

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

POST-APPROVAL PROCEDURES MANUAL FOR EDA CONSTRUCTION PROJECTS

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SECTION V
POST-APPROVAL STAGE 1

A. Preparation for Project Management Conference

During the EDA engineer/construction manager's review of the project file prepared by the project officer, the EDA engineer/construction manager shall:

1. Review the project scope of work;
2. Set up a working file, which shall include hardcopies of project-related documentation, including special award conditions, documentation of compliance with EDA requirements and special award conditions, and any project-related correspondence; and
3. Input the EDA estimated construction start date (CSE) and estimated construction completion date (CED) milestone into the Operations Planning and Control System (OPCS).

After the EDA engineer/construction manager reviews the project file, the EDA engineer/construction manager shall set up a project management conference and contact the recipient via letter and/or email concerning the conference.

B. Project Management Conference

The purpose of the project management conference is to explain to the recipient its post-approval responsibilities for the administration of the award and all applicable federal requirements.

The project management conference may be held at the regional office, the recipient's office, another mutually acceptable location, or by teleconference. The EDA engineer/construction manager represents the regional office at the conference. Other regional office staff may also attend on an as-needed basis.

The EDA engineer/construction manager shall introduce the Post-Approval CD outlining EDA's standardized post-approval process and present the recipient with a copy of the CD. The following matters shall be discussed:

1. Introduction of recipient and EDA project personnel;
2. The latest edition of the *Summary of EDA Construction Standards* (i.e. "the Bluebook");
3. Explanation of the terms and conditions of the award, which include the Form CD-450, *Financial Assistance Award*, the EDA-approved project budget and scope of work, the Construction Standard Terms and Conditions, any special award conditions, and all applicable federal statutory and regulatory requirements;
4. Explanation of EDA reporting and documentation requirements, including performance reports, title opinion, contract documents, payroll forms, etc. *See* section V.A. of the *Summary of EDA Construction Standards* for further details on the recipient's responsibilities regarding labor standards and payroll records;
5. Explanation that the recipient may *not*:

- a. Use the power of eminent domain in connection with the project (including land, easements, or other interests in land) for the purpose of advancing the economic interests of private parties; nor
- b. 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.

The recipient shall be advised that any use of eminent domain in connection with the project, whether by the recipient or any other entity that has the power of eminent domain, without EDA's prior written consent is an unauthorized project use. If the recipient indicates that eminent domain was used or will be used in connection with the project, consult with your regional counsel immediately;

6. Explanation of any special award conditions. The recipient should be advised that failure to satisfy the standard and special award conditions that call for action before execution of all construction contracts will delay disbursement of EDA award funds;
7. Discussion of the proposed time schedule in the award. The recipient should be informed that formal EDA approval is required if any of the time schedules are not met. The recipient should also be informed that failure to proceed with reasonable diligence may result in termination of the award;
8. Changes of scope. The EDA project engineer/construction manager should inform the recipient that changes of scope are rarely approved and will be approved solely at EDA's discretion;
9. Restrictions on encumbering and disposing of project facilities. The recipient may not encumber or dispose of project facilities at any time during the project's useful life without EDA's written approval;
10. Proposed project changes that require an award amendment, Form CD-451, *Amendment to Financial Assistance Award*;
11. The requirement that the recipient have written procurement procedures. For a recipient that is an institution of higher education, hospital, other non-profit, or commercial organization, the minimum standards for the recipient's procurement procedures can be found at 15 C.F.R. § 14.44(a). A recipient that is a State or local government may generally use the procurement procedures used by the recipient for non-federal funds, *provided* they do not conflict with federal requirements.

The recipient may have questions about which procurement system should be used, particularly if the recipient is accustomed to operating under other procurement standards. The recipient should be advised that the focus of the federal procurement standards is full and open competition for federal funds. If the recipient wishes to administer the award under procurement standards other than the federal standards, they may do so *only* in cases in which that procurement system is more strictly competitive than the federal standards. When this is not the case, the recipient shall follow the federal procurement standards found in 15 C.F.R. §§ 14.40 – 48 (for recipients that are institutions of higher education, hospitals, other non-profit and commercial organizations) or 15 C.F.R. § 24.36 (for recipients that are State and local governments). In all cases, the federal procurement standards shall provide the minimum standards.

Recipients that are States may follow the same policies and procedures used for procurements from non-federal funds, to the extent that they do not conflict with the federal standards of 15 C.F.R. § 24.36. Please see your regional counsel in case of conflict in procurements standards.

See the section below entitled *Recipient Submits Bid Tabulation Package* for further guidance on procurement procedures and standards, including EDA’s review of procurement systems of a recipient that is a State, local, or Indian tribal government and a recipient’s ability to self-certify its procurement systems;

12. Agreement between the recipient and the recipient’s architect/engineer (A/E) for professional design services that stipulates the requirement for competitive procurement. Please see the item directly above for direction on procurement standards and see your regional counsel if questions remain;
13. Present status of project development;
14. Award disbursement requirements;
15. Audit requirements. The EDA engineer/construction manager should familiarize the recipient with the Single Audit Act, which requires either a single or program-specific audit if the recipient expends \$500,000 or more in federal funds from *any* federal source in the course of the recipient’s fiscal year; any relevant OMB Circulars; and any EDA-specific audit requirements. See sections VIII.A and B of the *Summary of EDA Construction Standards* for guidance on audit requirements;
16. Force account work and services requirements, if applicable. *Force account* refers to services performed by the recipient’s own staff (as opposed to contractors);
17. Requirements for recipient-furnished materials and equipment, if applicable;
18. Compliance with federal regulations, including but not limited to Davis-Bacon wage rates, the Americans with Disabilities Act, Relocation Assistance, Historic Preservation, etc. See section D. of the Construction Standard Terms and Conditions entitled “Additional Requirements Relating to Construction Projects” for a complete list of applicable requirements;
19. Required project records and records retention requirements;
20. Requirement that all documentation necessary for project closeout be submitted within 90 days of the expiration date stipulated in the award or within 90 days of project completion (i.e., the date the recipient accepts the project from the contractor(s)), whichever occurs earlier. Please refer to any special award conditions to determine this;
21. The project budget. The EDA engineer/construction manager should inform the recipient of the prohibition against adding line items and the requirement that EDA formally approve any change to line items;
22. Acquisition of land, rights-of-way, and easements, and the need for a title opinion acceptable to EDA. Discuss the *Site Certificate*, which can be found on the Post-Approval CD;
23. Quarterly performance reports;
24. Recipient insurance or bonding requirements to protect the federal interest. If the recipient is an institution of higher education, a hospital, or a non-profit or commercial organization, this means that the recipient is expected to insure real property and equipment acquired with federal funds to the same extent that the recipient insures property and equipment owned by the recipient. If the recipient is a State or local government, EDA may accept the recipient’s bonding policy and requirements if EDA determines the federal interest is adequately protected. See subsection M.4. of the Construction Standard Terms and Conditions entitled *Insurance and Bonding*; and
25. Bonding requirements for contractors (100 percent performance bond, 100 percent payment bond, 5 percent bid bond).

Following the conference, the EDA engineer/construction manager shall enter the Pre-Construction Conference (CPR) milestone into OPCS.

C. Recipient Submits Requested Materials to EDA Engineer/Construction Manager

In no particular order, the recipient must submit the following for approval by the EDA engineer/construction manager:

1. Architect/Engineer Contract (“A/E Agreement”)

Upon receipt, the EDA engineer/construction manager will review to ensure that all requirements on the *Checklist for A/E Contracts*, which is provided on the Post-Approval CD, have been satisfied. The recipient must select the A/E in accordance with the procurement standards set forth in 15 C.F.R. parts 14 or 24, as applicable, or under a procurement system that is more strictly competitive than the federal procurement standards.

If deficiencies exist, the EDA engineer/construction manager will notify the recipient in writing. The recipient must correct deficiencies and re-submit the revised contracts to the EDA engineer/construction manager.

Upon approval, the EDA engineer/construction manager will note the A/E Agreement milestone (SDD) in OPCS. If the recipient submits the *A/E Cover Letter* provided on the Post-Approval CD, the EDA engineer/construction manager shall complete the signature block at the bottom of the *A/E Cover Letter* and send a copy to the recipient. If the recipient did not submit this cover letter, the EDA engineer/construction manager shall send the recipient a letter or email approving the A/E agreement.

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 employed by the recipient either full-time or part-time (“force account services”).

EDA may approve the use of “force account services” if:

- a. The services are routinely performed by the recipient for all construction projects performed by the recipient;
- b. The recipient has a special skill required for project construction;
- c. The recipient has made reasonable efforts to obtain a contractor, but has not been able to because of factors beyond the recipient’s control (e.g., remoteness of project site, overabundance of construction work in the area); or
- d. The recipient demonstrates substantial cost savings.

Work or services performed by “force account services” may be eligible for reimbursement *only* if it is performed in accordance 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.

2. Plans and Specifications

The recipient, with the assistance of its A/E, is responsible for the accuracy and completeness of project design, dimensions, and details; proper selection of materials; compliance with applicable building codes or ordinances; and compliance with the Construction Standard Terms and Conditions, EDA Contracting Provisions for Construction Projects, and any special award conditions.

Each contracting agency, applicant, and contractor is required to include the appropriate goal for minority and female participation for each trade in all invitations for bids or other solicitations for federal or federally-assisted construction contracts or subcontracts in excess of \$10,000. This goal is inserted in the Requirements for Affirmative Action (EEO) document. If the recipient is unable to locate the applicable percentages by using the links provided on the Post-Approval CD, the EDA engineer/construction manager will provide the recipient (or the recipient's A/E) with the percentage to be inserted. The applicable percentages can be found in the *Technical Assistance Guide for Federal Construction Contractors*, which is available from the U.S. Department of Labor's Employment Standards Administration Office of Federal Contract Compliance Programs. The guide can be accessed on the Department of Labor website at www.dol.gov/esa/ofccp/TAGuides/consttag.pdf.

Project plans and specifications and related documents must be submitted to the EDA engineer/construction manager for review and concurrence prior to advertising for bids. Although completion of the *Plans and Specifications Checklist* and the *Plans and Specification Cover Letter* templates provided on the Post-Approval CD is not mandatory, the EDA engineer/construction manager should strongly encourage the recipient to complete and submit these suggested templates along with the required plans and specifications documents.

After reviewing the submitted plans and specifications, the EDA engineer/construction manager shall ensure that:

- a. The project is designed to comply with the scope of work as described in the project application and in the terms and conditions of the award;
- b. Any deductive alternatives are taken in a specific order as shown on the bid documents;
- c. Any non-EDA work is identified on the plans and specifications to help ensure that EDA does not fund any work outside the project scope of work;
- d. All remaining items on the *Plans and Specification Checklist* provided on the Post-Approval CD have been satisfied; and
- e. The EDA project number and applicable EDA participation percentage appears on the cover of all contract documents and on the face sheet of the specification document(s).

Upon approval, the EDA engineer/construction manager will complete the signature block at the bottom of the *Plans and Specifications Cover Letter* or signify approval on the documentation provided by the recipient and send a copy of said letter or documentation to the recipient.

3. Site Certificate (Title Opinion)

The EDA engineer/construction manager should strongly encourage the recipient to use the *Site Certificate* template provided on the Post-Approval CD. This template will facilitate the regional counsel's approval of the title opinion. To fill out this template, the recipient or the recipient's A/E should complete Part I of the document titled *Certificate as to Project Site, Rights of Way, and*

Easements and send it to the recipient's attorney, who should complete Part II. The recipient should then return the *Site Certificate*, as well as the accompanying cover letter, to the EDA engineer/construction manager. The EDA engineer/construction manager will then route the *Site Certificate* and accompanying cover letter to the regional counsel, who will review the legal sufficiency of the certificate. If the regional counsel approves, the regional counsel will complete the signature block on the cover letter and return it to the EDA engineer/construction manager. The EDA engineer/construction manager will sign the signature block on the cover letter and return to the recipient.

If the recipient chooses to provide the title opinion in an alternate format, the regional counsel must draft a letter approving the title opinion and send a signed copy of this letter to the recipient.

The EDA engineer/construction manager shall keep a copy of the *Site Certificate* or title opinion documentation provided by the recipient for the project file.

4. **First Priority Lien**

Unless the recipient's attorney submits a valid legal opinion stating that there is a legal impediment to the recipient's grant of a first priority lien to EDA, the recipient shall submit documentation granting EDA first priority lien of the building/facility. The recipient should be strongly encouraged to use the *First Priority Lien* template provided on the Post-Approval CD and to submit the accompanying *First Priority Lien Cover Letter*, but other similar formats may be used. The recipient's attorney shall complete this document, submit the document to the appropriate jurisdiction for recordation, and submit proof of the lien's recordation in the appropriate jurisdiction to the regional counsel. Upon the regional counsel's approval, the EDA engineer/construction manager and regional counsel shall sign their respective signature blocks on the *First Priority Lien Cover Letter* and send a signed copy to the recipient. If the recipient chooses to submit proof of first priority lien to EDA in an alternate format, the regional counsel must sign and date this documentation, which serves as the regional counsel's acknowledgement of receipt, and send a copy to the recipient. This action shall be recorded by the EDA engineer/construction manager in OPCS as Lien Recorded (LRD).

5. **Covenant of Purpose, Use and Ownership**

If there is a legal impediment to recipient's grant of a first priority lien to EDA, the recipient shall instead submit the following documents for review:

- a. *Covenant of Purpose, Use, and Ownership* stating that the recipient will use the EDA-funded project for its original, intended purpose. This document must be completed by the recipient's attorney and recorded in the appropriate jurisdiction. The recipient's attorney must submit to EDA proof that the covenant was recorded in the appropriate jurisdiction. The recipient should be strongly encouraged to use the template provided on the Post-Approval CD and to attach the accompanying cover letter; however, other similar formats may be used; and
- b. A separate, signed statement from the recipient's attorney confirming that there is a legal impediment that prevents the recipient from granting EDA a first priority lien and explaining the nature of this legal impediment.

Upon approval, the EDA engineer/construction manager and regional counsel shall sign their respective signature blocks on the *Covenant of Purpose, Use, and Ownership cover letter* and send a signed copy

to the recipient. If the recipient chooses not to use the suggested templates, the regional counsel shall sign and date this documentation, which serves as the regional counsel's acknowledgement of receipt, and send a copy to the recipient. This action shall be recorded by the EDA engineer/construction manager in OPCS as Lien Recorded (LRD).

6. **Other Documents Required by the Special Award Conditions**

If a special award condition requires that any other documentation be submitted (e.g., Lead Agency Agreement, Administrative Services Agreement, State historic preservation officer (SHPO) clearance, documents related to compliance with environmental requirements), the EDA engineer/construction manager shall review and coordinate with appropriate regional office staff to ensure compliance.

Once the EDA engineer/construction manager has received and approved documentation of the recipient's compliance with a special award condition, the EDA engineer/construction manager shall notify the recipient by letter or email of EDA's acknowledgement of the compliance. Once the recipient is in compliance with all special award conditions, the EDA engineer/construction manager shall notify the recipient by letter or email that the recipient may proceed with the next step of the project. A copy of compliance documentation and all EDA acknowledgement letters or emails shall be kept in the project file. *See also* the section entitled *Administrative Approvals and Notifications* below.

D. **Recipient Submits Bid Tabulation Package**

After the EDA engineer/construction manager determines that the recipient has met all the requirements and submitted all required materials listed in the section below entitled *Recipient Submits Requested Materials to EDA Engineer/Construction Manager*, and that the submitted materials are sufficient and without deficiencies, the EDA engineer/construction manager may authorize the recipient to proceed with advertising for bid according to the recipient's EDA-approved procurement procedures. After the recipient has advertised for bids to complete the project, the recipient shall submit the bid tabulation documents and a recommendation for contract award. *See* sections V.D and E. of the *Summary of EDA Construction Standards* entitled *Contracting Standards* and *Competitive Procurement Requirements* for further guidance on procurement.

The EDA engineer/construction manager should strongly encourage the recipient to use the *Recommended Award Letter* and to submit the *Bid Opening Checklist*, both of which are provided on the Post-Approval CD. The regional office will review and approve the proposed bid tabulation documents to ensure that all of the requirements listed in the *Bid Opening Checklist* are satisfied. If deficiencies exist, the EDA engineer/construction manager will notify the recipient. The recipient must correct deficiencies and re-submit the proposed bid agreement to the EDA engineer/construction manager.

1. **Bid Overrun.** If the lowest responsive bid received by the recipient exceeds the amount budgeted for that item of work (i.e., bid overrun), the recipient may:
 - a. 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 alternatives may result in a new low bidder. Therefore, care must be taken that the above procedure is followed exactly when deductive alternatives are used to determine the lowest bid within the funds available;

- b. Reject all bids and re-advertise;
- c. Augment the recipient's share by an amount sufficient to cover the excess cost and adjust EDA's share of costs accordingly. If the recipient intends to finance the overrun from its own funds, the recipient shall identify the source of additional funds to EDA in writing. The funds must be from an acceptable source and cannot include conditions that may negatively impact the project; or
- d. Submit a request for additional EDA funding. Normally, this will be a last resort and should be discouraged unless the regional director is convinced that the project cannot be completed otherwise and is willing to consider current year overrun funding. EDA may not approve the request for additional funds, and termination of the project may be required.

The EDA engineer/construction manager should pay careful attention to the procurement system under which the recipient is operating. In this situation it is often the case that the procurement system under which the recipient is operating restricts the recipient's ability to negotiate or use a change order for a lower price after bid opening with any combination of bidders other than all bidders. The EDA engineer/construction manager should make sure that the recipient's procurement system allows the recipient to negotiate in this way. The federal procurement standards at 15 C.F.R. parts 14 or 24, as applicable, do not address this issue, but the recipient's procurement standards might.

- 2. **Bid Underrun.** Underrun amounts shall be transferred to the contingencies line item. The recipient should be 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 approved by EDA, consistent with the original purpose of the EDA-approved investment, and will be recorded in the log of budget revisions.
- 3. **Approval of Contract Award.** All federal procurement transactions should provide for open and free competition. Construction contracts will generally be awarded after the recipient has followed a sealed bid procurement process that includes open advertising and open competition. Although the sealed bid procurement process is preferred, there are some situations in which other procurement methods will be in the best interest of the project, including by competitive and non-competitive proposals. The recipient is obligated to be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. See 15 C.F.R. §§ 14.40-14.48 and 24.36 and sections V.E. and D. entitled *Contracting Standards* and *Competitive Procurement Requirements* in the *Summary of EDA Construction Standards* for further guidance on procurement standards and procedures.

The EDA engineer/construction manager may approve the contract award if:

- a. The award is based on adequate competition as specified in 15 C.F.R. parts 14 or 24 or as provided in the recipient's more strictly competitive procurement system, as applicable;
- b. The award is made to the bidder whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, based on a consideration of price, quality, and other factors. Please note if the award is made to other than the lowest responsible bidder and the recipient is operating under a more competitively restrictive procurement system, the EDA engineer/construction manager shall require the recipient to furnish a certification,

signed by the recipient's attorney, that such award is permissible under the recipient's procurement system. Generally, EDA shall defer to other, more competitively restrictive procurement requirements to the extent that they do not conflict with federal requirements. The EDA engineer/construction manager, in concert with the regional counsel, should make a determination that the contract award does not violate 15 CFR parts 14 or 24;

- c. Deductive alternatives, if used, were taken in the order listed in the invitation for bids;
- d. The recipient has furnished:
 - (i) A statement, signed by the recipient's authorized representative, certifying that all bids were opened in the recipient's presence, in a meeting open to the public, and that no bids were accepted after bid opening started, if applicable¹;
 - (ii) A copy of the official minutes of the bid opening, if applicable;
 - (iii) A tabulation of all bids and a copy of the A/E's cost estimate, along with a statement certifying that these documents are accurate to the best knowledge of the authorized representative.² The tabulation must include the following: the names of the bidders; the amount of each bid, including deductive alternatives, if applicable; the deductive alternatives shown in the order in which they were to be taken; which deductive alternatives were taken, if applicable; and the resulting totals;
 - (iv) Evidence of the proposed contractor's qualification. The A/E must review and certify that the proposed contractor is qualified to the best of the A/E's knowledge;
 - (v) Proof of advertisements for bid, if applicable;
 - (vi) The contractor's certificate of liability insurance; and
 - (vii) Evidence of adequate surety bond coverage.
- e. The recipient has furnished evidence satisfactory to EDA that the recipient's share of project funds is on hand or can be made available as needed;
- f. Special award conditions requiring compliance before bid award have been satisfied; and
- g. The recipient has certified that it has checked the proposed contractor and known subcontractors against the list of contractors debarred, ineligible, or suspended from contractual dealings with the U.S. Government.³ This includes the name of the firm and of the firm's principles. See section V.C. entitled *Specific Requirements for Subcontractors* in the *Summary of EDA Construction Standards* for further guidance on requirements for subcontractors.

Upon approval of the recommended award documents, the EDA engineer/construction manager will record the bid opening (BID) in OPCS, complete the signature block on the *Recommended Award Letter*, which is provided on the Post-Approval CD, and return the letter to the recipient. If the recipient

¹ Not required if the recipient submits the *Recommended Award Letter* in the template provided on the Post-Approval CD.

² Statement certifying accuracy of document not required if recipient submits the *Recommended Award Letter* in the template provided on the Post-Approval CD.

³ Not required if the recipient submits the *Recommended Award Letter* in the template provided on the Post-Approval CD.

chooses to use an alternate format, the EDA engineer/construction manager shall stamp or sign the cover letter provided by the recipient and return a copy of the letter to the recipient.

E. Recipient Submits Executed Construction Documents

The recipient shall submit the executed construction contract, including payment and performance bonds, and the contractor's certificate of liability insurance. The EDA engineer/construction manager shall strongly encourage the recipient to submit the *Executed Construction Contract Documents Cover Letter* provided on the Post-Approval CD along with these documents. The EDA engineer/construction manager shall review the performance and payment bonds to ensure that they are 100 percent bonds and that the surety company is listed on Treasury Circular 570. Upon approval, the EDA engineer/construction manager will sign the *Executed Construction Contract Documents Cover Letter*, which is provided on the Post-Approval CD, and send a copy to the recipient. If the recipient does not submit the cover letter provided, the EDA engineer/construction manager shall stamp or sign the cover letter provided by the recipient to acknowledge receipt of the required documentation and send a copy to the recipient.

F. Protest Procedures

If there is a protest regarding contractor selection or other procurement action, the protesting party must exhaust all administrative remedies available through the recipient before EDA will accept review of the protest. EDA will only review for the recipient's compliance with the regulations set out at 15 C.F.R. §§ 14.41 or 24.36(11) and 12, as applicable to the recipient. Matters concerning violation of law or statute are to be referred to such federal, state, or local authority as may have proper jurisdiction.

SECTION VI POST-AWARD STAGE 2

A. **Recipient Erects Project Sign and Submits Photo to EDA Engineer/Construction Manager**

The recipient shall be responsible for the construction, erection, and maintenance of a sign or signs indicating that the federal government is participating in the project at a conspicuous place at the project site during the construction process. EDA may require more than one sign if site conditions so warrant. The regional office will provide specifications for the sign. If the regional office's recommended specifications conflict with the State or local law, the recipient may modify such recommended specifications so as to comply with the state or local law.

When the regional office receives photographic confirmation that the sign has been erected per EDA's specifications, the EDA engineer/construction manager shall enter the Site Sign Documented (SSD) milestone into OPCS.

B. **Amendments**

Amendments are required when one or more changes to the terms and conditions of the award are necessary to resolve unforeseen problems or to remove obstacles to the project's successful completion. Amendments include any of the following:

- (i) Changes to project scope of work;
- (ii) Budget revisions requiring additional EDA or non-EDA sources of funds;
- (iii) Budget revisions that result in cumulative transfer among direct cost categories in excess of 10 percent of the total project cost when the federal share exceeds \$100,000;
- (iv) The inclusion of certain costs for which EDA's prior approval is needed under OMB Cost Principles for Educational Institutions (OMB Circular A-21, 2 C.F.R. part 220); State, Local, and Indian Tribal Governments (OMB Circular A-87, 2 C.F.R. part 225); and Non-Profit Organizations (OMB Circular A-122, 2 C.F.R. part 230), as applicable to the recipient;
- (v) Change of site location;
- (vi) Change or addition of recipient;
- (vii) Time extension (see below for more details); and
- (viii) Modification of award terms and conditions (other than time extensions).

Please note that the above list is not exhaustive. A situation not listed above may require an award amendment, triggering use of Form CD-451, *Amendment to Financial Assistance Award*. Please consult with your regional counsel.

Budget revisions that result in a cumulative transfer among direct cost categories of less than 10 percent of the total project cost are not considered amendments, but do require EDA's prior approval (*see* the section entitled *Administrative Approvals and Notifications* below). Similarly, EDA's approval of the recipient's documentation of compliance with special award conditions, or EDA's notification to the

recipient of changes in the EDA engineer/construction manager, project officer, or other award administration officials, are not considered amendments, but rather administrative notifications (*see* the section entitled *Administrative Approvals and Notifications* below).

1. **Form CD-451.** Amendments to the award require preparation of Form CD-451, *Amendment to Financial Assistance Award*, for signature (execution) by both the EDA regional director and the recipient's authorized representative. The amendment is not considered executed until both parties have signed.

The process for using Form CD-451 is as follows: (i) the recipient submits a written request for EDA to approve the change; (ii) the EDA engineer/construction manager reviews the request; (iii) the EDA engineer/construction manager prepares an ED-1103 internal memorandum to the regional director with the EDA engineer/construction manager's recommendation (if the proposed change will not impact the proposed budget, the EDA engineer/construction manager may leave the budget section of the ED-1103 blank); (iv) the regional director indicates approval/disapproval of the recommendation by signing the appropriate signature block on the ED-1103; (v) if the regional director approves the change, the EDA engineer/construction manager prepares a Form CD-451 for the regional director's signature (if not, the EDA engineer/construction manager prepares a letter rejecting the request for the regional director's signature); (vi) the regional director signs the Form CD-451; (vii) the EDA engineer/construction manager sends the Form CD-451 to the recipient; (viii) the recipient signs and returns the Form CD-451 to EDA; and (ix) the EDA engineer/construction manager files the ED-1103 and the executed Form CD-451 in the project file.

Note that amendments involving time schedule extensions and budget revisions requiring additional EDA funds require several additional steps. *See* the sections entitled *Amendments Involving Time Schedule Extensions* and *Amendments Involving Budget Revisions Requiring Additional EDA Funds (Overruns)* below.

2. **Amendments Involving Time Schedule Extensions**
 - a. 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 engineer/construction manager. The EDA engineer/construction manager must inform the recipient that award disbursements cannot be made while the recipient is not in compliance with the time schedule. The recipient's notification to EDA should contain the following information:
 - (i) 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 prepare the site, major re-engineering is required in order to obtain state or federal approvals, unplanned environmental mitigation is required);
 - (ii) A statement that no other changes to the project are contemplated;
 - (iii) Documentation that demonstrates there is still a bona fide need for the project; and
 - (iv) Confirmation that no further delay is anticipated and that the project can be completed within the revised time schedule.

- b. The EDA engineer/construction manager may determine, in consultation with the division director and regional director, that it is in the best interest of the project and the federal interest to reject the time extension request, approve the recipient's requested time extension, or approve a time extension shorter than the recipient's request.
- c. The EDA engineer/construction manager shall revise the construction start/finish date, as appropriate, and enter revised dates into OPCS using the CSR (Construction Start Revised Estimate) and the CCR (Construction Completion Revised Estimate) milestones.
- d. If significant construction, as determined by the EDA engineer/construction manager, is not commenced within two years of the award date or by the date estimated for start of construction in the award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA engineer/construction manager shall notify the recipient in writing that the award is suspended and that no disbursements will be made during the suspension. This written notification shall also request that the recipient provide a written justification as to why the award should not be terminated. If, after consultation with the recipient, the EDA engineer/construction manager determines that construction to completion cannot reasonably be expected to proceed promptly and expeditiously, the EDA engineer/construction manager shall issue a written memorandum to the regional director justifying the award's termination. (*See the subsection entitled Termination of Investment Assistance below.*) Alternatively, if the EDA engineer/construction manager determines that construction to completion may be expected to proceed promptly and expeditiously, the EDA engineer/construction manager shall issue a written memorandum to the regional director justifying EDA's continued participation in the project. The EDA engineer/construction manager shall keep a copy of any memorandum in the project file.
- e. *However*, in accordance with EDA Directive No. 17.18, *Policy and Procedures for Delayed Construction Projects* (effective May 30, 2000), the maximum construction start time extension that any regional office can grant is three years from the award date. Any extension beyond that limit must be approved by the Assistant Secretary of Commerce for Economic Development (Assistant Secretary). If the recipient requires a start time extension beyond three years from the award date, and if the EDA engineer/construction manager and the regional director agree that such an extension is warranted, the EDA engineer/construction manager shall prepare a Form ED-506 to the Assistant Secretary outlining the rationale for granting this extension, for signature by the regional director. If the Assistant Secretary approves this action, the EDA engineer/construction manager shall work with the recipient to execute an amendment using Form CD-451 with the revised construction start date.

3. **Amendments Involving Budget Revisions Requiring Additional EDA Funds (Overruns)**

- a. In accepting financial assistance from EDA, the recipient must agree to fund any project overrun(s). Additional EDA assistance for a project may not be approved and should be pursued by the recipient as a last resort. A request for additional funding must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, the recipient must submit the following documentation as part of a formal request for additional EDA funds:
 - (i) A written statement from the recipient's A/E, detailing the A/E's professional opinion that re-designing the project (so long as the re-design will still accomplish project purposes), or using new or additional deductive alternates, cannot

reasonably be expected to reduce the cost so that the project may be completed within the EDA-approved project budget; and

- (ii) A written statement from the recipient's authorized representative explaining 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.
- b. Upon receipt of a properly documented request for additional EDA assistance, the EDA engineer/construction manager shall advise the recipient that:
- (i) The request for additional assistance will be considered on the merits of the individual project and availability of funds;
 - (ii) The willingness of EDA to consider the request is not to be interpreted as an indication of approval; and
 - (iii) Any further action on the project by the recipient, absent a formal approval from EDA, is at the recipient's risk.
- c. If the regional office believes the recipient's request has merit, then the regional office will ask the recipient to submit an application for the additional EDA funding. The EDA engineer/construction manager should consult with the economic development specialist that will be processing the application to determine which sections of the application must be completed.

C. Administrative Approvals and Notifications

The EDA engineer/construction manager 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.

The EDA engineer/construction manager 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, of compliance with environmental requirements or SHPO clearance) and upon EDA's change of the project officer, EDA engineer/construction manager, or other award administration official assigned to the project, if applicable.

The regional director (or the EDA engineer/construction manager if the regional director has explicitly delegated this authority) shall send all administrative approvals/notifications to the recipient via letter or email. Administrative approvals and notifications do not require that the letter, email, or other documentation be returned by the recipient with a countersignature. If an administrative approval involves the transfer of funds among direct cost categories that is less than 10 percent of the total project cost or if the administrative approval involves the transfer of funds between direct and indirect cost categories, the EDA engineer/construction manager shall record the approval in the budget revision log for the project. In all cases, a copy of the letter or email detailing the approval or notification shall be kept in the project file.

D. **EDA-Approved Variances**

1. 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 will consider requests for variances to procedures set forth in the *Construction Standard Terms and Conditions* if they do not conflict with applicable federal and statutory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.
2. The EDA engineer/construction manager should consult with the regional counsel, the regional director, and other EDA staff, as appropriate, when a recipient requests such a waiver.

E. **Submission of Change Orders**

1. It may become necessary to alter the executed construction contract(s). 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. The EDA engineer/construction manager should strongly encourage the recipient to submit the *Change Order Cover Letter* provided on the Post-Approval CD along with the change order.
2. Work on the project may continue pending EDA review and approval of the change order, but the EDA engineer/construction manager should notify the recipient in writing that all work related to the change order is at the recipient's risk. EDA will only participate in the costs associated with the change order only if EDA approves the change order.
3. The recipient or the recipient's A/E shall perform a cost or price analysis in connection with every change order that affects the contract price. The recipient will prepare proposed contract change orders in sufficient quantity so that one copy can be furnished to EDA for approval. Necessary supporting statements, estimates, specifications, and plans should be attached. Before submission to the EDA engineer/construction manager, the change order must be signed by the recipient, the A/E, and the contractor. If the EDA engineer/construction manager approves the change order, the EDA engineer/construction manager shall complete the signature block on the *Change Order Cover Letter* and a copy return to the recipient. If the recipient chooses not to submit the template cover letter provided on the Post-Approval CD, the EDA engineer/construction manager shall stamp or sign the cover letter provided by the recipient to indicate EDA's approval and send a copy to the recipient. If the EDA engineer/construction manager does not approve the change order, the EDA engineer/construction manager shall attempt to resolve the issue via phone or by a site visit. If the EDA engineer/construction manager remains unable to approve the change order, the EDA engineer/construction manager shall notify the recipient in writing and keep a copy of the notification in the project file.
4. EDA will not approve change orders that change the authorized purpose and intent (i.e., the scope) of the project. Change orders that minimally or incidentally increase the cost of the project, but do not change the project scope, may be approved by EDA, provided that either:
 - a. The recipient has agreed in writing to fund the additional cost, in which case all work to effect 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. Unit prices are often used as a basis upon which to make a contract award and may be used to establish actual costs where actual quantities differ from estimated quantities. Differences between estimated and actual costs 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 in a unit price shown in the contract documents will require a change order to the contract. A change order may also be required at project completion to establish final quantities for unit price contracts.

F. Reporting Project Performance

1. The recipient must constantly monitor project progress to ensure that time schedules are met, project work units by time periods are accomplished, and other performance goals are achieved. This review shall be made for each program, function, or activity as set forth in the award.
2. The EDA engineer/construction manager shall require the recipient to submit a project performance report for each calendar quarter for each award. The report will cover the following for each program, function, or activity involved:
 - a. A comparison of actual accomplishments to the timetable of accomplishments established in the terms and conditions of the award;
 - b. An explanation for each occasion on which the recipient failed to meet the EDA-approved timetable, if applicable; and
 - c. Other pertinent information including an analysis and explanation of cost overruns or high unit costs, if applicable.
3. The quarterly performance report will be due not later than January 15, April 15, July 15, and October 15 for the previous quarter. This requirement shall begin with the recipient's acceptance of the EDA award and shall end when EDA closes out the project.
4. Between the quarterly performance report due dates, events may occur that have significant impact upon the project. In such cases, the recipient shall inform EDA as soon as the following types of conditions become known:
 - a. Problems, delays, or adverse conditions that may materially affect the ability of the recipient to attain project objectives, prevent timetables or goals from being met, or preclude the attainment of project work units by established time periods; or
 - b. A change in the recipient's budget estimates. If this occurs, the recipient shall be required to submit a request for budget amendment.

The recipient shall notify the EDA engineer/construction manager of such an event in the most expeditious way possible and, if the initial notification was not in writing, follow up with a written disclosure that shall include a statement of the action taken, or contemplated, and any federal assistance needed to resolve the situation. If the change implicates a revision of budget estimates, the recipient shall also submit a request for budget amendment.

G. EDA Review of Audit Findings

Per OMB Circular A-133, all recipients that expend more than \$500,000 in federal award monies (including EDA *and* non-EDA federal funds) in the recipient's fiscal year are legally required to submit an audit to the Federal Audit Clearinghouse. Recipients that receive funds from only *one* federal source may submit a program-specific audit. All other recipients must submit a single audit in accordance with

the requirements of OMB Circular A-133. Audits are due to the Clearinghouse within nine months of the end of the recipient's fiscal year or within 30 days of receipt of the auditor's report.

If the audit required under OMB Circular A-133 contains material findings, the recipient shall submit a copy of the audit to the EDA engineer/construction manager. When an audit that contains material findings is received, regional office staff shall:

1. Review all material findings and determine which, if any, are pertinent to the EDA project. Pertinent findings include those specifically related to the recipient's management of the EDA project, as well as broad findings related to the adequacy of the recipient's accounting procedures, internal controls, or other management controls and practices likely to have a bearing on the EDA project. If pertinent material findings are identified, regional office staff, including the regional counsel, shall discuss these findings and determine acceptable corrective actions;
2. Conduct a site visit that includes a discussion with the recipient regarding the pertinent material findings, as well as corrective actions to be taken, within 60 days of receiving the audit with pertinent material findings;
3. Within five business days of the site visit, send written notice to the recipient via certified mail of the corrective actions to be taken and the date by which these corrective actions must be accomplished;
4. Verify that appropriate corrective actions have been taken by the date specified, through a site visit if necessary; and
5. Propose termination if the recipient is unable to demonstrate implementation of each corrective action within six months of receipt of the EDA's written notification detailing such corrective actions. If the recipient does not agree to terminate the project for convenience, EDA should generally proceed with a termination for cause. All termination actions should be closely coordinated with the regional counsel and the regional director. *See the section entitled Termination below.*

H. Site Visits

The EDA engineer/construction manager shall have the primary responsibility for identifying and taking measures to expedite delayed projects. In order to resolve problems and monitor project progress, the EDA engineer/construction manager shall conduct site visits as required. The EDA engineer/construction manager shall enter each site visit in OPCS.

I. Termination

1. Termination for Convenience

- a. Terminations for convenience are preferable to terminations for cause. Terminations for convenience require fewer federal resources and are less prejudicial to the recipient's interests. Therefore, whenever practicable, a termination for convenience should be pursued rather than a termination for cause.
- b. Under this method of project termination, the recipient notifies EDA that it wishes to terminate the award. EDA may suggest a termination for convenience, but only the recipient may officially request such an action.

- c. When termination for convenience is initiated, the regional office will notify the recipient in writing that no new obligations against the award shall be incurred, that as many obligations as possible are to be cancelled, and that EDA will participate in eligible project costs properly incurred before the date of the notification. The recipient shall be asked to furnish documentary evidence of all costs previously incurred and advised that, upon termination of the project, the recipient will be reimbursed for EDA's share of all non-cancellable costs found eligible under current federal regulations. Determination of eligible project costs is at EDA's sole discretion.
- d. After receiving all required documents supporting termination for convenience, the regional office, working with the recipient, prepares an *Offer to Terminate Financial Assistance Award Agreement for Convenience*, which formalizes all agreed-upon termination conditions, including the EDA share of eligible costs incurred and the effective date of the termination. EDA allows full credit to the recipient for the federal share of non-cancellable, eligible costs that have been properly incurred prior to termination. EDA will not participate in any costs incurred after the effective date of termination of the project.
- e. The EDA engineer/construction manager shall prepare a Form ED-506 Action Memorandum to the regional director (*see* Appendix A below for template), with a copy to the Deputy Assistant Secretary for Management Services, which shall contain at least the following items:
- (i) Background
 - Brief description of project work, purpose, financing; and
 - Current status of project.
 - (ii) Discussion
 - Reason(s) for recipient's decision to terminate the award, including review of efforts to save the project;
 - Documentation of the recipient's request to terminate the award for convenience;
 - The amount of eligible costs that EDA has agreed to fund (these costs, if any, will be considered the final disbursement for the project); and
 - A general statement on project expenditures that have been approved to date as eligible project costs.
 - (iii) Recommendation. The ED-506 should state:

“In light of the above discussion and documentation and since the recipient has requested termination of Award No. XXXXXX for convenience, it is recommended that the project be terminated for convenience in accordance with the accompanying *Offer to Terminate Financial Assistance Award Agreement for Convenience*.”
- f. Upon the regional director's approval of the termination for convenience, the following items will be sent to the recipient:
- (i) A letter signed by the regional director and sent by certified mail to the recipient informing the recipient of EDA's approval of the recipient's request for

termination for convenience (*see* Appendix B below for the *Offer to Terminate Termination for Convenience Cover Letter* template). The letter shall establish the reason(s) for the termination action and make appropriate reference to the costs, if any, that are eligible for EDA reimbursement to the recipient; and

- (ii) The *Offer to Terminate Financial Assistance Award Agreement for Convenience* (*see* Appendix C below for the template).
- g. The EDA engineer/construction manager shall send a final Form SF-271, *Outlay Report and Request for Reimbursement for Construction Programs*, along with the *Closeout Memorandum* (*see* Appendix H below for the template), to the Accounting and Support Services Division (ASSD) at EDA Headquarters.

2. Termination for Cause

- a. EDA has the authority to terminate an award for cause when EDA determines that the recipient is in material noncompliance with the terms and conditions of the award. Unlike termination for convenience, termination for cause is normally a unilateral action by EDA. Approval of a termination for cause rests with the Assistant Secretary. *See* subsection VII.D. entitled *Termination of Investment Assistance* in the *Summary of EDA Construction Standards* for further guidance on terminating investment assistance for cause.
- b. When the EDA engineer/construction manager determines that termination is warranted due to the recipient's failure to comply with the terms and conditions of the award, the EDA engineer/construction manager should first discuss the recommendation to terminate with the division director as well as the regional director. If the EDA engineer/construction manager, division director, and regional director agree that a termination is warranted, the EDA engineer/construction manager should issue written notification sent by certified mail to the recipient that EDA: has determined that the recipient is in material non-compliance with the terms and conditions of the award; intends to initiate termination if specific corrective actions are not taken within 30 days to bring the recipient into material compliance; and that the recipient has the option to request a termination for convenience. This letter should list the specific corrective action(s) required and inform the recipient that a formal request from its authorized representative should be provided to EDA if the recipient wishes to terminate for convenience (*see* Appendix D below for the template *Termination for Cause Notice #1*). The EDA engineer/construction manager should seek assistance from the regional counsel in the preparation of this letter, which must be signed by the regional director and sent by certified mail, return receipt requested.
- c. If the recipient fails to respond and/or fails to demonstrate compliance with the corrective actions outlined in the letter within 30 days of receipt of the *Termination for Cause Notice #1*, the EDA engineer/construction manager shall prepare an ED-506 decision memorandum from the regional director to the Assistant Secretary (*see* Appendix E for the template *ED-506 re: Termination for Cause*) that contains the following:
 - (i) Background
 - Brief description of project work, purpose, financing; and
 - Current status of the project.

- (ii) Discussion
 - How the recipient is in material noncompliance with the terms and conditions of the award;
 - What corrective actions EDA requested of the recipient to avoid termination;
 - Documentation of the recipient's failure to undertake and/or complete these corrective actions in the 30-day time period allotted;
 - A statement that the recipient was informed of the option to terminate for convenience, but did not pursue this option;
 - A statement that it is in the government's best interest to pursue a termination for cause; and
 - The amount of eligible costs that EDA expects to fund. These costs, if any, will be considered the final disbursement for the project.
- (iii) Recommendation. The ED-506 should contain the conclusion that:

In view of the recipient's material noncompliance with the terms and conditions of the award, it is recommended that the project be terminated for cause.
- (iv) Attachments
 - A copy of the *Termination for Cause Notice #1* that was sent to the recipient, as described in subsection (b) above; and
 - The recipient's response, if applicable.
- d. After the regional director approves and signs the ED-506, the EDA engineer/construction manager shall route the ED-506 to the Office of the Chief Counsel in EDA Headquarters, which bears responsibility for managing EDA Headquarter's review and approval process.
- e. If the Assistant Secretary approves the termination for cause and signs the ED-506, the EDA engineer/construction manager shall prepare a letter from the regional director to the recipient that notifies the recipient of the termination for cause; reiterates the reason(s) for the termination for cause; and informs the recipient of procedures to repay disallowed costs (if any) and receive reimbursement for any eligible, non-cancellable costs incurred prior to the date of the termination action. *See Appendix F below for the Letter Notifying Recipient of Termination for Cause template.* This letter must be sent via certified mail, with return receipt requested.
- f. If appropriate documentation of costs is provided by the recipient and if the EDA engineer/construction manager determines that EDA should participate in these costs, the EDA engineer/construction manager shall prepare a final Form SF-271, *Outlay Report and Request for Reimbursement for Construction Programs*, along with the *Closeout Memorandum*, and submit both of these forms to ASSD.
- g. The EDA engineer/construction manager shall ensure that all of the following is included in the project file: (i) the ED-506 signed by the Assistant Secretary; (ii) the return receipt indicating the recipient's receipt of the final termination letter; and (iii) all correspondence with the recipient, particularly relating to termination.

**SECTION VII
CONSTRUCTION POST-APPROVAL –DISBURSEMENTS**

A. Recipient Submits Disbursement Request

1. Prior to Initial Disbursement

Before initial disbursement, the following must occur:

- a. The EDA engineer/construction manager must ensure that the recipient has satisfied all applicable terms and conditions of the award;
- b. The recipient must submit Form SF-271, *Outlay Report and Request for Reimbursement for Construction Programs*, and Form SF-3881, *ACH Vendor Form*, to the EDA engineer/construction manager for review;
- c. The EDA engineer/construction manager shall strongly encourage the recipient to complete and submit the *Checklist for Initial Disbursement* and the *Pay Request Cover Letter* provided on the Post-Approval CD along with SF-271 and SF-3881;
- d. The recipient shall certify that its proportionate share of funds (including overruns) is on deposit;
- e. All claims for reimbursement by the recipient must be substantiated by invoices or vouchers. The EDA engineer/construction manager shall strongly encourage the recipient to use the disbursement spreadsheet provided on the Post-Approval CD, which requires a listing of all invoices, expenses, and dollar amounts claimed. No disbursements may exceed the total of approved costs incurred as of the effective date of Form SF-271, multiplied by the percentage of award participation in the project by EDA. The EDA engineer/construction manager shall review all invoices and expenses claimed to ensure that they are eligible for EDA assistance; and
- f. The EDA engineer/construction manager should review the *Checklist for Initial Disbursement* provided on the Post-Approval CD to ensure that all requirements have been met.

2. Initial Disbursement

When all of the pre-initial disbursement requirements have been satisfied, the following steps must be taken:

- a. The EDA engineer/construction manager prepares the “Payment Voucher” (*see Appendix G below for the template Payment Voucher*⁴);
- b. The regional director and division director sign the *Payment Voucher*;
- c. The EDA engineer/construction manager logs the pay request for internal documentation;
- d. The EDA engineer/construction manager sends Forms SF-271 and SF-3881 and the *Payment Voucher* to the Accounting and Support Services (ASSD) Division in Headquarters; and

⁴ If the project is co-funded with another federal entity (e.g. ARC, DRA), contact ASSD to see what changes may be required to the payment voucher form.

- e. The EDA engineer/construction manager signs, dates, and sends a copy of the submitted *Pay Request Cover Letter* provided on the Post-Approval CD to the recipient. If the recipient does not use the template provided on the Post-Approval CD, the EDA engineer/construction manager shall send the recipient an email or letter approving the pay request.
- h. See subsection VI.A. entitled *Pre-Disbursement Requirements* of the *Summary of EDA Construction Standards* for further guidance on the disbursement process, which includes more detailed information on allowable costs and acceptable non-EDA contributions.

3. **Interim Disbursements**

- a. To receive interim disbursements, the recipient shall submit Form SF-271 to the EDA engineer/construction manager for review. The EDA engineer/construction manager should strongly encourage the recipient to also submit the “Pay Request Cover Letter” provided on the Post-Approval CD.
- b. All claims for reimbursement by the recipient must be substantiated by invoices or vouchers. The recipient shall be strongly encouraged to use the EDA spreadsheet provided on the Post-Approval CD, which requires a listing of all invoices, expenses, and dollar amounts claimed. The EDA engineer/construction manager shall ensure that the percentage of the award being requested does not exceed the percentage of completion of the project. The EDA engineer/construction manager shall review all invoices and expenses claimed to ensure that they are eligible for EDA assistance.
- c. The EDA engineer/construction manager will continue to process disbursement requests until 90 percent of EDA funds have been disbursed. The recipient can request the remaining 10 percent of EDA funds once all closeout documents have been received. See the subsection entitled *Project Closeout* at section VIII below.

4. **Headquarters Accounting Functions**

- a. Upon receipt of Form SF-271 and the *Payment Voucher*, ASSD in EDA Headquarters checks to ensure that the amount of funds requested on both forms match and that funds are available for disbursement.
- b. If funds are available, the payment data is entered into the Commerce Business System (CBS), and ASSD wires the funds to the recipient.
- c. If the funds requested do not match on both forms or funds are not available, ASSD confers with the regional office.
- d. ASSD emails a weekly disbursement log to the regional office showing all disbursements made during the week. The EDA engineer/construction manager shall review this log to ensure its accuracy. If the log does not match the EDA engineer/construction manager’s records, the EDA engineer/construction manager should contact ASSD.

SECTION VIII
CONSTRUCTION POST-APPROVAL –PROJECT CLOSEOUT

Once ASSD has disbursed 90 percent of project funds to the recipient, the project will reach the project closeout stage.

A. Recipient Submits Documentation for Final Closeout

1. **Project Closeout Process.** After project construction is complete, the recipient shall notify the EDA engineer construction manager in advance of the final inspection of the project so that EDA may have the opportunity to participate. When project construction and final inspection have been completed and the recipient has accepted the project from the contractor, the recipient can begin the closeout process by submitting the following documentation to EDA:
 - a. A request for final disbursement on an executed Form SF-271;
 - b. A written certification that all costs claimed are for eligible activities under the financial assistance award agreement, for which there is documentation included in the recipient's records⁵;
 - c. A *Final Acceptance Report* (the EDA engineer/construction manager should strongly encourage the recipient to use the template provided on the Post-Approval CD and submit the accompanying cover letter);
 - d. A statement signed by the recipient's authorized representative certifying that: the recipient has submitted valid single audits to the Federal Audit Clearinghouse within nine months of the end of the recipient's fiscal year completed during the period of performance; the recipient has submitted to EDA copies of any single audits containing material findings; and that any audits required by OMB Circular A-133 not yet due, but covering the award's period of performance, will be submitted to the Federal Audit Clearinghouse when due⁶; and
 - e. Other documentation as may be required by the EDA engineer/construction manager.
2. **Project Closeout Checklist.** The recipient is strongly encouraged to submit the *Project Closeout Checklist* provided on the Post-Approval CD, along with the aforementioned documentation. If the recipient does not use the "Project Closeout Checklist," the recipient must notify EDA of the following:⁷
 - a. Compliance with all award term and conditions, including special award conditions;
 - b. Procurement of permanent insurance for above-ground facilities;
 - c. Compliance with the requirement that all changes to the project have been brought to EDA's attention;

⁵ Not required if the recipient submits the Final Acceptance Report cover letter provided on the Post-Approval CD.

⁶ Not required if the recipient submits the Final Acceptance Report cover letter provided on the Post-Approval CD.

⁷ None of these documents are required if the recipient submits the Project Closeout Checklist template provided on the Post-Approval CD.

- d. Compliance with the requirement to retain all records pertinent to the award for three years from the date of submission of the final expenditure report, with the following exceptions:
 - (i) If any litigation, claim, or audit begins before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;
 - (ii) Records for real property and equipment acquired with federal funds must be retained for three years after final disposition; and
 - (iii) When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the recipient.
 - e. Receipt of as-built drawings from the contractor or the A/E;
 - f. Certification that there are no outstanding Davis-Bacon Act or local labor employment violations;
 - g. Any change, lien, mortgage, or other encumbrance relating to the ownership of the property acquired or improved with EDA assistance;
 - h. Any unresolved contract/contractor disputes;
 - i. Execution and recordation in the appropriate jurisdiction of a lien or covenant of purpose, use, and ownership in favor of EDA, if a lien or covenant of purpose has not already been executed and recorded;
 - j. That the project facility will be maintained by the recipient of its estimated useful life as determined by EDA, during which period the recipient shall not alienate its ownership or alter the use and purpose of the EDA-assisted facility without EDA's written permission.
3. The recipient shall submit, within 90 calendar days of the expiration of the award or project completion, whichever occurs earlier, documentation required for the completion of project closeout, including all financial, performance, and other reports as required by the terms and conditions of the award.
 4. Unless EDA authorizes an extension, the recipient shall liquidate all obligations incurred under the award no later than 90 calendar days after project completion or award expiration, whichever occurs earlier, as specified in the terms and conditions of the award.
 5. EDA shall advise the recipient of costs found eligible, costs found ineligible, and the reasons for ineligibility findings.
 6. The EDA engineer/construction manager shall prepare the *Closeout Memorandum* (see Appendix H below for the *Closeout Memorandum* template⁸). The regional director and division director must sign the "Closeout Memorandum" and submit it, along with the final Form SF-271, to ASSD.
 7. If the recipient has received an award amount in excess of the amount due the recipient, the recipient must refund the excess to EDA, payable to the U.S. Treasury.
 8. If the entire EDA award amount was not expended, ASSD will de-obligate the unexpended portion.

⁸ If the project is co-funded with another federal entity (e.g. ARC, DRA), contact ASSD to see what changes may be required to the closeout memorandum.

9. The EDA engineer/construction manager shall sign and date the *Final Acceptance Report Cover Letter* provided on the Post-Approval CD and return a copy to the recipient. If the recipient did not submit this cover letter, the EDA engineer/construction manager stamps or signs a copy of the template provided by the recipient and return this template to the recipient.
10. The EDA engineer/construction manager shall enter the Project Closed Date (PCL) and Actual Construction Completion date (CCR) into OPCS.
11. The EDA engineer/construction manager shall mail the recipient a letter reminding them of the GPRA reporting requirements.
12. The regional office sends the file to the Records Center, retaining some key files in-house (e.g., the project working file).

Appendix A: ED-506 re Termination for Convenience

FORM ED-506 (REV. 1-27-87)	U.S. DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT ADMINISTRATION					
CORRESPONDENCE BRIEF - MEMORANDUM						
TO:	X	Regional Director				
		Deputy Assistant Secretary				
<u>ACTION MEMORANDUM</u>						
DATE:	[Date]					
FROM:	[Name]					
REFERENCE:	EDA Award No. [number] [Investment name] [Location]					
RECIPIENT:	[Name of Recipient]					
SUBJECT:	Termination of Award for Convenience					
<p><u>Background:</u> On [date], EDA approved a financial assistance award in the amount of \$[EDA dollars] to the [recipient] for the [project description] estimated to cost \$[total project dollars]. [Describe work that was to have been performed as part of the overall project, as well as the EDA scope of work, as well as the project’s expected outcomes. For example: “The existing defective pre-cast concrete planks were to be replaced with a galvanized structural metal deck. The project was to enable the full use of the 196,000 ± SF facility for industrial and marine-related uses. The project was to save 89 jobs and create an additional 150 new jobs. The EDA award was to cover design, inspection and construction of the new roof structure.”]</p> <p><u>Discussion:</u> The [name] Regional Office received a letter from [recipient] on [date] requesting termination for convenience. A copy of this document is attached.</p>						
SURNAME AND ORGANIZATION <i>(Typed)</i>	PREPARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY
	Name, Title	Regional Counsel				
INITIALS AND DATE						

[Discuss reason(s) why the recipient requested a termination. For example: “On May 29, 2006, the recipient notified EDA that the repairs to the industrial facility were predicated on the recipient being able to find a suitable industrial user for the building. Since the financial assistance award date, the recipient had made diligent efforts to identify and secure a maritime industrial user for the Pier 1 site, but after pursuing several possibilities they were not successful in securing such a user.”]

As of [date of memo], EDA has disbursed \$[dollars] in award funds. The [recipient] has submitted documentation showing \$[dollars] in additional, non-cancellable, eligible expenses, and the EDA engineer/construction manager has determined that these documented expenses are eligible for reimbursement by EDA. These costs will be considered the final disbursement for the project.

Recommendation: In view of the above discussion, and since the recipient has agreed to the termination of EDA project #[award number], it is recommended that the project be terminated for convenience in accordance with the attached Offer to Terminate Financial Assistance Award for Convenience. It is also recommended that the Regional Director sign the attached letter to inform the recipient of EDA’s action.

[Attachments: Recipient request for termination for convenience, Offer to Terminate Award Agreement for Convenience, cover letter to Offer to Terminate Financial Assistance Award for Convenience.]

APPROVED: _____

DISAPPROVED: _____

DATE: _____

Appendix B: Offer of Termination for Convenience Cover Letter

[Recipient]

[Address]

Re: EDA Award #[insert project number]

Dear [Name]:

It is understood from your letter dated [date], that you are agreeable to the termination for convenience of the investment referenced above.

[Insert the following paragraph if EDA has determined that eligible costs have been incurred: “EDA has determined that the final accepted project cost for the project’s eligible obligations incurred up to the date of notification of the project’s termination was \$[dollars]. EDA has determined that the federal share of the total project cost is \$[dollars] which was previously disbursed to [recipient]. The remaining \$[dollars] of federal funding reserved and obligated for this project has been deobligated and returned to the U.S. Treasury.”]

[Alternatively, insert the following paragraph if EDA determines that no eligible costs have been incurred: “Since no participation was requested from EDA in the project’s eligible obligations incurred up to the date of notification of the project’s termination, the entire funding reserved and obligated for this project has been deobligated and returned to the U.S. Treasury.”]

We sincerely regret that the award could not be executed as planned. We appreciate that the difficulties were essentially beyond your control or resolution.

Enclosed are three copies, two of which have been signed, of an Offer to Terminate Financial Assistance Award Agreement for Convenience.

Acceptance of the Offer must conform to such local laws as govern the entering into and execution of contracts. Any procedural requirements respecting such agreements under local law must be observed.

Your acceptance of the Offer to Terminate Financial Assistance Award Agreement for Convenience should be indicated by the signatures of the principal officials on one of the signed copies of the Agreement. The acceptance copy should be returned to [Name], Regional Director, [Name] Regional Office, Economic Development Administration, [address].

Sincerely,

[Name]

Regional Director

Appendix C: Offer to Terminate Financial Assistance Award Agreement for Convenience

**OFFER TO TERMINATE
FINANCIAL ASSISTANCE AWARD AGREEMENT FOR CONVENIENCE**

EDA Investment No.: [number]

WHEREAS, the United States of America, Department of Commerce, Economic Development Administration (herein the "Government") pursuant to its authority under the Public Works and Economic Development Act of 1965 (P. L. 89-136), as amended, entered into a Financial Assistance Award Agreement (herein the "Agreement"), with [recipient(s)] on [date] and

WHEREAS, said Agreement provided an Award not to exceed the lower of [enter EDA \$] or [enter award rate] percent of the actual cost of the project estimated to cost [enter project \$] and consisting of [enter brief project description];

WHEREAS, the parties have now determined that it not feasible to complete the project as originally intended and that an accounting should be made and the Agreement terminated for convenience of the parties; and

[Insert the following paragraph if EDA has determined that eligible costs have been incurred: “WHEREAS, the parties agree that \$[dollars] has been expended toward the project to date and that the EDA share of eligible costs to date is \$[dollars]; and”]

WHEREAS, the parties further agree that no [other] eligible costs have been incurred or will be incurred pursuant to said Agreement [other than hereinabove mentioned];

NOW THEREFORE, for and in consideration of the premises and for the mutual benefit and convenience of the parties, the Government hereby tenders this Offer to Terminate on [date].

Acceptance of this Offer to Terminate must be made by the [recipient(s)] and returned to the Government on or before [insert 30 days from date of letter].

**DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

By: _____
[Name], Director
[Name] Regional Office

(Date)

EDA Investment No. [number]

The above Offer to Terminate Award for Convenience is hereby accepted.

By: _____
 (Signature) (Title of Accepting Official)

(Printed Name) (Date)

The above Offer to Terminate Award for Convenience is hereby accepted.

By: _____
 (Signature) (Title of Accepting Official)

(Printed Name) (Date)

CERTIFICATION (By Official other than Accepting Official)

The person signing this Acceptance is so authorized by the Governing Body or Board of the Recipient.

By: _____
 (Signature) (Title of Certifying Official)

(Printed Name) (Date)

CERTIFICATION (By Official other than Accepting Official)

The person signing this Acceptance is so authorized by the Governing Body or Board of the Recipient.

By: _____
 (Signature) (Title of Certifying Official)

(Printed Name) (Date)

Appendix D: Termination for Cause Notice #1

INITIAL LETTER TO RECIPIENT
NOTIFICATION OF INTENT TO TERMINATE FOR CAUSE

[date]

[Recipient]
[Address]

RE: **[Project name]**
EDA Award No. [number]

Dear [name] :

On [date], the [Recipient] accepted financial assistance award in the amount of \$ [EDA award amount] from the Economic Development Administration (EDA) for the purpose of [project description]. In accepting the award, you agreed to comply with the Special Award Conditions and with the Standard Terms and Conditions governing the award, including the provision to [insert provision the recipient is in violation of, e.g.:

As you are aware, the project has experienced serious delays in contravention of the above requirement. Special Award Condition No. 1 - PROJECT DEVELOPMENT TIME SCHEDULE states: "The Recipient shall pursue diligently the development of the Project so as to ensure completion of the Project and submission of closeout documents within the time schedule. Moreover, the Recipient shall notify the Government in writing of any event which could delay substantially the achievement of the Project within the prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government's taking action to terminate the Award in accordance with the regulations set forth at 13 CFR Chapter III and 15 CFR 24.43."

Furthermore, Section C.16 of the Standard Terms and Conditions of the Award states that EDA shall have the right to terminate for cause all or any part of its obligation if the Recipient has violated commitments it made in its application and supporting documents or has violated any of the terms and conditions of the award. Because you have failed to complete this project within the time specified in the Financial Assistance Award or within a reasonable time, EDA has determined that you, as Recipient, have materially breached the terms and conditions of the Financial Assistance Award.

Specifically, you have not completed construction within the approved time frame. The original construction completion date was [date]. On [date] the Regional Office approved a time extension extending the construction completion date to [date]. As of this date no written communication has been provided to EDA as is required in Special Condition No. 1, to notify EDA of any event which could delay the project. Furthermore,

over one year has lapsed and no documentation has been provided to show that the construction on the project is complete.]

In view of the above, this is to inform you that EDA will initiate a termination for cause, which will result in a termination of all of EDA's obligations to the project and a return of all non-disbursed EDA project funds (less eligible, non-cancellable costs) to the U.S. Treasury, unless one of the following occurs:

- 1) Within 30 days of the date of this letter, [recipient] [describe corrective action required and documentation necessary to show correction action has been taken], or
- 2) The [recipient]'s authorized representative submits a formal request for termination for convenience within 30 days of the date of this letter. Termination for convenience has several benefits, including no adverse impact on [recipient]'s future applications for Federal funding.

If you fail to respond in writing within the 30-day period, or if your justification for continuing the award is unacceptable, EDA will commence action to terminate the award.

EDA will, as of the date of this letter, formally cease disbursement on the award pending a final decision as to whether to terminate EDA's obligation under the award. In no event are you to incur any new obligations under the award pending EDA's final decision on this matter.

After reviewing your reply, EDA will inform you in writing of its final decision with respect to termination or other appropriate action. Please address any questions to [contact name and phone number].

Sincerely,

[Name]
Regional Director

Appendix E: ED-506 re Termination for Cause

FORM ED-506
(REV. 1-27-87)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CORRESPONDENCE BRIEF - MEMORANDUM

TO:	<input checked="" type="checkbox"/>	Assistant Secretary
	<input type="checkbox"/>	Regional Director

ACTION MEMORANDUM

DATE: [Date]

FROM: [Name]
Regional Director

REFERENCE: EDA Award No. [number]
[Investment name]
[Location]

RECIPIENT: [Recipient]

SUBJECT: Termination of Financial Assistance Award for Cause

Background: On [date], EDA approved a financial assistance award in the amount of \$[amount] to the [recipient] for [brief project description]. [Describe work that was to have been performed as part of the overall project, as well as the EDA scope of work, as well as the project's expected outcomes.]

SURNAME AND ORGANIZATION (Typed)	PREPARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY
		[Name, Title]	Regional Counsel			
INITIALS AND DATE						

Discussion: [This section should contain discussion on the following: (1) how the recipient is in material noncompliance with the terms and conditions of the award; (2) what corrective actions EDA requested of the recipient to avoid termination; (3) documentation of the recipient's failure to complete these corrective actions in the 30-day time period allotted; (4) a statement that the recipient was informed of the option of termination for convenience but did not pursue this option; (5) a statement that it is in the government's best interest to pursue a termination for cause; (6) the amount of eligible costs that EDA expects to fund. These costs, if any, will be considered the final disbursement for the project. For example:

The project was approved with a Project Development Time Schedule requiring construction to start on [date]. The Recipient notified the Regional Office that on [date], the building was completely destroyed by a devastating fire that consumed the entire structure. The building, which at the time of the fire was owned by the City of Somewhere, had to be demolished immediately due to issues related to public safety. Although arson caused by vagrants was suspected, no one was ever arrested or prosecuted for the fire.

At the time of the fire, no EDA eligible project activities had been accomplished. The building was owned by the City of Somewhere and had not yet been transferred to the Economic Development Industrial Corporation (EDIC). The Recipient had expended their own funds to complete such actions as preliminary design, market studies, cost estimates, environment assessments, and hiring community development consultants. None of these activities were included in the approved EDA project budget.

The Regional Office informed the Recipient that EDA would consider amending the Award to allow the Recipient to find a suitable replacement building to complete the project. This would be contingent on the EDIC finding a building that was located within the same census tract and that would fulfill the same economic need – that of providing space for the artisan population of Somewhere.

For nearly seven months the EDIC canvassed that area of the downtown for a structure that 1) could be adapted for re-use by artisans, 2) was located in the seven block area of the downtown, 3) was vacant to avoid displacement of workers and companies and 4) whose price fit into the original budget parameters of the application. The Something Building was to be donated to the EDIC for \$1.00.

In early winter of 2000, the EDIC identified the Replacement Building as a possible replacement for the Something Building and EDA Regional Office staff

was notified. Over the next four months EDIC worked to prepare costs estimates for the project, to present the project to City officials for approvals, to secure an adjacent parcel for parking and to secure new financing commitments. These actions were completed in May 2001 at which time an amended application was submitted to the Regional Office for consideration as a replacement project.

Over the next several months the Regional Office reviewed the amended application to make a determination if the revised project would be an acceptable replacement project. The Regional Office raised several concerns that the replacement project would not meet the economic goals of the original project. A few of the Regional Office concerns were as follows:

1) The original project would have renovated 42,000 ± SF of building space and was projected to create 120 permanent jobs. The amended project would have only renovated 11,500 ± SF of space and was only projected to create 25 jobs, both were substantially less than the original project.

2) In the original project, EDA's investment of \$[amount] represented only 27% of the total project cost of \$[dollars]. In the amended project, the EDA investment remained at \$[dollars] yet comprised 50% of the revised costs estimated now to be \$[dollars].

3) The revised project would have required \$[dollars] or 31% of the project budget to be used to acquire the 4-story building and an adjacent gas station. The project would have required the payment of relocation costs to relocate the gas station business. Additional project funds would have been used for the demolition and environmental remediation of the gas station site to allow the site to be used as a parking lot for the building occupants.

On [date], the Regional Office sent the EDIC a 30-day notice that EDA was intending to terminate the Award unless they submitted evidence to justify EDA's reconsideration of the intended termination action. The EDIC responded on [date] outlining a new project time schedule and assured that they could meet the economic development goals of the project. The Regional Office agreed to suspend its termination actions to allow the Recipient additional time to submit detailed engineering and environmental documentation for further consideration of the revised project.

The EDIC submitted the additional documentation on [date]. The Regional Office determined the project as presented would not fulfill the original intended economic benefits and the concerns as stated previously were still present. Therefore, the Regional Office recommended to the Recipient that they would consider agreeing to terminate the project for convenience.

The Regional Office followed-up several telephone conversations with the Recipient with a letter dated [date] notifying EDIC that EDA would be agreeable to terminate the Award for convenience. The letter informed EDIC that they must officially request the termination for convenience in writing and that they must also submit a resolution from the governing body authorizing the request. EDIC was also put on notice that failure to provide the documentation within 45 days of the date of the letter may lead the Regional Office to terminate the Award for cause.

The EDIC has never responded to the [date] letter requesting official documentation. Numerous telephone requests for the documentation were conducted between EDA and the Executive Director of EDIC. The Executive Director did not concur with EDA's determination that the revised project would not fulfill the intended economic benefits of the original project. Furthermore, the Executive Director also did not wish to terminate the project. The Regional Office informed the Director he had two options for the termination. He could either agree to terminate for convenience and submit a request to do so in writing, or EDA would unilaterally take action to terminate for cause. EDIC never provided the written request to terminate for convenience even after several follow-up telephone calls were again placed by the Regional Office and the Economic Development Representative. Therefore, the Regional Office initiated actions to terminate for cause.

The XX Regional Office believes that terminating the award is in the Government's best interest. No eligible costs have been incurred to date, and no disbursements have been made.

Recommendation: In view of the recipient's material noncompliance with the terms and conditions of the award, it is recommended that the project be terminated for cause. Additionally, since there are no project costs incurred on the project requiring EDA award participation, it is also recommended that the full EDA award amount totaling \$[dollars] be deobligated.

APPROVED: _____

DISAPPROVED: _____

DATE: _____

Appendix F: Letter Notifying Recipient of Termination for Cause

LETTER TO RECIPIENT
INFORMING OF TERMINATION FOR CAUSE

[Date]

[Recipient]

[Address]

RE: [Award Name]
EDA Award [number]

Dear [Name]:

Please be informed that, as of this date, EDA Investment Number [number] has been terminated for cause.

This action has been taken because the [recipient] has failed to comply with the Terms and Conditions of the Economic Development Administration Financial Assistance Award dated [date]. We refer specifically to [pertinent section of Terms and Conditions], as well as to nonconformance with instructions contained in correspondence from the Economic Development Administration, [Name of Regional Office] Regional Office on [date(s)].

[Insert one of the following paragraphs, as applicable:

This termination provides for EDA to participate in the [Recipient's] eligible obligations incurred prior to [date of initial letter], which have been found to amount to \$[amount]. All EDA funds reserved and obligated for this investment, beyond the amount EDA has agreed to fund, have now been de-obligated and returned to the U.S. Treasury.

[Alternative third paragraph]

This termination provides for EDA to participate in the [Recipient's] eligible obligations incurred prior to [date of initial letter of intent]. Therefore, you are requested to furnish proper documentation that would include a list of incurred eligible expenses related specifically to this investment, with appropriate invoices, paid receipts, cancelled checks, or other evidence of proof of such expenses. The [Name of Regional Office] Regional Office will determine which, if any, expenses are eligible for reimbursement and will process your payment accordingly.

[Alternative third paragraph]

This termination does not provide for EDA's participation in any costs that the [Recipient] may have incurred. All EDA funds that were reserved and obligated for the investment have been deobligated and returned to the U.S. Treasury.

This action of termination for cause will be a complete release and discharge of any and all obligations from the United States of America to the [Recipient]. [Additional language, if appropriate. If the recipient must repay costs: "It does not release the [Recipient] of its obligation to repay the \$[amount] spent in violation of the Financial Assistance Award."] This action does not release [recipient] of its obligation to retain records and be subject to audit requirements in accordance with the Financial Assistance Award.

Sincerely,

[Name]
Regional Director

Appendix G: Payment Voucher

Date: Month Day, Year

TO: Director, Administrative & Support Services Division
Mail Stop H 7217

FROM: Name
Director, XX Region

**SUBJECT: Payment Voucher for Award No. xx-xx-xxxxx
Recipient (Payee): Name, City, State**

The POC for this project isName, Phone Number

This payment is payment number xx

The Regional Office has determined:

- The total project cost is \$x,xxx,xxx
- EDA's share of the accepted total project cost is \$x,xxx,xxx
- Amount of award previously disbursed \$x,xxx,xxx
- Amount to be disbursed in this payment..... \$x,xxx,xxx

Construction Manager/Engineer's or
Economic Development Specialist/
Representative's Signature

Date

Area/Division Director's Signature

Date

Regional Director's Signature

Date

Appendix H: Closeout Memorandum

Date: Month Day, Year
TO: Director, Administrative & Support Services Division
Mail Stop H 7217
FROM: Name
Director, XX Region
SUBJECT: Final Action to Close Out Award No. xx-xx-xxxxx
Recipient: Name, City, State

This action is based on:

- Independent Project Audit
- OMB Circular A-133, Audit
- Determinations of the EDA Regional Office

The POC for this project isName, Phone Number

The project period is MM/DD/YY-MM/DD/YY

The (pro-rata or maximum) award rate xx%
is.....

The original approved total project cost is..... \$x,xxx,xxx

The award amount including project amendment is..... \$x,xxx,xxx

The Regional Office has determined:

- The final accepted total project cost is..... \$x,xxx,xxx
- EDA's share of the accepted total project cost is \$x,xxx,xxx
- Amount of award previously disbursed \$x,xxx,xxx
- Amount of this final disbursement..... \$x,xxx,xxx
- Amount to be de-obligated is..... \$x,xxx,xxx
- Excess award funds returned by Recipient \$x,xxx,xxx

Construction Manager/Engineer's Signature

Date

Area/Division Director's Signature

Date

Regional Director's Signature

Date