requirements set forth in the Act.
- b) If the monies appropriated for the grant are from a source other than the Build Illinois Fund or the Build Illinois Purposes Fund, and that appropriation expressly states a specific percentage of State grant funding for the project, the percentage set forth in the appropriation shall be the percentage of grant funding for allowable project costs as described in Section 661.701.
- c) The State share of project design costs shall be an allowance in accordance with the provisions of Appendix C of this Part.

(Source: Amended at 41 Ill. Reg. 13243, effective October 20, 2017)

Section 661.APPENDIX A General Conditions of Construction Contract Document

1. Definitions
2. Additional Instructions and Detail Drawings
3. Schedules, Reports and Records
4. Drawings and Specifications
5. Shop Drawings
6. Materials, Services and Facilities
7. Inspection and Testing
8. Substitutions
9. Patents
10. Surveys, Permits, Regulations
11. Protection of Work, Property, Persons
12. Supervision by Contractor
13. Changes in Work
14. Changes in Contract Price
15. Time for Completion and Liquidated Damages
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18. Suspension of Work, Termination and Delay
19. Payments to Contractor
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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 instrument 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 by 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 in 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 by the performance of a part of the Work at the site.
- 1.22 Substantial Completion -- The 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 purpose 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 construction 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 Drawings 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 submitting 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, test 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 of 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 on the product of a particular manufacturer or manufacturer 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 survey, needed for construction such as slope stakes, batterboards, 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 properly 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 of 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 or 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 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 an 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 of 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 of 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 on 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 the 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 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 rights 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 project his interests 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 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 to 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 Claim 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 cancelled 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 a Subcontractor under him. Insurance shall be written with a limit of liability of not less than \$500,00 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 and 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 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 and 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 Subcontractor, 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 of 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 performance 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 therefore 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 or 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, control, techniques, sequences, procedures, or construction safety.

27.4 The Engineer shall promptly make the 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 (140 W. 51st Street, N.Y., N.Y. 10020; 1986). This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgement 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 on 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.

Section 661. Appendix B Required Provisions (Engineering Agreements)

1. General

- (a) The grantee and the engineer agree that the following provisions shall apply to the work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.
- (b) This agreement is funded in part by a grant from the Illinois Environmental Protection Agency. Neither the State of Illinois nor the Illinois Environmental Protection Agency (hereinafter Agency) is a party to this agreement.

2. Responsibility of the Engineer

- (a) The engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the engineer under this agreement. The engineer shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, reports and other services.
- (b) The engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable Agency requirements.
- (c) Approval by the grantee or Agency of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the engineer of responsibility for the technical adequacy of the work. Neither the grantee's nor Agency's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement, and the engineer shall be and remain liable in accordance with applicable law for all damages to the grantee or Agency caused by the engineer's negligent performance of any of the services furnished under this agreement.
- (d) The rights and remedies of the grantee provided for under this agreement are in addition to any other rights and remedies provided by law.

3. Scope of work. Except as may be otherwise specifically limited in this agreement, the services to be rendered by the engineer shall include all services required to complete the task or step in accordance with applicable Agency regulations.
4. Changes.
 - (a) The grantee may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the engineer's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the engineer of the notification of change unless the grantee grants a further period of time before the date of final payment under this agreement.
 - (b) No services for which an additional compensation will be charged by the engineer shall be furnished without the written authorization of the grantee.
5. Termination.
 - (a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party; Provided, that no such termination may be effected unless the other party is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
 - (b) This agreement may be terminated in whole or in part in writing by the grantee for its convenience: Provided, That no such termination may be effected unless the engineer is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
 - (c) If termination for default is effected by the grantee, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the grantee by reason of the engineer's default. If termination for default is effected by the engineer, or if termination for convenience is effected by the grantee, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the engineer relating to commitments which had become firm prior to the termination.

- (d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the grantee all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the engineer in performing this agreement, whether completed or in process.
- (e) Upon termination pursuant to paragraphs(a) or (b) above, the grantee may take over the work and prosecute the same to completion by agreement with another party or otherwise.
- (f) If, after termination for failure of the engineer to fulfill contractual obligations, it is determined that the engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the grantee. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (c) of this clause.
- (g) The rights and remedies of the grantee and the engineer provided in this clause are in addition to any other rights and remedies provided by law or under this agreement.

6. Remedies.

- (a) Except as may be otherwise provided in this agreement, or as the parties hereto may otherwise agree, all claims, counterclaims, disputes and other matters in question between the grantee and the engineer arising out of or relating to this agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations stated in paragraphs (c) and (d) below. This agreement, and any other agreement or consent to arbitrate entered into in accordance therewith as provided below, will be specifically enforceable under the prevailing law of any court having jurisdiction.
- (b) Notice of demand for arbitration must be filed in writing with the other party to this Agreement, with the Agency and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- (c) All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy thereof is more than \$200,000 (exclusive of interest and costs) or to render a monetary award in

response thereto against any party which totals more than \$200,000 (exclusive of interest and costs).

- (d) No arbitration arising out of, or relating to, this agreement may include, by consolidation, joinder or in any other manner, any additional party not a party to this agreement.
- (e) By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs (c) and (d) above may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.
- (f) The award rendered by the arbitrators will be final, not subject to appeal, and judgement may be entered upon it in any court having jurisdiction thereof.

7. Payment

- (a) The engineer may submit payment requests. Such requests shall be based upon the value of the work and services performed by the engineer under this agreement, and shall be prepared by the engineer and supplemented or accompanied by such supporting data as may be required by the grantee.
- (b) Upon approval of such payment request by the grantee, payment upon properly certified vouchers shall be made to the engineer as soon as practicable of ninety percent of the amount as determined above: Provided, however, that if the grantee determines that the work under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the grantee, he may at his discretion release to the engineer such excess amount.
- (c) Upon satisfactory completion by the engineer of the work called for under the terms of this agreement, and upon acceptance of such work by the grantee, the engineer will be paid the unpaid balance of any money due for such work, including the retained percentages relating to this portion of the work.
- (d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the engineer shall execute and deliver to the grantee a release of all claims against the grantee arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the engineer from the operation of the release in stated amounts to be set forth therein.

8. Project Design.

- (a) In the performance of this agreement, the engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods and processes consistent with paragraphs (C), Competition, and (I) Specifications, of General Condition 21, General conditions for all subagreements, hereof.
- (b) The engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the engineer to be available only from a sole source, unless such use has been adequately justified in writing by the engineer as necessary for the minimum needs of the project.
- (c) The engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of General Condition 21(I)(1), Nonrestrictive specifications. The aforementioned General Condition requires that no specification for bids or statement of work may be written in such a manner as to contain proprietary, exclusionary or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brands names or trade of comparable quality and utility are listed and are followed by the words "or equal".
- (d) The engineer shall report to the grantee any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.

9. Audit; access to records.

- (a) The engineer shall maintain books, records, documents and other evidence directly pertinent to performance on Agency grant work under this agreement in accordance with accepted professional practice, appropriate accounting procedures, and the Conditions of the Grant Offer. The engineer shall also maintain the financial information and data used by the engineer in the preparation or support of the cost submission required pursuant to Section 660.503(g)(2) of the Grant Offer conditions for subagreements over \$100,000 and a copy of the cost summary submitted to the grantee. The Agency or any of its duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The engineer will provide proper facilities for such access and inspection.

- (b) The engineer agrees to include paragraphs (a) through (e) of this clause in all his contracts and all tier subcontracts directly related to project performance which are in excess of \$10,000.
 - (c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines for the reviewing or audit agency(ies).
 - (d) The engineer agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above. Where the audit concerns the engineer, the auditing agency will afford the engineer an opportunity for an audit exit conference and an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final report will include the written comments, if any, of the audited parties.
 - (e) Records under paragraphs (a) and (b) above shall be maintained and made available during performance on Agency grant work under this agreement and until three years from date of final Agency grant payment for the project. In addition, those records which relate to any "dispute" appeal under an Agency grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.
10. Price reduction for defective cost or pricing data. (The provisions of this clause are required by the Agency only if the amount of this agreement exceeds \$100,000. The grantee may elect to utilize this clause if the contract amount is \$100,000 or less.)
- (a) If the Agency determines that any price, including profit negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any significant sums because the engineer or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price or cost or profit shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.
 - (b) Failure to agree on a reduction shall be subject to the "Remedies" clause of this agreement.

(Note): "Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)"

11. Subcontractors

- (a) Any subcontractors and outside associates or consultants required by the engineer in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically approved by the grantee during the performance of this agreement. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the grantee.
- (b) Except as otherwise provided in this agreement, the engineer may not subcontract services in excess of thirty percent (30%) of the contract price to subcontractors or consultants without prior written approval of the grantee.

12. Equal employment opportunity. The engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

13. Covenant against contingent fees. The engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty the grantee shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. Gratuities

- (a) The grantee may, by written notice to the engineer, terminate the right of the engineer to proceed under this agreement if it is found, after notice and hearing, by the grantee that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the engineer, or any agent or representative of the engineer, to any official or employee of the grantee or of the Agency with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this agreement: Provided, That the existence of the facts upon which the grantee makes such findings shall be in issue and may be reviewed in proceedings pursuant to Clause 6 (remedies) of this agreement.
- (b) In the event this agreement is terminated as provided in paragraph (a) hereof, the grantee shall be entitled (1) to pursue the same remedies against the engineer as it could pursue in the event of a breach of the contract by the engineer, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the grantee) which shall be not less than three nor more than ten times the costs incurred by the engineer in providing any such gratuities to any such officer or employee.

- (c) The rights and remedies of the grantee provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this agreement.

Section 661. Appendix C Procedures for Determination of Design Allowance

1. General

This Appendix provides the method which will be used to determine the allowance for facilities design. The grant agreement will include an estimate of the allowance. The State share of the allowance is determined by applying the applicable grant percentage to the allowance.

2. Definitions

(a) Initial Allowable Building Cost - the allowable cost of the following:

(1) the initial award amount of all prime subagreements for building the project.

(2) the initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project.

(b) Estimated Design Allowance - the appropriate percentage from the table set forth in Section 4 multiplied by the estimated initial allowable building cost.

(c) Final Design Allowance - the appropriate percentage from the table set forth in Section 4 multiplied by the initial allowable building cost.

3. Procedures

(a) The final design allowance will be determined one time only for the project, based upon the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases. The allowance is not intended to reimburse the grantee for costs actually incurred for project design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity will not be appropriate.

(b) The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, and onsite inspections. These costs are allowable subject to the requirements of 35 Ill. Adm. Code 661.

(c) The grantee may request payment of 50 percent of the State share of the estimated design allowance immediately after grant award. Final payment of the State share of the allowance may be requested in the first payment after the grantee has awarded all prime subagreements for building the project and received Agency approval for all force

account work. The final payment of the allowance will be the State share of the final design allowance less any previous payment of the allowance based upon the estimated initial building cost.

4. Table

Building Cost	Allowance as a Percentage of building cost ^{1*}
150,000 or less	8.1570
175,000	8.0059
200,000	7.8772
250,000	7.6668
300,000	7.4991
350,000	7.3602
400,000	7.2419
500,000	7.0485
600,000	6.8943
700,000	6.7666
800,000	6.6578
900,000	6.5634
1,000,000	6.4300
1,200,000	6.3383
1,500,000	6.1690
1,750,000	6.0547
2,000,000	5.9574
2,500,000	5.7983
3,000,000	5.6714
3,500,000	5.5664
4,000,000	5.4769
5,000,000	5.3306
6,000,000	5.2140
7,000,000	5.1174
8,000,000	5.0352
9,000,000	4.9637
10,000,000 or more	4.9007

^{1*} Interpolate between values.

Note: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables shall not be used to determine the compensation for design services. The compensation for design services should be based upon the nature, scope and complexity of the services required by the community.

* Interpolate between values.