

ARKANSAS DEPARTMENT OF
POLLUTION CONTROL AND ECOLOGY

MINUTE ORDER NO. 77-3

LOCATION - SUBJECT: 208 Planning
Program Contract

PAGE 1 of 1 PAGES

The Department is hereby authorized to enter into a contract with the Arkansas Department of Local Services for completion of specific program elements of the 208 Workplan as per the attached draft contract. Total estimated cost of the project is \$134,000.

COMMISSIONERS

[Handwritten signatures and initials over lines]
BEG by JH
RCB by SJS
ACAS

Billy Franz
Chairman

Submitted by: H. Hannah

Date Passed: 1/28/77

STATE OF ARKANSAS
PROFESSIONAL CONSULTANT SERVICES CONTRACT

I. Date, Parties

This agreement is entered into on the _____ of _____ (DAY) _____, 1977 between Ark. Dept. of Pollution Control & Ecology (MONTH) (YEAR) (AGENCY) WATER of the State of Arkansas, (DIVISION) hereinafter referred to as the Agency and Arkansas Department of Local Services, Suite 900, First National Bank Building (FIRM OR INDIVIDUAL) (ADDRESS) hereinafter referred to as the consultant.

II. Objectives and Scope

The Agency and Consultant agree that the objectives and scope of this agreement are as described herein or by attachments, if so noted.

- Attachment #1 - Scope of Work
- Attachment #2 - General Provisions
- Attachment #3 - Special Provisions
- Attachment #4 - Payment Provisions and Schedule
- Attachment #5 - EPA Form No. 5700-41 (2-76)
- Attachment #6 - Applicable Federal Regulations

(Attachments Nos. _____, _____, _____, _____, _____)

III. Term

The term of this agreement will begin on _____ of _____ (DAY) _____, _____, and shall extend for a period of (MONTH) (YEAR) approximately 8 months and/or as agreed to separately in writing by both parties. The initial term of a contract shall not extend beyond June 30th of the year in which a biennium period ends. However, when it is necessary for a contract to extend beyond a biennium period, it is subject to the appropriation procedure of the Legislature and if the Legislature should disapprove the appropriation request, then the contract is terminated at the end of the biennial period. These contracts are subject to all of the provisions of the General Accounting and Budgetary Procedures Law (Act 876 of 1973). A letter to the consultant from the Agency extending or shortening the term of the agreement will be considered binding when endorsed by the Consultant and returned to the Agency. This letter will have the same distribution as was given the related contract.

IV. Source of Funds

State Appropriated Funds -0- Other Funds
Appropriation Code 450-12M,12N-FYP Other (Specify) _____
A. Federal Grant Funds Source Environmental Protection Agency

V. Compensation

For work to be accomplished under this agreement, the Consultant agrees to provide the personnel as listed below (or name on attachment hereto) at the rates scheduled for each level of consulting personnel.

SEE ATTACHMENT #4

Additionally, the Consultant and the Agency agree that the total compensation exclusive of expense reimbursement to be paid the Consultant should be approximately \$ _____.

VI. Expense Reimbursement

The consultant will be reimbursed for out of pocket expense as outlined below or in accordance with the accepted standard rates for professional consulting personnel which is attached hereto and made a part of this contract.

SEE ATTACHMENT #4

VII. Agency Responsibility

A. The Agency agrees to make available advice, counsel, data and personnel, etc. described immediately below or in attachment # _____ to this agreement.

B. The Agency representative who will act for the Agency in coordinating work of the Consultant will be
E. B. Perrien, Chief 208 Program
TITLE

VIII. Authority

A. This contract shall be governed by the Laws of the State of Arkansas, as interpreted by the Attorney General of the State and shall be in accordance with intent of Section 20 Act 620 of 1969.

B. Any legislation that may be enacted subsequent to the date of this agreement, which may cause all or any part of this agreement to be in conflict with the laws of the State of Arkansas, will be given proper consideration, if and when this contract is renewed or extended and the contract will be altered to comply with the then applicable laws.

SIGNATURES

.....

CONSULTANT
Director

TITLE
900 1st Nat'l Bank, LR

ADDRESS

DATE

STATE AGENCY
Director

TITLE
8001 National Dr., LR

ADDRESS

DATE

APPROVED

(DEPARTMENT OF FINANCE & ADMINISTRATION

DATE

Distribution

- (1) Original for Agency.
- (2) First copy for Consultant.
- (3) Second copy for Dept. of Finance & Administration Pre-Audit Section.
- (4) Third copy for Agency.

SCOPE OF SERVICES

The Department of Local Services will perform tasks related to the scope of work herein for 208 Water Quality Management Planning activities. These tasks generally relate to Sections 104, 105, 106, and 107 of the Detailed Work Program for 208 Water Quality Management Planning dated November 1, 1976.

TASK 104 Existing Land Use Patterns

- a. Develop specifications for maps required to relate land use to water quality problems in conjunction with the Department of Pollution Control and Ecology and the University of Arkansas.
- b. Utilize the LUDA system developed by the U.S.G.S. and currently on line at the University of Arkansas at Fayetteville to produce maps and tabular data by stream segments at Level II land use classification.
- c. Output: Statistical summary of land use acreages and one paper composite copy of the existing land use maps at Level II.

TASK 105 Population Projections

- a. Develop specific output requirements for 208 planning.
- b. Develop a methodology to disaggregate OBERS demographic data to stream segments.
- c. Develop a training program for operating agencies' personnel.
- d. Train operating agencies' personnel.
- e. Monitor operating agencies' disaggregation of OBERS demographic data to stream segments.
- f. Output: Statistical tabulation of OBERS Series E demographic data by stream segment.

TASK 106 Economic Projections

- a. Develop specific output requirements for 208 planning.
 - b. Develop a methodology for disaggregating OBERS System Series E data to stream segments.
 - c. Develop a training program for operating agencies' personnel.
 - d. Train operating agencies' personnel.
 - e. Monitor operating agencies' disaggregation of OBERS data to stream segments.
 - f. Output: Statistical tabulation of OBERS Series E economic data by stream segment.
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TASK 107

Future Land Use Patterns

- a. Develop specific output requirements appropriate for 208 planning.
- b. Develop a methodology to forecast land utilization by stream segment.
- c. Develop a training program for operating agencies' personnel.
- d. Train operating agencies' personnel.
- e. Monitor operating agencies' forecast of land utilization by stream segment.
- f. Output: Statistical tabulation of land utilization by stream segment.

It is anticipated that the eight non-metropolitan planning agencies and the Northwest Arkansas Regional Planning Commission will constitute the operating agencies for the purposes of this contract. Should any of these organizations decline participation in the work program, the Scope of Services may be re-negotiated with the Department of Pollution Control and Ecology.

Task 104, 105, 106, and 107 shall be completed within eight (8) months from the date of execution of this contract.

ATTACHMENT NO. 2 TO CONTRACT DATED _____, 1977
BETWEEN THE ARKANSAS DEPARTMENT OF LOCAL SERVICES (ADLS)
AND THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND
ECOLOGY (ADPC&E)

GENERAL PROVISIONS

1. This contract is funded in part by a grant from the United States Environmental Protection Agency, and is subject to regulations contained in 40 CFR, Subchapter B and particularly Part 33, Subpart F thereof as published in 40 Federal Register 20300-20302 (1975). If and when said regulations are finalized, amended or revised, the terms of this contract shall be deemed to be amended accordingly in order to maintain compliance. Neither the United States nor the United States Environmental Protection Agency is a party to this contract.
2. The ADPCE, with agreement of the ADLS, can amend the scope of services to be performed by the ADLS to describe same with greater particularity through a letter of agreement.
3. The ADPCE can terminate the contract at any time for default on the part of the ADLS or for the convenience of the ADPCE. This contract can be suspended by agreement of the contracting parties or by the ADPCE. Termination or suspension will be effective after 10 days from receipt of written notice by ADLS. In the event of termination or suspension of this contract, the ADLS will have thirty (30) days from the date of notice of termination or suspension to submit a detailed proposal for final settlement of this contract.
4. The ADLS shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under any project, program, or activity receiving assistance from EPA; and the ADLS shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin. The ADLS is subject to the requirements imposed upon the ADPCE relating to rights in data

and copyrights, inventions, and patents as set forth in 40 CFR 30.515.

5. The EPA Project officer and any authorized representative of EPA, ADPCE or the Comptroller General of the United States shall at all reasonable times during the period of the EPA grant support and until three years after final settlement have access to the facilities, premises and records, as defined in 40 CFR 30.805, of the ADLS relating to the project. In addition, any person designated by the EPA Project Office shall have access, upon reasonable notice to the ADLS by the EPA Project Officer, to visit the facilities and premises related to the project.
 6. Neither the ADPCE nor the ADLS may assign or transfer their individual interests in this contract without the written consent of the other parties. ADPCE and the ADLS each binds itself and its successors and assigns to the other party with respect to all covenants in this contract. Nothing herein is to be construed as creating a personal liability on the part of any officer or agent of any public body which may be a party hereto.
 7. The ADLS warrants that no person or company has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, nor has the ADLS paid or agreed to pay any person, company, corporation, individual or firm, any fee, commission, contribution, donation, percentage, gift or any other consideration, contingent upon, or resulting from award of this contract. For any breach or violation of this provision, the ADPCE shall have the right to terminate that agreement without liability and, at the ADPCE's discretion to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any other damages, and shall be responsible for reporting the details of such breach or violation to the proper legal authorities, where and when appropriate.
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ATTACHMENT NO. 3 TO CONTRACT DATED _____, 1977
BETWEEN THE ARKANSAS DEPARTMENT OF LOCAL SERVICES (ADLS)
AND THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND
ECOLOGY (ADPCE)

SPECIAL PROVISIONS

1. The ADLS shall name a contact individual assigned to coordinate all phases of the project with ADPCE.
 2. The ADLS must maintain records of contract performance as defined in 40 CFR 30.805, and make these records available for inspection, audit and copying by the ADPCE, EPA, the Comptroller General of the United States, or any authorized representative thereof, to the extent and for the same length of time as is set forth with respect to the ADPCE's records in 40 CFR 30.805.
 3. The ADLS shall indemnify and hold the ADPCE harmless for all claims, actions or suits brought on account of any negligent acts or misconduct by the ADLS, its agents or employees, in connection with services to be performed by the ADLS under this contract, including claims by the Federal government acting through the Environmental Protection Agency or Comptroller General Office arising out of determinations by such agencies that grant funds expended by the ADLS pursuant to this agreement are not in compliance with and pursuant to the applicable Federal and State law, rules and regulations and conditions of Grant #P-006049-01-0 pursuant to which these funds are made available.
 4. Each contract or subagreement executed by ADLS pursuant to this project shall be subject to prior approval by ADPCE/EPA. Each contract of over \$50,000 shall receive a cost analysis prior to the approval by the EPA project officer or to the execution of the contract or subagreement. Costs incurred by the ADLS prior to receipt from the EPA project officer of written approval shall be unallowable. The ADLS must insure that each contract or subagreement will contain a provision insuring EPA, ADPCE and the Comptroller General access to facilities,
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premises and records of each contract. In addition, contracts awarded under this agreement of \$10,000 or over will be subject to the rules and regulations dated January 25, 1974, for Equal Employment Opportunity.

5. This contract, along with any subagreements, is subject to adjustment upon completion of cost analysis review by EPA.
6. The term of this contract may be extended by mutual consent in writing of both parties.

ATTACHMENT 4 TO CONTRACT DATED _____, 1977
BETWEEN THE ARKANSAS DEPARTMENT OF LOCAL SERVICES (ADLS)
AND THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND
ECOLOGY (ADPCE)

PAYMENT PROVISIONS AND SCHEDULE

1. This contract is based on the condition that the ADPCE will provide a maximum of 75% of the total cost of the scope of work as referenced in Attachment No. 1, not to exceed \$100,425, with the ADLS and/or other parties providing funds or services necessary for the proper completion of the work. Compensation for services rendered by ADLS shall be as follows:
 - A. Upon execution of the contract, ADLS will be paid an advance of 10% of the total ADPCE payment, or \$10,042.50.
 - B. After the initial installment, payments will be made to ADLS in sums equal to ___% of the remaining balance due.
 - C. All payments outlined in (B) will be paid upon receipt by ADPCE of billing in triplicate; further, all payments will be made contingent upon review and approval of written monthly progress reports in such form as may be required by the ADPCE Project Officer named in Section VII (B) of this contract.
 2. The expenditure and documentation thereof of all project monies by ADLS shall comply with all applicable State and Federal Requirements. Any capital expenditures of \$100 or more proposed by ADLS or any of its sub-contractors must receive prior approval by ADPCE and, if applicable, EPA.
 3. All payments to ADLS will be contingent on the availability of funds to ADPCE.
 4. Should the percentage of Federal participation in this program be increased or decreased, the percentage and amount referenced in (1) above will be modified to reflect the same increase/decrease.
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ATTACHMENT NO. 4 TO CONTRACT DATED _____, 1977
BETWEEN THE ARKANSAS DEPARTMENT OF LOCAL SERVICES (ADLS)
AND THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND
ECOLOGY (ADPC&E)

COST OR PRICE SUMMARY FORMAT FOR SUBAGREEMENTS UNDER U.S. EPA GRANTS
 (See accompanying instructions before completing this form)

Form Approved
 OMB No. 158-R0144

PART I-GENERAL

1. GRANTEE	2. GRANT NUMBER
3. NAME OF CONTRACTOR OR SUBCONTRACTOR	4. DATE OF PROPOSAL
5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (Include ZIP code)	6. TYPE OF SERVICE TO BE FURNISHED

PART II-COST SUMMARY

7. DIRECT LABOR (Specify labor categories)	ESTI- MATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
		\$	\$	
DIRECT LABOR TOTAL:				\$
8. INDIRECT COSTS (Specify indirect cost pools)	RATE	x BASE =	ESTIMATED COST	
		\$	\$	
INDIRECT COSTS TOTAL:				\$
9. OTHER DIRECT COSTS				
a. TRAVEL			ESTIMATED COST	
(1) TRANSPORTATION			\$	
(2) PER DIEM			\$	
TRAVEL SUBTOTAL:			\$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)		QTY	COST	ESTIMATED COST
			\$	\$
EQUIPMENT SUBTOTAL:				
c. SUBCONTRACTS			ESTIMATED COST	
			\$	
SUBCONTRACTS SUBTOTAL:			\$	
d. OTHER (Specify categories)			ESTIMATED COST	
			\$	
OTHER SUBTOTAL:			\$	
c. OTHER DIRECT COSTS TOTAL:			\$	\$
10. TOTAL ESTIMATED COST				\$
11. PROFIT				\$
12. TOTAL PRICE				\$

INSTRUCTIONS

In completing this form, CAREFULLY READ AND FOLLOW ALL INSTRUCTIONS. Many items are not self-explanatory. Attach additional sheets if necessary.

Use only the applicable portions of this form:

Part I is applicable to all subagreements.

Part II is applicable to all subagreements requiring a cost review pursuant to EPA grant regulations.

Part III is applicable to all subagreements where review is based on price comparison (i.e., price analysis).

Part IV certifications will be executed as required by the regulations and by the instructions for each block.

PART I - GENERAL

Item 1 - Enter the name of the grantee as shown on the grant agreement.

Item 2 - Enter the grant identification number shown on the grant agreement (or assigned to the project, if no grant agreement has yet been executed).

Item 3 - Enter the name of the contractor or subcontractor with whom the subagreement is proposed to be executed.

Item 4 - Enter the date of the contractor's or subcontractor's proposal to the grantee.

Item 5 - Enter the full mailing address of the contractor or subcontractor.

Item 6 - Give a brief description of the work to be performed under the proposed subagreement.

PART II - COST SUMMARY

This portion of the form is to be completed by the contractor (or his subcontractor) with whom a subagreement is proposed to be executed, unless that subagreement is a formally advertised, competitively bid, fixed price contract.

Nothing in the following discussions should be interpreted as recommending the inclusion as direct costs any items normally treated as overhead costs in the firm's accounting or estimating system.

40 CFR 30.710 contains general cost principles applicable to subagreements under EPA grants. Pursuant to that section, all subagreements awarded to profit-making organizations are subject to the cost principles of 41 CFR 1-15.2. Architect-engineer and construction contracts are subject also to 41 CFR 1-15.4.

Item 7 - Direct Labor

Direct labor costs normally include salaries at a regular time rate. Overtime premiums should be identified separately on an attachment. Incurrence of unanticipated overtime costs requires the approval of the grantee at the time of incurrence. If significant overtime is known to be needed at the time of completion of the cost review form, the reasons therefor, labor categories, rates and hours should be identified on an attachment. Also included is the cost of partners' or principals' time when they are directly engaged in services to be rendered under the contract. In case the full time of any employee is not to be devoted to work to be performed under the contract, only the cost of actual time to be applied should be included. The compensation of a partner or principal shall be included as direct cost only for the time that he is expected to be engaged directly in the performance of work under the contract and only if it is the firm's normal practice to charge such time directly to all jobs. The rate of compensation of a partner or principal shall be commensurate with the cost of employing another qualified person to do such work, but the salary portion shall not exceed the actual salary rate of the individual concerned. Distribution of profits shall not be included in the rate of compensation.

Enter in block 7 the categories of professional or technical personnel necessary to perform each major element of work under the contract scope of services. Estimate man-hours for each category and extend them by the wage rates to be paid during the actual performance of the work. Current rates, adjusted for projected increases, if any, should be used for the actual categories of labor contemplated. All projected increases should be supported by recent experience or established personnel policy.

Enter in the far right column the total estimated direct labor cost.

Supporting records to be maintained by the contractor and which must be submitted or made available to the grantee or EPA upon request include:

- The method of estimating proposed man-hours.
- The computation technique used in arriving at proposed labor rates.
- The specific documents, books, or other records used as factual source material to develop proposed man-hours and labor rates.
- Detailed rate computations which were used in computing the information submitted on the form.

If in block 14a, the contractor has checked "No," a brief narrative description of the methods used in arriving at items a through d above shall be included on an attached sheet.

Item 8 - Indirect Costs

Indirect costs may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. Neither is the use of any particular allocation base mandatory. However, it is mandatory that the method used results in an equitable allocation of indirect costs to the cost objectives which they support.

Normally, the firm's accounting system and estimating practices will determine the method used to allocate overhead costs. The firm's established practices, if in accord with generally accepted accounting principles and PROVIDED THEY PRODUCE EQUITABLE RESULTS IN THE CIRCUMSTANCES, will generally be accepted. Proposed overhead rates should represent the firm's best estimate of the rates to be experienced during the contract period. They should be based upon recent experience and be adjusted for known factors which will influence experienced trends.

Common overhead groupings are overhead on direct labor and general and administrative expenses. The first grouping usually includes employment taxes, fringe benefits, holidays, vacation, idle time, bonuses, etc., applicable to direct labor. The second generally includes the remaining costs which because of their incurrence for common or joint objectives are not readily subject to treatment as direct costs. It is expected, however, that proposal groupings will correspond with the firm's normal method of accumulating indirect costs. (Under some accounting systems, the first grouping would be included instead under item 7.) No special categorization is required provided the results are realistic and equitable.

Direct salaries are the normal distribution base for overhead costs, but in some circumstances other bases produce more equitable results. As in the case of overhead costs groupings, the method to be used will depend upon the firm's normal practices and the equity of the results produced in the circumstances.

In the case of multi-branch firms, joint ventures, or affiliates, it is expected that overhead costs applicable to the specific location(s) where work is to be performed will be proposed. Company-wide, joint venture, or affiliate rate averages may not be appropriate. The rates should be tailored to the work locations. The objective is to allocate overhead costs more precisely.

The rate proposed should be based on cost data from the most recent fiscal periods updated to reflect changes in volume of business or operations.

Enter in block 8 the indirect cost pools normally used by the firm for allocation of indirect costs. Enter the indirect cost rate for each pool and extend each one by the rate base to which it applies to arrive at the estimated indirect costs to be incurred during the actual performance of the work. If the direct labor total from block 7 is not used as the rate base for any of the indirect cost pools, the rate base used must be explained on an attached sheet.

A brief narrative statement outlining the firm's policies and practices for accumulating indirect costs and the method used to compute the proposed rate or rates shall accompany the form. Include comment on the firm's policies regarding the pricing and costing of principals' time. The normal accounting treatment of principals' salaries, the annual amounts, and the hourly charge rate, if used, should be discussed.

Enter in the far right column the total estimated indirect costs.

Supporting records to be maintained by the contractor and which must be submitted or made available to the grantee or EPA upon request include:

- a. Detailed cost data showing overhead accounts, allocation bases, and rate computations for the preceding fiscal period. If more than six months of the current fiscal period have elapsed, cost data for this period should be included as one of the three periods.
- b. Company budgets, budgetary cost data, and overhead rate computations for future period(s).

Item 9 – Other Direct Costs

The following items are illustrative of costs normally included in this category of costs:

- a. Travel costs, including transportation, lodging, subsistence, and incidental expenses incurred by personnel or consultants while in a travel status in connection with the performance of services required by the contract. The cost principles generally require the use of less than first class air accommodations and also limit the cost of private aircraft.
- b. Equipment, Materials, and Supplies
 - (1) Long distance telephone, telegraph, and cable expenses to be incurred in connection with the performance of services required in connection with the contract.
 - (2) Reproduction costs including blueprints, black and white prints, ozalid prints, photographs, photostats, negatives; and express charges.
 - (3) Commercial printing, binding, artwork, and models.
 - (4) Special equipment.
- c. Subcontracts.
- d. Other Direct costs, if any, not included above.

Enter in blocks 9a-d other direct costs proposed. Travel costs entered must be supported by an attachment which identifies the number of man-trips proposed and the estimated cost per man-trip for both local and long distance transportation. The number of days and the rate per day must be provided to support the per diem shown. Each subcontract and consultant agreement must be identified separately in block 9c. For each subcontract in excess of \$10,000, this EPA Form 5700-41 completed and certified by the subcontractor shall be appended.

Enter in the far right column on line 9e the total of all other direct costs (9a-d).

Supporting data to be maintained by the contractor and which must be submitted or made available to the grantee or EPA upon request include:

- a. basis for other direct costs proposed,
- b. factual sources of costs, rates, etc., used in computing the proposed amount of each cost element.

Item 10 – Total Estimated Cost

Enter the total of all direct labor, indirect costs, and other direct costs from items 7, 8, and 9.

Item 11 – Profit

A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit will be estimated as a dollar amount after considering:

- a. degree of risk,
- b. nature of the work to be performed,
- c. extent of firm's investment,
- d. subcontracting of work, and
- e. other criteria.

The Federal Procurement Regulations cost principles applicable to subagreements with profit-making organizations (41 CFR 1-15.2 and 1-15.4) disallow certain types of costs which are sometimes incurred by firms in the normal conduct of their business. Examples of costs which are not allowable under these cost principles include, but are not limited to, entertainment, interest on borrowed capital and bad debts. Because the Government considers "profit" to be the excess of price over allowable costs, such computation can indicate a higher profit estimate than the firm's experienced profit as it customarily computes it. The contractor may separately disclose to the grantee its customary computations.

Enter the dollar amount of profit in block 11.

Item 12 – Total Price

Enter the total of item 10 and item 11.

PART III - PRICE SUMMARY

This portion of the form is for use by a grantee when price comparison (i.e., price analysis) is utilized in subagreement review. It may also be used by a contractor when price comparison is used as a basis for award of a subcontract.

Item 13 – Competitor's Catalog Listings, In-House Estimates, Prior Quotes

Enter sources of all competitive bids or quotes received, or catalogs used and their prices, or in-house estimates made, if appropriate, for comparison. Attach additional sheets if necessary, particularly for purchases of several different items.

Enter in the far right column the proposed price for the subagreement.

PART IV - CERTIFICATIONS

Item 14 - Contractor - FOR USE BY CONTRACTOR OR
SUBCONTRACTOR ONLY

- a. Complete this block only if Part II has been completed.
- b. Complete this block only if Part II has been completed.

Enter the specific cost principles with which the cost summary of Part II conforms. Cost principles applicable to subagreements with various types or organizations are identified in 40 CFR 30.710. Cost principles applicable to subagreements with profit-making organizations are those at 41 CFR 1-15.2, and, for architect-engineer or construction contracts, 41 CFR 1-15.4.

- c. (1) Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).
- (2) Enter the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on complete, current and accurate data.
- (3) Enter the date of signature. This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to (not to exceed 30 days).

Item 15 - Grantee Reviewer - FOR USE BY GRANTEE ONLY

If required by applicable grant regulations, the grantee must submit the signed form for EPA review prior to execution of the subagreement.

Item 16 - EPA Reviewer - FOR USE BY EPA ONLY

ATTACHMENT NO. 5 TO CONTRACT DATED _____, 1977
BETWEEN THE ARKANSAS DEPARTMENT OF LOCAL SERVICES (ADLS) AND
THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
(ADPC&E)

Officer approval of the analysis is required prior to the execution of any negotiated subagreement in excess of \$100,000 by the grantee (in accordance with § 33.229).

(b) **Price analysis.** Price analysis is the process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis is used when the goods or services required lend themselves to price comparison and may be accomplished in various ways including the following:

(1) The comparison of the price quotations submitted;

(2) The comparison of prior quotations and contract prices with current quotations for the same or similar end items;

(3) The comparison of prices set forth in published price lists issued on a competitive basis, published market price commodities, and similar indices, together with discount or rebate arrangements;

(4) The comparison of proposed prices with estimates of cost independently developed by personnel within the activity; or

(5) The comparison of ratios (dollars per square foot, per hour, per drawing, and so forth) to highlight major deviations from past buys.

(c) **Cost analysis.** (1) In those cases where there is less than adequate price competition, such as in single source procurement or in procurements where technical competition is the principal selection factor, a detailed analysis of the selector's cost estimate and backup cost or pricing data is required as a substitute for price comparison.

(2) Cost analysis includes the appropriate verification of cost data, the evaluation of specific elements of costs, and the projection of these data to determine the effect on prices of such factors as:

(i) The necessity for certain costs;

(ii) The reasonableness of amounts estimated for the necessary costs;

(iii) Allowances for contingencies;

(iv) The basis used for allocation of overhead costs; and

(v) The appropriateness of allocations of particular overhead costs to the proposed contract.

(3) Appropriate consideration should be given to 49 CFR Part 30 Subpart F, which contains general cost principles and procedures for the determination and allowability of costs under grants.

(4) Among the evaluations that should be made where the necessary data are available are comparisons of a contractor's or offeror's current estimated costs with:

(i) Actual costs previously incurred by the contractor or offeror;

(ii) The contractor's or offeror's last prior cost estimate for the same or a similar item with a series of his prior estimates;

(iii) Current cost estimates from other possible sources; and

(iv) Prior estimates of historical costs of other contractors manufacturing the same or similar items.

(5) Forecasting future trends in costs from historical cost experience is of primary importance. An adequate cost analysis must include consideration of future trends in costs when reasonably determinable.

(6) In addition to the elements of cost, the amount of profit shall be set forth separately in the cost analysis.

§ 33.510-5 Profit.

It is the policy of EPA that profit—i.e., the net proceeds obtained by deducting all eligible elements of cost (direct and indirect) from the price—on a subagreement and each amendment to a subagreement under a grant be sufficient to attract contractors who possess talents and skills necessary to the accomplishment of project objectives, and to stimulate efficient and expeditious completion of the project. Where effective price competition is lacking, or where cost analysis is performed, the estimate of profit should be analyzed as are all other elements of price. The objective of negotiations shall be the exercise of sound business judgment including 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 example, the ratio of profit to cost should normally be less for amendments and change orders than for initial contract agreements.

§ 33.510-6 Negotiation.

(a) Written or oral interviews should be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered (except as provided in § 33.515(c) for architectural or engineering services).

(b) Each proposer with whom negotiations are conducted shall be given reasonable opportunity (with a common cut-off date) to support, clarify, correct, improve, or revise its proposal.

(c) Information shall not be conveyed to one or more proposers which would give them a competitive advantage.

§ 33.510-7 Award of contract.

(a) After the close of negotiations, the grantee shall award the contract to the proposer whose proposal offers the greatest advantage for the project—technical, economic and other factors considered.

(b) An unsuccessful offeror shall be notified at the earliest practicable time that its offer has not been selected for award.

(c) Upon written request of an unsuccessful offeror, the grantee shall disclose the reason(s) for rejection.

(d) The grantee must develop and retain adequate records of the basis for selection for negotiation and award.

(e) The grantee shall secure the written approval of the Project Officer of all subagreements in excess of \$100,000 and their cost analysis prior to execution of the subagreements.

§ 33.515 Procurement of architectural or engineering services.

(a) Architectural or engineering services are those professional services asso-

ciated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operation and maintenance manuals, and other related services.

(b) Candidates will be evaluated on the basis of competence and qualification for the type of service required.

(c) Not less than three candidates must be selected and ranked for negotiation of contracts, unless after good faith effort to solicit proposals in accordance with § 33.510-1 of this Part, three or fewer qualified candidates respond, in which case all qualified candidates must be selected and ranked for negotiation. The ranking should be accomplished by an objective process, such as the appointment of a board or committee which includes technical experts. Oral or written interviews should be conducted with proposers and information derived therefrom shall be treated on a confidential basis, except as required to be disclosed to EPA pursuant to § 33.510-4 (Cost and price considerations).

§ 33.520 Small purchases.

(a) 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.

(b) Small purchases shall be accomplished by negotiation, except when otherwise required by State or local law or where it is clearly in the best interest of the project to accomplish such purchases by more formal methods. Reasonable competition shall be obtained.

(c) 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 written quotations received, or references to printed price lists used, will suffice as the record supporting the price paid.

Subpart F—Required Provisions

§ 33.600 General.

Each subagreement in excess of \$10,000 must adequately define the scope of project work to be performed by the contractor for the grantee and must include adequate provisions to define a sound and complete agreement. All such

subagreements must include the applicable provisions set forth in §§ 33.625-1 through 33.625-10 and, in addition, contracts for construction of facility improvement must include the applicable provision of §§ 33.650-1 through 33.650-5.

§ 33.615 Required solicitation statement.

Bidding documents (invitations for bids), in the cases of formally advertised procurements, or requests for proposals, or negotiated procurements, must include the following statement:

Any contract or contracts awarded under this (invitation for bids or request for proposals) are expected to be funded in part by a grant from the United States Environmental Protection Agency. This procurement will be subject to regulations contained in 40 CFR Subchapter B, and particularly Part 33 thereof. Neither the United States nor the United States Environmental Protection Agency is, nor will be, a party to this (invitation for bids or request for proposals) or any resulting contract.

§ 33.625 Required subagreement provisions.

§ 33.625-1 Privity of contract.

Each subagreement in excess of \$10,000 must include the following or substantially similar provision:

This contract is funded in part by a grant from the U.S. Environmental Protection Agency. This contract is subject to regulations contained in 40 CFR Subchapter B and particularly Part 33 thereof. Neither the United States nor the U.S. Environmental Protection Agency is a party to this contract.

§ 33.625-2 Amendment.

Each subagreement in excess of \$10,000 must contain adequate provision for amendment of work within the scope of the contract by the grantee.

§ 33.625-3 Termination; suspension.

Each subagreement in excess of \$10,000 must contain adequate provisions for termination of all or any part of contract performance for default or for convenience by the grantee, or for suspension of all or any part of contract performance by agreement or by the grantee, including the manner by which the termination or suspension will be effected and the basis for settlement.

§ 33.625-4 Remedies.

Each subagreement in excess of \$10,000 must contain adequate contractual provisions or conditions to allow for administrative, contractual, or legal remedies in instances where grantees or contractors violate or breach contract terms or conditions, and must provide for such damages, sanctions and penalties as may be appropriate.

§ 33.625-5 Employment practices.

Each subagreement in excess of \$10,000 must contain a provision that the contractor shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under any project,

program, or activity receiving assistance from EPA, and that the contractor shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

§ 33.625-6 Patents; data; copyrights.

(a) Each subagreement in excess of \$10,000 shall contain a provision to the effect that the contractor is subject to the duties of the grantee relating to rights in data and copyrights contained in 40 CFR 30.530.

(b) Each subagreement in excess of \$10,000 involving experimental, developmental, research or demonstration work shall contain a provision to the effect that the contractor is subject to the duties of the grantee relating to rights to inventions and patents contained in 40 CFR 30.515.

§ 33.625-7 Notice and assistance regarding patent and copyright infringement.

Each subagreement in excess of \$10,000 must contain a clause substantially similar to that set forth in the grant agreement entitled "Notice and Assistance Regarding Patent and Copyright Infringement."

§ 33.625-8 Records.

Each subagreement in excess of \$10,000 must contain a provision requiring the contractor to maintain records of contract performance as defined in § 30.305 of this Subchapter, and make these records available for inspection, audit and copying by the grantee, EPA, the Comptroller General of the United States, the Department of Labor, or any authorized representative, to the extent and for the same length of time as is set forth with respect to grantee records in § 30.305 of this Subchapter.

§ 33.625-9 Access.

Each subagreement in excess of \$10,000 must contain a provision to ensure that the Project Officer and any authorized representative of EPA, the Comptroller General of the United States or the Department of Labor, shall at all reasonable times during the period of EPA grant support and until three years following final settlement have access to the facilities, premises and records (as defined in § 30.305) of the contractor related to the project. In addition, any person designated by the Project Officer shall have access, upon reasonable notice to the grantee by the Project Officer, to visit the facilities and premises related to the project.

§ 33.625-10 Executive Order 11738.

Each subagreement in excess of \$10,000 must contain a provision whereby the contractor or subcontractor agrees to comply with all applicable regulations issued pursuant to Sec. 205 of the Clean Air Act or sec. 503 of the Federal Water Pollution Control Act (See 40 CFR Part 15 and 40 CFR 30.420-3).

§ 33.625-11 Contingent fees.

Each subagreement in excess of \$10,000 shall contain a prohibition against contingent fees as follows:

The Contractor warrants that no person or company 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 bona fide employees; nor has the contractor paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee, any fee, commission, contribution, donation, percentage, gift, or any other consideration, contingent upon, or resulting from award of this contract. For any breach or violation of this provision, the Owner shall have the right to terminate this agreement without liability and, at his discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any other damages, and shall be responsible for reporting the details of such breach or violation to the proper legal authorities, where and when appropriate.

§ 33.650 Requirements applicable to construction.

Where the subagreement is for construction, or for facility improvement or repair, it must also contain the following provisions, as applicable.

§ 33.650-1 Bonding and insurance.

(a) For each such contract in excess of \$100,000, the contractor must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. (Each bidder for such contracts must furnish a bid guarantee equivalent to 5 percent of the bid price; see § 33.410-5.) Construction contracts of \$100,000 or less shall be subject to State, local, and customary requirements relating to bid guarantees and performance and payment bonds.

(b) Contractors should obtain such construction insurance (e.g., fire and extended coverage, workmen's compensation, public liability and property damage, and "all risk" builders' risk) as is customary and appropriate.

§ 33.650-2 Contract Work Hours and Safety Standards Act.

Where applicable, all contracts awarded by grantees and subcontracts awarded by contractors of grantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by the Department of Labor regulations (29 CFR Part 5). Under sec. 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked

in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

§ 33.650-3 Davis-Bacon and related statutes.

When required by the Federal grant program legislation, all construction contracts awarded by grantees and all subcontracts awarded by contractors of grantees in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a et seq., 276c), as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract must be conditioned upon acceptance of the wage determination. All suspected or reported violations must be reported to the grantee and to the EPA Project Officer.

§ 33.650-4 Copeland Act.

All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. All suspected or reported violations must be reported to the grantee and to the EPA Project Officer.

§ 33.650-5 Equal employment opportunity.

Each subagreement in excess of \$10,000 must include provisions in compliance with Executive Order No. 11246 as amended by Executive Order No. 11375 and regulations issued thereunder (40 CFR Part 3).

Subpart G—Protests Against Award

§ 33.700 Grantee responsibility.

The grantee is responsible for conducting project procurement in accordance with applicable requirements of

State, territorial, or local laws or ordinances, as well as the specific requirements of Federal law or this Part directly affecting the procurement, and for the initial resolution of complaints based upon alleged violations of these Federal requirements. If a written complaint is made to the EPA Project Officer concerning an alleged violation of Federal law or this Part concerning procurement by an EPA grantee, the complaint will be referred to the grantee for resolution. The grantee must promptly determine each such complaint upon its merits permitting the complaining party, as well as any other interested party who may be adversely affected, to state in writing or at a conference the basis for their views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties (by certified mail, return receipt requested), a written summary of its determination, substantiated by a legal opinion (and accompanied by an engineering report, where construction is involved), providing a justification for its determination. See § 33.710 for applicable time limitations.

§ 33.705 EPA responsibility.

A party adversely affected by an adverse determination of a grantee made pursuant to § 33.700 concerning an alleged violation of a specific requirement of Federal law or this Part directly affecting a grantee's procurement may request the individual designated by the Administrator as the EPA Protest Officer to review such adverse determination, subject to the time limitation set forth in § 33.710. A copy of the written adverse determination and supporting justification shall be transmitted to the Project Officer with the request for review, together with a statement of the specific reasons why the proposed grantee procurement action would violate Federal requirements. The EPA Protest Officer will afford both the grantee and the complaining party, as well as any other interested party who may be adversely affected, an opportunity to present the basis for their views in writing or at a conference, and he shall promptly state in writing the basis for his determination of the protest. If the grantee proposes to award a formally advertised contract or to approve award of a specified sub-item under such a contract to a bidder other than the apparent low bidder, the grantee will bear the burden of proving that its determination concerning responsiveness of the low bid is in accordance with Federal law and this Subchapter. If the basis for the grantee's determination is a finding that the low bidder is not responsible, the grantee must establish and substantiate the basis for its determination and must establish that such determination has been made in good faith. The written determination by the EPA Protest Officer shall be promptly furnished to the grantee and to the complainant and shall be final as to Agency action except with respect to appeal rights of the grantee under the disputes provision of

the grant (see Part 30, Subpart J of this Subchapter).

§ 33.710 Time limitations.

A written protest should be made pursuant to § 33.700 as early as possible during the procurement process. A protest against award of a contract by a grantee must be mailed (certified mail, return receipt requested) or delivered to the Project Officer as soon as possible, but in no event later than the fifth working day after receipt of notice of non-selection, or, if no notice is received, the fifth working day after the complainant first learns of the action it desires to protest. A protest against a post-award procurement action of a grantee must be mailed (certified mail, return receipt requested) or delivered to the Project Officer as soon as possible, but in no event later than the fifth working day after the procurement action is taken by the grantee or the fifth working day after the complainant first learns of the action it desires to protest, whichever occurs later. A request for review by the EPA Protest Officer pursuant to § 33.705 must be received by the Project Officer within five working days after the complaining party received the grantee's adverse determination.

§ 33.715 Deferral of procurement action.

Where the grantee has received a written complaint pursuant to § 33.700, it must defer the protested procurement action (for example, defer its issuance of solicitation, bid opening date, contract award or notice to proceed under the contract) for ten days after mailing or delivery of any written adverse determination. Where the Project Officer has received a written protest pursuant to § 33.705, he must notify the grantee promptly and the grantee must defer its protested procurement action until after it receives the determination by the EPA Protest Officer. If a determination is made by either the grantee or the EPA Protest Officer which is favorable to the complainant, the grantee's procurement action (for example, contract award) must be taken in accordance with such determination.

§ 33.720 Extensions of time.

The filing of a protest by a bidder shall constitute an extension of the period for acceptance of his bid and his bid bond(s), if any, until 10 working days after final determination of his protest. The grantee must seek to obtain similar extensions from other affected bidders.

§ 33.725 Enforcement.

Noncompliance with the provisions of this Subpart affecting procurement may result in (a) total or partial termination of the grant pursuant to § 30.515 of this Subchapter, (b) ineligibility for grant assistance which could otherwise be awarded under this Subchapter, or (c) disallowance of project costs incurred in violation of the provisions of this Subpart or applicable Federal laws, as determined by the Protest Officer. The

ATTACHMENT NO. 6 TO CONTRACT DATED _____, 1977
BETWEEN THE ARKANSAS DEPARTMENT OF LOCAL SERVICES (ADLS) AND
THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
(ADPC&E)

(g) Definitions pertaining to this section may be found in 40 CFR 3.102.

(h) The provisions of this section may be waived only by the Administrator or Deputy Administrator (1) upon a written determination of the General Counsel that the award or the administration of the project would not be likely to involve a violation of 18 U.S.C. 207 or other EPA regulations respecting conflicts of interest, 40 CFR Part 3, and (2) if the Administrator or Deputy Administrator determines that the best interests of the Government would be served by an award of the grant or subagreement or existing administration of the grant in view of the limited extent of the conflict of interest and the outstanding expertise of the former employee.

§ 30.420-5 Employment practices.

A grantee or a party to a subagreement shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under any project, program, or activity receiving assistance from EPA. Each grantee or party to a subagreement shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

§ 30.420-6 Conservation and efficient use of energy.

Grantees must participate in the National Energy Conservation Program by fostering, promoting, and achieving energy conservation in their grant programs. Grantees must utilize to the maximum practical extent the most energy-efficient equipment, materials, and construction and operating procedures available.

§ 30.425 Special conditions.

The grant agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project or of EPA objectives. However, special conditions inconsistent with the provision and intent of this Subchapter may not be utilized.

§ 30.430 Noncompliance.

In addition to such other remedies as may be provided by law, in the event of noncompliance with any grant condition or specific requirement of this Subchapter, (a) a grant may be terminated or annulled pursuant to § 30.920, (b) project work may be suspended pursuant to § 30.915, (c) payment otherwise due to the grantee of up to 10 percent of the grant amount may be withheld (see § 30.615-3), (d) the grantee may be found nonresponsible or ineligible for future Federal assistance, (e) an injunction may be entered or other equitable relief afforded on behalf of the United States by a court of appropriate jurisdiction, or (f) such other administrative or judicial action may be instituted as may be legally available and appropriate.

Subpart D—Patents, Data, and Copyrights

§ 30.500 General.

This subpart sets forth policy and procedure regarding patents, data, and copyrights under EPA grants or fellowships, and the grant clauses and regulations which define and implement that policy.

§ 30.502 Definitions.

Definitions applicable to this Subpart D, in addition to those in § 30.135, are set forth in Appendixes B and C to this Part.

§ 30.503 Required provision regarding patent and copyright infringement.

(a) The grantee shall report to the Project Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee shall furnish to the Government, when requested by the Project Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

(c) The grantee shall include in each subagreement (including any tier subagreement) in excess of \$10,000 a clause substantially similar to the foregoing provisions.

§ 30.510 Patents and inventions.

It is the policy of EPA to allocate rights to inventions that result from federally supported grants or fellowships in accordance with the guidance and criteria set forth in the Statement of Government Patent Policy by the President of the United States on August 23, 1971 (36 FR 16337), hereinafter referred to as "Statement." Section 1 of the Statement sets forth three major categories (1(a), 1(b), and 1(c)) of contract or grant objectives, and prescribes the manner for allocation of rights to inventions that result from a grant or contract which falls within the particular category.

(a) Under Section 1(a) of the Statement, the United States, at the time of grant award, normally acquires or reserves the right to acquire the principal or exclusive rights to any invention made under the grant or contract. Generally, this is implemented by the United States taking all domestic rights to such invention. However, section 1(a) permits the grantee in exceptional circumstances, to acquire greater rights than a nonexclusive license at the time of grant award where the Administrator certifies that such action will best serve the public interest. Section 1(a) also prescribes circumstances under which the grantee or contractor may acquire such greater rights after an invention is identified.

(b) Under section 1(b) of the Statement, the grantee normally acquires principal rights at the time of grant award.

(c) Section 1(c) applies to grants that are not covered by Section 1(a) or 1(b), and provides that allocation of rights is deferred until after inventions have been identified.

§ 30.515 Required patent provision.

Every EPA grant involving research, developmental, experimental, or demonstration work shall be deemed subject to Section 1(a) of the Statement and shall be subject to the patent provisions set forth in Appendix B to this Part. The requirement is not applicable to fellowships.

§ 30.520 Optional patent provision.

The following clause may be inserted as a special condition in the grant agreement when requested by an applicant or grantee:

Authorization and consent. The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this grant project or any part hereof or any amendment hereto or any subagreement hereunder (including any lower tier subcontract).

§ 30.525 Data and copyrights.

EPA's data policy is to expedite general utilization or further development of new or improved pollution prevention and abatement technology and procedures developed under EPA grants and fellowships. Therefore, it is most important that the results of EPA sponsored research include data that is sufficient to enable those skilled in the particular area to promptly utilize or further develop such technology and procedures. Availability of adequate data permits accurate assessment of the progress achieved under a grant or fellowship so that EPA priorities can be established. Access to data accumulated by the grantee shall be made available to the Project Officer on request.

§ 30.530 Required data and copyright provision.

Every EPA grant or fellowship shall be subject to the rights in data and copyrights provisions set forth in Appendix C to this Part.

§ 30.540 Deviations.

Any request for deviation from the patent provisions in Appendix B and from the rights in data and copyrights provisions in Appendix C to this Part must be submitted in writing pursuant to Subpart I of this Regulation. No deviation or waiver of patent or data rights shall be granted without the concurrence of the EPA Patent Counsel.

Subpart E—Administration and Performance of Grants

§ 30.600 General.

The grantee bears primary responsibility for the administration and success of the grant project, including any

campus or off-site location. A special indirect cost rate may be applied for a large nonrecurring project when such project costs would distort the normal direct cost base used in computing the overhead rate.

(b) *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of an indirect rate may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the indirect cost that may be incurred. Such amounts negotiated in lieu of an indirect rate will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted. This method may not be used for grants to profit-making institutions.

§ 30.720 Cost sharing.

(a) Except as may be otherwise provided by law or this Subchapter, EPA grantees must share project costs except in cases where such grantee institutions have no source of income other than Federal grants and contracts. If there is no statutory matching requirement, a grantee must contribute not less than 5% of allowable project costs within each budget period. Such contributions may be reflected in either direct or indirect costs; in-kind contributions are permitted.

(b) Cost sharing must be negotiated prior to award of a grant and must be set forth in the grant agreement as a percentage of the total allowable project costs for each budget period. Criteria to be used in the negotiation concerning the extent of cost sharing may include the benefits the grantee will derive from the project; the financial risk the grantee will bear; and the resources the grantee has available.

(c) Contributions to cost sharing are allowable only if they are verifiable from the grantee's records; not included as cost sharing or matching contributions for any other Federally-assisted program; otherwise properly allocable to the project; and constitute allowable project costs.

(d) Institutional cost sharing agreements are not permitted.

§ 30.725 Cost and price analysis.

§ 30.725-1 Policy.

The reasonableness of the price or cost of each grant application or negotiated subagreement proposal must be considered. The method and degree of analysis shall depend on the circumstances of the particular grant or subagreement action.

§ 30.725-2 Price analysis.

A price analysis is the process of examining and evaluating a prospective price by comparison without evaluation of the composition of separate cost elements and proposed profit.

§ 30.725-3 Cost analysis.

A cost analysis is the process of examining, verifying and evaluating cost data and the judgmental factors applied in projecting from the basic cost data to a reasonable estimated price that will be representative of the total cost of performance of the grant or negotiated subagreement.

§ 30.725-4 Requirements.

(a) A formal cost analysis shall be made and a summary of findings prepared for all research, demonstration, planning and training grant applications deemed relevant and requesting EPA funds in excess of \$100,000 for the budget period.

(b) A formal cost analysis shall be made and a summary of findings prepared for all grant applications from profit making organizations deemed relevant.

(c) Any other grant application or subagreement may receive a cost analysis where EPA's program office or grants administration office considers it appropriate.

(d) Price analysis techniques may be used instead of or to supplement cost analysis wherever appropriate.

Subpart G—Grantee Accountability

§ 30.800 Financial management.

The grantee is responsible for maintaining a financial management system which shall adequately provide for:

(a) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with EPA reporting requirements. Accounting for project funds will be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

(b) Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all project funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized projects.

(d) Comparison of actual with budgeted amounts for each grant. If appropriate and required by the grant agreement, relation of financial information with performance or productivity data, including the production of unit cost information.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury through his commercial bank as close as

possible to the time of making the disbursements.

(f) Procedures for determining the allowability and allocability of costs in accordance with the provisions of § 30.705.

(g) Accounting records which are supported by source documentation.

(h) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with the terms of the grant agreement. The grantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size and complexity of the activity.

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 30.805 Records.

The following record and audit policies are applicable to all EPA grants and to all subagreements in excess of \$10,000 under grants.

(a) The grantee shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (1) the amount, receipt, and disposition by the grantee of all assistance received for the project, including both Federal assistance and any matching share or cost sharing, and (2) the total costs of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the EPA grant has been awarded. In addition, contractors of grantees, including contractors for professional services, shall also maintain books, documents, papers, and records which are pertinent to a specific EPA grant award. The foregoing constitute "records" for the purposes of this subpart.

(b) The grantee's records and the records of his contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying, and audit by EPA, the Comptroller General of the United States, the Department of Labor, or any authorized representative.

(c) The grantee and contractors of grantees shall preserve and make their records available to EPA, the Comptroller General of the United States, Department of Labor, or any authorized representative (1) until expiration of 3 years from the date of final settlement, or, for grants which are awarded annually, from the date of the submission of the annual financial status report, and (2) for such longer period, if any, as is required by applicable statute or lawful requirement, or by paragraph (c) (2) (i) or (ii) of this section.

(d) If a 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.

(ii) Records which relate to (a) appeals under the Subpart J—Disputes, of this Part, (b) litigation on the settlement of claims arising out of the performance of the project for which a grant was awarded, or (c) costs and expenses of the project to which exception has been taken by EPA or any of its duly authorized representatives, shall be retained until any appeals, litigation, claims or exceptions have been finally resolved.

§ 30.810 Property.

Except as otherwise prescribed by statute or the grant agreement, §§ 30.810-1 through 30.810-9 prescribe policies and procedures governing management and ownership of real property and tangible personal property whose acquisition cost is borne in whole or in part by EPA as a direct cost under a grant. Grantees are authorized to use their own property management standards and procedures as long as the minimum standards of these sections are included.

§ 30.810-1 Definitions.

The following definitions apply for the purpose of §§ 30.810-1 through 30.810-9.

(a) *Acquisition cost of purchased nonexpendable personal property.* The net invoice price of the property including the cost of any attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as for taxes, duty, protective in-transit insurance, freight, or installation, shall be included in or excluded from acquisition cost in accordance with the grantee's regular accounting practices.

(b) *Real property.* Except as otherwise defined by State law, land or any interest therein including land improvements, structures, fixtures and appurtenances thereto, but excluding movable machinery and equipment.

(c) *Personal property.* Except as otherwise defined by State law, tangible property of any kind except real property.

(d) *Nonexpendable personal property.* Tangible personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all nonexpendable personal property as defined herein.

(e) *Expendable personal property.* Expendable personal property refers to all tangible personal property (including consumable materials) other than nonexpendable personal property.

§ 30.810-2 Purchase of property.

Expenditures of project funds for property may be allowed as direct costs only to the extent that such property is necessary for the approved project during the project period. Purchase orders for purchase of personal property are subagreements as defined in this Part.

§ 30.810-3 Property management standards.

The grantee's property management standards for nonexpendable personal property shall include as a minimum the following elements:

(a) Accurately maintained property records which include:

(1) A description of the property,
(2) Manufacturer's serial number, model number, or other identification number,

(3) Source of the property, including contract or grant number,

(4) Whether title vests in the grantee or the Federal Government,

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost,

(6) Location, use, and condition of the property,

(7) Ultimate disposition data, including sales price or the method used to determine current fair market value where a grantee compensates EPA for its share.

(b) A physical inventory of property that is taken, and the results reconciled with the property records, at least once every 2 years. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(c) A control system which insures adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the Project Officer.

(d) Adequate maintenance procedures which insure that the property is maintained in good condition and that instruments used for precision measurement are periodically calibrated.

(e) Proper sales procedures for unrecycled property which would provide for competition to the extent practicable and result in the highest possible return.

(f) Identification of property owned by the Federal Government to indicate Federal ownership.

§ 30.810-4 Title to property.

Except as may be otherwise provided by law or in this Subchapter or in the grant agreement, title to all real or personal property whose acquisition cost is a direct cost under a grant project shall vest in the grantee, subject to such interest in the United States as may be provided for in this Subchapter or in the grant agreement. For all property with an acquisition cost of \$1,000, the grantee shall assure that the interest of the United States in the property is adequately reflected and protected in compliance with all recordation or registration requirements of the Uniform Commercial Code or other applicable local laws.

§ 30.810-5 Real property.

(a) The grantee shall use the real property for the purpose of the original grant.

(b) The grantee shall obtain approval from EPA for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by EPA.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the grantee shall request disposition instructions from EPA.

(d) EPA shall observe the following rules in the disposition instructions for real property:

(1) In the case of real property furnished by EPA or purchased wholly with EPA funds, the grantee shall return all such real property to the control of EPA.

(2) In the case of real property purchased in part with EPA funds, the grantee, at the direction of the Project Officer, may:

(i) Retain title with Federal restrictions removed if it compensates the Federal Government an amount computed by applying the Federal percentage of participation in the net cost of the project to the current fair market value of the property, or

(ii) Sell the property under guidelines provided by EPA and pay the Federal Government an amount computed by applying the Federal percentage of participation in the net cost of the project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds), or

(iii) Transfer title of the property to the Federal Government with its consent provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the net cost of the project to the current fair market value of the property.

§ 30.810-6 Federally-owned nonexpendable personal property.

(a) Title to federally owned property (property to which the Federal Government retains title) remains vested by law in the Federal Government.

(b) Upon termination of the grant or need for the property, such property shall be reported to EPA for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of EPA review. Under no circumstances shall grantees sell Government-owned property.

§ 30.810-7 Nonexpendable personal property acquired with Federal funds.

(a) *Use.* When nonexpendable personal property is acquired by a grantee as a direct cost under a grant, the grantee shall retain the property in the grant program for its useful life or as long as there is a need for the property to accomplish the purpose of the grant program, whichever is shorter. Except as