

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 885

MUNICIPAL BROWNFIELDS REDEVELOPMENT GRANT PROGRAM  
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**AUTHORITY:** Implementing and authorized by Section 58.13 of the Environmental Protection Act [415 ILCS 5/58.13].

**SOURCE:** Adopted at 23 Ill. Reg. 467, effective December 23, 1998; amended at 27 Ill. Reg. 14604, effective August 28, 2003; amended at 31 Ill. Reg. 5774, effective March 30, 2007.

## SUBPART A: GENERAL PROVISIONS

### **Section 885.100 Purpose**

The purpose of this Part is to provide municipalities in Illinois with financial assistance in the form of grants to be used for coordination of activities related to brownfields redevelopment.

### **Section 885.105 Definitions**

Unless specified otherwise, all terms shall have the meanings set forth in the Illinois Environmental Protection Act. Additionally, for purposes of this Part, the following definitions apply:

"Act" means the Illinois Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

"Applicant" means a municipality that applies for a municipal brownfields redevelopment grant.

"Municipal brownfields redevelopment grant" means a grant issued pursuant to Section 58.13 of the Act and Subpart B of this Part.

"Brownfields site" or "brownfields" means *a parcel of real property, or a portion of the parcel, that has actual or perceived contamination and an active potential for redevelopment.* (Section 58.2 of the Act)

"Grant agreement" means the written grant agreement documents and amendments thereto signed by both the Agency and a grantee in which the terms and conditions governing the grant are stated and agreed to by both parties.

"Grantee" means a municipality that has been awarded a grant for brownfields redevelopment under Section 58.13 of the Act.

"Municipality" means *an incorporated city, village, or town in this State. Municipality does not mean a township, town when that term is used as the equivalent of a township, incorporated town that has superseded a civil township, county, or school district, park district, sanitary district, or similar governmental district.* (Section 58.2 of the Act)

"River Edge Redevelopment Zone" means an area of the State created by the Department of Commerce and Economic Opportunity as a River Edge Redevelopment Zone pursuant to the River Edge Redevelopment Zone Act [65 ILCS 115].

"State" means the State of Illinois.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.110 Severability**

If any Section, subsection, sentence or clause of this Part shall be adjudged unconstitutional, void, invalid, or otherwise unlawful, such adjudication shall not affect the validity of this Part as a whole, or any Section, subsection, sentence, or clause thereof not adjudged unconstitutional, void, invalid, or otherwise unlawful.

## **SUBPART B: MUNICIPAL BROWNFIELDS REDEVELOPMENT GRANTS**

### **Section 885.200 Scope and Availability of Grants**

- a) Subject to the availability of funding and the limitations and requirements set forth in this Part, grant assistance is available to municipalities for coordination of activities related to brownfields redevelopment, *including identification of brownfields sites, site investigation and determination of remediation objectives and related plans and reports, and development of remedial action plans, and implementation of remedial action plans and remedial action completion reports.* (Section 58.13(a)(1) of the Act) The plans and reports shall be developed in accordance with Title XVII of the Act.
- b) *Grants shall be awarded on a competitive basis subject to availability of funding.* (Section 58.13(a)(2) of the Act)
- c) *Grant amounts shall not exceed 70% of the eligible project amount, with the remainder to be provided by the municipality as local matching funds.* (Section 58.13(a)(5) of the Act)

- d) A municipality, if determined to be in noncompliance, pursuant to Section 885.300, with any requirement of this Part for a previously-awarded grant, is not eligible to receive an additional grant until compliance is achieved.

(Source: Amended at 27 Ill. Reg. 14604, effective August 28, 2003)

### **Section 885.201 Limitations on Grant Amounts**

- a) *Except for grants to municipalities with designated River Edge Redevelopment Zones, grants shall be limited to a maximum of \$240,000 and no municipality shall receive more than this amount under this Part (Section 58.13(a)(4) of the Act). The following applies to municipalities other than municipalities with designated River Edge Redevelopment Zones:*
  - 1) Except as provided in subsection (a)(2) of this Section, the total amount of grant funds awarded to a municipality under this Part shall not exceed \$120,000.
  - 2) A grantee may request grant funds in excess of the limit set forth in subsection (a)(1) of this Section only after demonstrating the following:
    - A) The grantee is current on all reporting requirements set forth in Section 885.245 of this Part;
    - B) The grantee is current with the grant project work plan schedule; and
    - C) The Agency has approved payment of at least \$96,000 in grant funds for grant-eligible work, or the grantee has received Agency approval of a remedial action plan under 35 Ill. Adm. Code 740.
- b) *For grants to municipalities with designated River Edge Redevelopment Zones, grants shall be limited to a maximum of \$2,000,000 and no municipality shall receive more than this amount under this Part (Section 58.13(a)(4) of the Act). The following applies to municipalities with designated River Edge Redevelopment Zones:*
  - 1) Except as provided in subsection (b)(2) of this Section, the total amount awarded to a municipality under this Part shall not exceed \$1,000,000.
  - 2) A grantee may request grant funds in excess of the limit set forth in subsection (b)(1) of this Section only after demonstrating the following:
    - A) The grantee is current on all reporting requirements set forth in Section 885.245 of this Part;

- B) The grantee is current with the grant project work plan schedule; and
  - C) The Agency has approved payment of at least \$800,000 in grant funds for grant-eligible work, or the grantee has received Agency approval of a remedial action plan under 35 Ill. Adm. Code 740.
- 3) Grant funds in excess of \$240,000 must be used for grant projects located within the River Edge Redevelopment Zone.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.205 Grant Assistance Criteria**

- a) *Criteria for awarding grants shall include, but shall not be limited to, the following:*
  - 1) *Problem statement and needs assessment;*
  - 2) *Community-based planning and involvement;*
  - 3) *Implementation planning;*
  - 4) *Long-term benefits and sustainability (Section 58.13(a)(2) of the Act); and*
  - 5) Whether the applicant has previously received a grant under this Program.
- b) In awarding grants, *the Agency may give weight to geographic location to enhance geographic distribution of grants across this State (Section 58.13(a)(3) of the Act).*

(Source: Amended at 27 Ill. Reg. 14604, effective August 28, 2003)

### **Section 885.210 Applications for Municipal Brownfields Redevelopment Grants**

- a) A municipality may apply for grant funds only if the following conditions are met:
  - 1) The municipality commits in writing to enroll, or has enrolled, the brownfields site in the Site Remediation Program;
  - 2) A Phase I or II environmental audit has been or will be completed for the brownfields site and has been or will be submitted to the Site Remediation Program for review and approval;

- 3) The municipality provides a cost estimate for the cleanup, prepared by a professional engineer, for the brownfields site for which grant funds are to be expended and commits to work toward acquiring a No Further Remediation letter; and
  - 4) If the costs to complete corrective action and to acquire a No Further Remediation letter exceed the maximum amount available to the municipality under this grant program, the municipality has reasonably demonstrated that there is sufficient capital available to cover such costs.
- b) To be considered for a municipal brownfields redevelopment grant, an applicant must file with the Agency a complete application, in accordance with the requirements of this Section and relevant statutes.
- c) Applicants for municipal brownfields redevelopment grants must use grant application forms furnished by the Agency, or a similar format. Grant applications, including budget forms, may be obtained from and must be submitted to:

Illinois Environmental Protection Agency  
Bureau of Land  
Office of Brownfields Assistance  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276

- d) A complete municipal brownfields redevelopment grant application must include:
- 1) Background information on the applying municipality and proposed project, including:
    - A) The negative effects on the local community of the brownfields site and the positive effects on the local community of funding and implementation of the proposed project;
    - B) The local government involvement and planned additional involvement in the proposed project;
    - C) If the brownfields site is located in an enterprise zone, as defined at Section 3(b) of the Illinois Enterprise Zone Act [20 ILCS 655/3(b)], a map that identifies the designated enterprise zone and the specific brownfields site location;
    - D) The anticipated long-term benefits of the project and the means by which the municipality will sustain the benefits;
    - E) How the success of the project will be measured;

- F) A commitment by the grantee that the site for which the grant is sought will be entered into the Site Remediation Program with the grantee as the Remediation Applicant, to the extent that activities funded by the grant are not statutorily excluded under the Site Remediation Program;
  - G) If the property is not municipally owned, the following:
    - i) An explanation as to why grant funds are requested for privately held property and the anticipated benefit to the municipality of expending grant funds at privately held property;
    - ii) Identification of the owner of the property; and
    - iii) Tenant information, including but not limited to tenant name, type of lease/rental and type of business; and
  - H) If a designated River Edge Redevelopment Zone is located within the municipality, a copy of the River Edge Redevelopment Zone Certificate and all amendments to the certificate issued for the River Edge Redevelopment Zone pursuant to the River Edge Redevelopment Zone Act.
- 2) The project plan, including:
- A) A description of all components and phases of the proposed project;
  - B) A description of planned or proposed tasks to be performed by parties involved;
  - C) A schedule of the work plan by tasks, including specific activities and events;
  - D) A detailed explanation of all anticipated expenses covered by the grant and a discussion of costs not covered by the grant, but anticipated to achieve the stated long-term project goals and measures;
  - E) Letter(s) of agreement or other documentation showing the applicant is authorized, by law or consent, to act on behalf of or in lieu of the owner or operator of the site;

- F) Letter(s) of agreement or other documentation from the contractor or subcontractors involved in or responsible for components or phases of the proposed project;
- G) Map(s) indicating location(s) of the proposed project, areas affected by the proposed project and, if relevant to the project, enterprise zone;
- H) A designation of the total acreage of the project site;
- I) Location of the project site by latitude and longitude;
- J) A description of the planned use for the project site following the completion of remediation activities and the issuance of a No Further Remediation Letter under 35 Ill. Adm. Code 740; and
- K) If funding for performance of a remedial action is being requested, a copy of the remedial action plan approval letter issued by the Agency under 35 Ill. Adm. Code 740.

3) Information on project team members, including:

- A) The name of the project manager and a description of his or her previous management experience and other pertinent experience and capabilities;
- B) The names of other project team members and a description of their job titles, work assignments and experience;
- C) Documentation showing resource commitment by the grantee adequate for the project manager to successfully organize, administer, and complete the project specified in the proposal, such as:
  - i) Evidence of the relevant experience of all project team members; and
  - ii) Proposed allocation of resources, both capital and labor, to the project;
- D) The name, telephone number, fax number, and e-mail address, if any, of the project team member designated to serve as liaison with the Agency.

4) Information on any environmental consultant to be employed by the applicant, including:

- A) The previous project management experience and other pertinent experience and capabilities of the environmental consultant;
  - B) The names of key environmental consultant personnel and a description of their job titles, work assignments and experience;
  - C) A detailed description of the tasks the consultant is to perform in the proposed project;
  - D) Evidence of relevant experience of all environmental consultant personnel involved in the project;
  - E) Statement that work will be performed as outlined in the work plan approved as part of the application, including adherence to the supplied work schedule;
  - F) A copy of the consultant's current normal and customary billing rates; and
  - G) Evidence of relevant experience for all subcontractors to be used and a copy of each subcontractor's signed formal bid.
- 5) The grant amount requested and a budget, on a form prescribed by the Agency, or in a similar format, outlining the expenses to be incurred. All amounts must be rounded to the nearest dollar and all percentages must be carried to one decimal place. The budget must include costs of:
- A) Personnel services;
  - B) Equipment;
  - C) All other direct costs; and
  - D) Contractor and subcontractors.
- 6) Any additional information required by the Agency.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.215 Agency Action on Application**

- a) Issuance of municipal brownfields redevelopment grants is subject to availability of funding.

- b) The Agency shall take action on all pending complete municipal brownfields redevelopment grant applications at the close of each of two grant application periods per year, the first ending January 1 and the second ending July 1, except as provided in subsection (c) of this Section.
- c) The Agency may award and fund any grant prior to the end of a grant application period provided that the grant applicant demonstrates that:
  - 1) The brownfields redevelopment project for which the grant is sought is specific to one or more sites;
  - 2) Remediation of the project site or sites is necessary to assure protection of human health and the environment; and
  - 3) Failure to fund the grant prior to the end of the grant application period would substantially impair implementation of the project.
- d) If an applicant submits an incomplete application, the Agency shall so notify the applicant in writing, identifying the information that is lacking.
- e) The Agency shall, no more than 90 days after the close of each grant application period, or in accordance with subsection (c) of this Section, in writing, notify each applicant with a pending application:
  - 1) If funding is available for municipal brownfields redevelopment grants, of that applicant's selection or rejection for a grant award; or
  - 2) If funding is not available, of the unavailability of grant assistance.
- f) Municipalities cannot obtain grant assistance by default due to failure by the Agency to act within the time frames set forth in this Section.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.220 Grant Award Acceptance**

No more than 30 days after receipt of grant award selection notification, the grantee shall notify the Agency in writing of its acceptance. If the grantee fails to so notify the Agency, the grant award shall be null and void.

### **Section 885.225 Grant Agreement**

- a) The Agency shall send to the grantee, at the time the Agency notifies each applicant of the applicant's selection, formal grant agreement documents, including a grant agreement to be signed by the Agency and the grantee.

- b) The Agency shall not sign a grant agreement until the grantee has corrected any errors identified by the Agency in the grant application.
- c) The grant takes effect on the date that the Agency receives the signed grant agreement from the applicant.
- d) Once signed by both the Agency and the grantee, the grant agreement, comprising the written grant agreement documents and any amendments thereto, shall govern the grant.
- e) The Agency shall keep the original grant agreement documents and provide a copy to the grantee.
- f) The grant agreement may be amended in accordance with Section 885.230 of this Part.

(Source: Amended at 27 Ill. Reg. 14604, effective August 28, 2003)

#### **Section 885.230 Amendments to Grant Agreement**

- a) The grantee must obtain an amendment to the grant agreement for the following project changes:
  - 1) An increase in the total amount of grant funds awarded under this Part;
  - 2) The addition or deletion of one or more project sites; or
  - 3) The extension of any contractual or grant completion date for the project.
- b) The grant agreement may be amended only by the mutual consent of the parties set forth in writing as a formal grant agreement amendment, signed and dated by the Agency and the grantee. The grantee may request an amendment at any point during the grant term. Requests for amendments must be submitted on forms prescribed by the Agency and must include all reports due under Section 885.245(a) of this Part that have not been submitted. Grant amendments at the request of the grantee will be considered by the Agency only if the grantee is current on all reporting requirements set forth in Section 885.245(a) of this Part.
- c) Project changes other than those identified in subsection (a) of this Section must be approved by the Agency pursuant to Section 885.232 of this Part.
- d) No more than 90 days after receipt of a request for an amendment to the grant agreement the Agency shall notify the grantee in writing of its approval or rejection of the requested amendment.

- e) The Agency shall not approve any amendment to the grant agreement in violation of the limitations on grants set forth in Sections 885.200 and 885.201 of this Part.
- f) The Agency shall approve an amendment to the grant agreement, to the extent that the Agency may approve the amendment consistent with Sections 885.200 and 885.201 of this Part, if the grantee makes a showing that:
  - 1) The original project cost approval was based on estimated costs or contractor bids, where the actual costs or contractor bids are over or under the estimated costs;
  - 2) Amendments to State statutes have affected or will affect the project costs;
  - 3) A project element was inadvertently omitted; or
  - 4) A project element was added pursuant to requirements of the Site Remediation Program.
- g) If the Agency approves a requested amendment to the grant agreement, the Agency shall sign the amendment and the amendment shall become a part of the grant agreement. The amendment becomes effective on the date it is signed by the Agency.
- h) A grantee cannot obtain an amendment to the grant agreement by default due to the Agency's failure to act within the time frames set forth in this Section.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.232 Project Change Approvals**

- a) Project changes other than those identified in Section 885.230(a) of this Part must be approved by the Agency in writing (e.g., personnel changes, reallocation of budgeted amounts). The grantee may request approval of a project change at any point during the grant term. Requests for project change approvals must be submitted on forms prescribed by the Agency and must include all reports due under Section 885.245(a) of this Part that have not been submitted. Requests will be considered by the Agency only if the grantee is current on all reporting requirements set forth in Section 885.245(a) of this Part. This Section cannot be used to approve project changes identified in Section 885.230(a) of this Part.
- b) No more than 90 days after receiving a request for approval of a project change, the Agency shall notify the grantee in writing of its approval or rejection of the request.
- c) The Agency shall not approve a project change in violation of the limitations on grants set forth in Sections 885.200 and 885.201 of this Part.

- d) The Agency shall approve a project change, to the extent that the Agency may approve the project change consistent with Sections 885.200 and 885.201 of this Part, if the grantee makes a showing that:
  - 1) The original project cost approval was based on estimated costs or contractor bids, where the actual costs or contractor bids are over or under the estimated costs;
  - 2) Amendments to State statutes have affected or will affect the project costs;
  - 3) A project element was inadvertently omitted;
  - 4) An approved project element has been found unnecessary; or
  - 5) A project element was added pursuant to requirements of the Site Remediation Program.
- e) The Agency shall notify the grantee in writing of its approval or rejection of the requested project change. A project change approval becomes effective on the date the Agency issues its written notification of approval.
- f) A grantee cannot obtain approval of a project change by default due to the Agency's failure to act within the time frames set forth in this Section.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.235 Cost Criteria**

- a) The Agency shall approve for reimbursement to the grantee, under the terms set forth in Section 885.240 of this Part, only costs contained in the quarterly reports and meeting the following criteria:
  - 1) Costs within the scope of the redevelopment project for which the grant was awarded;
  - 2) Costs that are reasonable and necessary, including, but not limited to:
    - A) Site Remediation Program enrollment costs and Agency oversight costs of participating in the Site Remediation Program of Title XVII of the Act and No Further Remediation letter assessment fees;
    - B) Environmental consultant oversight services;
    - C) Remedial investigation and design;

- D) Development and implementation of activities necessary to establish remediation objectives;
  - E) Laboratory services necessary to determine site characterization and to establish cleanup objectives;
  - F) Installation and operation of groundwater investigation and groundwater monitoring wells;
  - G) Development and implementation of a soil sampling plan;
  - H) Development of a groundwater corrective action system;
  - I) Development of a soil corrective action plan;
  - J) Costs associated with seeking reimbursement from the municipal brownfields redevelopment grant program, including, but not limited to, completion of documentation for partial or final payment;
  - K) Purchase costs for non-expendable materials, supplies, equipment or tools purchased and used for the brownfields project;
  - L) Development and implementation of corrective action plans;
  - M) If asbestos that poses a threat to human health or the environment is detected outside a structure, costs associated with identifying the source of the asbestos and remediating the asbestos until it no longer poses a threat to human health or the environment;
  - N) For grants to municipalities with a designated River Edge Redevelopment Zone, costs associated with demolition within the River Edge Redevelopment Zone; and
  - O) For grants to municipalities with a designated River Edge Redevelopment Zone, costs associated with an asbestos study, survey, or abatement conducted within or associated with a structure or dwelling located within the River Edge Redevelopment Zone, including sample collection and analysis;
- 3) Costs in amounts up to, but not exceeding, the total amount of the grant award;
  - 4) Costs incurred on or after the date the grant agreement is executed;

- 5) Costs incurred without knowing violation of any State or federal law or regulation; and
  - 6) Costs incurred under a contract or subcontract in conformance with Section 885.255 of this Part.
- b) The Agency shall not approve for reimbursement any costs that are not necessary for completion of the work required under the grant agreement, including but not limited to:
- 1) Costs or losses resulting from business interruption at the specific site;
  - 2) Costs associated with improperly installed sampling or monitoring wells;
  - 3) Costs associated with improperly collected, transported or analyzed laboratory samples;
  - 4) Interest or finance costs charged as direct costs;
  - 5) Insurance costs charged as direct costs;
  - 6) Costs associated with an asbestos study, survey, or abatement conducted within or associated with a structure or dwelling, including sample collection and analysis, except as provided in subsection (a)(2)(O) of this Section;
  - 7) Costs associated with a lead paint study or survey conducted within or associated with a structure or dwelling, including sample collection and analysis;
  - 8) Costs associated with demolition, except as provided in subsection (a)(2)(N) of this Section;
  - 9) Costs outside the scope of the Agency-approved project;
  - 10) Costs incurred prior to the execution of the grant agreement;
  - 11) Costs of geotechnical sampling and study;
  - 12) Costs associated with resampling, when it has been determined that such resampling is necessary due to failure by the consultant to follow standard procedures or advice or direction from the Site Remediation Program; and
  - 13) Costs for expediting of lab analysis of samples, unless approved in advance by the Agency.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.240 Grant Payment**

- a) The Agency shall use reimbursements to the grantee as the method of payment of grant funds.
- b) To obtain reimbursement from the municipal brownfields redevelopment grant program, the grantee shall submit a request for reimbursement in writing to the Agency on forms provided by the Agency with documentation, including the activities performed, the timeframe in which the activities were performed and a breakdown of the costs incurred, to demonstrate that the grantee has incurred the costs for which reimbursement is sought.
- c) Grant funds must be expended no more than three years after the effective date of the grant award, except:
  - 1) For grantees who were issued a grant on or before January 1, 2002, in which case grant funds in excess of \$120,000 must be expended no more than three years after the effective date of the grant amendment; and
  - 2) For grantees whom the Agency determines would thereby be prohibited from successfully accomplishing the project goals set forth in the Agency-approved grant agreement, in which case grant funds must be expended by a date set by the Agency. The Agency determination must be based on the following written documentation from the grantee:
    - A) An explanation as to why the grant-approved activities cannot be completed within the authorized timeframe;
    - B) A statement as to the steps taken to correct any problems or deficiencies contributing to the inability to complete the project within the grant agreement timeframe;
    - C) An estimate of the additional time necessary to complete the project; and
    - D) A description of the impact on the community if the grant timeframe is not extended.
- d) The grantee may submit an initial request for reimbursement at any time after the costs for which reimbursement is sought have been incurred. Subsequent requests for reimbursement must be spaced at least 90 days apart, except that the grantee may submit a final reimbursement request no more than 90 days after either the most recent prior request or completion of approved grant activities.

- e) The Agency shall use the criteria set forth in Section 885.235 of this Part in determining whether to approve reimbursement to the grantee of costs included in each request for reimbursement.
- f) If grant funds are available, the Agency shall send a voucher for payment of an approved reimbursement request to the Comptroller's office no more than 90 days after receipt of the request.
- g) If grant funds are unavailable, the Agency shall so notify the grantee, no more than 90 days after receipt of a request for reimbursement, and shall send vouchers for payment of approved reimbursement requests to the Comptroller's office when funds become available.

(Source: Amended at 27 Ill. Reg. 14604, effective August 28, 2003)

### **Section 885.245 Grantee Responsibilities**

- a) The grantee must submit quarterly progress reports to the Agency, using forms provided by the Agency, during the term of the grant. Each progress report should be a short narrative of the activities performed and the dates they were performed during that quarter. The quarterly progress report must also include, but not be limited to, the following:
  - 1) Date the site was enrolled in the Site Remediation Program and a copy of the enrollment application;
  - 2) Any change in ownership or intended use of the Brownfields site;
  - 3) Any land use changes within the quarter; and
  - 4) Any deviations from the grant application work plan schedule.
- b) The grantee must submit a detailed final report to the Agency at the end of the grant term. In the final report, the grantee must, at a minimum, describe how the tasks described in the project plan submitted by the grantee have been fulfilled and provide a completed Match Funding Certification, on a form provided by the Agency, certifying that the required, local match has been met, in accordance with Section 885.200(c) of this Part.
- c) If the grantee fails to timely submit quarterly progress reports or a final report, the Agency may impose any of the sanctions set forth in Subpart C of this Part.
- d) If a designated River Edge Redevelopment Zone is located within the municipality, within 10 days after the amendment or decertification of a River Edge Redevelopment Zone pursuant to the River Edge Redevelopment Zone Act

the grantee must notify the Agency of the amendment or decertification and provide the Agency with a copy of the amendment or decertification documents.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.250 Evaluation of Performance**

The Agency shall oversee each grantee's performance under the municipal brownfields redevelopment grant program in the following manner:

- a) The Agency shall evaluate grantee performance and progress toward completing the approved project plan.
- b) If the Agency's evaluation reveals that the grantee is not in compliance with one or more of the terms, conditions or limitations of the grant agreement, the Agency shall attempt to resolve the situation through negotiation. The Agency and the grantee shall put any settlement reached in writing as a formal amendment to the grant agreement in accordance with Section 885.230 of this Part.
- c) If resolution is not achieved, the Agency may impose any of the sanctions set forth in Subpart C of this Part.

(Source: Amended at 27 Ill. Reg. 14604, effective August 28, 2003)

### **Section 885.255 Requirements Applicable to Contracting and Subcontracting**

- a) The following conditions and limitations shall apply to all contracts and subcontracts entered into by the grantee:
  - 1) The grantee must use a freely and openly competitive bidding process in contracting and must require the same of any contractor in subcontracting;
  - 2) Only fair and reasonable profits may be earned by contractors and subcontractors in contracts and subcontracts under Agency grants. Factors to be considered in determining a fair and reasonable profit shall include project-related: material acquisition costs; labor costs; management costs; contract risks; capital investments; degree of independent development; and cost control and record keeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor;
  - 3) The grantee, rather than the Agency, is responsible for the administration and successful accomplishment of the project for which the Agency grant is awarded. The grantee, rather than the Agency, is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of contracts and subcontracts entered into under the grant. This

responsibility includes, but is not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protest of award, claims, disputes and other procurement matters;

- 4) Any contract or subcontract must include a provision allowing project-related access, in accordance with Section 885.400 of this Part;
  - 5) Any contract or subcontract must provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records, including computer-generated documents, of the contractor or subcontractor that are pertinent to the project, for the purpose of making an audit, examination, excerpts, and transcriptions thereof; and
  - 6) Neither the Agency nor the State shall be a party to any contract or subcontract, solicitation, or request for proposals.
- b) No contract or subcontract shall be awarded to any person or organization that does not:
- 1) Have adequate financial resources, experience, organization, technical qualification, and facilities for performance of the subagreement, or a firm commitment or arrangement to obtain such;
  - 2) Have staffing sufficient to comply with the completion schedule for the project;
  - 3) Have a demonstrated record of integrity, good judgment, and performance, including any prior performance under grants or contracts with the federal or any state government;
  - 4) Have an established financial management system and audit procedure;
  - 5) Maintain a property management system that provides procedures for the acquisition, maintenance, safeguarding and disposition of all project-related property;
  - 6) Conform to the civil rights law, equal employment opportunity law, and labor law requirements, as well as all other statutes of the State; and
  - 7) Use good faith efforts to recruit, develop and extend employment and contracting opportunities to women, minorities and persons with disabilities for activities performed pursuant to the grant.
- c) Nothing in this Part shall be deemed to modify or negate any requirement of the Business Enterprise for Minorities, Females and Persons with Disabilities Act.

(Source: Amended at 27 Ill. Reg. 14604, effective August 28, 2003)

### **Section 885.260 Agency Cost Recovery**

- a) If the Agency undertakes a response action at the site of an approved project, the Agency will not seek recovery of its costs under Section 22.2 or Title XVII of the Act from a grantee as an owner or operator if the grantee's status as an owner or operator is based solely on the grantee's:
  - 1) Execution of a grant agreement; or
  - 2) Implementation of an approved project.
- b) *The exclusion provided under subsection (a) shall not apply to any grantee who has caused or contributed to the release or threatened release of a hazardous substance or pesticide from the facility, and such grantee shall be subject to the provisions of the Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under Sections 22.2(f) and 58.9 of the Act. (Section 22.2(h)(2)(H) of the Act)*

(Source: Amended at 27 Ill. Reg. 14604, effective August 28, 2003)

### **SUBPART C: NONCOMPLIANCE WITH GRANT CONDITIONS**

### **Section 885.300 Agency Action for Noncompliance with Grant Conditions**

- a) In addition to such other remedies as may be provided by law, in the event of noncompliance with any condition imposed pursuant to a municipal brownfields redevelopment grant or other violation of this Part, the Agency may:
  - 1) Revoke the grant and recover all grant funds disbursed;
  - 2) Take no action on reimbursement requests;
  - 3) Terminate the grant;
  - 4) Suspend all project work; or
  - 5) Take such other action as the Agency is authorized to take.
- b) Noncompliance includes, but is not limited to:
  - 1) Failure to submit a quarterly report or a final report;

- 2) Failure to deliver or act upon any grant commitment, such as a commitment to enter into the Site Remediation Program as the Remediation Applicant;
  - 3) Failure to provide local matching funds, as required under Section 885.200(c);
  - 4) Failure to limit use of the brownfields site to uses consistent with the end use designated in the grant application; or
  - 5) Failure to remediate the brownfields site consistent with the end use designated in the grant application, such as failure to remediate a site with a residential end use to residential cleanup levels.
- c) No action shall be taken under this Section without prior oral or written consultation with the grantee.
- d) In determining whether to take action and which action to take under this Section, the Agency shall consider factors including, but not limited to:
- 1) The severity of the violation(s);
  - 2) The number of violations by the grantee;
  - 3) Whether the violation is a continuing one;
  - 4) Whether the grantee can remedy the violation; and
  - 5) Whether the grantee and any contractor or subcontractor remain capable of complying with the approved work project.
- e) Recovery actions under this Section shall be taken pursuant to the Illinois Grant Funds Recovery Act [30 ILCS 705].

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.305 Project Termination by Grantee**

- a) The grantee may request the termination of an incomplete project for which a grant has been awarded only for good cause.
- b) The Agency shall review the grantee's request to terminate a project and make a finding, no more than 90 days after the date of receipt of the request to terminate, as to good cause. Good cause shall include, but not be limited to:
  - 1) A change in grant program requirements or priorities;

- 2) Lack of adequate public or private funding for the completion of the project; or
  - 3) Advancements in technology.
- c) If the Agency finds that the grantee's request to terminate the project is for good cause, it shall terminate the grant, effective upon the date the request to terminate the project was received by the Agency. The grantee may keep all grant funds previously paid.
  - d) If the Agency finds that the grantee's request to terminate the project is without good cause, the grant shall be revoked and the grantee shall return to the State all grant funds previously paid. The grantee shall return such funds no more than 30 days after the date the grant is revoked by sending a certified check to the Brownfields Redevelopment Fund.
  - e) A grantee cannot obtain approval of a request to terminate a project for good cause by default due to the Agency's failure to act within the time frames set forth in this Section.

(Source: Amended at 31 Ill. Reg. 5774, effective March 30, 2007)

### **Section 885.310 Stop-Work Orders**

- a) The Agency may, for any violation of this Part, issue a written stop-work order, requiring the grantee to stop all or any part of the project work, effective for a period of not more than 30 days from the date of the order, or for any further period to which the parties may agree in writing. The Agency shall include in any stop-work order a list of the project activities to which the order applies.
- b) Upon receipt of a stop-work order, the grantee must comply with its terms and stop the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- c) No more than 30 days after the date of the stop-work order, or within any extension of that period to which the parties agree in writing, the Agency shall:
  - 1) Upon resolution of the violation leading to the stop-work order, cancel the stop-work order; or
  - 2) Terminate the portion of the grant covered by the stop-work order, as provided in Section 885.300.
- d) If a stop-work order issued under this Section is canceled, or the effective period of the order or any written extension thereof expires, the grantee shall resume

work. The grantee may request an amendment to the grant agreement, in accordance with Section 885.230 of this Part, to obtain an adjustment in the grant amount accounting for the work stoppage.

- e) The grantee may not obtain reimbursement for costs associated with a stop-work order unless the Agency authorizes reimbursement in writing.

#### **Section 885.315 Covenant Against Contingent Fees**

- a) The grantee must warrant, as part of the grant agreement, that no person has been employed or retained to solicit or secure a grant under this Part upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- b) For breach or violation of this warranty, the Agency shall have the right to revoke the grant without liability or, in its discretion, to deduct from the grant award, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **Section 885.320 Recovery of Grant Funds**

If the Agency determines that any grant funds are being misspent or improperly held by the grantee, the Agency or the Attorney General shall have the authority to recover those funds and take any action authorized by the Illinois Grant Funds Recovery Act [30 ILCS 705].

#### **Section 885.325 Indemnification**

The grantee, rather than the Agency, 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 or 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, save harmless and defend the State and the Agency from all claims for any such loss, damage, injury, or death. However, a grantee's execution of a grant agreement, or implementation of an approved project, does not, in itself, render the grantee an owner or operator for purposes of 415 ILCS 5/22.2(h)(2), or under regulations promulgated pursuant to 415 ILCS 55/8. The grantee shall require any contractor or subcontractor engaged by the grantee to agree in writing to look solely to the grantee for performance of its contract or subcontract with the grantee and for satisfaction of any and all claims arising thereunder.

#### **Section 885.330 Statutory Requirements**

The grantee is solely responsible for assuring compliance with all statutory requirements, including, but not limited to, the Local Government Professional Services Selection Act [50 ILCS 510] and the Construction Contract Indemnification for Negligence Act [740 ILCS 35].

## SUBPART D: ACCESS, AUDITING AND RECORDS

### **Section 885.400 Access**

- a) The Agency or any authorized representative shall have access to the premises where any portion of the project for which the grant was awarded is being performed, both during normal business hours and at any other time project-related work is being performed.
- b) Subsequent to the end of the grant term, the Agency or any authorized representative shall have access to the project records, as defined in Section 885.405(a) of this Part, to the full extent of the grantee's right to access, during normal business hours.
- c) If the Agency or any authorized representative is denied access in violation of this Section, the Agency shall provide notice in writing to the grantee that failure to provide access within 10 days will be cause for:
  - 1) Termination of the grant pursuant to Subpart C of this Part;
  - 2) Refund to the State of any unexpended grant funds in the possession of the grantee; and
  - 3) Refund of any grant funds previously expended by the grantee, contractor, or subcontractor found in noncompliance with this Section.

### **Section 885.405 Audit and Records**

- a) The grantee shall maintain books, records, documents, reports and other evidentiary material, using accounting procedures and practices that conform to generally accepted accounting principles, to account properly for:
  - 1) The receipt and disposition by the grantee of all financial assistance received for the project, including both State assistance and the local share; and
  - 2) The costs charged to the project for which the grant has been awarded, including all direct and indirect costs of whatever nature incurred in performance of the project.
- b) The grantee's facilities, or such facilities as may be engaged in the performance of the project for which the 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 885.400 of this Part.

- c) The grantee shall preserve records and make records available to the Agency or any authorized representative:
- 1) Until expiration of 3 years from the date of final payment under this grant;
  - 2) For such longer period, if any, required by applicable statute or regulation;
  - 3) For records relating to grant work that has been terminated, for a period of 3 years from the date of any resulting final termination settlement; or
  - 4) For records relating to disputes and/or appeals, litigation or the settlement of claims arising out of the performance of the project for which the grant was awarded, or costs and expenses of the project to which exception has been taken by the Agency or any of its duly authorized representatives, until disposition of such appeals, litigation, claims, or exceptions.