



**UNITED STATES DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION**

**SUMMARY OF EDA CONSTRUCTION STANDARDS**

A REFERENCE TOOL FOR CONSTRUCTION INVESTMENTS  
MADE UNDER SECTIONS 201 OR 209 OF THE  
PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965,  
AS AMENDED (42 U.S.C. § 3121 *ET SEQ.*)

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## **I. PURPOSE AND SCOPE OF THIS SUMMARY**

### **A. PURPOSE**

1. This “*Summary of EDA Construction Standards*” (hereinafter referred to as “Summary”) describes the procedures for compliance, reporting, and record-keeping, and administrative requirements that apply to construction investments made by the Economic Development Administration (“EDA”) under sections 201 or 209 (42 U.S.C. §§ 3141 and 3149) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) (“PWEDA”).
2. *Terms and Conditions*. Form CD-450, “*Financial Assistance Award*,” (the “Award”), executed by EDA and the recipient, together with the EDA-approved project budget and scope of work, standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference, constitute the complete requirements, hereinafter referred to as the “Terms and Conditions,” applicable to the EDA investment. This Summary is designed to help clarify these requirements. In the event that any term or provision in this Summary conflicts with or is inconsistent with any provision contained in the Terms and Conditions, the provisions of the Terms and Conditions are controlling.

### **B. SCOPE**

1. This Summary applies to all Awards for construction projects and is based on the Office of Management and Budget’s (“OMB”) administrative and programmatic requirements for federal grants as set forth in applicable OMB Circulars, and in the following regulations published in the *Code of Federal Regulations* (“C.F.R.”):
  - (a) 13 C.F.R. chapter III (*Economic Development Administration, Department of Commerce*);
  - (b) 15 C.F.R. part 14 (*Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations*);
  - (c) 15 C.F.R. part 24 (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*);
  - (d) 2 C.F.R. part 220 (OMB Circular A-21, *Cost Principles for Educational Institutions*);
  - (e) 2 C.F.R. part 225 (OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*); and
  - (f) 2 C.F.R. part 230 (OMB Circular A-122, *Cost Principles for Nonprofit Organizations*), each as amended from time to time.
2. This Summary supplements the requirements set out in PWEDA, EDA’s regulations at 13 C.F.R. chapter III, the Terms and Conditions of the Award, and the applicable OMB Circulars listed in the Appendix to this Summary and the hyperlinks set out therein (*see* section IX.). This Summary should be used as a reference tool to implement various requirements that apply to EDA construction investments made under sections 201 or 209 of PWEDA (42 U.S.C. §§ 3141 and 3149). This Summary is not a comprehensive source of information. In addition to PWEDA, a list of primary sources of legal requirements is set out above in section I.B.1. *See also* section IX. (Appendix) of this Summary.

## **II. DEPARTMENT OF COMMERCE AND EDA POLICIES**

- A.** As a federal agency, EDA is obligated to promulgate regulations and establish policies and procedures applicable to recipients of EDA investments to:
1. Ensure compliance with applicable federal requirements;
  2. Safeguard the public's interest in the grant assets; and
  3. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.
- B.** EDA or the Department of Commerce (the "Department" or "Departmental") may issue changes from time to time to EDA's regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering this Award must have prior EDA written approval.
- C.** EDA's policy is to administer all Awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA may consider requests for variances to the procedures set out in this Summary if they do not conflict with applicable federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

## **III. REQUIREMENTS APPLICABLE TO EDA INVESTMENTS**

### **A. GRANT RECIPIENT AS TRUSTEE**

The recipient of an EDA investment holds grant funds and any EDA-funded project property in trust for the purpose(s) for which the Award was made. The recipient's obligation to the Federal government continues for the estimated useful life of the project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the "Federal Interest") in the property improved, in whole or in part, with the EDA investment. *See* 13 C.F.R. § 314.2.

If EDA determines that the recipient fails or has failed to meet this obligation, the agency may exercise any rights or remedies with respect to its Federal Interest in the project. However, EDA's forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

### **B. THE RECIPIENT'S RESPONSIBILITIES**

1. The recipient is responsible for complying with all federal laws (and the regulations issued thereunder), federal, Departmental and EDA policies, Executive Orders, and OMB Circulars, as referenced in the Terms and Conditions, each as may be amended from time to time. These statutes, regulations, policies, Executive Orders and OMB Circulars may include administrative and audit requirements, federal cost principles, programmatic requirements, financial requirements, and property management requirements. *See* 13 C.F.R. § 302.6. The recipient is responsible for the design, bidding, construction, and operation of the project to ensure compliance with all grant requirements, including those set out at 13 C.F.R. part 305.

2. In order to facilitate timely implementation, EDA may accept the recipient's certification, accompanied by evidence satisfactory to EDA, that it meets the requirements for receiving the Award and that it will comply with its Terms and Conditions. *See* 13 C.F.R. § 302.15. EDA also may require the recipient submit specific certifications for critical issues, such as major procurement and costs claimed in requests for disbursement of grant funds. EDA will monitor project progress and compliance with the Terms and Conditions through the:
  - (a) Recipient's written reports;
  - (b) Review of the recipient's records during EDA visits to the project site;
  - (c) Department's Office of Inspector General audits; and
  - (d) Single or program-specific audit conducted in accordance with OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," and the related *Compliance Supplement*. *See* section VIII.A. of this Summary.
3. During the construction period, the recipient is responsible for:
  - (a) Monitoring project progress and reporting progress to EDA;
  - (b) Providing for adequate construction inspection;
  - (c) Paying costs incurred for the project promptly; and
  - (d) Monitoring contractors' compliance with applicable local, State and federal requirements.
4. After construction is completed, the recipient is responsible for submitting close-out documentation and properly administering, operating and maintaining the project for its estimated useful life, as determined by EDA and as set forth in the Terms and Conditions. *See* 13 C.F.R. § 302.12.
5. Failure to satisfy any Term or Condition may result in disallowance of costs, or suspension or termination of the Award and recovery of grant funds. In addition, such failure may have a negative impact on the recipient's ability to receive future funding from the Department. *See* 13 C.F.R. § 302.18. In particular, the project development time schedule, a Term of the Award, can be extended only through the recipient's written request for an amendment to the Award and written approval by EDA. *See* 13 C.F.R. § 302.7. The Terms and Conditions of the Award place the recipient on notice that the grant may be suspended for not proceeding in accordance with the EDA-approved time schedule set out in the Award. No disbursement of EDA funds is permitted when a project has exceeded the EDA-approved time schedule, unless EDA has given written approval to a time schedule extension. *See* 13 C.F.R. § 305.9 regarding project phasing and investment disbursement.

### **C. EMINENT DOMAIN**

In making a discretionary award for a construction project, EDA considers the policy on eminent domain set out in Executive Order 13406, "*Protecting the Property Rights of the American People*." The Terms and Conditions of the Award include appropriate provisions to ensure that the recipient has agreed:

1. Not to use any power of eminent domain available to the recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;
2. Not to accept title to land, easements or other interests in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and

3. Any use of the power of eminent domain to acquire land, easements, or other interests in land, whether by the recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of EDA is an unauthorized use of the project. If the recipient puts the project to an unauthorized use, the recipient will be required to compensate EDA for its fair share in accord with 13 C.F.R. §§ 314.4 and 314.5, and 15 C.F.R. §§ 14.32 or 24.31, as applicable.

#### **D. RECORD-KEEPING REQUIREMENTS**

The recipient is responsible for maintaining records that document compliance with the Terms and Conditions of the Award. At a minimum, the recipient's records must contain documentation that fully discloses:

1. The amount and disposition of the EDA investment assistance;
2. All project expenditures and procurement actions;
3. The total cost of the project that the Award funds;
4. The amount and nature of the portion of project costs provided by non-EDA sources;
5. Contractor compliance with applicable federal requirements; and
6. Such other records as EDA determines will facilitate an effective audit.

The recipient is responsible for retaining records for the time frame specified in the Terms and Conditions. *See* 13 C.F.R. § 302.14. *See also* 15 C.F.R. §§ 14.50-14.53 or §§ 24.40-24.42, as applicable.

#### **E. THE FINANCIAL ASSISTANCE AWARD**

The recipient should pay particular attention to the following provisions of the Award:

1. *Description of Project.* The description of the project in the Award, together with more detailed information provided in the Award application, determines and defines the scope(s) of work to be funded under the Award.
2. *Federal Requirements.* The listed federal requirements describe applicable administrative or programmatic obligations for which the recipient is responsible. Critical documents are listed in section IX. (Appendix) of this Summary. These publications provide important information on requirements regarding procurement, record-keeping, eligible project costs and other administrative or programmatic issues.
3. *Standard Terms and Conditions.* The standard terms and conditions are applicable to all EDA-assisted construction projects.
4. *Special Award Conditions.* The special award conditions may contain conditions that must be satisfied prior to advertisement for bids, start of construction, or disbursement of Award funds, as well as conditions unique to the Award that are ongoing for the estimated useful life of the project.

#### **F. MONITORING AND REPORTING PROJECT PROGRESS**

Events may occur that have significant impact upon the project, including delays or adverse conditions which may materially affect the ability of the recipient to attain project objectives within established time periods or meet the project development time schedule. The recipient must disclose such problems to EDA in the most expedient way possible and then, if initial notification was not made in writing, report the event in writing, including a statement of the action contemplated, and any federal assistance needed to resolve the situation. *See* 15 C.F.R. §§ 14.51 or 24.40, as applicable. Any changes made to the project without

EDA's prior approval are made at the recipient's risk of non-payment of costs, suspension, termination or other applicable EDA action. *See* 13 C.F.R. § 302.7.

#### **IV. PRE-CONSTRUCTION REQUIREMENTS**

##### **A. ENVIRONMENTAL COMPLIANCE**

EDA undertakes environmental reviews of projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 *et seq.*, as implemented under 40 C.F.R. chapter V) ("NEPA"), and all other federal environmental statutes, regulations and Executive Orders, as listed in the Terms and Conditions of the Award. These authorities include the implementing regulations of NEPA, which require EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 C.F.R. § 1506.6(b). The recipient must pay special attention to and comply with any special environmental conditions in the Award. *See* 13 C.F.R. § 302.1.

##### **B. CIVIL RIGHTS COMPLIANCE**

In accordance with the following authorities, discrimination is prohibited by a recipient or "Other Party" (as defined in 15 C.F.R. § 8.3(l) and 13 C.F.R. § 302.20(b)) with respect to a project receiving EDA investment assistance under PWEDA:

1. Title VI of the Civil Rights Act of 1964, as amended (Pub. L. No. 88-352, 42 U.S.C. § 2000d *et seq.*), and the Department's implementing regulations at 15 C.F.R. part 8;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) prohibiting discrimination on the basis of sex under federally-assisted education programs or activities;
3. Pub. L. No. 92-65, 42 U.S.C. § 3123 (proscribing discrimination on the basis of sex in EDA assistance provided under PWEDA) and Pub. L. No. 94-369, 42 U.S.C. § 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations at 15 C.F.R. §§ 8.7-8.15;
4. Section 504 of the Rehabilitation Act of 1973, as amended (Pub. L. No. 93-112, 29 U.S.C. § 794), and the Department's implementing regulations at 15 C.F.R. part 8b;
5. The Age Discrimination Act of 1975, as amended (Title III of Pub. L. No. 94-135, 42 U.S.C. § 6101 *et seq.*), and the Department's implementing regulations found at 15 C.F.R. part 20;
6. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and
7. Other federal statutes, regulations and Executive Orders, as applicable. *See generally* 13 C.F.R. § 302.20.

Consistent with 15 C.F.R. §§ 14.44(b) or 24.36(e), as applicable, the recipient and any sub-recipient will take all necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

## **C. START OF CONSTRUCTION**

1. *Early construction starts.* The recipient must make a written request to EDA for early construction start permission. In order for project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the project facilities is in compliance with the Terms and Conditions. If construction commences prior to EDA's determination, the recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 C.F.R. § 305.11.
2. *Delayed construction starts.* The following requirement is applicable to all EDA-assisted construction projects: If significant construction (as determined by EDA) is not commenced within two years of the approval of the project or by the date estimated for start of construction in the grant Award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA grant will be automatically suspended and may be terminated if EDA determines, after consultation with the recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. *See also* sections VII.B. and F. of this Summary.

## **D. PROJECT MANAGEMENT CONFERENCE**

1. Shortly after approval of the Award, EDA may contact the recipient to arrange a project management conference. The purpose of the project management conference is to explain to the recipient its post-approval responsibilities for administration of the Award and applicable federal requirements.
2. Whenever practicable, the project management conference should be held when and where appropriate EDA regional office personnel will be available. The recipient's authorized representative, architect/engineer, attorney and possibly the recipient's financial representative should attend.

## **E. ARCHITECT/ENGINEER SERVICES**

1. The architect/engineer agreement shall provide for all services required by the recipient for the design and engineering phases of the project. Appropriate standards or guidance developed by professional organizations, such as the American Consulting Engineers Council ("ACEC"), American Society of Civil Engineers ("ASCE"), National Society of Professional Engineers ("NSPE"), or the American Institute of Architects ("AIA"), may be used where the recipient does not have standard procurement or contracting documents.
2. The architect/engineer agreement shall cover all services necessary for the successful execution of the project including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram ("CPM/PERT") where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site to ensure that the work proceeds in accordance with the approved plans and specifications.
3. The recipient must select the architect/engineer in accordance with the procurement standards set forth in 15 C.F.R. parts 14 or 24, as applicable. Unless EDA has approved a different type of award, the compensation to the architect/engineer for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on

EDA's determination (subject to audit) that the compensation is reasonable. The "cost-plus-a-percentage-of-cost" and "percentage of construction cost" methods of contracting are specifically prohibited. See 15 C.F.R. §§ 14.44(c) or 24.36(f)(4), as applicable.

4. All architect/engineer contracts awarded by recipients shall include a provision to the effect that the recipient, EDA, the Comptroller General of the United States, the Departmental Inspector General, or any of their duly authorized representatives, shall have access to any paper or electronic documents, books, correspondence, and records of the architect/engineer (which are pertinent to the Award) to verify the recipient's compliance with Award requirements. See 13 C.F.R. § 302.14.
5. The recipient must require the architect/engineer to maintain all records for at least three (3) years after the recipient makes final payment and all pending matters are closed. See 15 C.F.R. §§ 14.53(b) or 24.36(i)(11), as applicable.

#### **F. SERVICES PERFORMED BY RECIPIENT'S OWN FORCES**

The recipient may have a portion or all of the design, construction, inspection, legal services, or other work or services in connection with the project performed by personnel who are employed by the recipient either full-time or part-time ("force account construction"). See 13 C.F.R. § 305.7.

EDA may approve the use of "force account construction" subject to the following conditions:

1. The services are routinely performed by the recipient for all construction projects performed by the recipient;
2. The recipient has a special skill required for the construction of the project;
3. The recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the region; or
4. The recipient demonstrates substantial cost savings.

"Force account construction" may be considered an eligible cost for EDA reimbursement if the work or services performed are in conformance with OMB Circulars A-122 ("*Cost Principles for Nonprofit Organizations*"), A-21 ("*Cost Principles for Educational Institutions*"), or A-87 ("*Cost Principles for State, Local and Indian Tribal Governments*"), as applicable. See 2 C.F.R. parts 230, 220, or 225, as applicable.

#### **G. TRIBAL EMPLOYMENT RIGHTS ORDINANCES**

In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference(s) in contracting, hiring, and firing and the payment of a TERO fee generally are allowable provisions under federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

## **H. LAND, EASEMENTS AND RIGHTS OF WAY**

1. Except as provided in 13 C.F.R. § 314.6(b) or as otherwise authorized by EDA, recipient-owned property acquired or improved in whole or in part with investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered.
2. The recipient must disclose to EDA all encumbrances. EDA will not accept any encumbrance that interferes with the construction, intended use, operation or maintenance of the project during its estimated useful life. *See* 13 C.F.R. § 314.7. Prior to the advertisement of bids or at such other time as EDA requires, the recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property needed for the project is vested in the recipient and that it has obtained any rights-of-way, easements, State or local government permits, long-term leases or other property interests required for the project.

## **I. RELOCATION ASSISTANCE**

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. No. 91-646, 42 U.S.C. § 4601 *et seq.*) (the “Uniform Act”), apply to all recipients of EDA investment assistance.

The Uniform Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with federal assistance funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of the Uniform Act and to provide evidence of such compliance if requested. *See* 13 C.F.R. § 302.5.

## **J. EDA REVIEW OF PLANS AND SPECIFICATIONS**

1. The recipient (with the assistance of its architect/engineer) is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, compliance with local building codes or ordinances, and is expected to use the “*EDA Contracting Provisions for Construction Projects*,” which provides a list of applicable EDA and other federal requirements as guidance in developing all construction contracts.
2. Plans, specifications, and related documents must be submitted for EDA review and concurrence prior to advertising for bids. EDA’s review is to ensure compliance with the Terms and Conditions of the Award and does not attest to the accuracy of design, dimensions, details, proper selection of materials, nor compliance with local building codes or ordinances. This responsibility rests with the recipient.

EDA’s review is intended to confirm that:

- (a) The project as designed complies with the scope of work as described in the project application and in the Award;
- (b) Deductive alternates, if used, are taken in a specific order as shown in the bid documents;
- (c) Any non-EDA funded work, if included, is identified so separate project progress and separate project costs can be determined; and
- (d) The EDA project number and applicable EDA participation appears on the cover of all contract drawings and on the face sheet of the specification document(s).

3. EDA also will review for acceptability after advertising but before award of the contract if:
  - (a) The procurement is expected to exceed the simplified acquisition threshold (currently set at \$100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation;
  - (b) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;
  - (c) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold;
  - (d) The recipient's procurement procedures or operations fail to comply with the procurement standards set out in the Award; or
  - (e) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "name brand" product.
4. Until EDA has reviewed and concurred with the recipient's proposed contracts and related documents and determined they comply with the Terms and Conditions, the recipient will be proceeding at its own risk regarding the eligibility of any costs incurred. *See* 13 C.F.R. § 305.11.

#### **K. NON-EDA WORK**

If the recipient plans to include both EDA-funded and non-EDA-funded work in a single contract, the following requirements apply:

1. The plans and specifications must clearly define and separate costs included in the EDA project scope of work from other costs;
2. The recipient may offer for bid and award work in addition to the EDA project, *provided* the:
  - (a) recipient understands that EDA will participate only in the EDA-approved project; and
  - (b) additional work does not adversely affect the original intent or economic impact of the EDA-approved project;
3. Plans and specifications must be drawn so that the EDA project is clearly identifiable at all times during construction; and
4. Bid underruns cannot be applied to fund work that is not a part of the EDA project. It is the responsibility of the recipient to pay in full for all additional work beyond the scope of the EDA project. *See* 13 C.F.R. § 305.10.

Where a proposed contract includes EDA-funded and non-EDA-funded scope(s) of work, the contract will normally be awarded to the lowest bidder on all the work. EDA's participation will be determined based on the bid price for the lowest qualified bid for the EDA-funded scope of work. The recipient must include pertinent information with the contract award documentation prior to submitting it for EDA concurrence.

#### **L. ALTERNATE CONSTRUCTION PROCUREMENT METHODS**

1. Recipients may use alternate construction procurement methods to the traditional design/bid/build procedure (including lump sum or unit price-type construction contracts). These methods include but are not limited to construction management at-risk

and force account. If an alternate method is used, the recipient shall submit to EDA for approval a construction services procurement plan and the recipient must use a design professional to oversee the process. *See* 13 C.F.R. § 305.6.

2. If the recipient elects to use the force account method, EDA will furnish specific guidance to the recipient to determine if the cost for such work is eligible for EDA reimbursement. *See* section IV.F. of this Summary.

## **M. OVERRUN AT THE BID OPENING**

If there is an overrun at bid opening, the recipient may:

1. Take deductive alternatives to eliminate certain project elements in case of insufficient funds – if provided for in the bid documents – in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), results in a price within the budget for that item of work. It should be noted that the use of deductive alternates may result in a new low bidder. Therefore, care must be taken that the above procedure is followed exactly when deductive alternates are used to determine the lowest bid within the funds available.
2. Reject all bids and re-advertise. There should be a rational basis for believing that re-advertising will result in a lower bid (i.e., the recipient will have the project redesigned or there will be wider advertising).
3. Augment the recipient's share by an amount sufficient to cover the excess cost. If the recipient intends to finance the overrun from its own funds, it must furnish a letter to EDA identifying the source of the additional funds. The funds must be from an acceptable source and cannot include conditions that may negatively affect the project.
4. Request additional EDA financial assistance as a last resort. EDA may not approve the request for additional funds, which may require the termination of the project. *See* sections VII.C. and D. of this Summary.

## **N. PROTEST PROCEDURES**

No protest or complaint regarding a contractor selection action shall be accepted by EDA until all administrative remedies at the recipient level have been exhausted. EDA's review will be limited in accordance with the regulations set out at 15 C.F.R. §§ 14.41 or 24.36(11) and (12), as applicable.

## **V. REQUIREMENTS DURING CONSTRUCTION**

### **A. THE RECIPIENT'S RESPONSIBILITIES**

1. *General.* The recipient (with the assistance of the architect/engineer) is responsible for (a) ensuring project completion in accordance with approved plans and specifications; (b) monitoring project progress; (c) keeping EDA advised of project progress; (d) providing for adequate construction inspection; (e) paying costs incurred for the project promptly; and (f) monitoring the contractors' compliance with local, State and federal requirements. *See also* section III.B. of this Summary.
2. *EDA construction sign.* The recipient is responsible for constructing, erecting and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the project site indicating that the Federal government is participating in the project. EDA may require more than one sign if site conditions so

warrant. The EDA regional office will provide specifications for the sign. If the EDA-recommended sign specifications conflict with State or local law, the recipient may modify such recommended specifications so as to comply with the State or local law. *See* 13 C.F.R. § 305.12.

3. *Inspection of construction.* The recipient must provide competent project inspection during the construction period. The inspector may be an employee of the recipient, an employee of the architect/engineer, or a person(s) under contract with the recipient. EDA must review and concur with the extent of the inspection and the selection of the inspector.
4. *Occupancy prior to completion.* If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the recipient must:
  - (a) follow the requirements of local or State law;
  - (b) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;
  - (c) secure the written consent of the contractor;
  - (d) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and
  - (e) secure permanent fire and extended coverage insurance and, where applicable, grant the contractor a permit to complete construction. *See* 13 C.F.R. § 305.14.
5. *Labor standards.* All contractors on EDA-assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by U.S. Department of Labor's regulations (29 C.F.R. part 5). The recipient or its architect/engineer should periodically check the contractor's compliance. The recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA-assisted project.
6. *Inspection for final acceptance.* The recipient will schedule a final inspection when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed. Representatives of the recipient, the architect/engineer and the contractor(s) will make the final inspection. EDA must be notified in advance of the final inspection so that an EDA representative also may have the opportunity to participate.
7. *Contractor payrolls.* The recipient must require each contractor and subcontractor to maintain weekly payroll records. EDA may require that copies of payroll records be furnished to the applicable regional office.
8. *Equal employment opportunities.* The regulations at 41 C.F.R. § 60-1.7 issued pursuant to Executive Order 11246, "*Equal Employment Opportunity*", as amended, require all "prime contractors" and "subcontractors," as those terms are defined in 41 C.F.R. § 60-1.3, to submit compliance reports regarding equal employment opportunities. The purpose of the regulations at 41 C.F.R. part 60-1 is to achieve the aims of parts II, III and IV of Executive Order 11246, as amended, for promoting and ensuring equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Federal government contractors or with contractors performing under federally-assisted construction contracts.

## **B. CONTRACT CHANGE ORDERS**

1. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. *See* 13 C.F.R. § 305.13.
2. The work on the project may continue pending EDA review and concurrence with the change order but the recipient should be aware that all such work is at the recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.
3. The recipient (or its architect/engineer) shall perform a cost or price analysis in connection with every change order that affects the contract price. Generally, change orders should be submitted to EDA for review and concurrence as such changes occur. The recipient will prepare proposed contract change orders in sufficient quantity so that one (1) copy can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications and plans should be attached. Before submission to the EDA regional office, the change order must be signed by the recipient, the architect/engineer and the contractor. The recipient will be notified in writing of EDA's concurrence if the change order is acceptable to EDA.
4. EDA will not allow changes to the authorized purpose and intent of the project. Change orders that add minimally or incidentally to the cost of the project but do not alter the project scope may be allowed by EDA, *provided*, that either:
  - (a) The recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or
  - (b) There are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.
5. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA-approved project budget. EDA will concur with a change order if the work in the change order is within the project scope and is necessary for the proper implementation of the project.
6. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract. A change order also may be required at project completion to establish final quantities for unit price contracts.

## **C. SPECIFIC REQUIREMENTS FOR SUBCONTRACTORS**

1. The recipient is responsible for ensuring that the contractor causes applicable provisions to be inserted in all subcontracts to bind subcontractors to EDA and Departmental

requirements as contained in the Terms and Conditions of the Award and in 15 C.F.R. parts 14 or 24, as appropriate.

2. Each subcontractor must agree to comply with all applicable federal, State, and local requirements.
3. As required by 15 C.F.R. §§ 14.44(d) and 24.35, as appropriate, the recipient (or sub-recipient) must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, “*Debarment and Suspension.*” The recipient may access the *Excluded Parties List System* (“EPLS”), maintained by the General Services Administration, at [www.epls.gov/](http://www.epls.gov/). See also 2 C.F.R. part 1326.
4. The Terms and Conditions of the Award may impose additional requirements, which the recipient will be required to have the prime contractor impose on any subcontractor(s).

#### **D. CONTRACTING STANDARDS**

1. *States.* If a State is the recipient of EDA investment assistance, the State will follow the same policies and procedures it uses for procurements from its non-federal funds, *provided* those policies and procedures conform to applicable federal law and standards found in 15 C.F.R. § 24.36. The State must ensure that every purchase order or other contract includes clauses required by federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A-87, “*Cost Principles for State, Local, and Indian Tribal Governments,*” is applicable. See 2 C.F.R. part 225.
2. *Recipients other than States.* Consistent with the requirements of 15 C.F.R. §§ 14.40 or 24.36, as applicable, a recipient of EDA investment assistance other than a State will use its own procurement procedures which reflect applicable State and local laws and regulations; provided that the procedures conform to applicable federal law and the standards identified in 15 C.F.R. §§ 14.40-14.48 or 24.36(b) – (i), as applicable. A State or local government or Indian tribal government recipient may request EDA to review its procurement system to determine whether its system meets these standards. See 15 C.F.R. § 24.36(g)(3)(i).

Additionally, the recipient or sub-recipient may self-certify its procurement system. Under a self-certification procedure, EDA may rely on written assurances from the recipient or sub-recipient that it is complying with the standards in 15 C.F.R. § 24.36(b) – (i). The recipient or sub-recipient must cite specific procedures, regulations, and standards as being in compliance with 15 C.F.R. § 24.36(b) – (i), and have its system available for EDA to review. In the absence of written procurement procedures and policies provided by the recipient that meet EDA and other federal requirements, applicable federal procurement standards will govern the project. For reimbursable cost determinations, OMB Circulars A-122, *Cost Principles for Nonprofit Organizations*, or A-21, *Cost Principles for Educational Institutions*, are applicable as appropriate. See 2 C.F.R. parts 220 and 230. See also section IV.G. for special provisions applicable to certain Indian tribal recipients.

3. *Standards of conduct.* Recipients shall maintain a written code of conduct, which shall govern the actions of any Interested Party (as defined in 13 C.F.R. § 300.3) engaged in the award and administration of contracts supported by EDA funds. No Interested Party shall participate in selection or in the award or administration of a contract supported by

EDA funds if a conflict of interest, real or apparent, is or could be involved. A conflict may arise when any Interested Party has a financial or personal interest in the firms selected for award. A conflict also may exist where there is an appearance that an Interested Party's objectivity in performing his or her duties is impaired. See 13 C.F.R. § 302.17.

4. *Awards to responsible contractors.* Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.
5. *Maintenance of records.* Recipients will maintain records sufficient to detail the history of each procurement transaction related to the EDA project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for concluding the contract price.
6. *Settlement of issues.* Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues (e.g., source evaluation, protests, disputes and claims) arising out of procurements. EDA will not substitute its judgment for that of the recipient unless the matter, as determined in EDA's sole discretion, primarily involves a federal issue.
7. *Wage rate requirements.* Wage rates paid for labor must not be less than the prevailing area wages, as determined by the U.S. Secretary of Labor and must be embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 276a *et seq.*). See also section IX. (Appendix) of this Summary.

## **E. COMPETITIVE PROCUREMENT REQUIREMENTS**

1. *General.* All procurement transactions in relation to the EDA project must be conducted in a manner providing full and open competition consistent with applicable federal requirements. See 15 C.F.R. parts 14 or 24, as applicable.
2. *Geographic preferences.* Recipients must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this guidance preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms (given the nature and size of the project) to compete for the contract.
3. *Written selection procedures.* Recipients must have written selection procedures for procurement actions. These procedures must ensure that all solicitations:
  - (a) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such descriptions shall not contain language that unduly restricts competition. The description may include a statement of the qualitative nature of the material, product or service, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate

description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of the material, product or service. The specific features of a name brand which must be met by offerors must be clearly stated; and

- (b) Identify all requirements which offerors must fulfill and all factors to be used in evaluating bids or proposals.

4. *Bids submitted for alternative materials.*

- (a) Should the recipient, acting upon the advice of his/her consultant architect/engineer, desire to obtain competitive prices for differing materials, such bids should be requested on the basis of “alternate bids.” As used herein, this term refers to the method used to obtain bids on more than one material to be used for the same purpose. For example, for 2,000 linear feet of sewer line, Bid A might call for the pipe material to be cast iron. Bid B might call for the pipe material to be ductile iron. Bid C might call for the material to be asbestos cement.
- (b) If bids are asked for on the basis of two or more alternate bids, the bid documents must clearly state that the contract will be awarded to the bidder having the lowest responsible bid price based upon the availability of funds.
- (c) If the recipient wishes to use a material that will result in increased cost, EDA may permit the use of such material, but the amount of EDA’s participation in the project must remain based on the lowest bid from a responsible bidder.

5. *Allowable methods of procurement and related requirements.*

- (a) *Procurement by sealed bids (formal advertising).* Bids are to be publicly solicited and a firm fixed-price contract (lump sum or unit price) is to be awarded to the bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction services. The following requirements apply to sealed bids:
  - (i) The invitation for bids is publicly advertised and solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids;
  - (ii) The invitation for bids includes applicable specifications and pertinent attachments and adequately defines the items or services, in order for the bidder to properly respond;
  - (iii) All bids are publicly opened at the time and place prescribed in the invitation for bids;
  - (iv) A firm fixed-price contract award will be made in writing to the lowest responsive responsible bidder; and
  - (v) Any or all bids may be rejected if there is a sound and properly documented reason. *See* 15 C.F.R. § 24.36(d)(2).

The advertising process for inviting bids should be in compliance with applicable State or local requirements where the project will be constructed. In the absence of State or local requirements, the advertisement should appear in publications of general circulation a minimum of four (4) times within a 30-day period prior to the opening of bids. Generally, a minimum of thirty (30) days should be allowed for submission of bids.

- (b) *Procurement by competitive proposals.* Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. This method generally is used when conditions are not appropriate for the use of sealed bids. The following requirements apply to competitive proposals:
- (i) Requests for proposals are publicized and identify all evaluation factors; any response to a request for proposals must be considered to the maximum extent practical;
  - (ii) Proposals are solicited from an adequate number of qualified sources (generally, EDA requires responses from at least three responsible firms);
  - (iii) Recipients have a method for conducting technical evaluations of the proposals received and for selecting awardees;
  - (iv) Awards are made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered, as appropriate; and
  - (v) Recipients may use competitive proposal procedures for qualification-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not a selection factor, can be used only for procuring architectural/engineering professional services. *See 15 C.F.R. § 24.36(d)(3).*
- (c) *Procurement by noncompetitive proposals.* This technique requires EDA's prior written concurrence and is conducted by solicitation of a proposal from only one source. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and when one of the following circumstances applies:
- (i) The item is available only from a single source;
  - (ii) The public exigency or emergency will not permit a delay resulting from competitive solicitation; or
  - (iii) After soliciting a number of sources, competition is determined inadequate. *See 15 C.F.R. § 24.36(d)(4).*
- (d) *Contract cost analysis.*
- (i) The recipient must perform a cost or price analysis in connection with every procurement action, including contract modifications. *See 15 C.F.R. § 24.36(f).*
  - (ii) Costs based on estimated costs for contracts under grants will be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (*see section VI.A.3. of this Summary*). The recipient may reference its own cost principles that comply with applicable federal cost principles.
- (e) *Bonding and insurance requirements.* For construction or facility improvement contracts or for subcontracts exceeding \$100,000, the following minimum requirements apply:
- (i) The bonding company selected must be listed in the U.S. Treasury Department's Circular 570, "*Companies Holding Certificates of Authority*

*as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”*

- (ii) A bid guarantee must be obtained from each bidder equivalent to five (5) percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of the bid execute such contractual documents as may be required.
- (iii) A performance bond must be required from the contractor for one hundred (100) percent of the contract price.
- (iv) A payment bond must be required from the contractor for one hundred (100) percent of the contract provisions.

The recipient shall require each construction contractor and all subcontractors to maintain, during the life of its contract, Workmen’s Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by applicable State or local law. Where appropriate, the recipient shall require the prime contractor to provide Builder’s Risk Insurance as part of the construction contract. In all cases, the recipient is responsible for seeing that coverage is obtained and kept in force. When obtained by the recipient directly, such coverage is an eligible project cost.

## **VI. DISBURSEMENT OF GRANT FUNDS AND FINANCIAL ADMINISTRATION**

### **A. PRE-DISBURSEMENT REQUIREMENTS**

1. *General.* Eligible cost reimbursement is EDA’s preferred method of grant disbursement. Disbursements of grant funds must be made by electronic transfer based on the recipient’s actual rate of expenditure. EDA will make disbursements based on the percentage of EDA participation, but in no event for more than the total sum stated in the Award. The initial disbursement will be made only after the following conditions have been met:
  - (a) EDA determines that the recipient has satisfied all applicable Terms and Conditions of the Award (*see* 13 C.F.R. § 305.9(b));
  - (b) The recipient has requested disbursement by submitting Form SF-271, “*Outlay Report and Request for Reimbursement for Construction Programs*” (OMB Control No. 0348-0002), for incurred costs that are itemized and eligible;
  - (c) The recipient certifies that its proportionate share of funds (including overruns) is on deposit; and
  - (d) The recipient meets such other requirements as EDA may establish.

Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds (*see* paragraph A.2. below) before requesting additional grant disbursements.

2. *Interest earned on advances.* Under OMB Circular A-102, recipients and sub-recipients may retain \$100 per year of interest earned on federal advances for administrative expenses. Under OMB Circular A-110, recipients may retain interest amounts up to \$250 per year for administrative expenses. While these are general provisions regarding interest earned on grant funds, *see* 15 C.F.R. §§ 14.22(l) or 24.21(i), as applicable, for specific requirements.

3. *Allowable costs.* EDA allowable costs are determined by reference to the following OMB Circulars: Circular A-122 titled “*Cost Principles for Nonprofit Organizations*” (2 C.F.R. part 230); Circular A-21 titled “*Cost Principles for Educational Institutions*” (2 C.F.R. part 220); and Circular A-87 titled “*Cost Principles for State, Local and Indian Tribal Governments*” (2 C.F.R. part 225). Generally, costs that are allowable include salaries, supplies and other expenses that are reasonable and necessary for the completion of the scope of work. Allowable costs must be determined in accordance with the cost principles applicable to the organization incurring the costs.
4. *Acceptable costs and contributions.* In determining the amount of the non-federal share of the cost of a project, EDA may provide credit towards the non-federal share of all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, assumptions of debt, and services. *See* section 204(b) of PWEDA (42 U.S.C. § 3144).

The matching share may include funds from other federal agencies only if authorized by statute that allows such use, which may be determined by EDA’s reasonable interpretation of such authority. *See* 13 C.F.R. § 300.3.

Neither cash nor the value of in-kind contributions may count towards satisfying a cost-sharing requirement of a grant agreement if it has been or will be counted towards satisfying a cost-sharing requirement of another federal grant agreement, a federal procurement contract, or any other award of federal funds. The eligible applicant must show that the matching share is committed to the EDA project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Award. *See* 13 C.F.R. § 301.5.

## **B. INTERIM DISBURSEMENTS**

After the initial disbursement has been made, the recipient may request interim disbursements by submitting Form SF-271, as required for reimbursement of EDA’s share of eligible project costs. Interim disbursements will normally continue until ninety (90) percent of the grant funds have been disbursed, with the remaining ten (10) percent normally held pending final disbursement and project close-out.

## **C. FINAL DISBURSEMENT**

When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient can begin the close-out process by submitting the following documentation to EDA:

1. A request for final disbursement on an executed Form SF-271;
2. A written certification that all costs claimed are for eligible activities under the grant agreement, for which there is documentation included in the recipient’s records;
3. A final acceptance report;
4. A certification signed by the authorized representative of the recipient that the recipient’s currently valid OMB Circular A-133 audit has been or will be transmitted to the Federal Audit Clearinghouse and that if the audit contains any material findings, a copy of the audit in its entirety has been submitted to EDA; and

5. Other documentation as may be required by EDA.

The recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the recipient, the balance will be paid by wire transfer. If the recipient has received a grant amount in excess of the amount due the recipient, the recipient must refund the excess to EDA, payable to the U.S. Treasury.

## **VII. AWARD AMENDMENTS, APPROVALS, AND NOTIFICATIONS**

Between approval and closeout of an EDA construction project, modifications to the Terms and Conditions may be necessary to resolve unforeseen problems. In most instances, the proposed modification can be accomplished only if EDA agrees to a formal amendment to the Award.

### **A. AMENDMENTS**

In order to amend the Award, the Project Officer shall prepare Form CD-451, "*Amendment to Financial Assistance Award*," for execution by both the Regional Director and the recipient's authorized representative. Form CD-451 is required for any of the following amendments to an Award:

1. Changes to project scope of work;
2. Budget revisions requiring additional EDA or non-EDA sources of funds;
3. Budget revisions that result in cumulative transfers among direct cost categories in excess of 10 percent of the total project cost when the federal share exceeds \$100,000;
4. The inclusion of certain costs for which EDA's prior approval is needed under the following OMB Circulars: Circular A-21, "*Cost Principles for Educational Institutions*" (2 C.F.R. part 220); Circular A-87, "*Cost Principles for State, Local, and Indian Tribal Governments*" (2 C.F.R. part 225); and Circular A-122, "*Cost Principles for Non-Profit Organizations*" (2 C.F.R. part 230), as applicable;
5. Change of site location;
6. Change to or addition of recipient;
7. Time extensions; and
8. Modifications to the Terms and Conditions of the Award, other than time extensions.

When Form CD-451 is required, the recipient must submit a request for amendment in writing to the EDA regional office. If the request is approved, the EDA regional office completes and transmits the Form CD-451 to the recipient. The recipient's authorized representative must execute the Form CD-451 and return it to the EDA regional office.

### **B. TIME SCHEDULE EXTENSIONS**

1. The recipient is responsible for implementing the project in accordance with the project development time schedule contained in the Award. As soon as the recipient becomes aware that it will not be possible to meet the project development time schedule, it must notify the EDA regional office. Grant disbursements cannot be made if the recipient is not in compliance with the time schedule. The recipient's notice to EDA should contain the following information:
  - (a) An explanation of the reason for the recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain State or federal approvals; unplanned environmental mitigation required);

- (b) A statement that no other changes to the project are contemplated;
  - (c) Documentation that demonstrates there is still a bona fide need for the project; and
  - (d) Confirmation that no further delay is anticipated and that the project can be completed within the revised time schedule.
2. EDA will perform a mandatory review of the project's progress for any project that is not under construction within two (2) years of the grant award date. In accordance with EDA policy, the maximum construction start time extension that any region can grant is restricted to a date three (3) years from the grant award date. Any extension beyond that limit must be approved by the Assistant Secretary of Commerce for Economic Development.
  3. EDA reserves the right to suspend or terminate an Award if the recipient fails to proceed with reasonable diligence to accomplish the project as intended. *See also* sections VII.B. and F. of this Summary.

### **C. BUDGET REVISIONS**

1. The tabulation of estimated project costs contained in the Award is the controlling budget plan for the project. Recipients shall request EDA's prior written approval for any anticipated budget revision in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable. The recipient must notify EDA of any proposed deviation from the budget or program plans, including changes in scope or the objective of the project (even if there is no associated budget revision requiring prior written approval). *See* 15 C.F.R. §§ 14.25 and 24.30.
2. The transfer of funds from line items other than the contingencies line item may be permitted, *provided* there will be no significant adverse effect on the objective of the line item from which the transfer is to be made.
3. The construction line item will be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts will be transferred to the contingencies line item. Recipients are reminded that contingency funds are to be used to cover situations resulting from unknown conditions and changes required for the fulfillment of authorized project activities under the Award. Underrun funds may be used to further improve the project, as long as the improvements are consistent with the original purpose of the approved-EDA investment and with prior approval from EDA. *See* 13 C.F.R. § 305.10.

### **D. ADDITIONAL EDA FUNDING**

1. In accepting financial assistance from EDA, the recipient agreed to fund any overrun(s). Additional EDA assistance for an approved project is unlikely to be approved. To be considered for approval, it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will consider a formal request for additional EDA funds, it is necessary for the recipient to furnish the following documentation:
  - (a) A written statement from the recipient's architect/engineer, giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and
  - (b) A written statement from the administrative head of the recipient's organization

justifying why the recipient cannot furnish the additional funds required, why non-EDA sources of funds cannot be secured, and certifying that the recipient's borrowing capacity has been exhausted.

2. EDA's consideration of a request for additional EDA assistance does not indicate approval.

#### **E. ADMINISTRATIVE APPROVALS AND NOTIFICATIONS**

1. EDA shall issue a written administrative approval for budget revisions that result in the cumulative transfer among direct cost categories of *less* than 10 percent of the total project cost and to approve budget revisions that result in the transfer of funds between direct and indirect cost categories, as long as those transfers are also *less* than 10 percent of the total project cost.
2. EDA shall issue a written administrative notification upon EDA's approval and acceptance of the recipient's documentation of compliance with special award conditions (for example, compliance with environmental or State historic preservation law requirements) and upon EDA's change in the Project Officer or other administrative official assigned to the recipient's project, if applicable.

#### **F. TERMINATION OF INVESTMENT ASSISTANCE**

1. *Termination for cause.*
  - (a) If a recipient materially fails to comply with any Term or Condition of the Award, EDA may take one or more of the actions set out in 15 C.F.R. §§ 14.62(a) or 24.43(a), as applicable.
  - (b) In taking an enforcement action, EDA will provide the recipient an opportunity to appeal if the recipient is entitled to an appeal under any statute or regulation applicable to the action involved. *See* 15 C.F.R. §§ 14.62(b) or 24.43(b), as applicable.
  - (c) Costs resulting from obligations incurred by the recipient after notice by EDA of suspension or termination of the Award are not allowable unless EDA expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other costs incurred by the recipient during suspension or after termination that are necessary and not reasonably avoidable are allowable if:
    - (i) The costs result from obligations that were properly incurred by the recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and
    - (ii) The costs would be allowable if the Award were not suspended or expired normally at the end of the funding period in which the termination takes effect. *See* 15 C.F.R. §§ 14.62(c) or 24.43(c), as applicable.
  - (d) The enforcement remedies identified in 15 C.F.R. §§ 14.62 or 24.43, as applicable, including suspension and termination, do not preclude the recipient from being subject to debarment or suspension under Executive Orders 12549 and 12689 and the Department's implementing regulations at 2 C.F.R. part 1326.

2. *Termination for convenience.* The Recipient may request at any time termination for convenience of this Award upon sending to the Grants Officer written notification in a form acceptable to EDA setting forth the reasons and effective date of such termination. See 15 C.F.R. §§ 14.61 or 24.44, as applicable.

## VIII. POST-CONSTRUCTION REQUIREMENTS

### A. OMB CIRCULAR A-133 AUDIT REQUIREMENTS

1. *Requirement to have an A-133 audit performed.* The recipient is subject to the requirements contained in OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations” and the related *Compliance Supplement* (Appendix B to OMB Circular A-133), each as revised from time to time. OMB Circular A-133 is issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156, 31 U.S.C. §§ 7501-7507). OMB Circular A-133 requires any non-federal entity (i.e., non-profit organizations, including non-profit institutions of higher education and hospitals, States, local governments and Indian tribes) that expends federal awards of \$500,000 or more in one fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Circular.
2. *Requirement to submit audit to Federal Audit Clearinghouse.* A recipient expending federal awards of \$500,000 or more in a fiscal year and therefore, having a single or program-specific audit for that year conducted in accordance with OMB Circular A-133, must submit a copy of the single or program-specific audit to the Bureau of the Census, designated by OMB as a central clearinghouse, at the following address:

Federal Audit Clearinghouse  
1201 E. 10<sup>th</sup> Street  
Jeffersonville, IN 47132

The recipient may contact the Federal Audit Clearinghouse by email, phone or fax:

Email: [govs.fac@census.gov](mailto:govs.fac@census.gov)  
Telephone: (301) 763-1551  
(800) 253-0696 (toll free)  
Fax: (301) 457-1592

The Federal Audit Clearinghouse operates on behalf of OMB to disseminate audit information to federal agencies and to the public, and to help auditors and auditees minimize the reporting burden of complying with Circular A-133 requirements. For more information, access the website at <http://harvester.census.gov/fac/>.

The audit will be considered “on time” if it is received by the Federal Audit Clearinghouse no later than thirty (30) days after the recipient receives the auditor’s report or nine (9) months after the end of the recipient’s fiscal year. The Federal Audit Clearinghouse also offers an online entry system for submission of Form SF-SAC at <http://harvester.census.gov/fac/collect/ddeindex.html>.

3. *Requirement to submit audit to EDA.* If the recipient’s currently valid OMB Circular A-133 audit contains material findings, the recipient shall submit the audit in hard copy to the regional office.

## **B. DEPARTMENTAL AUDIT RESOLUTION PROCESS**

1. Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), EDA or the Department's Office of the Inspector General ("OIG") may conduct an audit of the Award at any time. The recipient will be notified in advance if it is selected for an audit. The recipient must permit EDA, the Comptroller General of the United States, the Departmental Inspector General, or any of their duly authorized representatives, access to all books, documents, papers and records, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to verify the recipient's compliance with the Terms and Conditions of the Award. *See* 13 C.F.R. § 302.14.

When the OIG requires a program audit on the Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by an independent accountant under contract with the Department, OIG personnel, or any other federal, State or local audit entity.

2. An audit of the Award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (an account receivable) due to the Department. For this reason, the recipient should take seriously its responsibility to respond to all audit findings, questioned costs and recommendations with adequate explanations and written evidence when disputing audit determinations.
3. A recipient whose Award is audited will have an opportunity to dispute the audit findings.
  - (a) Unless the Inspector General determines otherwise, the recipient will have thirty (30) days from the date of the transmittal of the OIG's draft audit report to submit written comments and documentary evidence.
  - (b) The recipient will have thirty (30) days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
  - (c) EDA will review any documentary evidence submitted by the recipient, and will notify the recipient of the results in an "Audit Resolution Determination Letter," which will specify the timeframe in which the Recipient is able to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the findings in the Audit Resolution Determination Letter.
  - (d) An appeal of the findings in the Audit Resolution Determination Letter does not prevent the establishment of any audit-related debt, nor does it prevent the accrual of interest on the debt. If the findings in the Audit Resolution Determination Letter are overturned or modified on appeal, appropriate corrective action will be taken. An appeal will stay the offset of funds owed by the recipient against funds due to the recipient.
  - (e) EDA will review the recipient's appeal and notify the recipient of the results in an "Appeal Determination Letter." After the opportunity to appeal has expired or after the appeal determination has been rendered, the Department will not accept any further documentary evidence from the recipient. No other administrative appeals are available in the Department.

## C. PROPERTY MANAGEMENT

1. Any property that is acquired or improved, in whole or in part, with EDA investment assistance, whether through a grant or a cooperative agreement, is subject to the requirements of PWEDA and the regulations at 13 C.F.R. part 314. Title, authorized use, successor recipient, property disposition, and Federal Share (as defined in 13 C.F.R. § 314.5) requirements are set out at 13 C.F.R. part 314.
2. During the estimated useful life of the project, as determined by EDA, EDA retains a Federal Interest in the project property. *See* section III.A. of this Summary. The Federal Interest secures compliance with the ownership, purpose, scope and intended use of the EDA project and may be reflected by a recorded lien, statement or other recordable instrument setting forth EDA's property interest (e.g., a mortgage, covenant, or other statement of EDA's real property interest in the case of a project involving the acquisition, construction or improvement of a building). *See* 13 C.F.R. § 314.8.
3. A recipient may request a release of the Federal Interest in property acquired or improved with EDA investment assistance and fully compensate EDA for its Federal Share in the property. A release pursuant to 13 C.F.R. § 314.2(b) gives the recipient title to the property free and clear of any further governmental interest.

In contrast, a recipient may request a release of the Federal Interest in project assets that are subject to an estimated useful life in excess of the statutory twenty (20) year limitation. *See* section 601(d)(2) of PWEDA (42 U.S.C. § 3211) and 13 C.F.R. § 314.10. In that case, EDA may release its Federal Interest, however, the property acquired or improved with EDA investment assistance may not be used: (a) in violation of the nondiscrimination requirements set forth in 13 C.F.R. § 302.20; or (b) for inherently religious activities prohibited by applicable federal law.

## D. CLOSEOUT PROCEDURES

1. After construction is completed and the project is closed out financially, the recipient has an ongoing responsibility to properly administer, operate and maintain the project for its estimated useful life in accordance with its original purpose. *See* 13 C.F.R. § 302.12. The recipient must comply with all Award requirements, including but not limited to ongoing compliance with applicable environmental law, performance measurement reporting requirements, and federal statutes, regulations and Executive Orders prohibiting discrimination and inherently religious activity. The recipient must maintain records to document such compliance, which shall be made available for inspection by EDA or other government officials as required. When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient may begin the closeout process. *See* section VI.C. of this Summary. The recipient must take the following actions:
  - (a) Confirm to EDA compliance with all Terms and Conditions.
  - (b) Confirm to EDA that it will procure permanent insurance for above-ground facilities.
  - (c) Notify EDA of the results of a review of the project to ensure that all changes to the project have been brought to the attention of EDA.
  - (d) Confirm to EDA that it will retain for three (3) years all records pertaining to the Award.
  - (e) Submit to EDA a completed and executed *Certificate of Final Completion*.
  - (f) Submit and obtain from the contractor or the architect/engineer as-built drawings.

- (g) Certify to EDA that a currently valid single or program-specific audit (in compliance with OMB Circular A-133 and the related *Compliance Supplement*) has been submitted to the Federal Audit Clearinghouse. If no single or program-specific audit is available but is required, the recipient's plan to secure the audit must be furnished to EDA. If no single or program-specific audit is required, the recipient must advise EDA.
  - (h) Submit to EDA the currently valid audit required under OMB Circular A-133 *if* the audit contains material findings. Otherwise, the recipient shall certify to EDA that the audit does not contain material findings.
  - (i) Confirm to EDA that no outstanding Davis-Bacon Act or local labor employment violations exist.
  - (j) Notify EDA of any change, lien, mortgage or other encumbrance relating to the ownership of the property acquired or improved with EDA investment assistance.
  - (k) Notify EDA of any unresolved contract/contractor disputes.
  - (l) Maintain the facility during its estimated useful life, as determined by EDA, during which period the recipient may not alienate its ownership or alter the use and purpose of the EDA-assisted facility without EDA's written permission.
2. The recipient shall submit, within ninety (90) calendar days after the completion of the project, all financial, performance and other reports as required by the Terms and Conditions of the Award.
  3. Unless EDA authorizes an extension, the recipient must liquidate all obligations incurred under the Award no later than ninety (90) calendar days after acceptance of the project from the contractor or before the end of project period, whichever occurs earlier, as specified in the Terms and Conditions of the Award.
  4. The following documentation should accompany the recipient's final disbursement request, as applicable, unless such documentation has been previously furnished:
    - (a) Copies of all executed contracts, subcontracts (if claimed separately from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the EDA investment;
    - (b) A certification signed by the authorized representative of the recipient that the recipient's currently valid OMB Circular A-133 audit has been or will be transmitted to the Federal Audit Clearinghouse;
    - (c) A certification signed by the authorized representative of the recipient that the recipient's currently valid OMB Circular A-133 audit does not contain material findings. If the recipient's currently valid OMB Circular A-133 audit *does* contain material findings, the recipient must provide the regional office with a hardcopy of the audit;
    - (d) Payroll forms, if any of the costs claimed is for work performed by force account construction;
    - (e) Title opinions, legal descriptions, appraisals, bills of sale, title records, etc., for any land cost being claimed; and
    - (f) Specifics of any administrative costs being claimed.
  5. The closeout of an Award does not affect any of the following:
    - (a) The right of EDA to disallow costs and recover funds on the basis of a later audit or other project review;
    - (b) The recipient's obligation to return any funds due as a result of later corrections or other transactions;

- (c) Requirements for property management, records retention and performance measurement reports; and
- (d) Single or program-specific audit requirements per OMB Circular A-133 and the related "*Compliance Supplement*."

## IX. APPENDIX

The following documents are available from the Office of Management and Budget's, the Department of Commerce's, and the Government Printing Office's websites at [www.whitehouse.gov/omb/](http://www.whitehouse.gov/omb/), [www.commerce.gov](http://www.commerce.gov), [www.gpoaccess.com](http://www.gpoaccess.com), public libraries, and other sources. Each document listed below contains a link that will take you directly to that document on the internet.

1. [15 C.F.R. part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit and Commercial Organizations](#)
2. [15 C.F.R. part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments](#)
3. [2 C.F.R. part 225, Cost Principles for State, Local and Indian Tribal Governments \(OMB Circular A-87\)](#)
4. [OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and the related Compliance Supplement \(Appendix B to OMB Circular A-133\)](#)
5. [2 C.F.R. part 230, Cost Principles for Nonprofit Organizations \(OMB Circular A-122\)](#)
6. [2 C.F.R. part 220, Cost Principles for Educational Institutions \(OMB Circular A-21\)](#)
7. [48 C.F.R. part 31, Contract Cost Principles and Procedures](#)
8. [2 C.F.R. part 1326, Nonprocurement Debarment and Suspension](#)
9. [15 C.F.R. part 29, Governmentwide Requirements for a Drug-Free Workplace \(Financial Assistance\)](#)
10. [15 C.F.R. part 11, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended](#)
11. Davis Bacon Wage Rate Determinations: [www.wdol.gov/](http://www.wdol.gov/)

The following are available as exhibits to this Summary from EDA's Internet website at [www.eda.gov](http://www.eda.gov):

1. CHECKLIST FOR ARCHITECT/ENGINEER CONTRACTS
2. CHECKLIST FOR PLANS AND SPECIFICATIONS
3. CHECKLIST FOR INITIAL DISBURSEMENT OF EDA FUNDS
4. CHECKLIST FOR PROJECT CLOSEOUT
5. EDA CONTRACTING PROVISIONS FOR CONSTRUCTION PROJECTS
6. NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

7. CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS AND LOBBYING (CD-512)
8. QUARTERLY PERFORMANCE REPORT
9. CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY AND EASEMENTS (INCLUDING TITLE OPINION)
10. ACH VENDOR/MISCELLANEOUS PAYMENT ENROLLMENT FORM