

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 360  
GENERAL CONDITIONS OF STATE OF ILLINOIS GRANTS FOR SEWAGE  
TREATMENT WORKS UNDER THE ANTI-POLLUTION BOND ACT OF 1970

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AUTHORITY: Implementing and authorized by Section 4 of the Anti Pollution Bond Act (Ill. Rev. Stat., 1989, ch. 127, par. 454).

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

**Section 360.101 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 this grant, the grant may be annulled and all grant funds recovered, or
- 1) The grant may be terminated pursuant to General Condition Section 360.103, (Termination) hereof; or
  - 2) The project work may be suspended pursuant to General Condition, Section 360.102, (Stop-Work Order) hereof;
  - 3) An injunction may be entered by an appropriate court; or
  - 4) Such other action may be taken by the Agency as the Director shall determine.
- b) No action shall be taken under this general condition without prior consultation with the applicant.

**Section 360.102 Stop-Work Order**

- a) The Agency may, at any time, by written order to the grantee, require the grantee to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop-work order issued pursuant to this clause. 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; or
  - 2) Terminate the work covered by such an order as provided in General Condition Section 360.103, (Termination) hereof.
- 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 for, or in the grantee's cost properly allocable to the performance of any part of the project; and
  - 2) The grantee asserts a written claim for such adjustment within 30 days after the end of the period of work stoppage: Provided, That if the Agency decides the circumstances justify such action, the Agency may receive and act upon any such claim asserted at any time prior to final payment under this grant.
- c) No costs which are incurred by the grantee after the receipt of a stop-work order, or within any extension of the stop-work order period to which the Agency and the grantee shall have agreed, shall be allowable costs hereunder unless authorized by the Agency in writing or as otherwise authorized under this general condition.

### **Section 360.103 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. Upon such termination, the grantee shall refund to the State of Illinois Anti-Pollution Fund any unexpended grant funds, except such portion thereof as may be required by the grantee to make payment for materials and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination and further provided that such costs are otherwise

allowable under the conditions of this grant.

b) Project Termination by Grantee

The grantee may not terminate a project for which the grant has been awarded, except for good cause. 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 Anti-Pollution Fund as final settlement.

**Section 360.104 Waiver of Conditions**

- a) Except as stated in paragraph (b) below, the Director of the Agency may waive any of these General Conditions, either in whole or in 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.
- b) The following conditions will not be waived:
- 1) General Condition Section 360.401, (Project Initiation).
  - 2) General Condition Section 360.601, (Sewer Use Ordinances).
  - 3) General Condition Section 360.602, (User Charges)
  - 4) General Condition Section 360.203, (Facilities Planning).
  - 5) General Condition Section 360.202, (Sewer System Evaluation and Rehabilitation).
  - 6) General Condition Section 360.205, (Areawide Waste Treatment Management Planning).

SUBPART B: REQUIREMENTS APPLICABLE TO APPLICATIONS FOR GRANTS

**Section 360.201 Contents of Grant Applications**

a) The grantee shall furnish the following documents, plans, contracts, subcontracts, agreements, subagreements, approvals, assurances and evidences in form satisfactory to the Agency and no grant offer or grant amendment shall be made until such documentation has been submitted to and approved by the Agency. However, in the case of grants in which one or more steps are combined under one grant offer, pursuant to Condition Section 360.104, (Waiver of Conditions) hereof, the submission of such documents may be deferred, in accordance with an agreed-upon schedule, until required for the appropriate step.

b) Step 1 project

Application for a Step 1 (facilities planning) grant shall include:

- 1) A plan of study presenting:
  - A) The proposed planning area;
  - B) An identification of the entity or entities that will be conducting the planning;
  - C) The nature and scope of the proposed Step 1 project, including a schedule for the completion of specific tasks; and
  - D) An itemized description of the estimated costs for the project;
- 2) Proposed contracts, subcontracts, agreements and subagreements, or an explanation of the intended method of awarding contracts, subcontracts, agreements and subagreements for performance of any substantial portion of the project work;
- 3) Required comments or approvals of relevant state, local, and federal agencies (including "Clearinghouse" requirements of OMB Circular A-95, promulgated at 38 FR 32874 on November 28, 1973). However, in the case in which the requirement of such comments and approvals is waived by the Director, pursuant to Condition Section 360.104, (Waiver of Conditions) hereof, they shall not be required hereunder.

c) Step 2 project

Preparation of construction drawings and specifications. Prior to the award of a grant or grant amendment for a Step 2 project, the following must have been furnished in addition to each of the items specified in paragraph (b) of this

condition:

- 1) A facilities plan (including an environmental assessment) in accordance with General Condition Section 360.203, (Facilities Planning) hereof;
- 2) Satisfactory evidence of compliance with the user charge provisions of General Conditions Section 360.602, (User Charges) hereof;
- 3) A statement regarding availability of the proposed site, if relevant;
- 4) Satisfactory evidence of compliance with other applicable federal statutory and regulatory requirements (see 40 CFR 30);
- 5) Proposed contracts, subcontracts, agreements and subagreements or an explanation of the intended method of awarding contracts, subcontracts, agreements and subagreements for performance of any substantial portion of the project work;
- 6) Required comments or approvals of relevant state, local, and federal agencies (including "Clearinghouse" requirements of OMB Circular A-95) if a grant application has not been previously submitted. However, in the case in which the requirement of such comments and approvals is waived by the Director, pursuant to Condition Section 360.104, (Waiver of Conditions) hereof, they shall not be required hereunder.

d) Step 3 project

Building and erection of a treatment works. Prior to the award of a grant or grant amendment for a Step 3 project, each of the items specified in paragraphs (b) and (c) of this condition must have been furnished to and approved by the Agency, and in addition the following shall have been submitted to and approved by the Agency:

- 1) Construction drawings and specifications, suitable for bidding purposes;
- 2) A schedule for or evidence of compliance with General Condition Section 360.406, (Operation and Maintenance) hereof concerning an operation and maintenance program;
- 3) If bids have been taken, bid evaluations, prior to award, prepared in accordance with the provisions of General Conditions Section 360.302, (Construction Contracts of Grantee) hereof, in such form and content as the Agency may direct;

- 4) Proposed contracts, subcontracts, agreements and subagreements for Step 3 project construction, prepared in accordance with all applicable provisions of these Grant Conditions; and
- 5) A construction permit or "authorization to construct" from the Agency, pursuant to the provisions of Rule 910 or 951, whichever may be applicable, of Chapter 3, Water Pollution, of the Regulations of the Illinois Pollution Control Board.

### **Section 360.202 Sewer System Evaluation and Rehabilitation**

- a)
  - 1) All grantees whose grant assistance is awarded after July 1, 1973 must demonstrate to the satisfaction of the Agency that each sewer system discharging into the treatment works project for which the grant offer is made is not or will not be subject to excessive infiltration/inflow. The determination whether excessive infiltration/inflow exists may take into account, in addition to flow and related data, other significant factors such as cost-effectiveness (including the cost of substantial treatment works construction delay), public health emergencies, the effects of plant bypassing or overloading, or relevant economic or environmental factors.
  - 2) The determination whether or not excessive infiltration/inflow exists will generally be accomplished through a sewer system evaluation consisting of:
    - A) An infiltration/inflow analysis; and, if appropriate,
    - B) A sewer system evaluation survey followed by rehabilitation of the sewer system to eliminate any excessive infiltration/inflow defined in the sewer system evaluation.
- b) The infiltration/inflow analysis shall demonstrate the non-existence or possible existence of excessive infiltration/inflow in each sewer system tributary to the treatment works. The analysis should identify the presence, flow rate, and type of infiltration/inflow conditions which exist in the sewer systems. Information to be obtained and evaluated in the analysis should include, to the extent appropriate, the following:
  - 1) Estimated flow data at the treatment facility, all significant overflows and bypasses, and, if necessary, flows at key points within the sewer system.



- 2) Relationship of existing population and industrial contribution to flows in the sewer system.
- 3) Geographical and geological conditions which may affect the present and future flow rates or correction costs for the infiltration/inflow.
- 4) A discussion of age, length, type, materials of construction and known physical condition of the sewer system.
- 5) For determination of the possible existence of excessive infiltration/inflow, the analysis shall include an estimate of the cost of eliminating the infiltration/inflow conditions. These costs shall be compared with estimated total costs for transportation and treatment of the infiltration/inflow.
- 6) If the infiltration/inflow analysis demonstrates the existence or possible existence of excessive infiltration/inflow, a detailed plan for a sewer system evaluation survey shall be included in the analysis. The plan shall outline the tasks to be performed in the survey and their estimated costs.
- 7) The sewer system evaluation survey shall consist of a systematic examination of the sewer systems to determine the specific location, estimated flow rate, method of rehabilitation and cost of rehabilitation, method of rehabilitation and cost of rehabilitation versus cost of transportation and treatment for each defined source of infiltration/inflow.
- 8) The results of the sewer system evaluation survey shall be summarized in a report. In addition, the report shall include:
  - A) A justification for each sewer section cleaned and internally inspected.
  - B) A proposed rehabilitation program for the sewer systems to eliminate all defined excessive infiltration/inflow.
  - C) Exception

In the event it is determined by the Agency that the treatment works would be regarded (in the absence of an acceptable program of correction) as being subject to excessive or possible excessive infiltration/inflow, grant assistance may be offered provided that the grantee establishes to the satisfaction of the Agency that the

treatment works project for which grant application is made will not be significantly changed by any subsequent rehabilitation program or will be a component part of any rehabilitation system: Provided, That the grantee agrees to complete the sewer system evaluation and any resulting rehabilitation on an implementation schedule, which shall be inserted as a special condition in this grant agreement.

### **Section 360.203 Facilities Planning**

- a) The grantee shall undertake and complete facilities planning which shall consist of plans and studies which are directly related to the construction of publicly owned treatment works to comply with the provisions of the Environmental Protection Act (Ill. Rev. Stat. 1975, ch. 111½, pars. 1001 et seq.) and regulations adopted thereunder or Sections 301 and 302 of the Federal Water Pollution Control Act (PL 92-500, as amended) and regulations adopted thereunder, whichever are more stringent. The grantee shall demonstrate to the satisfaction of the Agency through such plans and studies the need for such facilities and, by a systematic evaluation of feasible alternatives, shall also demonstrate that the proposed measures represent the most cost-effective means of meeting applicable effluent limitations and water quality standards and goals, recognizing environmental and social conditions.
- b) If the information required to be furnished as part of a facilities plan has been developed separately, it should be furnished and incorporated by reference in the facilities plan. Planning previously or collaterally accomplished under local, state or federal programs will be utilized (not duplicated).
- c) The completed facilities plan must be submitted by the grantee and approved by the Agency. Where deficiencies in a facilities plan are discovered, the Agency shall promptly notify the grantee in writing of the nature of such deficiencies and of the recommended course of action to correct such deficiencies. Approval of a plan of study or a facilities plan will not constitute an obligation of the State of Illinois or the Agency for any Step 2, Step 3, or combination Steps 2 and 3 project.
- d) A facilities plan submitted for approval shall include adopted resolutions or, where applicable, executed agreements of the implementing governmental units or management agencies providing for acceptance of the plan, or assurances that it will be carried out, and statements of legal authority necessary for plan implementation.
- e) A facilities plan may include more than one Step 3 project and provide the basis

for several subsequent Step 2, Step 2-3, or Step 3 projects. A facilities plan which has served as the basis for the award of a grant for a Step 2, Step 2-3, or Step 3 project shall be reviewed prior to the award of any grant for a subsequent project involving Step 2 or Step 3 to determine if substantial changes have occurred. If in the judgement of the Agency substantial changes have occurred which warrant revision or amendment, the plan shall be revised or amended and submitted for review in the same manner specified in (c) above.

- f) Facilities planning must be in accordance with the following requirements, and such other requirements as may be determined to be appropriate by the Agency. Such facilities plan shall include:
- 1) A description of the treatment works for which construction drawings and specifications are to be prepared. This description shall include preliminary engineering data, cost estimates for design and construction of the treatment works, and a schedule for completion of design and construction. The preliminary engineering data may include, to the extent appropriate, such information as a schematic flow diagram, unit processes, design data regarding detention times, flow rates, sizing of units, etc.
  - 2) A description of the selected complete waste treatment system(s) of which the proposed treatment works is a part. The description shall cover all elements of the system, from the service area and collection sewers, through treatment, to the ultimate discharge of treated wastewaters and disposal of sludge.
  - 3) Infiltration/inflow documentation in accordance with General Condition Section 360.202, (Sewer System Evaluation and Rehabilitation) hereof.
  - 4) A cost-effective analysis of alternatives for the treatment works and for the waste treatment system(s) of which the treatment works is a part. The selection of the system(s) and choice of the treatment works on which construction drawings and specifications are to be based shall reflect the cost-effectiveness analysis. This analysis shall include:
    - A) The relationship of the size and capacity of alternative works to the needs to be served, including reserve capacity;
    - B) An evaluation of alternative flow and waste reduction measures;
    - C) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

- D) An evaluation of the capability of each alternative to meet applicable effluent limitations. The treatment works design must be based upon meeting the effluent limitations of the Environmental Protection Act (Ill. Rev. Stat. 1975, ch. 111½, pars. 1001 et seq.) and regulations adopted thereunder or Sections 301 and 302 of the Federal Water Pollution Control Act (PL 92-500) and regulations adopted thereunder, whichever are more stringent.
  - E) An identification of, and provision for, applying the best practicable waste treatment technology (BPWTT) as defined by the United States Environmental Protection Agency, based upon an evaluation of technologies included under each of the following waste treatment management techniques:
    - i) Biological or physical-chemical treatment and discharge to receiving waters;
    - ii) Treatment and reuse; and
    - iii) Land application techniques.
  - F) All Step 2, Step 3 or combination Step 2-3 projects for publicly-owned treatment works construction from funds authorized for any fiscal year beginning after June 30, 1974, shall be based upon application of BPWTT, as a minimum. Where application of BPWTT would not meet water quality standards, the facilities plan shall provide for attaining such standards. Such provision shall consider the alternative of treating combined sewer overflows.
  - G) An evaluation of the alternative means by which ultimate disposal can be effected for treated wastewater and for sludge materials resulting from the treatment process, and a determination of the means chosen.
  - H) An adequate assessment of the expected environmental impact of alternatives including sites consistent with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). This assessment shall be revised as necessary to include information developed during subsequent project steps.
- 5) An identification of effluent discharge limitations, or where a permit has been issued, a copy of the permit for the proposed treatment works as

required by the National Pollutant Discharge Elimination System.

- 6) Required comments or approvals of relevant State, interstate, regional, and local agencies.
- 7) A brief summary of any public meeting or hearing held during the planning process including a summary of the views expressed.
- 8) A brief statement demonstrating that the authorities which will be implementing the plan have the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed treatment works.
- 9) As applicable, public participation in the facilities planning process shall be consistent with 40 CFR 105. One or more public hearings or meetings shall be held within the area to obtain public advice at the beginning of the planning process. All governmental agencies and other parties which are known to be concerned or may have an interest in the plan shall be invited to participate. As a minimum, the following shall be required:
  - A) A public hearing shall be held prior to the adoption of the facilities plan by the implementing governmental units. This public hearing for the facilities plan may satisfy the hearing requirement of (f)(4)(g) above. The Agency may require the grantee to hold additional public hearings, if needed, to more fully discuss the plan and alternatives or to afford concerned interests adequate opportunity to express their views.
  - B) The time and place of the public hearing shall be conspicuously and adequately announced, generally at least 30 days in advance. In addition, a description of the water quality problems and the principal alternatives considered in the planning process shall be displayed at a convenient local site sufficiently prior to the hearing (approximately 15 days).
  - C) Appropriate local and state agencies; state and regional clearinghouses, interested environmental groups and appropriate local public officials should receive written notice of public hearings.
- 10) Grant assistance for Step 2 or 3 may be awarded prior to approval of a facilities plan for the entire geographic area to be served by the complete waste treatment system of which the proposed treatment works will be an

integral part if the Agency determines that applicable minimum requirements have been met (see) (f)(3) and (f)(4)(A), (D), and (G) of this general condition); that the facilities planning relevant to the proposed Step 2 or 3 project has been substantially completed; and that the Step 2 or 3 project for which grant assistance is made will not be significantly affected by the completion of the facilities plan and will be a component part of the complete system: Provided, That the applicant agrees to complete the facilities plan on a schedule which shall be inserted as a special condition of this grant offer.

g)

- 1) The scope of each treatment works project defined within the facilities plan as being required for implementation of the plan, and for which state or federal assistance will be requested, shall define:
  - A) Any necessary new treatment works construction; and
  - B) Any rehabilitation work determined by the sewer system evaluation to be necessary for the elimination of excessive infiltration/inflow. However, rehabilitation which should be a part of the grantee's normal operation and maintenance responsibilities shall not be included within the scope of a Step 3 treatment works project.
- 2) Grant assistance for a Step 3 project segment consisting of rehabilitation work may be awarded concurrently with Step 2 work for the design of the new treatment works construction.

#### **Section 360.204 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 award, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

#### **Section 360.205 Areawide Waste Treatment Management Planning**

The grantee shall provide such assurances as the Agency may require that the project is fully consistent with the requirements of the applicable areawide waste treatment management plan effective pursuant to the provisions of Section 208 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1288)

SUBPART C: REQUIREMENTS APPLICABLE TO APPLICATIONS FOR GRANTS

**Section 360.301 General Conditions for all Subagreements**

a)

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

The written agreement and amendments thereto between the Agency and a grantee (applicant) in which the terms and conditions governing the grant are stated and agreed to by both parties.
  - B) "Subagreement"

A written agreement between the grantee and another party 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.
  - C) "Contractor"

The person to whom a subagreement is awarded.
  - D) "Grantee"

The unit of local government which has been awarded a grant for planning or construction of a treatment works under the Anti-Pollution Bond Act.

b) Local preference

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

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 may be earned by contractors in subagreements under Agency grants. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to General Condition Section 360.302, (Construction Contracts of Grantee) is presumed to be reasonable.

e) Grantee responsibility

The grantee is responsible for the administration and successful accomplishment of the project for which Agency grant assistance is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements entered into under the grant in accordance with sound business judgment and good administrative practice. This includes but is not limited to issuance of invitations for bids or requests for proposals, selection of contractors, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, 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 these General Conditions, which apply to the grantee.

f) Privity of contract

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

g) General requirements

Subagreements must:

- 1) Be necessary for and directly related to the accomplishment of the project



work;

- 2) Be in the form of a bilaterally executed written agreement (except for small purchases of \$10,000 or less);
- 3) Be for monetary or in-kind consideration; and
- 4) Not be in the nature of a grant or gift.

h) Documentation

- 1) Procurement records and files for purchases in excess of \$10,000 shall include the following:
  - A) Basis for contractor selection;
  - B) Justification for lack of competition if competition appropriate to the type of project work to be performed is required but not obtained; and
  - C) Basis for award cost or price.
- 2) Procurement documentation as described in Section 360.301(h)(1) above shall be retained by the grantee or contractors of the grantee for the period of time required by General Condition Section 360.502, (Audit and Records) of these General Conditions.

i) Specifications

- 1) Nonrestrictive specifications

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

2) Project specifications shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, except to the extent that advanced technology may be utilized if approved by the Agency by the issuance of a construction permit or authorization to construct.

3) Sole source restriction

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

4) Experience clause restriction

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

j) Force account work

1) The grantee must secure prior written approval of the Agency for utilization of the force account method in lieu of subagreement for any Step 1 or Step 2 work in excess of \$10,000 or any Step 3 work in excess of \$25,000 unless the force account method is stipulated in the grant agreement.

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

A) The grantee possesses the necessary competence and resources to accomplish the project work; and

B) The work can be accomplished more economically by the use of the force account method; or

C) Emergency circumstances so dictate.

- k) No subagreement shall be awarded:
- To any person or organization which does not:
- 1) Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);
  - 2) Have the ability to comply with the proposed or required completion schedule for the project;
  - 3) Have a satisfactory record of integrity, judgment, and performance, including in particular any prior performance upon grants and contracts in the federal and state wastewater treatment plant construction programs;
  - 4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and assets;
  - 5) Maintain a standard of procurement acceptable to the Agency;
  - 6) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding and desposition of all property; and
  - 7) Conform to the civil rights, equal employment opportunity, and labor law requirements of these conditions.
- 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 must effectively pursue available state or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee shall advise the Agency

immediately when any such allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any such matter.

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. Generally, procurements may be negotiated by the Applicant if:

- 1) Public exigency will not permit the delay incident to advertising (e.g., an emergency procurement);
- 2) The material or service to be procured is available from only one person or firm (and, if the procurement is expected to aggregate more than \$10,000, the Agency has given prior approval in writing);
- 3) The aggregate amount involved does not exceed \$2,500 (except as provided in paragraph (2) of this subsection);
- 4) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution;
- 5) No responsive, responsible bids at acceptable price levels have been received after formal advertising, and the Agency has given advance written approval;
- 6) The procurement is for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for highly perishable materials, resale, or for technical or specialized supplies requiring substantial initial investment for manufacture. Any negotiated procurement under this paragraph (6) of this subsection, other than for perishable materials, must be approved in advance by the Agency.

n) Small purchase

- 1) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed \$10,000. The small purchase limitation of \$10,000 applies to the

aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should properly be grouped together. Reasonable competition shall be obtained.

- 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.

### **Section 360.302 Construction Contracts of Grantee**

- a) This condition shall apply to construction contracts (subagreements) awarded by recipients of Step 3 or Step 2 and 3 projects only, except that it shall not apply to personal and professional service contracts, for which see General Condition Section 360.303, (Contracts for Personal and Professional Services – Consulting Engineering Agreements) below.
- b) The project work shall be performed under one or more contracts awarded by the grantee to private firms, except for force account work authorized by the Agency.
- c) Each contract shall be either a fixed-price (lump sum) contract or fixed-rate (unit price) contract, or a combination of the two, unless the Agency gives advance written approval for the grantee to use some other acceptable type of contract. The cost-plus-a percentage of cost type of contract shall not be used.
- d) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with General Condition Section 360.301(m), (Negotiation of Subagreements) above. Formal advertising shall be in accordance with the following:

- 1) Adequate public notice

The applicant will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation, beyond the applicant's locality (statewide, generally) inviting bids on the project work, and stating the method by which bidding documents may be obtained and examined. Where the estimated prospective cost of Step 3 construction is ten million dollars or more, such notice must generally be published in

trade journals of nationwide distribution. The applicant should in addition solicit bids directly from bidders, if it maintains a bidders list.

2) Adequate time for preparing bids

Adequate time, generally not less than 30 days, must be allowed between the date when public notice pursuant to paragraph (1) of this section is first published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when such notice is first published.

3) Adequate bidding documents

A reasonable number of bidding documents (invitations for bid) shall be prepared by the grantee and shall be furnished upon request on a first-come, first-served basis. A complete set of bidding documents shall be maintained by the grantee and shall be available for inspection and copying by any party. Such bidding documents shall include:

- A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule. (Drawings and specifications may be made available for inspection instead of being furnished.);
- B) The terms and conditions of the contract to be awarded;
- C) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;
- D) Responsibility requirements or criteria which will be employed in evaluating bidders; Provided, That an experience requirement or performance bond may not be utilized unless adequately justified under the particular circumstances by the applicant;
- E) The following statement:

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

- F) A copy of this General Solution Section 360.302 (d)(3)(F) in the proposal form to be used by bidders, which shall, unless deleted by a bidder, constitute a representation and certification to be considered as a part of his bid. This General Condition Section 360.302 (d)(3)(F) shall also constitute a statement that a bid will not be considered for award where Section 360.302 (d)(3)(G)(i), (d)(3)(G)(iii), below has been omitted or modified. Where Section 360.302(d)(3)(G)(ii) has been deleted or modified, the bid will not be considered for award unless the bidder furnishes with the bid a signed statement which sets forth in detail the circumstances of the disclosure and the Director of the Agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition:
- G) By submission of the bid, each bidder certifies, and in the case of a joint bid each party thereto certifies as to his own organization, that in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
  - ii) Unless otherwise required by law, the prices which have been quoted in the bid have not knowingly been disclosed by bidder, prior to opening, directly or indirectly to any other bidder or to any competitor; and
  - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.
- H) Each person signing the bid shall certify that:
- i) He is the person in the bidder's organization responsible within that organization for the decision as to the prices being bid and that he has not participated, and will not participate, in any action contrary to Section 360.302 (d)(3)(G)(i-iii) above; or
  - ii) He is not the person in the bidder's organization responsible within that organization for the decision as to the prices being bid but that he has been authorized to act as agent for

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the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to Section 360.302 (d)(3)(G)(i-iii) above, and as their agent shall so certify; and shall also certify that he has not participated, and will not participate, in any action contrary to Section 360.302 (d)(3)(G)(i-iii) above; and

I) A copy of all the general conditions, special conditions, assurances, agreements and terms of the grant offer.

4) Sealed Bids

The grantee shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.

5) Amendments to bidding documents

If the grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the amendments shall be communicated in writing to all firms who have obtained bidding documents in time to be considered prior to the bid opening time; when appropriate, the period for submission of bids shall be extended.

6) Bid modifications

A firm which has submitted a bid shall be allowed to modify or withdraw its bid prior to the time of bid opening.

7) Public opening of bids

The grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

8) Award to the low responsive, responsible bidder.

A) After bids are opened, they shall be evaluated by the grantee in accordance with the methods and criteria set forth in the bidding documents.

B) The grantee may reserve the right to reject all bids. Unless all bids are rejected, award shall be made to the low, responsive,



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responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the grantee.

- C) If award is intended to be made to a firm which did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed not responsive or not responsible.
  - D) Local laws, ordinances, regulations or procedures which are designed or operate to give local or in-state bidders preference over other bidders shall not be employed in evaluating bids.
- e) Negotiations of contract amendments (change orders)

1) Grantee responsibility

The grantee is responsible for negotiation of construction contract change orders. This function may be performed by the grantee directly or, if authorized, by his consulting engineer. During negotiations the contractor shall:

- A) Make clear that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
- B) Assure that the contractor demonstrates that he will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
- C) Assure a fair and reasonable price for the required work.

2) Changes in unit price or time

The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with paragraph Section 360.302(e) of this General Condition, as appropriate. The value of any work covered by a change order or of any claim for increases or decrease in the contract price shall be determined by the method set forth in Section 360.302(e)(2)(A-C) below which is most advantageous to the grantee.

- A) Unit prices

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- i) Original bid items: Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed 15 percent of the original bid quantity and the total dollar change of that bid item is significant, the unit price shall be reviewed by the grantee to determine if a new unit price should be negotiated.
    - ii) New items: Unit prices of new items shall be negotiated.
  - B) A lump sum to be negotiated.
  - C) Cost reimbursement

The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work plus an amount to be agreed upon to cover the cost of general overhead and profit to be negotiated.
- 3) For each change order not in excess of \$100,000 the contractor shall submit sufficient cost and pricing data to the grantee to enable the grantee to determine the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
- 4) For each change order in excess of \$100,000, the contractor shall submit to the grantee for review sufficient cost and pricing data to enable the grantee to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed. Such data shall include:
  - A) As a minimum, proposed change order costs shall be presented in summary format as prescribed by the Agency and shall be supported by a certification executed by the contractor that proposed costs reflect complete, current and accurate cost and pricing data applicable to the data of the change order.
  - B) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price change orders and a specific total dollar amount of profit will be set forth separately in the cost summary for cost reimbursement change orders.
  - C) More detailed cost data than that required by the summary format

may be required by the grantee format may be required by the grantee to substantiate the reasonableness of proposed change order costs.

- D) Allowability of costs for change orders shall be determined in accordance with General Condition Section 360.801, (Determination of Allowable Costs) below.
- E) For costs under cost reimbursement change orders, the contractor shall have an accounting system which accounts for such costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable change orders. Allowable change order costs shall be determined in accordance with General Condition Section 360.801, (Determination of Allowable Costs), below. The contractor shall propose and account for such costs in a manner consistent with his normal accounting procedures.
- F) Change orders 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 subsequent audit substantiates that such certification was not based on complete, current and accurate cost and pricing data and on costs allowable under these General Conditions at the time of the change order execution.

5) Agency review

Prior to the execution of any change order in excess of \$100,000, the grantee shall submit to the Agency for its review:

- A) The cost and pricing data submitted by the contractor;
- B) A certification of review and acceptance of the contractor's cost or price; and
- C) A copy of the proposed change order.

6) Profit

For the purpose of negotiated change orders to construction contracts under Agency grants, profit is defined as the net proceeds obtained by

deducting all allowable costs (direct and indirect) from the price. The estimate of profit is to be reviewed by the grantee as are all other elements of price.

7) Related work

Related work shall not be split into two amendments or change orders merely to keep it under \$100,000 and thereby avoid the requirements of this General Condition. For change orders which include both additive and deductive items:

- A) If any single item (additive or deductive) exceeds \$100,000, the requirements of Section 360.302(e)(4) hereof shall be applicable.
- B) If no single additive or deductive item has a value of \$100,000, but the total price of the change order is over \$100,000, the requirements of Section 360.302(e)(4) hereof shall be applicable.
- C) If the total of additive items of work in the change order exceeds \$100,000, or the total of deductive items of work in the change order exceeds \$100,000, and the net price of the change order is less than \$100,000, the requirements of Section 360.302(e)(4) hereof shall apply.

f) Progress payments to contractors

1) Policy

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

2) Protection of progress payments made for specifically manufactured equipment

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

3) Limitations on progress payments

In no case may progress payments for undelivered equipment or items be made in any amount greater than seventy-five percent of the cumulative incurred costs allocable to contract performance with respect to the undelivered equipment or items. Submission of a request for any such progress payments shall be accompanied by a certification furnished by the fabricator of the equipment or item that the amount of progress payment claimed constitutes not more than seventy-five percent of cumulative incurred costs allocable to contract performance, and in addition, in the case of the first progress payment request, a certification that the amount claimed does not exceed 15 percent of the contract or item price quoted by the fabricator.

4) A subcontractor or supplier which is determined by the Agency to have frustrated the intent of the provisions regarding progress payments for major equipment or specifically manufactured equipment through failure to deliver the equipment may be determined nonresponsible and ineligible for further work under Agency grants.

5) Contract provisions

Where applicable, appropriate provisions regarding progress payments must be included in each contract and subcontract.

6) The foregoing progress payments policy should be implemented in invitations for bids under Step 3 grants.

g) Retention from progress payments

1) The grantee may retain a portion of the amount otherwise due the contractor. Except as provided in subsection (D) below, the amount retained by the grantee shall be limited to the following:

A) Withholding of not more than 10 percent of the payment claimed until the work is 50 percent complete.

B) When work is 50 percent complete, reduction of the withholding to 5 percent of the dollar value of all work satisfactorily completed to date; Provided that the contractor is making satisfactory progress and there is no specific cause for greater withholding.

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- C) When the work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below 5 percent to only the amount necessary to assure completion.
  - D) The grantee may reinstate up to 10 percent withholding if the grantee determines, at its discretion, that the contractor is not making satisfactory progress or there is other specific cause for such withholding.
- 2) The foregoing retention policy shall be implemented with respect to all Step 3 projects for which plans and specifications are approved after July 1, 1976. Appropriate provision to assure compliance with this policy shall be included in the bid documents for such projects initially or by addendum prior to the bid submission date, and as a special condition in the grant agreement or in a grant amendment. For all previous active projects, the foregoing policy may be implemented by the grantee through contract amendment upon written request to the grantee by the contractor upon consideration upon consideration which the grantee deems adequate.
  - 3) A grantee who delays disbursement of grant funds may be required to credit to the State all interest earned on those funds.
- h) Required construction contract provisions

Each construction contract shall include the "General Conditions" of the "Contract Documents for Construction of Federally Assisted Water and Sewer Projects," a copy of which is included as Appendix A to these General Conditions. In addition, each construction contract entered into after July 1, 1976, shall include the following provisions:

- 1) Audit; access to records:
  - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on grant work under this agreement in accordance with accepted business practices, appropriate accounting procedures and practices, and the requirements which would be applicable to a federal grant under the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251, et seq., PL 92-500). The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of any cost submissions required under General Condition Section 360.302(e), (Negotiation of Contract Amendments, Change Orders) and a copy of the cost

summary submitted to the owner. The Auditor General, the owner, the Agency, or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The contractor will provide proper facilities for such access and inspection.

- B) If this contract is a formally advertised, competitively awarded, fixed price contract, the contractor agrees to apply paragraphs (i) through (vi) of this subsection (A) applicable to all negotiated change orders and contract amendments in excess of \$10,000 which affect the contract price. In the case of all other prime contracts, the contractor agrees to include paragraphs (i) through (vi) of this Section Section 360.302(h)(A) in all his contracts and all tier subcontracts or change orders thereto directly related to project performance which are in excess of \$10,000.
- C) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or auditing agencies.
- D) The contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (i) and (ii) above, to any of the agencies referred to in paragraph (i) above. 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.
- E) Records under paragraphs (i) and (ii) above shall be maintained and made available during performance on Agency grant work under this agreement and until three years from the date of final grant payment for the project. In addition, those records which relate to any dispute or litigation or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such dispute, appeal, litigation, claim, or exception.
- F) The right of access conferred by this clause will generally be exercised (with respect to financial records) under
  - i) negotiated prime contracts,

- ii) negotiated change orders or contract amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price contract, and
    - iii) subcontracts or purchase orders under any contract at other than a formally advertised, competitively awarded, fixed price contract.
  - G) However, this right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, such right of access may be exercised under any type of contract or subcontract:
    - i) with respect to records pertaining directly to contract performance, excluding any financial records of the contractor, and
    - ii) if there is any indication that fraud, gross abuse, or corrupt practices may be involved.
- 2) Price reduction for defective cost or pricing data.
  - A) This clause is applicable only to:
    - i) any negotiated prime contract in excess of \$10,000;
    - ii) negotiated contract amendments or change orders in excess of \$100,000 affecting the price of a formally advertised, competitively awarded, fixed price contract; or
    - iii) any subcontract or purchase order in excess of \$100,000 under a prime contract other than a formally advertised, competitively awarded, fixed price contract.
  - B) However, this clause is not applicable for contracts or subcontracts to the extent that they are awarded on the basis of effective price competition. The owner may elect not to utilize this clause where any such negotiated contract or subcontract is \$100,000 or less.
  - C) If the Agency determines that any price (including profit) negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant



sums because the contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price or cost or profit shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

D) Failure to agree on a reduction shall be subject to Article 30 (Arbitration) of the General Conditions of this Contract.

3) Covenant against contingent fees

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

4) Gratuities

A) The owner may, by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found, after notice and hearing, by the owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor or any agent or representative of the contractor, to any official or employee of the owner or of the State of Illinois with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this contract: Provided, that if the existence of the facts upon which the owner makes such findings are in issue, they may be reviewed in proceedings pursuant to Article 30 (Arbitration) of the General Conditions of this contract.

B) In the event this contract is terminated as provided in Section 360.302(h)(i) hereof, the owner shall be entitled:

- i) 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
- ii) as a penalty in addition to any other damages to which it

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may be entitled by law, to exemplary damages in an account (as determined by the owner) 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 owner provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this contract.

- i) Subcontracts under construction contracts

The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by such prime contractor in awarding or executing such subcontracts shall comply with:

- A) All provisions of State and local law;
- B) All provisions of these General Conditions with respect to fraud and other unlawful or corrupt practices; and
- C) All provisions of these General Conditions with respect to access to facilities and records and audit of records.

### **Section 360.303 Contracts for Personal and Professional Services – Consulting Engineering Agreements**

- a) Except as is otherwise provided in Section (d) below, the provisions of Section 360.303(a) through (n) apply to all subagreements of grantees for architectural or engineering services where the aggregate amount of services involved is expected to exceed \$10,000. The provisions of Section 360.303(d), (e), and (f) are not required, but may be allowed where the population of the grantee municipality is 25,000 or less according to the most recent U.S. census. When \$10,000 or less of services (e.g., for consultant or consultant subcontract services) is required, the provisions of General Condition Section 360.301(n) (Small Purchases) shall apply.
- b) Type of Contract (Subagreement)
  - 1) General

Cost reimbursement, fixed price or per diem types of contracts or combinations thereof may be negotiated for architectural or engineering

services. A fixed price contract is generally used only when the scope and extent of work to be performed is clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate. A per diem contract may be used if no other type of contract is appropriate. An incentive fee may be utilized if the grantee submits an adequate independent cost estimate and price comparison pursuant to Section 360.303(h).

2) Contracts prohibited

The cost-plus-percentage-of-cost and the percentage-of-construction-cost types of contract are prohibited.

3) Fixed price contracts

An acceptable fixed price contract is one which establishes a guaranteed maximum price which may not be increased except to the extent that a contract amendment increases the scope of work.

4) Cost reimbursement contracts

Each cost reimbursement contract must clearly establish a cost ceiling which the engineer may not exceed without formally amending the contract and a fixed dollar profit which may not be increased except in case of a contract amendment which increases the scope of the work.

5) Per diem contracts

A per diem agreement expected to exceed \$10,000 may be utilized only after a determination that a fixed price or cost reimbursement type contract is not appropriate. Per diem agreements should be used only to a limited extent such as where the first task under Step 1 grant involves establishing the scope and cost of succeeding Step 1 tasks, or for incidental services such as expert testimony or intermittent or professional testing services. (Resident engineer and resident inspection services should generally be compensated under paragraph (b)(3) or (4) of this Section 360.303.) Cost and profit included in the per diem rate must be specifically negotiated and displayed separately in the engineer's proposal. The contract must clearly establish a price ceiling which may not be exceeded without formally amending the contract.

6) Compensation procedures

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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 approved by the Agency;
- C) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract; and
- D) The fixed price contract includes a guaranteed maximum price for completion of the specifically defined scope of work; the cost reimbursement contract includes a fixed dollar profit which may not be increased except in a case of a contract amendment which increases the scope of work.

c) Transition Policy

1) Announcement and Selection

The requirements of Section 360.303(c) through (e) of this General Condition shall not apply to Step 1 work where the Step 1 grant was awarded or the initiation of Step 1 work was approved by the Agency prior to July 1, 1976, nor to subsequent Step 2 and Step 3 work in accordance with Section 360.303(c)(3), provided that the grantee is satisfied with the qualifications and performance of the engineer employed.

2) Required Consulting Engineering Provisions

Effective July 1, 1976, grant assistance for Steps 1, 2, or 3 will not be awarded nor will initiation of Step 1 work be approved unless the subagreement clauses required pursuant to Appendix C. (Required Provisions – Consulting Engineering Agreements) are included in the consulting engineering subagreement.

3) Enforcement:

- A) Refusal by a consulting engineer to insert the required access

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clause, or to allow access to its records or to renegotiate a consulting engineering contract in accordance with the foregoing requirements, will render costs incurred under such contract unallowable. Accordingly, all such costs will be questioned and disallowed pending compliance with this general condition and Appendix C.

- B) Where the Agency determines that the time required to comply with the access to records and type of contract provisions of this general condition will unduly delay award of grant assistance, it may award the grant assistance conditioned upon compliance with this general condition within a specified period of time. In such event, no grant payments for the affected engineering work may be made until such compliance has been obtained.
- 4) Access to Records – Audit:
- A) After June 30, 1975, a construction grant for Steps 1, 2, or 3 will not be awarded unless an acceptable records and access clause is included in the consulting engineering agreement. The clause contained in section 9 of Appendix C, (Required Provisions - Consulting Engineering Agreements) shall be used after July 1, 1976.
  - B) For the purpose of determining where the Agency shall exercise its right of access with respect to consulting engineering agreements entered into between June 30, 1975 and July 1, 1976, the Agency will follow the guidelines set forth in Appendix B, (Access to Records – Audit (Existing Consulting Engineering Agreements)) of these General Conditions.
- d) Public Notice:
- 1) Adequate notice as provided in paragraph 2 of this section must be given of the requirement for architectural or engineering services for all subagreements with an anticipated price in excess of \$25,000, except as provided in paragraphs (3), (4) and (5) of this section. In providing public notice pursuant to paragraph 2 of this section, grantees must comply with the policies enunciated in paragraphs (b), "Local Preference", and (c) "Competition", of General Condition Section (General Conditions for all Subagreements).
  - 2) Public Announcement

A notice of request for qualifications should be published in professional journals, newspapers, or publications of general circulation over a reasonable area, and, in addition if desired, through posted public notices or written notification directed to interested persons, firms, or professional organizations inviting the submission of statements of qualifications. The announcement must clearly state the deadline and place for submission of qualification statements.

- 3) This public notice requirement and the related requirements of Section 360.303(e) and (f) shall not be required, but may be followed, where the population of the grantee municipality is 25,000 or less according to the latest U.S. census.
  - 4) This public notice requirement and the related requirements of Section 360.303(e), (Evaluation of qualifications) and (f), (Solicitation and Evaluation of Proposals), of this General Condition, shall not apply to the procurement of architectural or engineering services for Steps 2 or 3 of a grant if the grantee is satisfied with the qualifications and performance of an engineer who performed all or any part of the Step 1 or Step 2 work, the engineer has the capacity to perform the subsequent steps, and the grantee desires the same engineer to provide architectural or engineering services for the subsequent steps.
  - 5) When a single treatment works is segmented into two or more Step 3 projects, and if the Step 2 work is accordingly segmented so that the initial contract for preparation of construction drawings and specifications does not cover the entire treatment works to be built under one grant, the grantee need not announce the requirement for architectural or engineering services for subsequent segments of design work under one grant. The grantee may use the same engineering form that was selected for the initial segment of Step 2 work for subsequent segments if he desires to do so. All other appropriate provisions of these sections, including cost review and negotiation of price, will apply to each segment of work.
- e) Evaluation and qualifications:
- 1) The grantee shall review the qualifications of firms which responded to the announcement and shall uniformly evaluate the firms.
  - 2) Qualification shall be evaluated by an objective process such as by the the appointment of a board or committee, which, to the extent practicable, should include persons with technical skills.

- 3) Criteria which should be considered in the evaluation of candidates for submission of proposals should include:
  - 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 with 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) with the time limitations, taking into consideration the current and planned workload of the firm;
  - D) The familiarity of the candidate with types of problems applicable to the project; and
  - E) Avoidance of personal and organizational conflicts of interest prohibited under State and local law.
- f) Solicitations and Evaluation of Proposals:
  - 1) Requests for professional services proposals must be sent to no fewer than three candidates who responded to the announcement, unless after good faith effort to solicit qualifications in accordance with Subsection (d), (Public Notice) hereof, fewer than three qualified candidates respond, in which case all qualified candidates must be provided requests for proposals.
  - 2) 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 include the solicitation statement required pursuant to Section 360.303(k)(1), hereof and must inform offerors of the evaluation criteria, including all those in paragraph (3) of this section, and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized).
  - 3) All proposals submitted in response to the request for professional services proposals must be uniformly evaluated. Evaluation criteria shall include

as a minimum, all criteria stated in Section 360.303(e)(3). 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.

- 4) Proposals shall be evaluated by an objective process such as the appointment of a board or committee which to the extent practicable includes persons with technical skills. Oral (including telephone) or written interviews should be conducted with top rated proposers, and information derived therefrom shall be treated on a confidential basis, except as required to be disclosed pursuant to State or local law or to the Agency pursuant to Section 360.303(h), (Cost and Price Considerations) hereof.
  - 5) At no point during the entire procurement process shall information be conveyed to any candidate which would provide an unfair competitive advantage.
- g) Negotiation
- 1) Grantees are responsible for negotiation of their contracts for architectural or engineering services. Contract procurement including negotiation may be performed by the grantee directly or by another non-state governmental body, person or firm retained for the purpose. Contract negotiations may include the services of technical, legal, audit or other specialists to the extent deemed appropriate.
  - 2) Negotiation shall be conducted in accordance with state or local procedure.
  - 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, as a minimum:
    - A) The scope and extent of work and other essential requirements;
    - B) Identification of the personnel and facilities to accomplish the work within the required time, including where needed, employment of additional personnel, subcontracting, joint ventures, etc;
    - C) Provision of the required technical services in accordance with regulations and criteria established for the project; and



- D) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations set forth in Section 360.303(h) and (i), and payment provisions.

h) Cost and Price Considerations:

1) General

It is the policy of the Agency that the cost of price of all subagreements and amendments thereto must be considered. For each subagreement in excess of \$10,000 but not greater than \$100,000 grantees shall use the procedures described in paragraph (3) of this section or an equivalent process.

2) Subagreements over \$100,000

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

- A) The candidate(s) selected for negotiation shall submit to the grantee for review sufficient cost and pricing data as described in paragraph (3) of this section to enable the grantee to ascertain the necessary and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

- B) The applicant/grantee shall submit to the Agency for review:

- i) Documentation of the public notice of need for architectural or engineering services, selection procedures used, and negotiation methodology used, in those cases where sections Section 360.303(d), (e) and (f) are applicable;
- ii) The cost and pricing data submitted by the selected engineer;
- iii) A certification of review and acceptance of the selected engineer's cost or price; and
- iv) A copy of the proposed subagreement document.

- C) The Agency will review the complete subagreement actions and approve the grantee's compliance with appropriate procedures prior to the award of the subagreement. The grantee shall be notified upon completion of the review.

3) Cost Review

- A) A review of proposed subagreement costs shall be made by the grantee.
- B) As a minimum, proposed subagreement costs shall be presented in summary format prescribed by the Agency and shall be supported by a certification executed by the selected engineer that proposed costs reflect complete, current and accurate cost and pricing data applicable to the date of anticipated subagreement award.
- C) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price contracts and 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 to substantiate the reasonableness of proposed subagreement costs. Such detailed documentation is normally required by the Agency only when the selected engineer is unable to certify that the cost and pricing data used are complete, current and accurate. The Agency may, on a selected basis, perform a preaward cost analysis on any subagreement. Normally, a provisional overhead rate will be agreed upon prior to contract award.
- E) Appropriate consideration should be given to General Condition Section 360.801, (Determination of Allowable Costs) which contains general cost principles which must be used for the determination of the allowability of costs under grants. The engineer's actual costs, direct and indirect, allowable for State participation shall be determined in accordance with the terms and conditions of the subagreement and this subpart. Examples of costs which are not allowable under those cost principles include, but are not limited to, entertainment, interest on borrowed capital and bad debts.

- F) The engineer shall have an accounting system which 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. Allowable project costs shall be determined in accordance with Section 360.303(3)(E) of this section. The engineer must propose and account for costs in a manner consistent with his normal accounting procedures.
- G) Subagreements awarded on the basis of review of a cost element summary and 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.

i) Profit

The objective of negotiations shall be the exercise of sound business judgement and good administrative practice including the determination of a fair and reasonable profit based on the firm's assumption of risk and input to total performance and not merely the application of a predetermined percentage factor. 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 engineers who possess talents and skills necessary to the accomplishment of project objectives, and to stimulate efficient and expeditious completion of the project. Where cost review is performed, the estimate of profit should be reviewed by the grantee as are all other elements of price.

j) Award of Subagreement

After the close of negotiations and after review and approval by the Agency if required pursuant to Section 360.303(h)(2), the grantee may award the contract. Unsuccessful candidates should be notified promptly.

k) Required Solicitation and Subagreement Provisions:

- 1) Required solicitation statement

- A) Requests for qualifications or proposals must include the following statement, as well as the proposed terms of the subagreement.

"Any contract or contracts awarded under this request for (qualifications/professional proposals) are expected to be funded in part by a grant from the Illinois Environmental Protection Agency. This procurement will be subject to the requirements of the grant offer."
  - B) Neither the State of Illinois nor the Illinois Environmental Protection Agency is nor will be a party to this request for (qualifications/professional proposals) or any resulting contract.
- 2) Content of subagreement
- A) Each subagreement must adequately define:
    - 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;
    - iv) The extent of subcontracting and consultant agreements.
  - B) If any of these elements cannot be defined adequately for later tasks or steps at the time of contract execution, the subsequent tasks or steps shall not be included in the contract at that time.
- 3) Required subagreement provisions. Each consulting engineering contract must include the provisions set forth in Appendix C, (Required Provisions – Consulting Engineering Agreements) to these general conditions.
- l) Subagreement Payments – Architectural or Engineering Services:
- 1) Generally, payment will be made under consulting engineering contracts upon the completion of a step, or if specified in the grant agreement, upon completion of specific tasks within the step.
  - 2) Upon satisfactory completion by the engineer of the work called for under

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the terms of a contract, and upon acceptance of such work by the grantee, with the concurrence of the Agency, the engineer will be paid the unpaid balance of any money due for such work, including any retained percentages relating to this portion of the work.

- 3) Payment may not be withheld for professional services, except as provided in the contract for professional services. Any withholding should be limited to only that amount necessary to assure contract compliance.
- m) **Applicability to Existing Contracts.** In some cases a negotiated subagreement may have been executed prior to the effective date of these general conditions to cover work under more than one step of a grant. Such contracts already in existence may not comply with the requirements of Section 360.301 and Section 360.303 herein. Section 360.303(C) of this General Condition and Appendix B set forth Agency policy with respect to such contracts and must be implemented prior to the grant award action for the next step under the grant.
- n) **Subcontracts under subagreements for architectural or engineering services:**
- 1) The award or execution of subcontracts under a prime contract for architectural or engineering services awarded to an engineer by a grantee, and the procurement and negotiation procedures used by the engineer in awarding such subcontracts are not required to comply with any of the provisions, selection procedures, policies or principles set forth in General Condition in Section 360.301 or Section 360.303 except those specifically stated in paragraph (2) of this section.
  - 2) The award or execution of subcontracts in excess of \$10,000 under a prime contract for architectural or engineering services and the procurement procedures used by the engineer in awarding such subcontracts must comply with the following:
    - A) General Condition Section 360.301(b), (Local preference).
    - B) General Condition Section 360.303(h), (Cost and Price Considerations).
    - C) General Condition Section 360.303(i), (Profit).

**Section 360.304 Equal Opportunity**

- a) Any contract of the grantee in furtherance of the project shall contain the Equal Opportunity Clause as set forth in Article VI of the Rules and Regulations for

Public Contracts prescribed by the Illinois Department of Human Rights and filed with the Secretary of State as follows:

b) *Article VI*  
*Equal Employment Opportunity Clause*

*Section 3.1. Each Contracting Agency Shall Ensure that every Contract to which it is a party shall contain the following clause:*

*Equal Employment Opportunity*

*In the Event of the Contractor's noncompliance with any provision of this equal employment opportunity clause, the Illinois Fair Employment Practices Act or the Fair Employment Practices Commission's Rules and Regulations for Public Contracts, the Contractor may be declared nonresponsible and therefore ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or avoided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.*

*During the performance of this contract, the Contractor agrees as follows:*

- 1) *That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service: and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.*
- 2) *That, if it hires additional employees in order to perform this contract or any portion hereof, it will determine the availability (in accordance with the Commission's Rules and Regulations for Public Contracts) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.*
- 3) *That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.*
- 4) *That it will send to each labor organization or representative or workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Fair Employment Practices Act and the Commission's Rules and Regulations*

*for Public Contracts. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Illinois Fair Employment Practices Commission and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.*

- 5) *That it will submit reports as required by the Illinois Fair Employment Practices Commission's Rules and Regulations for Public Contracts, furnish all relevant information as may from time to time be requested by the Commission or the contracting agency, and in all respects comply with the Illinois Fair Employment Practices Act and the Commission's Rules and Regulations for Public Contracts.*
- 6) *That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Illinois Fair Employment Practices Commission for purposes of investigation to ascertain compliance with the Illinois Fair Employment Practices Act and the Commission's Rules and Regulations for Public Contracts.*
- 7) *That it will include verbatim or by reference the provisions of paragraphs 1 through 7 of this clause in every performance subcontract as defined in Section 2.10(b) of the Commission's Rules and Regulations for Public Contracts so that such provisions will be binding upon every such subcontractor; and that it will also so include the provisions of paragraphs 1, 5, 6, and 7 in every supply subcontract as defined in Section 2.10(a) of the Commission's Rules and Regulations for Public Contracts so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further it will promptly notify the contracting agency and the Illinois Fair Employment Practices Commission in the event any subcontractor fails or refuses to comply therewith. In addition, no contractor will utilize any subcontractor declared by the commission to be nonresponsible and therefore ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.*

*Section 3.2. INCORPORATION BY OPERATION OF THE REGULATIONS.*

*All contract specifications furnished by any contracting agency to bidders or contractors shall contain the equal employment opportunity clause set forth in Section 3.1 hereof and such clause shall be included as a material term of any contract; however, a contracting agency having published rules and regulations which govern all its contracts and which include the equal employment opportunity clause may incorporate such clause by reference in such agency's individual contracts or contract specifications. By operation of these rules and regulations, the equal employment opportunity clause shall be deemed to be a part of every contract whether or not such contract is in writing and regardless of whether said clause is physically incorporated*

*therein.*

*Section 3.3. SUBCONTRACTS. Each contractor and subcontractor shall in turn include the equal employment opportunity clause set forth in Section 3.1 hereof in each of its subcontracts verbatim or by reference so that provisions of Paragraphs 1 through 7 of said clause will be binding upon subcontractors of every tier; provided however, that only paragraphs 1, 5, 6, and 7 need be included in every subcontract as defined in Section 2.10(a) of the rules and regulations of the Illinois Fair Employment Practices Commission.*

### **Section 360.305 Compliance With Procurement Requirements**

a) Grantee responsibility

The grantee is responsible for selecting the low, responsive, and responsible bidder or other contractor in accordance with applicable requirements of state, or local laws or ordinances, as well as the specific requirements of state and federal law or this 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 construction services or materials for a project involving Step 3, the complaint will be referred to the grantee for resolution. The grantee shall promptly determine each such complaint upon its merits concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering and legal opinion, providing a justification for its determination.

b) Arbitration

Disputes between the grantee and any party adversely affected by the determination of the grantee made pursuant to Section 360.305(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. This agreement to arbitrate shall be specifically enforceable under the arbitration laws of the State of Illinois (Ch. 10 Ill. Rev. Stat. 1975, Sections 101-123). The award rendered by the arbitrator shall be final, and judgement 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 should be made pursuant to Section 360.305(a) of this general



condition 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 Section 360.305(a) of this general condition 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 paragraph Section 360.305(b) of this general condition 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 Section 360.305(a) of this general condition, 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 complaint, 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 General Condition Section 360.103, (Termination) hereof;
- 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.

**Section 360.306 Disputes**

- a) Only the grantee may appeal to the Agency under this provision with respect to its subagreements thereunder for its own name and benefit. Neither a contractor nor a subcontractor of a grantee may prosecute an appeal under the disputes provision of a grant in its own name or interest.
- b) Any dispute arising under this grant which is not disposed of by agreement shall be decided by the Director or his duly authorized representative, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the

applicant. The decision of the Director shall be final and conclusive.

- c) This "disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in Section 360.306(b) above.

### **Section 360.307 Indemnity**

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, 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 Ill. Rev. Stat. 1973, Ch. 29, par. 61. 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.

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

### **Section 360.401 Project Initiation**

Any obligation of the State of Illinois and the Agency to make any payment of grant funds shall terminate absolutely unless the project is initiated no later than one calendar year from the date of acceptance by the grantee of the project grant offer or as otherwise provided by a special condition of this grant. For Step 1 and 2 grants, a project 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, a notice to proceed with the work has been issued. A project shall be deemed to have been initiated on the issuance of a notice to proceed under a construction contract for any segment of Step 3 project work, or if notice to proceed is not required, execution of the construction contract.

### **Section 360.402 Project Changes**

- a) Prior approval by the Agency is required for project changes which may:
  - 1) Increase the amount of State funds needed to complete the project, except that no change will be approved which either exceeds the grant offered or which exceeds the limitation provided for approvable contingencies;
  - 2) Substantially alter the design or scope of the project;

- 3) Alter the type of treatment to be provided;
  - 4) Extend any contractual completion date for the project; or
  - 5) Substantially alter the location, size, capacity or quality of any major item of equipment.
- b) The grantee shall promptly notify the Agency in writing of all proposed changes. Failure on the part of the grantee to give timely notice of proposed project changes or disapproval of a proposed project change by the Agency may result in:
- 1) Disallowance of costs incurred which are attributable to the change; or
  - 2) Termination of the grant.
- c) The Agency may disapprove proposed project changes by written notice to the grantee within 3 weeks after receipt of a written notice of a proposed change; however, 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.
- d) Notwithstanding the provisions of Section 360.402(a-c) above, prior Agency removal is not required for changes having a cost of less than \$500.00 either for the correction of minor errors or to make emergency or minor changes except that the total cost for all changes allowable under this provision shall not exceed one-half of one percent of the total grant offer.
- e) In addition to the notification of project changes pursuant to Section 360.402(a-c) above, a copy of any prime contract or modification thereof and of revisions to plans and specifications must be promptly submitted to the Agency for approval; however, neither approval nor failure to approve any prime contract or modification thereof or revisions to plans and specifications shall commit or obligate the State of Illinois or the Agency to any increase in the amount of the grant or payments thereunder.

### **Section 360.403 Supervision**

The grantee will provide and maintain competent and adequate engineering supervision and inspection of the project to ensure that the construction conforms with the approved plans and specifications for any project involving construction (Step 3).

### **Section 360.404 Project Sign**

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

### **Section 360.405 Final Inspection**

- a) The grantee must notify the Agency of the completion of Step 3 project construction. The Agency shall cause final inspection to be made within 60 days of the receipt of the notice provided that the grantee has fully complied with the following general conditions hereof;

General Condition Section 360.402 (Project changes)

General Condition Section 360.406 (Operation & maintenance)

General Condition Section 360.601 (Sewer use ordinance)

General Condition Section 360.602 (User charges).

- b) In the event that compliance with these general conditions is not achieved until after completion of construction, final inspection will be made within 60 days after the final act of compliance. Upon completion of the final inspection and upon determination by the Agency that the treatment works have been satisfactorily constructed in accordance with the provisions of General Condition Section 360.804, (Grant Payment Schedule) hereof.
- c) In the event that the grantee has not fully complied with the above listed general conditions within 6 months after completion of construction, or such extension of time beyond 6 months as the Director may agree to in writing, this grant agreement shall be terminated pursuant to General Condition Section 360.103, (Termination) hereof, and all funds paid out under this grant agreement shall be refunded to the State Anti-Pollution Bond Fund.

### **Section 360.406 Operation and Maintenance**

- a) The grantee must make adequate provisions satisfactory to the Agency for assuring economic, effective, and efficient operation and maintenance of its sewage treatment works in accordance with a plan of operation approved by the Agency.

- b) As a minimum, such plan shall:
  - 1) Be developed and submitted to the Agency for approval in accordance with a schedule developed as a special condition of the grant; and
  - 2) Include provision for:
    - A) An operation and maintenance manual for each facility;
    - B) An emergency operating and response program;
    - C) Properly trained management, operation, and maintenance personnel;
    - D) Adequate budget for operation and maintenance, and for replacement of all equipment with an expected life of less than 30 years;
    - E) Operational reports; and
    - F) Provisions for laboratory testing adequate to determine influent and effluent characteristics and removal efficiencies.
  
- c) The Agency shall not pay:
  - 1) More than 50 percent of the State share of any Step 3 project unless the grantee has furnished and the Agency has approved the plan of operation and the grantee has submitted a draft of the operation and maintenance manual for review, or adequate evidence of timely development of such a draft; and
  - 2) More than 90 percent of the State share unless the grantee has furnished a satisfactory final operation and maintenance manual or as otherwise provided by a special condition of this grant.

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

**Section 360.501 Access**

- a) The Agency and any persons designated by the Agency shall at all reasonable times have access to the premises where any portion of the project for which the

grant was awarded is being performed. Subsequent to cessation of grant support Agency personnel or any authorized representative shall at all reasonable times have access to the project records (as defined in General Condition Section 360.502, (Audit and Records) hereof) and to the project site, to the full extent of the grantee's right to access.

- b) Any contract entered into by the grantee for Step 1, Step 2 or Step 3 work, and any subagreement thereunder, shall provide the representatives of the Agency will have access to the work whenever it is in preparation or progress that the contractor or subcontractor will provide proper facilities for such access and inspection. Such contract or subagreement must also provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records of the contractor or subcontractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.
- c) Any failure by the grantee or any contractor or subcontractor of the grantee to provide access, as provided herein, after 10 days' written notice from the Agency, shall be cause for termination of the grant pursuant to Condition Section 360.103, (Termination) hereof, and refund to the State of Illinois Anti-Pollution Fund of any unexpended grant funds in the hands of the grantee, and in addition thereto, refund of any grant funds previously expended by the grantee, contractor, or subcontractor found in noncompliance with this Condition Section 360.501

#### **Section 360.502 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 as promulgated by the American Institute of Certified Public Accountants and to the 13 basic principles set forth by the National Committee on Governmental Accounting, to properly account for:
  - 1) The receipt and disposition by the grantee of all assistance received for the project, including both State assistance and any matching share or cost sharing; and
  - 2) The costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the grant has been awarded. The foregoing 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 at all reasonable times to inspection and audit by the Agency or any

authorized representative.

- 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 of lawful requirement, or by Section 360.502(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 which relate to appeals under the "Disputes" clause of this grant, litigation or the settlement of claims arising out of the performance of the project for which this grant was awarded, or costs and expenses of the project as to which exception has been taken by the Agency or any of its duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.
- f) Any failure by the grantee or any contractor or subcontractor or the grantee to make records available to the Agency as required by this Condition Section 360.502 after 10 days' written notice from the Agency, shall be cause for termination of the grant, pursuant to Condition Section 360.103, (Termination) hereof, and refund to the State of Illinois Anti-Pollution Bond Fund of any unexpended grant funds in the hands of the grantee, and in addition thereto, refund of any grant funds previously expended by the grantee, contractor or subcontractor found in noncompliance with this Condition Section 360.502.

### **Section 360.503 Reports**

The grantee shall prepare and file with the Agency an acceptable final report and such progress, financial and other reports relating to the conduct and results of the approved project as the Agency may require. Such reports shall be submitted at such times and in such form and style as may be directed by the Agency. 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 Condition Section 360.102, (Stop-Work Order) hereof;

- c) Termination of the grant pursuant to Condition Section 360.103, (Termination) hereof; or
- d) Such other action as the Agency may be authorized to take.

SUBPART F: REQUIREMENTS FOR SEWER USE ORDINANCE,  
USER CHARGES AND FLOOD PLAIN INSURANCE

**Section 360.601 Sewer Use Ordinance**

- a) The grantee must obtain the approval of the Agency of its sewer use ordinance prior to the issuance of the Step 3 grant. The grantee shall demonstrate to the satisfaction of the Agency that a sewer use ordinance or other legally binding requirement will be enacted and enforced in each jurisdiction served by the treatment works project before the completion of construction. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.
- b) The sewer use ordinance shall require:
  - 1) Pretreatment of any industrial wastes which would otherwise be detrimental to the treatment works or its proper and efficient operation and maintenance or will otherwise prevent entry of such wastes into the treatment works; and
  - 2) Compliance with any applicable federal or state pretreatment requirements.
- c) The sewer use ordinance shall provide that after completion of construction of the sewage treatment facilities which are the subject of this grant, no new direct discharges to the waters of the State shall be allowed from any property within the service area of the grantee.
- d) The ordinance shall prohibit the introduction into the sewer system of industrial waste until General Condition Section 360.602, (User Charges) are met.

(Source: Amended at 16 Ill. Reg. 5891, effective March 31, 1992)

**Section 360.602 User Charges**

- a) The grantee must obtain the approval of the Agency of its system of user charges



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prior to the issuance of the Step 3 grant. The grantee shall implement the user charge system before the treatment works is placed in operation.

- b) The Agency may approve a user charge system in accordance with the following criteria:
- 1) The user charge system must result in the distribution of the cost of operation and maintenance of treatment works within the grantee's service area to each user (or user class) in proportion to such user's contribution to the total wastewater loading of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).
  - 2) For the first year of operation, operation and maintenance costs shall be based upon past experience for existing treatment works or some other rational method that can be demonstrated to be applicable.
  - 3) The grantee shall review user charges annually and revise the rates periodically to reflect actual treatment works operation and maintenance costs.
  - 4) The user charge system must generate sufficient revenue to offset the cost of all treatment works operation and maintenance and replacement required to be provided by the grantee.
  - 5) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from treatment works owned by other, then the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority.
  - 6) The use of a tax system in lieu of a user charge system, or as a supplement thereto, is specifically disallowed unless it meets federal requirements or unless the tax system is dedicated to support the operation and maintenance of a collection system and where treatment is provided by another municipality.
  - 7) The user charge system shall meet such other standards as the Agency may reasonably require in order to assure the continued financial stability

of the grantee.

- c) Upon approval of a grantee's system of user charges, the implementation and maintenance of the approved system and the implementation schedules therefore shall become a condition of the grant subject to the provisions of General Condition Section 360.101, (Noncompliance with Grant Conditions) hereof.
- d) The grantee must maintain such records as are necessary to document such compliance. The grantee shall maintain such records in accordance with the provisions of the Local Records Act, Ch. 116 Ill. Rev. Stats. 1975, Secs. 43. 101-43.114, except that no such records may be destroyed for a period of 30 years unless microfilm reproductions are made.
- e) The Agency or any authorized representative shall have access to any books, documents, papers, and records of the grantee which are applicable to the grantee's system of user charges for the purpose of making audit, examination, excerpts, and transcriptions thereof to ensure compliance with the provisions of paragraph (b) of this general condition.

(Source: Amended at 16 Ill. Reg. 5891, effective March 31, 1992)

### **Section 360.603 Flood Plain Insurance**

- a) The grantee (or the construction contractor, as appropriate) shall acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, beginning with the period of construction, and maintain such insurance for the entire useful life of the project if the total value of insurable improvements is \$10,000 or more.
- b) The amount of insurance required is the total project cost, excluding facilities which are uninsurable under the National Flood Insurance Program, such as bridges, dams, water and sewer lines, and underground structures, and excluding the cost of the land, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, whichever is less.
- c) The required insurance premium for the period of construction is an allowable project cost.

### **SUBPART G: INCORPORATED REQUIREMENTS**

### **Section 360.701 Statutory Conditions**

- a) All State of Illinois grants under the Anti-Pollution Bond Act are awarded subject

to State and Federal law including the requirements of the following Illinois Statutes:

- 1) "The Illinois Architectural Act" (Ill. Rev. Stat. 1981, ch. 111, par. 1201 et seq.) relating to the practice of architecture.
- 2) "The Protection of Adjacent Landowner's Act" (Ill. Rev. Stat. 1981, ch. 111½, par. 3301 et seq.) relating to the duty of an owner or occupant of land upon which excavations are made in reference to the furnishing of lateral and subjacent support to adjoining lands and structures thereon.
- 3) "The Regulation of Rivers, Lakes and Streams Act" (Ill. Rev. Stat. 1981, ch. 19, par. 65(f)) relating to flood plains.
- 4) "The Contracts for Public Works Act" (Ill. Rev. Stat. 1981, ch. 29, par. 15 et seq.) relating to bonds of contractors entering into contracts for public construction.
- 5) "The Discrimination in Public Contracts Act" (Ill. Rev. Stat. 1981, ch. 29, par. 17 et seq.) relating to the prohibition of discrimination and intimidation on account of race, creed, color, sex or national origin in employment under Contracts for Public Works.
- 6) "The Wages of Employees on Public Works Act" (Ill. Rev. Stat. 1981, ch. 48, par. 39n et seq.) relating to the regulation of laborers, mechanics and other workmen employed in any public works by the State, county, city or any public body or any political subdivision or by anyone under contract for public works.
- 7) "The Health and Safety Act" (Ill. Rev. Stat. 1981, ch. 48, par. 137.1 et seq.) relating to the health and safety of persons employed and vesting in the industrial commission power to make reasonable rules relating thereto.
- 8) "The Workmen's Compensation Act" (Ill. Rev. Stat. 1981, ch. 48, par. 138.1 et seq.) relating to providing compensation for accidental injuries or death suffered in the course of employment within this State, and without the State where the contract of employment is made within this State.
- 9) "The Medical Examination of Employees and Applicants Act" (Ill. Rev. Stat. 1981, ch. 48, par. 172(d) et seq.) relating to forbidding employers to require employees or applicants for employment to pay the cost of medical examinations required as a condition of employment.

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- 10) "The Occupational Diseases Act" (Ill. Rev. Stat. 1981, ch. 48, par. 172.36 et seq.) relating to providing remedies for injuries suffered or death resulting from occupational diseases incurred in the course of employment.
  - 11) "The Fair Employment Practices Act" (Ill. Rev. Stat. 1975, ch. 48, par. 851 et seq.) relating to denial of equality of employment opportunity because of race, color, religion, sex, national origin or ancestry.
  - 12) "The Age Discrimination Act" (Ill. Rev. Stat. 1975, ch. 48, par. 881 et seq.) relating to prohibition of unjust discrimination because of age.
  - 13) "The Illinois Professional Engineering Act" (Ill. Rev. Stat. 1981, ch. 48½, par. 5101 et seq.) relating to the practices of Professional Engineering.
  - 14) "The Publication of Notices in General Act" (Ill. Rev. Stat. 1981, ch. 100, par. 1 et seq.) relating to publication of notices.
  - 15) "The Interest in Contracts Act" (Ill. Rev. Stat. 1981, ch. 102, par. 3 et seq.) relating to the prevention of fraudulent and corrupt practices in the making or accepting of contracts by public officers.
  - 16) "The Open Meetings Act" (Ill. Rev. Stat. 1981, ch. 102, par. 41 et seq.) relating to meetings.
  - 17) "The Environmental Protection Act" (Ill. Rev. Stat. 1981, ch. 111½, par. 1001 et seq.) and regulations thereunder.
  - 18) "The Illinois Structural Engineering Act" (Ill. Rev. Stat. 1981, ch. 111, par. 6501 et seq.) relating to the practice of structural engineering.
- b) The grantee is solely responsible for assuring compliance with all applicable statutory requirements.

**Section 360.702 Incorporation of Documents**

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

- a) Any Application for State Grant for Sewage Treatment Works Under the Anti-Pollution Bond Act of 1970, plus supporting and supplementary documents;

- b) Any Application for Federal Grant for Sewage Treatment Works Under the Federal Water Pollution Control Act, as amended, plus supporting and supplementary documents;
- c) Any Offer and Acceptance of Federal Grant for Sewage Treatment Works Under the Federal Water Pollution Control Act, as amended, plus supporting and supplementary documents;
- d) Any Illinois Environmental Protection Agency Sewage Treatment Works Permit Application, plus supporting and supplementary documents;
- e) Any Illinois Environmental Protection Agency Sewer System Permit Application, plus supporting and supplementary documents;
- f) Any Illinois Environmental Protection Agency Permit, plus supporting and supplementary documents;
- g) Any National Pollutant Discharge Elimination System (NPDES) Permit or Permit Application, plus supporting and supplementary documents.

SUBPART H: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

**Section 360.801 Determination of Allowable Costs**

- a) The grantee will be paid, upon request, in accordance with General Condition Section 360.804, (Grant Payment Schedule) hereof, 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 following criteria:

- b) Allowable project costs.

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

- 1) Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in Section 360.801(c)(7) below.
- 2) Costs under construction contracts;
- 3) Professional and consultant services;

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- 4) Facility planning directly related to the treatment works;
  - 5) Sewer system evaluation;
  - 6) Project feasibility and engineering reports;
  - 7) Preparation of construction drawings, specifications, estimates, and construction contract documents;
  - 8) Landscaping;
  - 9) Supervision of construction work;
  - 10) Removal and relocation or replacement of utilities for which the grantee is legally obligated to pay;
  - 11) Materials acquired, consumed, or expended specifically for the project;
  - 12) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations;
  - 13) Development and preparation of an operation and maintenance manual; and
  - 14) Project identification signs.
  - 15) Flood plain insurance
- c) Unallowable costs

Costs which exceed the total amount of the grant offer or are not necessary for the construction of a treatment works project are unallowable. Such costs include, but are not limited to:

- 1) Basin or areawide planning not directly related to the project;
- 2) Bonus payments not legally required for completion of construction in advance of a contractual completion date;
- 3) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;
- 4) Fines and penalties resulting from violations of, or failure to comply with,

federal, state, or local laws;

- 5) Costs outside the scope of the approved project;
- 6) Interest on bonds or any other form of indebtedness required to finance the project costs;
- 7) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in Section 360.801(e) below;
- 8) Site acquisition (for example, sewer rights-of-way, sewage treatment plant sites, sanitary landfills and sludge disposal areas) except as otherwise provided in Section 360.801(d)(1) below;
- 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 construction industry for methods and materials research, public and industry relations, market development, labor-management matters, wage negotiations, jurisdictional disputes, defraying of all or part of unsuccessful offerors bidding costs, or similar purposes;
- 12) Costs under construction contracts which costs are incurred after the expiration of the applicable contractual completion date, even if the contractual completion date is subsequently extended by the grantee, unless such extension has been approved by the Agency in accordance with General Condition Section 360.402, (Project Changes) hereof;
- 13) Personal and professional services costs (including professional engineering costs) arising under a cost-plus-percentage of cost type of agreement (including the multiplier contract where profit is included in the multiplier) or a percentage-of-construction-cost type of contract;
- 14) Personal and professional services costs (including professional engineering costs) when the Agency has been refused access to the books and records of the contractor or the contractor has refused to renegotiate a

personal or professional services contract in accordance with the provisions of General Condition Section 360.303, (Contracts for Personal and Professional Services – Consulting Engineering Agreements) hereof; and

- 15) Increases in personal and professional services contract fees which are based solely on a percentage of an increased construction cost notwithstanding the contractual liabilities of the grantee under such contract.

- d) Costs allowable, if approved.

Certain direct costs are sometimes necessary for the construction of a treatment works and are allowable if reasonable and approved by the Agency in the grant offer or a grant amendment. Such costs include, but are not limited to:

- 1) Land acquired after October 17, 1972, that will be an integral part of the treatment process or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent); and
- 2) Rate determination studies required pursuant to determination of user charges under General Condition Section 360.602, (User Charges) hereof.

- e) 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 Section 360.801(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 D to these General Conditions.

- f) 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 General Condition Section 360.306, (Disputes) hereof.



g) Limitation upon project costs incurred prior to grant award

Payment will not be authorized for costs incurred prior to the date of the grant award except as in accordance with paragraphs (1), (2), and (3) of this Section 360.801.

- 1) Step 1 or 2 projects:
  - A) No prior approval or prior grant award is required for Step 1 or Step 2 project work initiated on or before October 31, 1974; payment for all such allowable costs incurred after the approved date of initiation of construction will be authorized in conjunction with the first award of grant assistance.
  - B) In the case of Step 1 or Step 2 project work initiated on or after November 1, 1974, no payment is authorized for:
    - i) Step 1 costs incurred prior to the date of approval of a plan of study by the Agency; and
    - ii) Step 2 costs incurred prior to the date of approval by the Agency of a facilities plan;
    - iii) Payment for Step 1 or Step 2 costs incurred after such dates of approval by the Agency will be authorized in conjunction with the first award of grant assistance.
  - C) Where Step 1 or Step 2 project work is initiated after June 30, 1975, no grant for the Step 1 or Step 2 project work may be awarded unless such award precedes initiation of the project work.
- 2) Step 3 projects: No grant offer for a Step 3 project will be awarded unless such award precedes initiation of the Step 3 construction. Advance acquisition of major equipment items requiring long lead times, or advance construction of minor portions of treatment works, in emergencies or instances where delay could result in significant cost increases, may be approved by the Agency, but only:
  - A) If the grantee submits a written and adequately substantiated request for approval; and
  - B) If written approval by the Agency is obtained prior to the initiation

of the advance acquisition or advance construction.

- 3) The approval of a plan of study, a facilities plan, or of advance acquisition of equipment or advance construction will not constitute a commitment for approval of grant assistance for a subsequent treatment works project, but will allow payment for the previously approved costs as allowable project costs only upon subsequent award of grant assistance, if requested prior to grant award. In instances where such approval is obtained, the applicant proceeds at its own risk, since payment for such costs will not be made until grant assistance for the project is awarded.
- h) Sewage collection systems.
- 1) No project costs will be allowed for the construction of any sewage collection system until the Agency has made a determination in writing prior to initiation of construction that:
    - A) There is a waste treatment works of sufficient existing or planned capacity to adequately treat the sewage collected by the proposed sewage collection system; and
    - B) That such project work is either for a new sewage collection system in a previously unsewered community and that the community was in existence on October 18, 1972, or is for replacement or major rehabilitation of an existing sewage collection system and such replacement or rehabilitation has been determined by the Agency to be necessary in accordance with the provisions of General Condition Section 360.202, (Sewer System Evaluation and Rehabilitation) hereof.
  - 2) No project costs will be allowed for the replacement or major rehabilitation of an existing sewage collection system if the sewage collection system average dry weather flow design capacity exceeds 150 percent of the average dry weather flow design capacity of the sewage collection system existing on October 18, 1972.
  - 3) Project costs allowable for the construction of new sewage collection systems are limited to the design and construction of a system with flow design capacity through the system equal to 150 percent of the waste waters originating from the community as it existed on October 18, 1972.

**Section 360.802 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, which grant includes a provision for approvable contingencies as set forth in the grant and special conditions thereof. Nothing herein, including the provisions of General Condition Section 360.402, (Project Changes) hereof, 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 appropriate percentage 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 hereinabove described.

**Section 360.803 Use of Grant and Payment of Non-Allowable Costs**

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

**Section 360.804 Grant Payment Schedule**

- a) The grantee shall be paid the state share of allowable costs incurred within the scope of an approved project not to exceed the total grant, subject to the limitations of the general and special conditions of this grant; Provided, that such payments must be in accordance with the payment schedule and the grant amount set forth in the grant offer, any amendments thereto or in this condition.
- b) The payment schedule will provide that payment for Step 1 and Step 2 project work will be made only on the basis of completion of the step or, if specified in the payment schedule in the grant agreement, upon completion of specific tasks within the step. All allowable costs incurred prior to initiation of construction of

the project must be claimed in the application for grant assistance for that project prior to the award of such assistance or no subsequent payment will be made for such costs.

1) Initial request for payment

Upon award of grant assistance, the grantee may request payment for the unpaid state share of actual or estimated allowable project costs incurred prior to grant award subject to the limitations of the general and special conditions of the grant, and payment for such costs shall be made in accordance with the payment schedule included in the grant.

2) Interim requests for payment

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

3) Adjustment.

At any time or times prior to final payment under the grant, the Agency may cause any request(s) for payment to be reviewed or audited. Each payment theretofore made shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment may be reduced for overpayments or increased for underpayments on preceding requests for payment.

4) Refunds, rebates, credits, etc.

The state share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee has been paid under a grant, must be paid to the State of Illinois Anti-Pollution Fund. Reasonable expenses incurred by the grantee for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Agency.

5) Final payment

Upon completion of final audit by the Agency and the final inspection pursuant to General Condition Section 360.405, (Final Inspection) hereof and approval of the request for payment designated by the grantee as the "final payment request" and upon compliance by the grantee with all applicable requirements of the grant, the Agency shall cause to be disbursed to the grantee any balance of approved allowable project cost which has not been paid to the grantee. Prior to final payment under the grant, the grantee must execute and deliver an assignment to the Agency, in form and substance satisfactory to the Agency, of the state share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the State under the grant, and a release discharging the State of Illinois, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to such exceptions which may be specified in the release.

6) Schedule of payments

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

**Section 360.805 Other Federal or State Grants**

If the grantee shall become eligible for a grant of federal funds or state funds for this project from other than the Anti-Pollution Fund, the grantee shall repay to the State of Illinois, for deposit in the Anti-Pollution Fund, any funds received exceed 75 percent of the approved allowable cost of the project 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 Anti-Pollution Fund or to reimburse to the Anti-Pollution 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.

**Section 360.APPENDIX A General Conditions of Construction Contract Document  
(Document No. 11 of the Contract Documents for Construction of Federally Assisted Water  
and Sewer Projects)**

1. Definitions
2. Additional Instructions and Detail Drawings
3. Schedules, Reports and Records
4. Drawings and Specifications
5. Shop Drawings
6. Materials, Services and Facilities
7. Inspection and Testing
8. Substitutions
9. Patents
10. Surveys, Permits, Regulations
11. Protection of Work, Property, Persons
12. Supervision by Contractor
13. Changes in Work
14. Changes in Contract Price
15. Time for Completion and Liquidated Damages
16. Correction of Work
17. Subsurface Conditions
18. Suspension of Work, Termination and Delay
19. Payments to Contractor
20. Acceptance of Final Payment as Release

21. Insurance
22. Contract Security
23. Assignments
24. Indemnification
25. Separate Contracts
26. Subcontracting
27. Engineer's Authority
28. Land and Rights-of-Way
29. Guaranty
30. Arbitration
31. Taxes

1. DEFINITIONS

- 1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:
- 1.2 ADDENDA – Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT, DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.
- 1.3 BID – The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.
- 1.4 BIDDER – Any person, firm or corporation submitting a BID for the WORK.
- 1.5 BONDS – Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

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- 1.6 CHANGE ORDER – A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.
- 1.7 CONTRACT DOCUMENTS – The contract, including Advertisement For Bids, Information For Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond. NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.
- 1.8 CONTRACT PRICE – The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.9 CONTRACT TIME – The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- 1.10 CONTRACTOR – The person, firm or corporation with whom the OWNER has executed the Agreement.
- 1.11 DRAWINGS – The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared by or approved by the Engineer.
- 1.12 ENGINEER – The person, firm or corporation named as such in the CONTRACT DOCUMENTS.
- 1.13 FIELD ORDER – A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.
- 1.14 NOTICE OF AWARD – The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.
- 1.15 NOTICE TO PROCEED – Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.
- 1.16 OWNER – A public or quasi-public body in authority, corporation, association, partnership, or individual for whom the WORK is to be performed.
- 1.17 PROJECT – The undertaking to be performed as provided in the CONTRACT DOCUMENTS.



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- 1.18 RESIDENT PROJECT REPRESENTATIVE – The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.
- 1.19 SHOP DRAWINGS – All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.
- 1.20 SPECIFICATIONS – A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.21 SUBCONTRACTOR – An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR by the performance of a part of the WORK at the site.
- 1.22 SUBSTANTIAL COMPLETION – That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.
- 1.23 SUPPLEMENTAL GENERAL CONDITIONS – Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.
- 1.24 SUPPLIER – Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.
- 1.25 WORK – All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.
- 1.26 WRITTEN NOTICE – Any notice to the party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.
2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.
- 2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.
3. SCHEDULES, REPORTS AND RECORDS
  - 3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.
  - 3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:
    - 3.2.1 The dates at which special detail drawings will be required; and
    - 3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
  - 3.3 The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.
4. DRAWINGS AND SPECIFICATIONS
  - 4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.
  - 4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

- 4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.
5. SHOP DRAWINGS
- 5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWINGS shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.
- 5.2 When submitting for the ENGINEER'S review SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.
6. MATERIALS, SERVICES AND FACILITIES
- 6.1 It is understood that except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.
- 6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials and equipment shall be applied, installed,

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connected, erected, used, cleaned and conditioned as directed by the manufacturer.

- 6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.
- 6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
7. INSPECTION AND TESTING
- 7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- 7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.
- 7.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.
- 7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.
- 7.5 Inspections, tests or approvals by the engineers or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.
- 7.6 The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.
- 7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and

replaced at the CONTRACTOR'S expense.

- 7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. SUBSTITUTIONS

- 8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

- 9.1 The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits of claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process design on the product of a

particular manufacturer or manufacturer is specified, however, if the CONTRACTOR has reason to believe that the design process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

10. SURVEYS, PERMITS, REGULATIONS

10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail survey, needed for construction such as slope stakes, batterboards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- 11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.
- 11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.
12. SUPERVISION BY CONTRACTOR
- 12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.
13. CHANGES IN THE WORK
- 13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS or in the time required for performance of the WORK an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him th a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. CHANGES IN CONTRACT PRICE

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

- a. Unit prices previously approved
- b. An agreed lump sum
- c. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition, there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead profit.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME, for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.



- 15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, an extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.
- 15.4 The CONTRACTOR shall not be charged with liquidated damages of any excess cost when the delay in completion of the WORK is due to the following and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER OR ENGINEER.
- 15.4.1 To any preference, priority or allocation order duly issued by the OWNER
- 15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and
- 15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.
16. CORRECTION OF WORK
- 16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and reexecute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.
- 16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.
17. SUBSURFACE CONDITIONS

- 17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:
- 17.1.1 Subsurface or latent physical condition at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or
  - 17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.
- 17.2 The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE, provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.
18. SUSPENSION OF WORK, TERMINATION AND DELAY
- 18.1 The OWNER may suspend the WORK on any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume the WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.
- 18.2 If the CONTRACTOR is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or

remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

- 18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any rights of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER the OWNER may, without cause and without prejudice to any other right or remedy elect to abandon the PROJECT and terminate the CONTRACT in such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.
- 18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. PAYMENTS TO CONTRACTOR

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing the approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5%) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.

19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site.

- 19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.
- 19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.
- 19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.
- 19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.
- 19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there

shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BONDS.

21. INSURANCE

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.3 Claim for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person, and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the

OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

- 21.3 The CONTRACTOR shall procure and maintain, at his own expense, during the the CONTRACT TIME, liability insurance as hereinafter specified:
- 21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS whether such operations be by himself or by any SUBCONTRACTOR under him or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury including death, at any time resulting therefrom, sustained by any one person in any one accident, and a limit of liability of not less than \$500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident: and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident.
- 21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.
- 21.4 The CONTRACTOR shall procure and maintain, at his own expense during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at

the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

- 21.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name the insured the CONTRACTOR, the ENGINEER, and the OWNER.

## 22. CONTRACT SECURITY

- 22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions, and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

## 23. ASSIGNMENTS

- 23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or



interest therein, or his obligations thereunder, without written consent of the other party.

24. INDEMNIFICATION

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. SEPARATE CONTRACTS

25.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The

## SUBTITLE C

CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

- 25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefore as provided in Sections 14 and 15.

26. SUBCONTRACTING

- 26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.
- 26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.
- 26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- 26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power or regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.
- 26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.
27. ENGINEER'S AUTHORITY
- 27.1 The ENGINEER shall act as the OWNER'S representative during the construction

period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The ENGINEER will not be responsible for the construction means, control, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make the decisions relative to interpretation of the CONTRACT DOCUMENTS.

## 28. LAND AND RIGHTS-OF-WAY

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

## 29. GUARANTY

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the

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CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

30. ARBITRATION

30.1 All claims, disputes and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 20 shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgement may be entered upon it in any court having jurisdiction thereof.

30.2 Notice of the demand for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and with the American Arbitration Association, and a copy shall be filed with the ENGINEER. Demand for arbitration shall in no event be made on any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

30.3 The CONTRACTOR will carry on the WORK and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

31. TAXES

31.1 The CONTRACTOR will pay all sales consumer use and other similar taxes required by the law of the place where the WORK is performed.

**Section 360.APPENDIX B Access To Records – Audit (Existing Consulting Engineering Agreement) (Applicable To Consulting Engineering Agreements Entered Into Between June 30, 1975 and July 1, 1976)**

1. Access clause. After June 30, 1975, a construction grant for Steps 1, 2 or 3 will not be awarded unless an acceptable records and access clause is included in the consulting engineering subagreement. The clause contained in Appendix III shall be used after July 1, 1976.
2. Agency exercise of right of access to records.
  - a. For the purpose of determining where the Agency shall exercise its right of access, engineers' project-related records have been divided into three categories:
    - (1) Category A. Records pertaining directly to the professional, technical and other services performed, excluding any type of financial records of the consulting engineer.
    - (2) Category B. Financial records of the consulting engineer pertaining to the direct costs of professional, technical and other services performed, excluding financial records pertaining to profit and overhead or other indirect costs.
    - (3) Category C. Financial records of the consulting engineer excluding from Category B.
  - b. In all cases, the Agency will exercise its right of access to Category A records. Also, where there is an indication that fraud, gross abuse, or corrupt practices may be involved, the Agency will exercise its right of access to records in all categories. Otherwise, access to consulting engineers' financial records (Categories B and C) will depend principally upon the method(s) of compensation stipulated in the agreement:
    - (1) Agreements based upon a percentage of construction cost. Category B and C records will not be audited. However, terms of the agreement including the total amount of compensation will be evaluated for fairness and reasonableness and consistency with historical and advisory guidelines in general use and acceptable locally or other analyses or data relied upon or utilized by the contracting parties in negotiation of the agreement. Such evaluation shall also consider comparable contracts for which Agency grants have been awarded.

- (2) Agreements based upon salary cost times a multiplier including profit. Category B records will be audited. However, terms of the agreement, including the total amount of compensation and the multiplier, will be evaluated for fairness and reasonableness and consistency with historical and advisory guidelines in general use and acceptable locally or other analyses or data relied upon or utilized by the contracting parties in negotiation of the agreement. Such evaluation shall also consider comparable contracts for which Agency grants have been awarded. Items of overhead or other indirect costs will only be audited to the extent necessary to assure that types of costs found both in overhead and reimbursable direct costs, if any, are properly charged.
  - (3) Per diem agreements. Category B records will be audited. Category C records will not be audited. Audit will be performed to the extent necessary to determine that hours claimed and classes of personnel used were properly supported. The per diem rates will be evaluated in accordance with appropriate portions of paragraphs 2.b(1) and (2) of this appendix.
  - (4) Cost plus a fixed fee (profit). All direct costs and overhead and other indirect costs claimed will be audited to determine that they are reasonable, allowable, and properly supported by the consulting engineer's records. The amount of fixed fee will not be questioned unless the total compensation appears unreasonable when evaluated in accordance with paragraphs 2.b(1) and (2) of this appendix.
  - (5) Fixed price lump sum contracts. Category B and C records will not be audited. The contract amount will not be questioned unless the total compensation appears unreasonable when evaluated in accordance with appropriate portions of paragraphs A.2.b.(1) and (2) of this appendix.
- c. Under agreements covering both grant-eligible and ineligible work, access to records will be exercised to the extent necessary to allocate contract work or costs between work grant-eligible for construction grant assistance and work or costs which are ineligible.
  - d. Under agreements utilizing two or more methods of compensation, each part of the agreement will be separately audited in accordance with the appropriate subparagraph of paragraph (b)(2) of this section.

- e. Any audited firm and the grantee will be afforded opportunity for an audit exit conference and an opportunity to receive and comment upon the pertinent portions of each draft audit report. The final audit report will include the written comments, if any, of the audited parties in addition to those of the appropriate state agency(ies).

**Section 360.APPENDIX C Required Provisions – Consulting Engineering Agreements  
(Applicable To Consulting Engineering Agreements Entered Into After July 1, 1976)**

1. General
  - (a) The grantee and the engineer agree that the following provisions shall apply to the work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.
  - (b) This agreement is funded in part by a grant from the Illinois Environmental Protection Agency. Neither the State of Illinois nor the Illinois Environmental Protection Agency (hereinafter Agency) is a party to this agreement.
2. Responsibility of the Engineer
  - (a) The engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the engineer under this agreement. The engineer shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, reports and other services.
  - (b) The engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable Agency requirements.
  - (c) Approval by the grantee or Agency of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the engineer of responsibility for the technical adequacy of the work. Neither the grantee's nor Agency's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement, and the engineer shall be and remain liable in accordance with applicable law for all damages to the grantee or Agency caused by the engineer's negligent performance of any of the services furnished under this agreement.
  - (d) The rights and remedies of the grantee provided for under this agreement are in addition to any other rights and remedies provided by law.
3. Scope of work. Except as may be otherwise specifically limited in this



agreement, the services to be rendered by the engineer shall include all services required to complete the task or step in accordance with applicable Agency regulations.

4. Changes.

- (a) The grantee may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the engineer's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the engineer of the notification of change unless the grantee grants a further period of time before the date of final payment under this agreement.
- (b) No services for which an additional compensation will be charged by the engineer shall be furnished without the written authorization of the grantee.

5. Termination

- (a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party; Provided, That no such termination may be effected unless the other party is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (b) This agreement may be terminated in whole or in part in writing by the grantee for its convenience: Provided, That no such termination may be effected unless the engineer is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (c) If termination for default is effected by the grantee, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the engineer at the

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time of termination may be adjusted to the extent of any additional costs occasioned to the grantee by reason of the engineer's default. If termination for default is effected by the engineer, or if termination for convenience is effected by the grantee, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the engineer relating to commitments which had become firm prior to the termination.

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

6. Remedies.

- (a) Except as may be otherwise provided in this agreement, or as the parties hereto may otherwise agree, all claims, counterclaims, disputes and other matters in question between the grantee and the engineer arising out of or relating to this agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations stated in paragraphs (c) and (d) below. This agreement, and any other agreement or consent to arbitrate entered into in accordance

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therewith as provided below, will be specifically enforceable under the prevailing law of any court having jurisdiction.

- (b) Notice of demand for arbitration must be filed in writing with the other party to this Agreement, with the Agency and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- (c) All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy thereof is more than \$200,000 (exclusive of interest and costs) or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs).
- (d) No arbitration arising out of, or relating to, this agreement may include, by consolidation, joinder or in any other manner, any additional party not a party to this agreement.
- (e) By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs (c) and (d) above may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.
- (f) The award rendered by the arbitrators will be final, not subject to appeal, and judgement may be entered upon it in any court having jurisdiction thereof.

7. Payment

- (a) The engineer may submit payment requests. Such requests shall be based upon the value of the work and services performed by the engineer under this agreement, and shall be prepared by the engineer and supplemented or accompanied by such supporting data as may be required by the grantee.
  - (b) Upon approval of such payment request by the grantee, payment upon properly certified vouchers shall be made to the engineer as soon as practicable of ninety percent of the amount as determined above: Provided, however, that if the grantee determines that the work under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the grantee, he may at his discretion release to the engineer such excess amount.
  - (c) Upon satisfactory completion by the engineer of the work called for under the terms of this agreement, and upon acceptance of such work by the grantee, the engineer will be paid the unpaid balance of any money due for such work, including the retained percentages relating to this portion of the work.
  - (d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the engineer shall execute and deliver to the grantee a release of all claims against the grantee arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the engineer from the operation of the release in stated amounts to be set forth therein.
8. Project Design.
- (a) In the performance of this agreement, the engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods and processes consistent with paragraphs (C), Competition, and (I) Specifications, of General Condition 21, General conditions for all subagreements, hereof.
  - (b) The engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the engineer to be available

only from a sole source, unless such use has been adequately justified in writing by the engineer as necessary for the minimum needs of the project.

- (c) The engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of General Condition 21(I)(1), Nonrestrictive specifications. The aforementioned General Condition requires that no specification for bids or statement of work may be written in such a manner as to contain proprietary, exclusionary or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brands names or trade of comparable quality and utility are listed and are followed by the words "or equal".
- (d) The engineer shall report to the grantee any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.

9. Audit; access to records.

- (a) The engineer shall maintain books, records, documents and other evidence directly pertinent to performance on Agency grant work under this agreement in accordance with accepted professional practice, appropriate accounting procedures and practices, and General Conditions 3, Access, and 4, Audit and Records, hereof. The engineer shall also maintain the financial information and data used by the engineer in the preparation or support of the cost submission required pursuant to General Condition 23(H)(2) for subagreements over \$100,000 and a copy of the cost summary submitted to the grantee. The Agency or any of its duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The engineer will provide proper facilities for such access and inspection.
- (b) The engineer agrees to include paragraphs (a) through (e) of this clause in all his contracts and all tier subcontracts directly related to project performance which are in excess of \$10,000.
- (c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines for the reviewing or audit agency(ies).

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

11. Subcontractors
  - (a) Any subcontractors and outside associates or consultants required by the engineer in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically approved by the grantee during the performance of this agreement. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the grantee.
  - (b) Except as otherwise provided in this agreement, the engineer may not subcontract services in excess of thirty percent (30%) of the contract price to subcontractors or consultants without prior written approval of the grantee.
12. Equal employment opportunity. In accordance with the Agency policy as expressed in General Condition 25, the engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.
13. Covenant against contingent fees. The engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty the grantee shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
14. Gratuities
  - (a) The grantee may, by written notice to the engineer, terminate the right of the engineer to proceed under this agreement if it is found, after notice and hearing, by the grantee that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the engineer, or any agent or representative of the engineer, to any official or employee of the grantee or of the Agency with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this agreement: Provided, That the existence of the facts upon which the grantee makes such findings shall be in issue and may be reviewed in proceedings pursuant to Clause 6 (Remedies) of this agreement.

- (b) In the event this agreement is terminated as provided in paragraph (a) hereof, the grantee shall be entitled (1) to pursue the same remedies against the engineer as it could pursue in the event of a breach of the contract by the engineer, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the grantee) which shall be not less than three nor more than ten times the costs incurred by the engineer in providing any such gratuities to any such officer or employee.
- (c) The rights and remedies of the grantee provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this agreement.



**Section 360.APPENDIX D Procedures for Determination of Indirect Costs and Indirect Cost Rates**

1. 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.

2. General:

- (A) 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.
- (B) Indirect cost rates are not retroactive and may not be changed during the period of the grant agreement.
- (C) No indirect costs are allowable for reimbursement grants.
- (D) The grantee must secure approval of the Agency of its proposed indirect cost rate in advance of its acceptance of a Step 3 grant.

3. Grantees with Existing USEPA Construction Grants:

- (A) If the grantee has a current grant from the U.S. Environmental Protection Agency (USEPA) for construction of a sewage treatment works, the most recently established indirect cost rate in that grant will be used by the Agency, provided that:
  - (1) the rate was approved by the lead federal agency; and
  - (2) procedures established in Federal Management Circulars 73-6 and 74-4 were followed in determining the rate; and
  - (3) the indirect cost rate in the USEPA grant was negotiated in accordance with the requirements of 40 CFR 30.715-2.

- (B) If the grantee has a current grant from USEPA for the construction of treatment works which shows a zero indirect cost rate or which specifies that there is not indirect cost rate, it is not eligible to establish an indirect cost rate for a state grant.
- (C) If the grantee is claiming prior cost involving force account work, the indirect cost associated with such work may be computed from an applicable USEPA construction grant made to the same grantee and in effect during the period of time in which the force account work was incurred.
- (D) To establish an indirect cost rate under this section, the Agency will require:
  - (1) copies of all executed grants currently in effect between the grantee and USEPA, certified by the clerk or other appropriate official of the grantee;
  - (2) 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 USEPA grants.
- (E) If the grantee has more than one currently effective USEPA construction grant with differing indirect cost rates, the Agency will determine which of the federally approved indirect cost rates is most appropriate for use on the state grant project.

4. Grantee without Existing USEPA Construction Grants:

For grantees which do not have existing current USEPA construction grants, either of the following procedures may be used to establish an indirect cost rate:

- (A) 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 40 CFR 30.715-2(b) 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.
- (B) A negotiated indirect cost rate may be established, in the manner described in 40 CFR 30.715-2(a), in accordance with either of the following procedures:

- (1) For projects whose total estimated project cost is less than \$10 million, the grantee shall follow the Agency's criteria for use in determining eligibility of specific items used in establishing an indirect cost rate, submit the completed indirect cost rate determination to the Agency with substantiation, 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. Under this section, total indirect costs may not exceed five percent of the total estimated project cost.
- (2) For projects with a total project cost of more than \$10 million, the grantee may propose an indirect cost rate, with substantiation and justification, to the Agency. The Agency will review the submitted information in accordance with guidance provided by Federal Management Circulars 74-4 and 73-6 and procedures described in 40 CFR 30-715-2(a).

5. Disputes:

The grantee will be notified 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 General Condition 9, Disputes, of these general conditions.