

**Construction Investments (OMB Control 0610-0096): 13 CFR §§ 305.5—305.14**

**§ 305.5 Project administration by District Organization.**

(a) When a District Organization is not the Recipient or co-Recipient of Investment Assistance, the District Organization may administer the Project for the Recipient if EDA determines fulfillment of the following conditions:

(1) The Recipient has requested (either in the application or by separate written request) that the District Organization for the Region in which the Project is located administer the Project;

(2) The Recipient certifies and EDA finds that:

(i) Administration of the Project is beyond the capacity of the Recipient's current staff and would require hiring additional staff or contracting for such services;

(ii) No local organization or business exists that could administer the Project in a more efficient or cost-effective manner than the staff of the District Organization; and

(iii) The staff of the District Organization would administer the Project without sub-contracting the work; and

(3) The allowable costs for the administration of the Project by the District Organization's staff will not exceed the amount that would be allowable to the Recipient.

(b) EDA must approve the request either by approving the application in which the request is made or by separate specific written approval.

**§ 305.6 Allowable methods of procurement for construction services.**

(a) Recipients may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These methods include but are not limited to design/build, construction management at risk and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:

(1) Justification for the proposed method for procurement of construction services;

(2) The scope of work with cost estimates and schedules;

(3) A copy of the proposed construction contract;

(4) The name and qualifications of the selected design professional; and

(5) Procedures to be used to ensure full and open competition, including the selection criteria.

(b) For all procurement methods, the Recipient must comply with the procurement standards set forth in 15 CFR parts 14 or 24, as applicable.

**§ 305.7 Services performed by the Recipient's own forces.**

In certain circumstances, the Recipient may wish to consider having a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the Project performed by personnel who are employed by the Recipient either full-time or part-time. EDA may approve the use of such "in-house forces" if:

(a) The services are routinely performed by the Recipient for all construction Projects performed by the Recipient (for example, inspection or legal); or

(b) The Recipient has a special skill required for the construction of the Project (for example, construction of unique Indian structures); or

- (c) The Recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the Project site or an overabundance of construction work in the Region; or
- (d) The Recipient demonstrates substantial cost savings.

**§ 305.8 Recipient-furnished equipment and materials.**

The Recipient may wish to incorporate into the Project equipment or materials that it will secure through its own efforts, subject to the following requirements:

- (a) EDA must approve any use of Recipient-furnished equipment and materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value of such equipment;
- (b) EDA may require the Recipient to establish that the expense claimed for such equipment or materials is competitive with current local market costs; and
- (c) Acquisition of Recipient-furnished equipment and/or materials under this section is also subject to the requirements of 15 CFR parts 14 or 24, as applicable.

**§ 305.9 Project phasing and Investment disbursement.**

(a) EDA may authorize in advance the award of construction contracts in phases, provided the Recipient submits a request that includes each of the following:

- (1) Valid reasons justifying why the Project must be phased;
- (2) Description of the specific elements to be completed in each phase;
- (3) Detailed construction cost estimates for each phase;
- (4) Time schedules for completing all phases of the Project;
- (5) Certification that the Recipient can and will fund any overrun(s); and
- (6) Certification that the Recipient is capable of paying incurred costs prior to

the first disbursement of EDA funds.

(b) EDA will begin disbursement of funds after receipt of evidence sufficient to EDA of compliance with all Investment award conditions. EDA may approve the disbursement of funds prior to the tender of all construction contracts if the Recipient can demonstrate to EDA's satisfaction that a severe financial hardship will result without such approval.

**§ 305.10 Bid underrun.**

If at the construction contract bid opening, the lowest responsive bid is less than the total Project cost, the Recipient will notify EDA to determine whether Investment funds should be deobligated from the Project.

**§ 305.11 Contract awards; early construction start.**

EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the terms and conditions of the Investment award in order for the costs to be eligible for EDA reimbursement. Pending this determination, the Recipient may issue a notice permitting construction under the contract to commence. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA review and concurrence. The EDA regional office will advise the Recipient of the requirements necessary to obtain EDA's determination.

**§ 305.12 Project sign.**

The Recipient shall be responsible for the construction, erection and maintenance in good condition throughout the construction period of a sign or signs at a conspicuous place at the Project site indicating that the Federal government is participating in the Project. The EDA regional office will provide mandatory specifications for the signage.

**§ 305.13 Contract change orders.**

(a) If it becomes necessary to alter the construction contracts post-execution, the Recipient and contractor shall agree to a formal contract change order.

(b) All contract change orders must receive EDA review for compliance with the terms and conditions of the Investment award, even if the Recipient is to pay for all additional costs resulting from the change or the change order reduces the contract price.

(c) Work on the Project may continue pending EDA review of the contract change order, but all such work will be at the Recipient's risk until EDA completes its review.

**§ 305.14 Occupancy prior to completion.**

Occupancy of any part of the Project prior to final acceptance is entirely at the Recipient's risk and must follow the requirements of local and State law.