

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

PART 871
GENERAL CONDITIONS OF STATE OF ILLINOIS MUNICIPAL WASTE
PLANNING AND NONHAZARDOUS MUNICIPAL WASTE ENFORCEMENT
GRANTS

SUBPART A: INTRODUCTION

Section	
871.101	Purpose
871.102	Definitions
871.103	Severability

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

Section	
871.201	Noncompliance with Grant Conditions
871.202	Stop-Work Order
871.203	Termination
871.204	Waiver of Conditions
871.205	Covenant Against Contingent Fees
871.206	Statutory Conditions

SUBPART C: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS OF
GRANTEE

Section	
871.301	General Conditions for all Subagreements
871.302	Contracts for Personal and Professional Services - Professional Consultant Agreements
871.303	Compliance with Procurement Requirements
871.304	Disputes
871.305	Indemnity

SUBPART D: REQUIREMENTS APPLICABLE TO INITIATION AND
AMENDMENT

Section	
871.401	Project Initiation
871.402	Project Changes
871.403	Termination of Delegation Agreement

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

Section	
871.501	Access
871.502	Audit and Records
871.503	Reports

SUBPART F: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

Section	
871.601	Determination of Allowable Costs
871.602	Amount of Grant-Percentage of Approved Allowable Costs
871.603	Use of Grant and Payment of Unallowable Costs
871.604	Grant Payment Schedule (Repealed)
871.605	Other Federal or State Grants

APPENDIX A	Required Provisions-- Professional Contractor Agreements
APPENDIX B	Procedures for Determination of Indirect Costs and Indirect Cost Rates

AUTHORITY: Implementing and authorized by Section 22.15 of the Environmental Protection Act [415 ILCS 5/22.15].

SOURCE: Adopted at 11 Ill. Reg. 18158, effective October 23, 1987; amended at 14 Ill. Reg. 17201, effective October 9, 1990; amended at 19 Ill. Reg. 11821, effective August 3, 1995.

SUBPART A: INTRODUCTION

Section 871.101 Purpose

- a) Section 22.15 of the Environmental Protection Act [415 ILCS 5/22.15] authorizes the Agency to:

- 1) *Provide financial assistance to units of local government in planning for the management of nonhazardous solid waste or municipal waste where alternatives to disposal of nonhazardous solid waste or municipal waste in a sanitary landfill will receive full evaluation and consideration in the planning process or in plans prepared pursuant to the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act (Section 22.15(g) of the Act); and*
 - 2) *To provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r) at nonhazardous solid waste or municipal waste disposal sites. (Section 22.15(h) of the Act)*
- b) The rules set forth in this Part constitute conditions which apply to any agreement through which the Agency provides the financial assistance described in subsection (a) above for:
- 1) Planning for the management of municipal waste in accordance with Section 22.15(g) of the Environmental Protection Act [415 ILCS 5/22.15(g)]; and
 - 2) Inspection, investigation and enforcement activities at nonhazardous solid waste or municipal waste disposal sites in accordance with Section 22.15(h) of the Environmental Protection Act [415 ILCS 5/22.15(h)].

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.102 Definitions

- a) For purposes of this Part, the words and terms used in this Part shall have the meanings below. Words and terms not defined in this Part shall have the meanings set forth in 35 Ill. Adm. Code 870. Words and terms not defined in this Part and not defined in 35 Ill. Adm. Code 870 shall have the meanings as defined in the Environmental Protection Act [415 ILCS 5].
- b) For purposes of this Part, the following definitions apply. "Act" or "Environmental Protection Act" means the Environmental Protection Act [415 ILCS 5].

"Applicant" means the unit of local government that is applying for a municipal waste planning or nonhazardous solid or municipal waste enforcement grant under Section 22.15 of the Act.

"Contractor" means the person, as defined by Section 3.26 of the Act, to whom a subagreement is awarded.

"Delegation agreement" means an agreement authorized by Section 4(r)

of the Act [415 ILCS 5/4(r)], under which the Agency may delegate inspection, investigation and enforcement authority at nonhazardous solid waste or municipal waste facilities or sites to a unit of local government.

"Enforcement grant" means a grant issued pursuant to Section 22.15(h) of the Act for inspection, investigation and enforcement activities at nonhazardous solid waste or municipal waste disposal sites. (Referred to as "SMWE Grant" in 35 Ill. Adm. Code 870.)

"Generally accepted accounting principles" means procedures outlined by the Financial Accounting Standards Board (High Ridge Park, Stamford, Connecticut 06905, June 1, 1987).

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

"Grantee" means the unit of local government that has been awarded a grant for municipal waste planning or nonhazardous solid or municipal waste enforcement under Section 22.15 of the Act.

"Phase I MWP Grant" means a Municipal Waste Needs Assessment Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(b).

"Phase II MWP Grant" means a Municipal Waste Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(c).

"Phase III MWP Grant" means a Municipal Waste Implementation Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(d).

"Planning grant" means a grant issued pursuant to Section 22.15(g) of the Act for the planning of municipal waste management.

"State" means the State of Illinois.

"Subagreement" means a written agreement between the grantee and another party, such as a contractor, and any tier of 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.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.103 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 871.201 Noncompliance with Grant Conditions

- a) In the event of noncompliance with any condition or obligation imposed pursuant to a grant made under Section 22.15 of the Act, the Agency may 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 871.203 of this Part;
 - 4) Suspend all or part of the project work pursuant to Section 871.202 of this Part; or
 - 5) Take other actions, such as reducing the amount of the grant by the amount of misused funds, or disallowing costs in accordance with Section 871.601 of this Part.
- b) No action shall be taken under this Part without prior consultation with the grantee.
- c) In determining whether to take action and which action to take when the Agency is empowered to act under this Part, the Agency shall consider factors such as the severity of the violation(s); the number of violations by the grantee; whether the violation is a continuing one; whether the grantee can remedy the violation; and whether the grantee and any subagreements remain capable of complying with the approved work project (see Subpart C of this Part).

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.202 Stop-Work Order

- a) The Agency may, for any violation of this Part, 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 Section. 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 that stop-work order; or
 - 2) Terminate the work covered by such order as provided in Section 871.203 of this Part.
- 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 equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant instrument shall be amended accordingly, if:
- 1) The stop-work order results either in an increase in the time required to complete the project, or an increase 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. Such claim must be submitted prior to final payment under the grant.
- c) Costs 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 costs only if so defined by Section 871.601 of this Part.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.203 Termination

- a) **Grant Termination by Agency** The Agency, by written notice and after consultation with the grantee, may terminate the grant, in whole or in part. Cause for termination shall include, but not be limited to: default by the grantee, failure by the grantee to comply with the terms and conditions of the grant, realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancements in the state of the art.
- 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 advancements 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. 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 Solid Waste Management Fund as final settlement.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.204 Waiver of Conditions

The Director of the Agency may waive any or all of the conditions required by this Part, with respect to any grant offer, by a statement made in writing to the grantee, either as a special condition of the grant offer or otherwise (and the waiver made subject to such additional conditions as the Director may deem necessary), if the purpose of the requirement has been accomplished or if the requirement waived is not considered by the Director to be necessary to insure the integrity of the project.

Section 871.205 Covenant Against Contingent Fees

The grantee warrants 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. For breach or violation of this warranty, the Agency shall have the right to annul this 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.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.206 Statutory Conditions

The grantee is solely responsible for assuring compliance with all statutory requirements.

SUBPART C: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS OF GRANTEE

Section 871.301 General Conditions for all Subagreements

- a) Scope of Application
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.

- b) **Local Preference**
Local laws, ordinances, regulations or procedures which are designed 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.
- c) **Competition**
It is the policy of the Agency to encourage free and open competition appropriate to the type of project work to be performed.
- d) **Profits**
Only fair and reasonable profits approved by the Agency may be earned by contractors in subagreements under Agency grants. Factors to be considered in determining a fair and reasonable profit shall include, but not be limited to, material acquisition, labor costs, associated 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.
- e) **Travel**
The grantee is responsible for ensuring that reimbursement for travel expenses accrued by contractors conducting grant eligible activities does not exceed the travel limits established by 80 Ill. Adm. Code 3000 (effective July 1, 1990), and rules promulgated thereunder. The Agency will not reimburse grantees for any contractors' travel expenses exceeding State travel limits for mileage, transportation, lodging, per diem, parking, tolls, and other eligible travel costs.
- f) **Grantee Responsibility**
The grantee is responsible for the administration and successful accomplishment of the project for which the Agency grant 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 and oversight of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. These functions may be performed for the grantee by an individual or firm retained by the grantee for that purpose. Such an agent acts for the grantee and is subject to all the provisions of the grant agreement, including the requirements contained in this Part, that apply to the grantee. Ultimate responsibility for the project will continue to remain with the grantee.

Costs incurred by a unit of local government will be eligible for grant reimbursement only after the grant is executed.

- g) Privity of contract
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts), nor to any solicitation or request for proposals therefor.
- h) General Requirements
Subagreements shall:
 - 1) Be directly related to the accomplishment of the grantee's approved work program;
 - 2) Be in the form of a bilaterally executed written agreement;
 - 3) Be for monetary or in-kind consideration; and
 - 4) Not be in the nature of a grant or gift.
- i) Documentation
 - 1) Procurement records and files for contracts shall include the following:
 - A) Basis for contractor selection; and
 - B) Basis for award cost or price.
 - 2) Procurement documentation as described in subsection (i)(1) above shall be retained by the grantee or contractors of the grantee for the period of time required by Section 871.502.
- j) In-kind Work
 - 1) The grantee must secure prior written approval of the Agency for utilization of in-kind contributions for work on planning grants in excess of \$10,000 for Phase I activities and \$25,000 for Phase II activities unless otherwise stipulated in the Grant Agreement.
 - 2) The Agency's approval of in-kind contributions shall be based on its determination that:
 - A) The grantee has trained manpower and supervisory personnel whose expertise and current responsibilities would enable them to accomplish the project work and to maintain records of such work in accordance with this Part; and
 - B) The use of in-kind contributions will effect savings in cost over those that would be incurred under technical/professional service contracting methods.
- k) The Agency retains the right to review, approve or disapprove in accordance with this Part all subagreements to be entered into by the grantee prior to execution of all such agreements. The Agency shall not approve the awarding of any subagreements to any person or organization which does not:
 - 1) Have adequate resources, or the ability to obtain such resources prior to project initiation, to satisfactorily complete the project, including financial, organizational, and technical qualifications;

- 2) Have experience, or the ability to obtain such experience prior to the project's initiation, in nonhazardous solid waste or municipal waste planning, data collection and interpretation, and report preparation; and have a proven record of meeting schedules and budgets;
 - 3) Have staffing sufficient to comply with the proposed or required completion schedule for the project;
 - 4) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts with federal or State government;
 - 5) Have an adequate financial management system and audit procedure which complies with generally accepted accounting procedures 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.);
 - 6) Maintain a standard of procurement in accordance with this Part;
 - 7) Maintain a property management system that provides adequate procedures for the acquisition, maintenance, safeguarding, and disposition of all property; or
 - 8) Conform to the civil rights, equal employment opportunity, and labor law requirements of the State of Illinois.
- l) 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 shall effectively pursue available State or local legal and administrative remedies and shall 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.
- m) Negotiation of Subagreements
- Negotiation of subagreements (i.e., award of subagreements by any method other than formal advertising) is authorized if it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Procurements may be negotiated by the grantee if:

- 1) Public exigency as evidenced by governmental declaration will not permit the delay in advertising (e.g., an emergency procurement);
 - 2) The aggregate amount involved does not exceed \$2,500;
 - 3) The material or service to be procured is available from only one person or firm (and, if the procurement is expected to aggregate more than \$10,000, the Agency has given prior approval in writing);
 - 4) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution; or
 - 5) No responsive bids at acceptable price levels have been received after formal advertising, and the Agency has given advance written approval of the negotiated contract. The Agency shall give such approval upon a showing by the grantee that no responsive bids were received.
- n) Small Purchases
- 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 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 properly be grouped together. Reasonable competition shall be obtained and shall be evidenced by submission of price quotations.
 - 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.
- o) Agency Review of Subagreements
- 1) The Agency retains the right to review, approve, or disapprove in accordance with this Part all subagreements to be entered into by the grantee in furtherance of the administration of the grant prior to execution of that subagreement. The Agency shall approve a subagreement only if the grantee demonstrates that the subagreement is in conformance with subsection(k) above.
 - 2) If, at any time during the project, the Agency determines that the grantee's subcontractors are not successfully accomplishing project activities in accordance with the grant award, the Agency

may take one or more actions presented in Section 871.201 of this Part. If the determination is due to the failure of the grantee's subcontractors to successfully accomplish the project work, the Agency shall notify the grantee in a timely manner of the determination and its recommendations for resolving the project deficiencies.

- p) Award of Subagreement
After review and approval by the Agency, the grantee may award the contract. The Agency shall notify the grantee in writing of disapproved subagreements. Unsuccessful candidates shall be notified promptly.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.302 Contracts for Personal and Professional Services - Professional Consultant Agreements

- a) Scope of Application
The provisions of subsections (a) through(i) of this Section apply to all subagreements of grantees for consulting services. When \$10,000 or less of services (e.g., for consultant or consultant subcontract services) is required, the provisions of Section 871.301 (n) of this Part (Small Purchases) shall apply.
- b) Type of Contract (Subagreement)
- 1) General
Cost reimbursement or fixed price contracts may be negotiated for consulting services. A fixed price contract is generally used only when the scope and extent of work to be performed are clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate.
 - 2) Cost reimbursement contracts
Each cost reimbursement contract must clearly establish a cost ceiling that may not be exceeded without formally amending the contract and a fixed dollar profit which may not be increased except in case of a contract amendment that increases the scope of the work.
 - 3) Fixed price contracts
An acceptable fixed price contract is one that establishes a guaranteed maximum price which may not be increased except to the extent that a contract amendment increases the scope of work.
 - 4) Contracts prohibited
The cost-plus-percentage-of-cost type of contract is prohibited.
 - 5) 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 contained in Section 871.601 of this Part; and
 - C) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract.
- c) Evaluation and Qualifications
- 1) The grantee shall review and uniformly evaluate the qualifications of candidate firms.
 - 2) Qualifications shall be evaluated by an objective process such as by the appointment of a board or committee, which, to the extent practicable, should include persons with technical skills.
 - 3) Criteria that shall be considered in the evaluation of candidates for submission of proposals include, but are not limited to:
 - A) Specialized experience and technical competence of the candidate or firm and its personnel (including a joint venture, association or professional subcontract) in connection with the type of services required and the complexity of the project;
 - B) Past record of performance on contracts with the grantee, other government agencies or public bodies, and private industry, including such factors as control of costs, quality of work, and ability to meet schedules;
 - C) Capacity of the candidate to perform the work (including any specialized services) within the time limitations, taking into consideration the current and planned workload of the firm; and
 - D) Avoidance of personal and organizational conflicts of interest prohibited under State and local law.
- d) Solicitation and Evaluation of Proposals
- 1) Requests for professional services proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals must inform offerors of the evaluation criteria, including all those in subsection (c)(3) of this Section, and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized).
 - 2) All proposals submitted in response to the request for professional services proposals must be uniformly evaluated. Evaluation criteria shall include, at a minimum, all criteria stated in subsection (c)(3) of this Section. The grantee shall also evaluate the candidate's proposed method to accomplish the work

required, including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and designs.

- 3) Proposals shall be evaluated by an objective process such as the appointment of a board or committee that, to the extent practicable, includes persons with technical skills. Oral (including telephone) or written interviews shall be conducted with top rated proposers, and information derived therefrom shall be treated as confidential, except as required to be disclosed pursuant to State or local law or to the Agency pursuant to subsection (f) below.
 - 4) At no point during the entire procurement process shall information be conveyed to any candidate that would specify bid deficiencies and corrective actions, indicate the contents of competing bids, or otherwise provide an unfair competitive advantage.
- e) Negotiation
- 1) Grantees are responsible for negotiation of their contracts for consulting 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 or local procedures. If such procedures conflict with this Part, State procedures shall have precedence over this Part. This Part shall have precedence over local procedures.
 - 3) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proposed 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) Availability 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 (f) and (g) below, and payment provisions.
- f) Cost and Price Considerations
- 1) General
It is the policy of the Agency that the cost or price of all subagreements and amendments thereto must be considered. For

each subagreement, grantees shall use the procedures described in subsection (f)(2) below or equivalent process.

2) Cost Review

- A) A review of proposed subagreement costs shall be made by the grantee.
- B) At a minimum, proposed subagreement costs shall be presented on forms prescribed and provided by the Agency and shall be supported by a certification executed by the selected contractor 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 required by the summary format may be required by the grantee or the Agency to substantiate the reasonableness of proposed subagreement costs. Such detailed documentation is required by the Agency only when the selected contractor is unable to certify that the cost and pricing data used are complete, current and accurate or when evidence of fraud or misconduct has arisen. The Agency may, on a selected basis, perform a pre-award cost analysis on any subagreement. Circumstances under which such an analysis would be conducted include amendments to subagreements or evidence of cost inflation to meet costs. A provisional overhead rate will be agreed upon prior to contract award.
- E) The contractor's actual costs, direct and indirect, allowable for State participation shall be determined in accordance with the terms and conditions of the subagreement and this Part.
- F) The contractor shall have an accounting system that accounts for costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable project costs among projects. The contractor 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 such certification was not based on complete, current and accurate cost and pricing data or not based on costs allowable under the appropriate Agency cost principles at the time of award.

- g) Profit
The objective of negotiations shall be the determination of a fair and reasonable profit as described in Section 871.301(d) of this Part. 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. Profit on a subagreement and each amendment to a subagreement under a grant should be sufficient to attract contractors who possess talents and skills necessary to accomplish project objectives, and to stimulate efficient and expeditious completion of the project. Where cost review is performed, the estimate of profit shall be reviewed by the grantee and the Agency as will all other elements of price.
- h) Required Subagreement Provisions
 - 1) Content of subagreement
 - A) Each subagreement must define, at a minimum:
 - i) The scope and extent of project work;
 - ii) The time for performance and completion of the contract work, including where appropriate, dates for completion of significant project tasks;
 - iii) Personnel and facilities necessary to accomplish the work within the required time; and
 - iv) The extent of subcontracting and contractor agreements, including all costs to be incurred under each subagreement.
 - B) If any of these elements cannot be defined for later tasks or steps at the time of contract execution, the subsequent tasks or steps shall be included in the contract at a time specified in the contract.
 - 2) Required subagreement provisions Each consulting services contract must include the provisions set forth in Appendix A of this Part, and shall state that Appendix A provisions will supersede all others.
- i) Subcontracts Under Subagreements for Consulting Services
 - 1) The award or execution of subcontracts under a prime contract for consulting services awarded to a contractor by a grantee, and the procurement and negotiation procedures used by the contractor in awarding such subcontracts, are required to comply with all provisions, selection procedures, policies and principles set forth in Section 871.301 and Section 871.302 of this Part.
 - 2) The award or execution of subcontracts in excess of \$10,000 under a prime contract for consulting services and the

procurement procedures used by the contractor in awarding such subcontracts must comply with the following:

- A) Section 871.301(b) of this Part (Local Preference);
- B) Section 871.302(f) of this Part (Cost and Price Considerations); and
- C) Section 871.302(g) of this Part (Profit).

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.303 Compliance With Procurement Requirements

- a) **Grantee Responsibility**

The grantee is responsible for selecting the low, responsive bidder or other contractor in accordance with applicable requirements of State or local laws or ordinances, as well as the specific requirements of State and federal law or the grant agreement directly affecting the procurement (for example, the non-restrictive specification requirement or the equal employment opportunity requirement) and for the initial resolution of complaints based upon alleged violations. If complaint is made to the Agency concerning an alleged violation of any law or of this grant agreement in the procurement of services or materials for a project, the complaint will be referred to the grantee for resolution. The grantee shall promptly determine each such complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected, including bidders on the contract in question, to state in writing or at a conference the basis for views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties who participated in the conference or submitted written comments, 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) above 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 pursuant to subsection (a) above shall be made as early as

possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the procurement process, provided that a complaint authorized by subsection (a) above must be mailed by certified mail (return receipt requested), or delivered, no later than five working days after the bid opening. A request for arbitration pursuant to subsection (b) above 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

Where the grantee has received a written complaint pursuant to subsection (a) above, 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 which is favorable to the complainant, the terms of the solicitation must be revised or the contract must be awarded (as appropriate) in accordance with such determination.

e) Enforcement

Noncompliance with the provisions of this grant affecting procurement will result in:

- 1) Total or partial termination of the grant pursuant to Section 871.203;
- 2) Ineligibility for grant assistance which could otherwise be awarded under this grant; or
- 3) Disallowance of project costs incurred in violation of the provisions of this grant offer or applicable laws, as determined by the Agency.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.304 Disputes

- a) Only the grantee may appeal to the Agency under this provision with respect to its subagreements thereunder in its own name and for its own 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 which is not disposed of by agreement shall be decided by the Agency. A written decision shall be mailed or otherwise furnished to the grantee. The decision of the Agency shall be final and conclusive.
- c) This "disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in subsection (b) above.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.305 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, save harmless and defend the State of Illinois and the Agency from all claims for any such 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 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 such contract or satisfaction of any and all claims arising thereunder.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

SUBPART D: REQUIREMENTS APPLICABLE TO INITIATION AND AMENDMENT

Section 871.401 Project Initiation

Any obligation of the State of Illinois and the Agency to make any payment of grant funds shall terminate absolutely unless the grantee initiates performance of its obligations under the grant no later than one calendar year from the date of acceptance by the grantee of a Planning Grant offer or not later than 3 months from the date of acceptance of an Enforcement Grant offer or as otherwise provided by the grant agreement. Performance of obligations under the grant shall be deemed to have been initiated on the execution of an agreement or contract for any element of project work; or, if an agreement or contract covering an element of the work has previously been entered into, upon the issuance of a notice to proceed with that work.

Section 871.402 Project Changes

- a) Prior approval by the Agency is required for project changes that may:
 - 1) Alter the scope of the project by changing the methodologies or personnel to be used, as agreed to at the time of the grant award;
 - 2) Extend any contractual or grant completion date for the project; subject to the provisions required by Section 870.207(e); or
 - 3) Re-allocate budget amounts by category through line-item revisions, provided that the total grant amount does not change.
- b) The grantee shall notify the Agency of project changes pursuant to subsection (a) above in writing 30 days prior to the effective date of all

proposed project changes. Failure on the part of the grantee to give timely notice of proposed project changes pursuant to subsection (a) of this Section may, in accordance with Section 871.201 of this Part, result in:

- 1) Disallowance of costs incurred that are attributable to the change;
or
 - 2) Termination of the grant.
- c) The Agency shall disapprove proposed project changes by written notice to the grantee within 30 days after receipt of a written notice from the grantee of a proposed change pursuant to subsection (a) of this Section. If the Agency fails to notify the grantee within 30 days after receipt of project changes pursuant to subsection (a) of this Section, these changes shall be deemed to be approved. Neither approval nor failure to disapprove a project change shall 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. The total cost for all changes allowable under this provision shall not exceed one-half of one percent of the total grant offer.
- d) In addition to the notification of project changes pursuant to subsections (a) through (c) of this Section, a copy of any prime contract or modification thereof and of revisions to specifications must be submitted to the Agency for approval within one week of execution; however, neither approval nor disapproval of any prime contract or modification thereof or revisions to specifications shall commit or obligate the State of Illinois or the Agency to any increase in the amount of the grant or payments thereunder.
- e) The Agency will approve project changes if the grantee can make a showing that:
- 1) Amendments to State statutes affect the project cost;
 - 2) A project element was inadvertently omitted; or
 - 3) An approved project element was found to be unnecessary.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.403 Termination of Delegation Agreement

Any obligation of the State of Illinois and the Agency to make any payment of funds pursuant to a Nonhazardous Solid Waste or Municipal Waste Enforcement Grant shall terminate upon the termination of the delegation agreement under which the grantee is authorized to perform the activities subsidized by the grant.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

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

Section 871.501 Access

- a) The Agency and any persons designated by the Agency shall have access to the premises where any portion of the work for which the grant was awarded is being performed during normal business hours and any other time at which the work is being performed. Subsequent to cessation of grant support, Agency personnel or any authorized representative shall have access to the project records as defined in Section 871.502 of this Part 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 the representatives of the Agency will have access to the work as described in subsection (a) above 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 that 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 871.203 of this Part and refund to the State of Illinois Solid Waste Management Fund of any grant funds previously expended by the grantee, contractor, or subcontractor found in noncompliance with this Section.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.502 Audit and Records

- a) The grantee shall maintain books, records, documents, reports, and other evidentiary material and accounting procedures and practices that conform to generally accepted accounting principles 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 of 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 constitute "records" for the purposes of this condition.

- 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 871.501 of this Part.
- c) The grantee shall preserve and make his 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 subsection (d) or (e) below.
- 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 871.304 of this Part, litigation, 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 to which exception has been taken by the Agency or any of its duly authorized representatives shall be retained until final disposition of such appeals, litigation, claims, or exceptions.
- 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 871.203 of this Part, and refund to the State of Illinois Solid Waste Management Fund of any grant funds previously expended by the grantee, contractor or subcontractor found in noncompliance with this Section.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.503 Reports

The grantee shall prepare and file with the Agency a final report containing the information required by 35 Ill. Adm. Code 870.207 and all financial requests required by Section 870.209. Failure to timely submit reports required by this grant offer may result in:

- a) Withholding of grant funds;
- b) Suspension of the grant pursuant to Section 871.202;
- c) Termination of the grant pursuant to Section 871.203; or
- d) Such other action as the Agency may be authorized to take.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

SUBPART F: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

Section 871.601 Determination of Allowable Costs

- a) The grantee will be paid, upon request, 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 listed below. 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 (b)(7) below;
 - 2) Professional and consultant services;
 - 3) Project feasibility and engineering reports; and
 - 4) Materials acquired, consumed, or expended specifically for the project.
- b) Unallowable Costs Costs which exceed the total amount of the grant offer or which are not necessary for completion of the work required by the Grant Agreement are unallowable. Such costs include, but are not limited to:
 - 1) Area wide planning or enforcement not directly related to the project;
 - 2) Bonus payments not legally required for completion of the project;
 - 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 planning or enforcement 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) below;
 - 8) Site acquisition (for example, sanitary landfills and sludge disposal areas);
 - 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 these General Conditions;
 - 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 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 under contracts that 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 871.402;
 - 13) Personal and professional consultant services costs arising under a cost-plus-percentage-of-cost type of agreement (including the multiplier contract where profit is included in the multiplier);
 - 14) Personal and professional consultant services 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 871.302; and
 - 15) Increases in personal and professional consultant 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.
- c) Indirect Costs Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable pursuant to subsection (a) above. Where the benefits derived from an applicant's indirect services cannot be readily determined, a lump sum for overhead may be negotiated based upon a determination that such amount will be approximately the same as the actual indirect costs that may be incurred. Procedures for development of an indirect cost agreement are included as Appendix B to this Part.
 - d) Disputes Concerning Allowable Costs The grantee shall seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations by the Agency concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with Section 871.304.
 - e) Limitation on Project Costs Incurred Prior to Grant Award Payment will not be authorized for costs incurred prior to the date of the grant award.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.602 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 871.402 of this Part, shall operate to commit or obligate the State of Illinois or the Agency to any increase in the total amount or 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 periodic audit, 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 described above.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.603 Use of Grant and Payment of Unallowable Costs

- a) The grant shall be expended solely for approved allowable costs incurred in the municipal waste planning or nonhazardous solid waste or municipal waste enforcement activities authorized by the terms of the grant.
- b) The grantee agrees to pay the unallowable costs associated with the project and all allowable costs of the project which exceed the amount of the grant offer.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.604 Grant Payment Schedule (Repealed)

(Source: Repealed at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.605 Other Federal or State Grants

If the grantee becomes eligible for a grant of federal funds or State funds for this project from other than the Solid Waste Management Fund, the grantee shall repay to the State of Illinois, for deposit in the Solid Waste Management Fund, any funds received under this offer if the total federal or State funds received exceed 70 percent of the approved allowable cost under a planning grant or enforcement grant, as defined by the Agency in accordance with the conditions of this grant. The grantee shall take any and all actions as may be directed by the Agency to perfect and preserve such eligibility and to obtain such grant of federal funds or State funds from other than the Solid Waste Management Fund or to reimburse to the Solid Waste Management Fund such amounts as might have been returned to it under this condition but for failure of the grantee to take timely action as directed.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.APPENDIX A Required Provisions -- Professional Contractor Agreements

1) General

- A) The grantee and the contractor 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 (Agency). Neither the State of Illinois nor the Agency is a party to this agreement.

2) Responsibility of the Contractor

- A) The contractor 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 contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors or deficiencies in designs, drawings, specifications, reports and other services. The contractor 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 35 Ill. Adm. Code 871.
- B) Approval by the grantee or Agency of drawings, designs, specifications, reports, and incidental consulting work or materials furnished hereunder shall not in any way relieve the contractor 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 contractor shall be and remain liable in accordance with applicable law for all damages to the grantee or Agency caused by the contractor's negligent performance of any of the services furnished under this agreement.
- C) 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 contractor shall include all services required to complete the task or step in accordance with 35 Ill. Adm. Code 871.

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 contractor'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 contractor for adjustment under this

clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change unless the grantee grants a further period of time before the date of final payment under this agreement.

B) If additional compensation will be charged by the contractor for its services, prior written authorization must be obtained from the grantee.

5) Termination

A) This agreement may be terminated in whole or in part in writing by either party in the event of 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) 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 contractor at the time of termination shall be adjusted to reflect any additional costs occasioned to the grantee by reason of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the grantee, the equitable adjustment shall include a reasonable profit, as defined in Section 871.301(d) of this Part, for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which are contractually obligated prior to the termination.

C) Upon receipt of the termination action pursuant to paragraphs (a) or (b) of this clause, the contractor 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 contractor in performing this agreement, whether completed or in process.

D) Upon termination pursuant to paragraphs (a) or (b) of this clause, the grantee may take over the work and prosecute the same to completion by agreement with another party or otherwise.

E) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor 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 (b) of this clause.

F) The rights and remedies of the grantee and the contractor 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 contractor 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, subject to the limitations stated in paragraphs (c) and (d) of this clause. 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) of this clause 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 judgment may be entered upon it in any court having jurisdiction thereof.
- 7) Payment
- A) The contractor shall submit payment requests to the grantee in accordance with the schedule in the project scope of work. Such requests shall be based upon the value of the work and services performed by the contractor under this agreement,

and shall be prepared by the contractor and supplemented or accompanied by such supporting data as may be required by the grantee or the Agency. The contractor shall also submit progress reports to the grantee on forms prescribed and provided by the Agency in accordance with the schedule in the project scope of work. These reports shall document work completed and costs incurred during the reporting period and to date.

- B) Upon approval of such payment request by the grantee, payment shall be made to the contractor as soon as practicable of ninety percent of the amount as determined above.
 - C) Upon satisfactory completion by the contractor of the work called for under the terms of this agreement, and upon acceptance of such work by the grantee, the contractor 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 to settlement upon termination of the agreement, and as a condition precedent thereto, the contractor 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 contractor from the operation of the release in stated amounts to be set forth therein.
- 8) Audit and Access to Records
- A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on Agency grant work under this agreement in accordance with generally accepted accounting principles and in accordance with Sections 871.501 and 871.502 of this Part. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required pursuant to this Part for subagreements over \$100,000 and a copy of the grant 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 contractor will provide proper facilities for such access and inspection.
 - B) The contractor agrees to include paragraphs (a) through (e) of this clause in all 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 the American Institute of Certified Public Accountants' Professional Standards.
 - D) The contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs
 - E) and (b) of this clause, to the Agency. Where 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.

- F) Records under paragraphs (a) and (b) of this clause 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 that 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.
- 9) Price Reduction for Defective Cost or Pricing Data for Agreements Exceeding \$100,000
- 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 because the contractor 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, 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 35 Ill. Adm. Code 871. Appendix A(6) of this Part. (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 contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. It is also expected that any contractor subject to such indemnification will generally require substantially similar identification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)
- 10) Subcontractors
- A) Any subcontractors and outside associates or consultants hired by the contractor 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 of subcontractors, associates, or consultants will be subject to the prior written approval of the Agency and the grantee.
- B) Except as otherwise provided in this agreement, the contractor 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.
- 11) Equal Employment Opportunity
- The contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.
- 12) 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, except bona fide 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 or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13) Gratuities

- A) The grantee may, by written notice to the contractor, terminate the right of the contractor 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 contractor, or any agent or representative of the contractor, 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) of this clause, the grantee shall be entitled: (1) to pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor; 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 contractor 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.

14) Conflict of Interest

Contractor, by signing this agreement, covenants that contractor has no public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with the performance of contractor's services and obligations under this agreement. Any such conflict shall be disclosed to the grantee and the grantee shall determine whether such conflict is cause for the non-execution or termination of this agreement. Contractor further covenants that, in the performance of this agreement, no person having such interest shall be employed by contractor.

15) Americans with Disabilities Act

Contractor certifies that it shall comply with the provisions of the Americans with Disabilities Act (42 USC Section 12101 et seq.) as it may apply to the services, programs or activities that are to be provided under this agreement.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)

Section 871.APPENDIX B Procedures for Determination of Indirect Costs and Indirect Cost Rates

a) Definition

Indirect costs are those costs incurred for a common or joint purpose but benefiting more than one cost objective, and not readily identifiable to the cost objectives specifically benefited. The term indirect cost, as used herein, applies to costs of this type occurring in the grantee department (or other relevant organizational unit responsible for project performance), as well as those central service support costs incurred by other departments in supplying goods, services, and facilities to the grantee department when such cost can be assigned to the departmental indirect cost pool as a result of an approved cost allocation plan.

b) General

- 1) Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement incorporated in the grant agreement. Indirect cost rates and indirect costs as determined below shall be used in the grant agreement but shall be considered to be estimates; the final amount of eligible indirect costs will be based on audited actual costs.
- 2) Indirect cost rates are not retroactive and may not be changed during the period of the grant agreement.

c) Grantees with Existing State or Federal Grants

- 1) If the grantee has a current grant from a State or federal agency, the most recently established indirect cost rate in that grant will be used by the Agency, provided that the rate was established in accordance with 40 CFR 30.410 and 40 CFR 30.412 (July 1, 1986). (This incorporation contains no later amendments or editions.)
- 2) If the grantee has a current State or federal grant that shows a zero indirect cost rate or that specifies that there is no indirect cost rate, it is not eligible to establish an indirect cost rate for a planning grant.
- 3) To establish an indirect cost rate, the Agency will require:
 - A) copies of all executed grants currently in effect between the grantee and State or federal agencies, certified by the clerk or other appropriate official of the grantee; and
 - B) a letter from an appropriate official of the grantee, authorizing representatives of the Agency to have access to the federal audit which served as the basis of the indirect cost rate in the State or federal grants.
- 4) If the grantee has more than one currently effective State or federal grant with differing indirect cost rates, the Agency will determine which of the approved indirect cost rates is most appropriate for use on the State planning or enforcement grant. The most appropriate indirect cost rate is that rate derived from the prior existing project which was most similar in scope, objectives, methodology and personnel to the project for which the enforcement or planning grant is sought.

d) Grantees without Existing State or Federal Grants

For grantees that do not have existing current State or federal grants, either of the following procedures may be used to establish an indirect cost rate:

- 1) A negotiated lump sum for overhead may be established, based on the grantee's submission of evidence of estimated charges to be incurred. The provisions of applicable federal regulations will be used as guidance in establishing such a lump sum. Lump sum indirect costs negotiated under this provision may not exceed one percent of the total project cost; or
- 2) A negotiated indirect cost rate may be established in accordance with the following procedures: the grantee shall follow the Agency's criteria in determining eligibility of specific items used in establishing an indirect cost rate, submit the completed indirect cost rate determination to the Agency with calculations and assumptions made within the calculations, and provide a certification from an appropriate official of the grantee that the information submitted is, to the best of its knowledge, true and accurate. Total indirect costs may not exceed five percent of the total estimated project cost.

e) Disputes

The grantee will be notified in writing of Agency approval or disapproval of a proposed indirect cost rate. If the Agency disapproves the proposed rate, its reasons for disapproval shall be stated, together with a more appropriate method of determination. If the grantee does not accept the Agency's determination of a more appropriate method, it may contest it pursuant to the provisions of Section 871.304 of this Part.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)