



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

**SUMMARY OF EDA CONSTRUCTION STANDARDS**

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

JULY 2018

**TABLE OF CONTENTS**

I. PURPOSE AND SCOPE OF THIS SUMMARY ..... 1  
A. PURPOSE..... 1  
B. SCOPE ..... 1

II. DEPARTMENT OF COMMERCE AND EDA POLICIES ..... 2

III. REQUIREMENTS APPLICABLE TO EDA INVESTMENTS ..... 2  
A. GRANT RECIPIENT AS TRUSTEE..... 2  
B. THE RECIPIENT’S RESPONSIBILITIES..... 2  
C. EMINENT DOMAIN ..... 3  
D. RECORD-KEEPING REQUIREMENTS ..... 4  
E. THE FINANCIAL ASSISTANCE AWARD ..... 4  
F. FINANCIAL REPORTING..... 4  
G. MONITORING AND REPORTING PROJECT PROGRESS ..... 5

IV. PRE-CONSTRUCTION REQUIREMENTS..... 6  
A. ENVIRONMENTAL COMPLIANCE ..... 6  
B. CIVIL RIGHTS COMPLIANCE ..... 7  
C. START OF CONSTRUCTION..... 7  
D. PROJECT MANAGEMENT CONFERENCE..... 8  
E. ARCHITECT/ENGINEER SERVICES ..... 8  
F. SERVICES PERFORMED BY RECIPIENT’S OWN FORCES ..... 8  
G. TRIBAL EMPLOYMENT RIGHTS ORDINANCES ..... 9  
H. LAND, EASEMENTS AND RIGHTS OF WAY ..... 9  
I. RELOCATION ASSISTANCE..... 9  
J. EDA REVIEW OF PLANS AND SPECIFICATIONS..... 10  
K. NON-EDA WORK..... 10  
L. ALTERNATE CONSTRUCTION PROCUREMENT METHODS ..... 11  
M. OVERRUN AT THE BID OPENING ..... 11

V. REQUIREMENTS DURING CONSTRUCTION ..... 12  
A. THE RECIPIENT’S RESPONSIBILITIES..... 12  
B. CONTRACT CHANGE ORDERS. .... 13  
C. SPECIFIC REQUIREMENTS FOR SUBCONTRACTORS ..... 14  
D. CONTRACTING STANDARDS..... 14  
E. COMPETITIVE PROCUREMENT REQUIREMENTS ..... 16

VI. DISBURSEMENT OF GRANT FUNDS AND FINANCIAL ADMINISTRATION ..... 20  
A. PRE-DISBURSEMENT REQUIREMENTS ..... 20  
B. INTERIM DISBURSEMENTS ..... 21  
C. FINAL DISBURSEMENT ..... 21

VII. AWARD AMENDMENTS, APPROVALS, AND NOTIFICATIONS ..... 21

- A. AMENDMENTS ..... 22
- B. TIME SCHEDULE EXTENSIONS ..... 22
- C. BUDGET REVISIONS ..... 23
- D. ADDITIONAL EDA FUNDING ..... 23
- E. ADMINISTRATIVE APPROVALS AND NOTIFICATIONS ..... 24
- F. TERMINATION OF INVESTMENT ASSISTANCE ..... 24

VIII. POST-CONSTRUCTION REQUIREMENTS ..... 26

- A. AUDIT REQUIREMENTS ..... 26
- B. DEPARTMENTAL AUDIT RESOLUTION PROCESS ..... 27
- C. PROPERTY MANAGEMENT ..... 28
- D. CLOSEOUT PROCEDURES ..... 28

IX. APPENDIX ..... 31

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

### **A. PURPOSE**

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

### **B. SCOPE**

1. This Summary applies to all Awards for construction projects and is based on the Office of Management and Budget’s (“OMB”) administrative and programmatic requirements for federal grants as set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and in EDA’s regulations implementing PWEDA. These requirements are published in the *Code of Federal Regulations* (“C.F.R.”), each as amended from time to time:
  - (a) 13 C.F.R. chapter III (*Economic Development Administration, Department of Commerce*); and
  - (b) 2 C.F.R. part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*).
2. This Summary supplements the requirements set out in PWEDA, EDA’s regulations at 13 C.F.R. chapter III, the Terms and Conditions of the Award, 2 C.F.R. part 200 and the applicable requirements and authorities listed in the Appendix to this Summary and the hyperlinks set out therein (*see* section IX.). This Summary should be used as a reference tool to implement various requirements that apply to EDA construction investments made under sections 201 or 209 of PWEDA (42 U.S.C. §§ 3141 and 3149). This Summary is not a comprehensive source of information. In addition to PWEDA, a list of primary sources of legal requirements is set out above in section I.B.1.

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

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

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

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

The Recipient of an EDA investment holds grant funds and any EDA-funded project property in trust for the purpose(s) for which the Award was made. The Recipient's obligation to the Federal government continues for the estimated useful life of the project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the "Federal Interest") in the property improved, in whole or in part, with the EDA investment. *See* 13 C.F.R. § 314.2; 2 C.F.R. §§ 200.41, 200.316.

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

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

1. The Recipient is responsible for complying with all federal laws (and the regulations issued thereunder), federal, Departmental and EDA policies, Executive Orders, and 2 C.F.R. part 200, as referenced in the Terms and Conditions, each as may be amended from time to time. These statutes, regulations, policies, Executive Orders and 2 C.F.R. part 200 may include administrative and audit requirements, federal cost principles, programmatic requirements, financial requirements, and property management requirements. *See* 13 C.F.R. § 302.6. The Recipient is responsible for the design, bidding, construction, and operation of the project to ensure compliance with all grant requirements, including those set out at 13 C.F.R. part 305.

2. In order to facilitate timely implementation, EDA may accept the Recipient's certification, accompanied by evidence satisfactory to EDA, that it meets the requirements for receiving the Award and that it will comply with its Terms and Conditions. *See* 13 C.F.R. § 302.15; 2 C.F.R. § 200.208. EDA also may require the Recipient submit specific certifications for critical issues, such as major procurement and costs claimed in requests for disbursement of grant funds. EDA will monitor project progress and compliance with the Terms and Conditions through the:
  - (a) Recipient's written reports;
  - (b) Review of the Recipient's records during EDA visits to the project site;
  - (c) Department's Office of Inspector General audits; and
  - (d) Single or program-specific audit conducted in accordance with Subpart F of 2 C.F.R. part 200 and the related *Compliance Supplements*. *See* section VIII.A. of this Summary.
3. During the construction period, the Recipient is responsible for:
  - (a) Monitoring project progress and reporting progress to EDA;
  - (b) Providing for adequate construction inspection;
  - (c) Paying costs incurred for the project promptly; and
  - (d) Monitoring contractors' compliance with applicable local, State and federal requirements.
4. After construction is completed, the Recipient is responsible for submitting close-out documentation and properly administering, operating and maintaining the project for its estimated useful life, as determined by EDA and as set forth in the Terms and Conditions. *See* 13 C.F.R. § 302.12; 2 C.F.R. §§ 200.316, 200.343-200.344.
5. Failure to satisfy any Term or Condition may result in disallowance of costs, or suspension or termination of the Award and recovery of grant funds. In addition, such failure may have a negative impact on the Recipient's ability to receive future funding from the Department. *See* 13 C.F.R. § 302.18; 2 C.F.R. §§ 200.213, 200.338-200.342. In particular, the project development time schedule, a Term of the Award, can be extended only through the Recipient's written request for an amendment to the Award and written approval by EDA. *See* 13 C.F.R. § 302.7. The Terms and Conditions of the Award place the Recipient on notice that the grant may be suspended for not proceeding in accordance with the EDA-approved time schedule set out in the Award. No disbursement of EDA funds is permitted when a project has exceeded the EDA-approved time schedule, unless EDA has given written approval to a time schedule extension. *See* 13 C.F.R. § 305.9 regarding project phasing and investment disbursement.

### **C. EMINENT DOMAIN**

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

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

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

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

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

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

The Recipient is responsible for retaining records for the time frame specified in the Terms and Conditions. See 13 C.F.R. § 302.14. See also 2 C.F.R. § 200.333.

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

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

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

#### **F. FINANCIAL REPORTING**

1. *Semiannual financial reports.* Any Recipient whose Award has not been fully disbursed is required to submit a "Federal Financial Report" (Form SF-425 or any successor form) to EDA semiannually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable project expenses that have been incurred, but not claimed for reimbursement by the Recipient. The first report shall be as of March 31 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be of September 30 of each year and shall be submitted to EDA no later than October 30 of each year. Instructions for completing and submitting Form SF-425 will be furnished to the Recipient at least sixty (60) days before the report is due. While EDA generally does not advance funds, when the agency does so, the Recipient must submit Form SF-425 within fifteen (15) business days following the end of each quarter for an award under \$1 million, fifteen

- (15) business days following the end of each month for an award totaling \$1 million or more, or as otherwise specified in a special award condition.
2. *Final financial report.* The Recipient must submit a final financial report using Form SF-425 within ninety (90) days of the expiration date of the Award (or from the date the Recipient accepts the project from the contractor, whichever occurs earlier).
  3. *Noncompliance with financial reporting requirements.* Noncompliance with these requirements will result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments or disallowance of costs. Financial reports are to be submitted to the Project Officer.

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

1. *Quarterly Project Progress (Performance) Reports.*
  - (a) Quarterly Project Progress Reports must be submitted in accordance with the procedures set out in 2 C.F.R. § 200.328, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under the Award; deferral of processing of new awards, amendments or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed. See 13 C.F.R. § 302.18.
  - (b) Unless otherwise specified in the Award, the Quarterly Project Progress Reports will contain the following information for each project program, function, or activity:
    - (i) A comparison of planned and actual accomplishments according to the timetable or list of project objectives in the Award;
    - (ii) An explanation of any delays or failures to meet the project timetable or project goals; and
    - (iii) Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
  - (c) Quarterly Project Progress Reports shall be submitted for each calendar quarter to the Project Officer. Each project progress report must be submitted in accordance with the deadlines outlined in the special award conditions, or, where not otherwise specified, project progress reports will be due on a quarterly basis not later than January 31, April 30, July 31, and October 31 for the immediate previous quarter. The final Project Progress Report shall be submitted to EDA no more than 90 days after the project closeout date. This reporting requirement begins with the Recipient's acceptance of the Award and ends when EDA approves project closeout.

The Recipient shall submit Quarterly Project Progress Reports to the Project Officer electronically, unless otherwise specified in the Special Award Conditions.

*Interim performance reporting.* The Recipient must report any event that will or may have a significant impact upon the project, including delays or adverse conditions that materially may affect the ability of the Recipient to attain project objectives within established time periods or meet the project development time schedule. The recipient must disclose such problems to the Project Officer in the most time-expedient way



possible and then, if the initial report was not made in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action taken or contemplated to resolve the matter, and any federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. See 2 C.F.R. § 200.308(g). Any changes made to the project without EDA's prior approval are made at the Recipient's risk of nonpayment of costs, suspension, termination, or other applicable EDA action. See 13 C.F.R. § 302.7.

2. *Government Performance and Results Act reporting.* In addition to Quarterly Project Progress Reports, EDA may require the Recipient to report on project performance beyond the project closeout date for Government Performance and Results Act ("GPRA") purposes. In no case shall the Recipient be required to submit any report more than ten years after the project closeout date. Data used by the Recipient in preparing reports shall be accurate and, whenever possible, from independent sources. See 13 C.F.R. § 302.16.
3. *Reporting on real property.* The Recipient must submit reports (using Form SF- 429 "Real Property Status Report" or any successor form) at least annually, on the status of real property in which EDA retains an interest, unless the Federal interest in the real property extends 15 years or longer. When EDA's interest extends for a period of 15 years or more, EDA, at its option, may require the Recipient to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years of the Award and thereafter every five years). See 2 C.F.R. § 200.329.

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

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

Each Recipient must comply with all environmental standards and shall identify to EDA any impact a proposed project may have on the environment. In some cases, Award funds can be withheld by EDA under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable EDA to make an assessment on any impacts that a project may have on the environment.

EDA undertakes environmental reviews of projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*, as implemented under 40 C.F.R. parts 1500-1508) ("NEPA"), and all other federal environmental statutes, regulations and Executive Orders, as listed in the Terms and Conditions of the Award. These authorities include the implementing regulations of NEPA, which require EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 C.F.R.

§ 1506.6(b). The Recipient must pay special attention to and comply with any special environmental conditions in the Award.

See 13 C.F.R. § 302.1.

## **B. CIVIL RIGHTS COMPLIANCE**

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

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

Consistent with 2 CFR § 200.321, the Recipient and any subrecipient must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

## **C. START OF CONSTRUCTION**

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

#### **D. PROJECT MANAGEMENT CONFERENCE**

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

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

1. The architect/engineer agreement shall provide for all services required by the Recipient for the planning, design and engineering phases of the project. Appropriate standards or guidance developed by professional organizations, such as the American Consulting Engineers Council ("ACEC"), American Society of Civil Engineers ("ASCE"), National Society of Professional Engineers ("NSPE"), and/or the American Institute of Architects ("AIA"), may be used where the Recipient does not have standard procurement or contracting documents.

The architect/engineer agreement shall cover all services necessary for the successful execution of the project including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram ("CPM/PERT") where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site to ensure that the work proceeds in accordance with the approved plans and specifications.

2. The Recipient must select the architect/engineer in accordance with the procurement standards set forth in 2 C.F.R. part 200. Unless EDA has approved a different type of award, the compensation to the architect/engineer for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on EDA's determination (subject to audit) that the compensation is reasonable. The "cost-plus-a-percentage-of-cost" and "percentage of construction cost" methods of contracting are specifically prohibited.
3. In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 C.F.R. § 200.326, all contracts made by the Recipient under an Award must contain the applicable provisions set out in Appendix II to 2 C.F.R. part 200, which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. *See* Appendix II to 2 C.F.R. part 200 for a full explanation of these requirements.

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

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

EDA may approve the use of “in-house forces” subject to the following conditions:

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

“In-house forces” may be considered an eligible cost for EDA reimbursement if the work or services performed are in conformance with 2 C.F.R. part 200.

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

In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances (“TEROs”), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Federal awards granted to American Indian and Alaska Native tribal governments generally may provide for preference in contracting, hiring, firing, and the payment of a TERO fee.

The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is “necessary and reasonable for the performance of the Federal Award,” as provided under 2 C.F.R. § 200.403.

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

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

#### **I. RELOCATION ASSISTANCE**

The Recipient is subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) (the “Uniform Act”) and implementing regulations issued at 49 C.F.R. part 24. The Uniform Act establishes uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with federal assistance funds. Recipients and any subrecipients are required to comply fully with the intent of the Uniform Act and to provide evidence of such compliance if requested. *See* 13 C.F.R. § 302.5.

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

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

EDA’s review is intended to confirm that:

- (a) The project as designed complies with the scope of work as described in the project application and in the Award;
  - (b) Deductive alternates, if used, are taken in a specific order as shown in the bid documents;
  - (c) Any non-EDA funded work, if included, is identified so separate project progress and separate project costs can be determined; and
  - (d) The EDA project number and applicable EDA participation appears on the cover of all contract drawings and on the face sheet of the specification document(s).
3. EDA also will review for acceptability after advertising but before award of the contract if:
    - (a) The procurement is expected to exceed the simplified acquisition threshold (currently set at \$250,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation;
    - (b) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;
    - (c) A proposed contract modification changes the scope of a contract or increases the contract amount above the simplified acquisition threshold;
    - (d) The Recipient’s procurement procedures or operations fail to comply with the procurement standards set out in the Award; or
    - (e) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a “name brand” product.
  4. Until EDA has reviewed and concurred with the Recipient’s proposed contracts and related documents and determined they comply with the Terms and Conditions, the Recipient will be proceeding at its own risk regarding the eligibility of any costs incurred. *See* 13 C.F.R. § 305.11.

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

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

1. The plans and specifications must clearly define and separate costs included in the EDA project scope of work from other costs;

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

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

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

1. Recipients shall seek EDA's prior written approval to use alternate construction procurement methods to the traditional design/bid/build procedure (including lump sum or unit price-type construction contracts). These methods may include design/build, construction management at-risk and "in-house forces". If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. *See* 13 C.F.R. § 305.6.
2. If the Recipient elects to use "in-house forces", EDA will furnish specific guidance to the Recipient to determine if the cost for such work is eligible for EDA reimbursement. *See* section IV.F. of this Summary.
3. For all procurement methods, the Recipient must comply with the procedures and standards set forth in 2 C.F.R. part 200.

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

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

1. Take deductive alternatives to eliminate certain project elements in case of insufficient funds – if provided for in the bid documents – in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), results in a price within the budget for that item of work. It should be noted that the use of deductive alternates may result in a new low bidder. Therefore, care must be taken that the above procedure is followed exactly when deductive alternates are used to determine the lowest bid within the funds available.
2. Reject all bids and re-advertise if there is a rational basis for believing that re-advertising will result in a lower bid (*i.e.*, the Recipient will have the project redesigned or there will be wider advertising).

3. Augment the Recipient's share by an amount sufficient to cover the excess cost. If the Recipient intends to finance the overrun from its own funds, it must furnish a letter to EDA identifying the source of the additional funds and confirming that the funds are from an acceptable source, will be available as needed, and are not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Award.
4. Request in writing additional EDA financial assistance as a last resort. EDA may not approve the request for additional funds, which may require the termination of the project. *See* sections VII.C. and D. of this Summary.

## V. **REQUIREMENTS DURING CONSTRUCTION**

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

1. *General.* The Recipient (with the assistance of the architect/engineer) is responsible for:
  - (a) ensuring project completion in accordance with approved plans and specifications;
  - (b) monitoring project progress;
  - (c) keeping EDA advised of project progress;
  - (d) providing for adequate construction inspection; (e) paying costs incurred for the project promptly; and (f) monitoring the contractors' compliance with local, State and federal requirements. *See also* section III.B. of this Summary.
2. *EDA construction sign.* The Recipient is responsible for constructing, erecting and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the project site indicating that the Federal government is participating in the project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with the State or local law. *See* 13 C.F.R. § 305.12.
3. *Inspection of construction.* The Recipient must provide competent project inspection during the construction period. The inspector may be an employee of the Recipient, an employee of the architect/engineer, or a person(s) under contract with the Recipient. EDA must review and concur with the extent of the inspection and the selection of the inspector.
4. *Occupancy prior to completion.* If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the Recipient must:
  - (a) follow the requirements of local or State law;
  - (b) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;
  - (c) secure the written consent of the contractor;
  - (d) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and
  - (e) secure permanent fire and extended coverage insurance and, where applicable, grant the contractor a permit to complete construction.

Occupancy or use prior to final acceptance from the contractor is entirely at the Recipient's risk. *See* 13 C.F.R. § 305.14.

5. *Labor standards.* All contractors on EDA-assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by U.S. Department of Labor's regulations (29 C.F.R. parts 5 and 1926). The Recipient or its architect/engineer should periodically check the contractor's compliance. The Recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA-assisted project.
6. *Inspection for final acceptance.* The Recipient will schedule a final inspection when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed. Representatives of the Recipient, the architect/engineer and the contractor(s) will make the final inspection. EDA must be notified in advance of the final inspection so that an EDA representative also may have the opportunity to participate.
7. *Contractor payrolls.* The Recipient must require each contractor and subcontractor to maintain weekly payroll records. EDA may require that copies of payroll records be furnished to the applicable regional office.
8. *Equal employment opportunities.* The regulations at 41 C.F.R. § 60-1.7 issued pursuant to Executive Order 11246, "*Equal Employment Opportunity*", as amended, require all "prime contractors" and "subcontractors," as those terms are defined in 41 C.F.R. § 60-1.3, to submit compliance reports regarding equal employment opportunities. The purpose of the regulations at 41 C.F.R. part 60-1 is to achieve the aims of parts II, III and IV of Executive Order 11246, as amended, for promoting and ensuring equal opportunity for all persons, without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin, employed or seeking employment with Federal government contractors or with contractors performing under federally-assisted construction contracts.

## **B. CONTRACT CHANGE ORDERS**

1. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. *See* 13 C.F.R. § 305.13.
2. The work on the project may continue pending EDA review and concurrence with the change order but the Recipient should be aware that all such work is at the Recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.
3. The Recipient (or its architect/engineer) shall perform a cost or price analysis in connection with every change order that affects the contract price. Generally, change orders should be submitted to EDA for review and concurrence as such changes occur. The Recipient will prepare proposed contract change orders in sufficient quantity so that one (1) copy can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications and plans should be attached. Before submission to the EDA regional office, the change order must be signed by the Recipient, the architect/engineer and the contractor. The Recipient will be notified in writing of EDA's concurrence if the change order is acceptable to EDA.



4. EDA will not allow changes to the authorized purpose and intent of the project. Change orders that add minimally or incidentally to the cost of the project but do not alter the project scope may be allowed by EDA, *provided*, that either:
  - (a) The Recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or
  - (b) There are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.
5. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA-approved project budget. EDA will concur with a change order if the work in the change order is within the project scope and is necessary for the proper implementation of the project.
6. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract. A change order also may be required at project completion to establish final quantities for unit price contracts.

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

1. The Recipient is responsible for ensuring that the contractor causes applicable provisions to be inserted in all subcontracts to bind subcontractors to EDA and Departmental requirements as contained in the Terms and Conditions of the Award and in Appendix II to 2 C.F.R. part 200, as appropriate.
2. Each subcontractor must agree to comply with all applicable federal, State, and local requirements.
3. As required by 2 C.F.R. § 200.213, the Recipient (or subrecipient) must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under 2 C.F.R. part 180 and Executive Orders 12549, “*Debarment and Suspension*” and 12689, “*Debarment and Suspension*.” The Recipient may access the *System for Award Management* (“SAM”), maintained by the General Services Administration, at [www.sam.gov/](http://www.sam.gov/). See also 2 C.F.R. part 1326.
4. The Terms and Conditions of the Award may impose additional requirements, which the Recipient will be required to have the prime contractor impose on any subcontractor(s).

### **D. CONTRACTING STANDARDS**

1. *States*. If a State is the Recipient of EDA investment assistance, when procuring property or services, the State must follow the same policies and procedures it uses for procurements from its non-federal funds. The State will comply with 2 C.F.R. § 200.322 dealing with the procurement of recovered materials and ensure that every

purchase order or other contract includes clauses required by Appendix II to 2 C.F.R. part 200.

2. *Recipients other than States.* Consistent with the requirements of 2 C.F.R. § 200.318, a Recipient of EDA investment assistance other than a State will use its own documented procurement procedures which reflect applicable State and local laws and regulations; provided that the procedures conform to applicable federal law and the standards identified in 2 C.F.R. §§ 200.318 – 200.326. A Recipient may request EDA to review its procurement system to determine whether its system meets these standards. *See* 2 C.F.R. § 200.324(c)(1).

Additionally, the Recipient or subrecipient may self-certify its procurement system. Under a self-certification procedure, EDA may rely on written assurances from the Recipient or subrecipient that it is complying with the standards in 2 C.F.R. §§ 200.318 – 200.326. The Recipient or subrecipient must cite specific policies, procedures, regulations, or standards as being in compliance with 2 C.F.R. §§ 200.318 – 200.326, and have its system available for EDA to review. *See also* section IV.G. for special provisions applicable to certain Indian Tribal Recipients.

3. *Standards of conduct.* Recipients shall maintain a written code of conduct, which shall govern the actions of any Interested Party (as defined in 13 C.F.R. § 300.3) engaged in the award and administration of contracts supported by EDA funds. No Interested Party shall participate in selection or in the award or administration of a contract supported by EDA funds if a conflict of interest, real or apparent, is or could be involved. A conflict may arise when any Interested Party has a financial or personal interest in the firms selected for award. A conflict also may exist where there is an appearance that an Interested Party's objectivity in performing his or her duties is impaired. *See* 13 C.F.R. § 302.17 and 2 C.F.R. § 200.318(c).
4. *Awards to responsible contractors.* Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources. *See* 2 C.F.R. § 200.318(h).
5. *Maintenance of records.* Recipients will maintain records sufficient to detail the history of each procurement transaction related to the EDA project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for concluding the contract price. *See* 2 C.F.R. § 200.318(i).
6. *Settlement of issues.* Recipients alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. EDA will not substitute its judgment for that of the Recipient unless the matter, as determined in EDA's sole discretion, primarily involves a federal concern.
7. *Wage rate requirements.* Wage rates paid for labor must not be less than the prevailing area wages, as determined by the U.S. Secretary of Labor and must be embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 3141 *et seq.*). *See also* section IX. (Appendix) of this Summary.

## E. COMPETITIVE PROCUREMENT REQUIREMENTS

1. *General.* All procurement transactions in relation to the EDA project must be conducted in a manner providing full and open competition consistent with applicable federal requirements. *See* 2 C.F.R. § 200.319.
2. *Geographic preferences.* Recipients must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this guidance preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms (given the nature and size of the project) to compete for the contract. *See* 2 C.F.R. § 200.319.
3. *Written selection procedures.* Recipients must have written selection procedures for procurement actions. These procedures must ensure that all solicitations:
  - (a) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such descriptions must not contain features that unduly restricts competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of the material, product or service. The specific features of a name brand which must be met by offerors must be clearly stated; and
  - (b) Identify all requirements which offerors must fulfill and all factors to be used in evaluating bids or proposals.

*See* 2 C.F.R. § 200.319.
4. *Bids submitted for alternative materials.*
  - (a) Should the Recipient, acting upon the advice of his/her consultant architect/engineer, desire to obtain competitive prices for differing materials, such bids should be requested on the basis of “alternate bids.” As used herein, this term refers to the method used to obtain bids on more than one material to be used for the same purpose. For example, for 2,000 linear feet of sewer line, Bid A might call for the pipe material to be cast iron. Bid B might call for the pipe material to be ductile iron. Bid C might call for the material to be asbestos cement.
  - (b) If bids are asked for on the basis of two or more alternate bids, the bid documents must clearly state that the contract will be awarded to the bidder having the lowest responsible bid price based upon the availability of funds.
  - (c) If the Recipient wishes to use a material that will result in increased cost, EDA may permit the use of such material, but the amount of EDA’s participation in the project must remain based on the lowest bid from a responsible bidder.

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

- (a) *Procurement by sealed bids (formal advertising).* Bids are to be publicly solicited and a firm fixed-price contract (lump sum or unit price) is to be awarded to the bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction services if the conditions in the following sentence are met. In order for sealed bidding to be feasible, the following conditions should be present: (i) a complete, adequate, and realistic specification or purchase description is available; (ii) two or more responsible bidders are willing and able to compete effectively for the business; and (iii) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

The following requirements apply to sealed bids:

- (i) The invitation for bids is publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids;
- (ii) The invitation for bids, which includes any applicable specifications and pertinent attachments, must adequately define the items or services, in order for the bidder to properly respond;
- (iii) All bids are publicly opened at the time and place prescribed in the invitation for bids;
- (iv) A firm fixed-price contract award will be made in writing to the lowest responsive responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound and properly documented reason.

*See 2 C.F.R. § 200.320(c).*

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

- (b) *Procurement by competitive proposals.* Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. This method generally is used when conditions are not appropriate for the use of sealed bids. The following requirements apply to competitive proposals:
- (i) Requests for proposals are publicized and identify all evaluation factors and their relative importance; any response to a publicized request for proposals must be considered to the maximum extent practical;
  - (ii) Proposals are solicited from an adequate number of qualified sources (generally, EDA requires responses from at least three responsible firms);
  - (iii) Recipients have a written method for conducting technical

- (iv) evaluations of the proposals received and for selecting awardees; Awards are made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered, as appropriate; and
- (v) Recipients may use competitive proposal procedures for qualification-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not a selection factor, can be used only for procuring architectural/engineering professional services. It cannot be used to purchase other types of services though architectural/engineering firms are a potential source to perform the proposed effort.

See 2 C.F.R. § 200.320(d).

- (c) *Procurement by noncompetitive proposals.* This technique requires EDA's prior written concurrence and is conducted by solicitation of a proposal from only one source. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and when one or more of the following circumstances apply:
  - (i) The item is available only from a single source;
  - (ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - (iii) EDA expressly authorizes noncompetitive proposals in response to a written request from the Recipient; or
  - (iv) After soliciting a number of sources, competition is determined inadequate.

See 2 C.F.R. § 200.320(f).

- (d) *Procurement by Micro Purchases.* Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micropurchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. The \$10,000 threshold is periodically adjusted for inflation. For more information, please see Uniform Guidance (2 CFR Part 200.67 and 200.320(a)).
- (e) *Procurement by Small Purchase Procedures.*

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold of \$250,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The \$250,000 threshold is periodically adjusted for inflation. For more information, see *Uniform Guidance* (2 CFR Part 200.320(b)).
- (f) *Contract cost analysis.*

- (i) The Recipient must perform a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Recipient must make independent estimates before receiving bids or proposals.
- (ii) The Recipient must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work
- (iii) Costs or prices based on estimated costs for contracts under grants will be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (*see* section VI.A.3. of this Summary). The Recipient may reference its own cost principles that comply with applicable federal cost principles.
- (iv) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

*See* 2 C.F.R. § 200.323

- (g) *Bonding and insurance requirements.* For construction or facility improvement contracts or for subcontracts exceeding \$150,000, EDA may accept the bonding policy and requirements of the Recipient or subrecipient if EDA or the pass-through entity determines that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements shall apply:
  - (i) A bid guarantee must be obtained from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
  - (ii) A performance bond must be required from the contractor for one hundred (100) percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - (iii) A payment bond must be required from the contractor for one hundred (100) percent of the contract price. A "payment bond" is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contracts.

*See* 2 C.F.R. § 200.325.

The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with EDA funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. *See* 2 C.F.R. § 200.310

The Recipient shall require each construction contractor and all

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

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

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

1. *General.* The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment will be reimbursement. Disbursements of grant funds will be made by electronic transfer based on the Recipient's actual rate of expenditure. EDA will make disbursements based on the percentage of EDA participation, but in no event for more than the total sum stated in the Award. The initial disbursement will be made only after the following conditions have been met:

- (a) EDA determines that the Recipient has satisfied all applicable Terms and Conditions of the Award (*see* 13 C.F.R. § 305.9(b));
- (b) The Recipient has completed and submitted Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form;";
- (c) The Recipient has requested disbursement by submitting Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs" (OMB Control No. 0348-0002), for incurred costs that are itemized and eligible;
- (d) The Recipient certifies that its proportionate share of funds (including overruns) is on deposit; and
- (e) The Recipient meets such other requirements as EDA may establish.

Recipients shall disburse program income, rebates, refunds, contract settlements, and audit recoveries before requesting additional grant disbursements.

2. *Allowable costs.* EDA allowable costs are determined by reference to Subpart E of 2 C.F.R. part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Generally, costs that are allowable include salaries, supplies and other expenses that are reasonable and necessary for the completion of the scope of work. Allowable costs must be determined in accordance with the cost principles.
3. *Acceptable costs and contributions.* In determining the amount of the non-federal share of the cost of a project, EDA may provide credit towards the non-federal share of all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, assumptions of debt, and services. *See* section 204(b) of PWEDA (42 U.S.C. § 3144).

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

Neither cash nor the value of in-kind contributions may count towards satisfying a cost-sharing requirement of a grant agreement if it has been or will be counted towards

satisfying a cost-sharing requirement of another federal grant agreement, a federal procurement contract, or any other award of federal funds. The eligible applicant must show that the matching share is committed to the EDA project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Award. *See* 13 C.F.R. § 301.5.

## **B. INTERIM DISBURSEMENTS**

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

## **C. FINAL DISBURSEMENT**

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

1. A request for final disbursement on an executed Form SF-271;
2. A written certification that all costs charged against the Award (EDA share and non-Federal share) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient's records;
3. An executed certificate of final acceptance signed by the Recipient and the Recipient's architect/engineer;
4. The Recipient's certification that its currently valid single or program-specific audit in accordance with Subpart F of 2 C.F.R. part 200, if applicable, does not contain any material findings (if the Recipient's currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via email to the Project Officer, who will review with the Grants Officer);
5. The Recipient's certification that its currently valid audit (in accordance with Subpart F of 2 C.F.R. part 200), if applicable, has been submitted to the Federal Audit Clearinghouse; and
6. Other documentation as may be required by EDA.

The Recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received a grant amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

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

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



## A. AMENDMENTS

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

1. Changes to project scope of work;
2. Budget revisions requiring additional EDA or non-EDA sources of funds;
3. Budget revisions that result in cumulative transfers among direct cost categories in excess of ten (10) percent of the total project cost when the federal share exceeds \$150,000;
4. The inclusion of certain costs for which EDA’s prior approval is needed under 2 C.F.R. part 200, “*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*;
5. Change of site location;
6. Change to or addition of Recipient;
7. Time extensions; and
8. Modifications to the Terms and Conditions of the Award, other than time extensions.

See 2 C.F.R. § 200.308.

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

## B. TIME SCHEDULE EXTENSIONS

1. Unless otherwise authorized in 2 CFR § 200.308, or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date of the period of performance.
2. The Recipient is responsible for implementing the project in accordance with the project development time schedule contained in the Award. As soon as the Recipient becomes aware that it will not be possible to meet the project development time schedule, it must notify the EDA regional office. The Recipient’s notice to EDA must contain the following information:
  - (a) An explanation of the reason for the Recipient’s inability to complete work by the specified date (*e.g.*, a lengthy period of unusual weather delayed the contractor’s ability to excavate the site, major re-engineering required in order to obtain State or federal approvals, unplanned environmental mitigation required);
  - (b) A statement that no other changes to the project are contemplated;
  - (c) Documentation that demonstrates there is still a bona fide need for the project; and
  - (d) A statement that no further delay is anticipated and that the project can be completed within the revised time schedule.
3. EDA expects construction on a project to start within two (2) years from the date of grant award. In accordance with EDA policy, the maximum construction start time extension

that any region can grant is restricted to a date wherein the project will still be completed within five (5) years from the date of grant award. If the delayed construction start date might impact the project being completed within five (5) years or any extension beyond that five (5) year limit must be approved by the Assistant Secretary of Commerce for Economic Development.

4. EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule and to suspend or terminate an Award if the Recipient fails to proceed with reasonable diligence to accomplish the project as intended. *See also* sections IV.C and VII.F. of this Summary.

### **C. BUDGET REVISIONS**

1. The tabulation of estimated project costs contained in the Award (i.e., the EDA-approved budget) is the controlling budget plan for the project. The Recipient must notify EDA of any proposed deviation from the budget or program plans in accordance with 2 C.F.R. § 200.308, including any change in scope of work or the objective of the project (even if there is no associated budget revision requiring prior written approval). If prior written approval is not required under 2 C.F.R. § 200.308, the Recipient may request the Grants Officer's review of and guidance on proposed revisions to the budget.
2. The transfer of funds from line items other than the contingencies line item may be permitted, *provided* there will be no significant adverse effect on the objective of the line item from which the transfer is to be made.
3. Transfers shall not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior written approval. *See* 2 C.F.R. § 200.308.
4. The construction line item will be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized project activities under the Award. EDA may approve the use of underrun funds to increase the EDA share of the project or further improve the project, as long as EDA determines that the use is consistent with the original purpose of the approved-EDA investment. *See* 13 C.F.R. § 308.1.

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

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

- reduce the cost to within the available funds; and
  - (b) A written statement from the administrative head of the Recipient's organization justifying why the Recipient cannot furnish the additional funds required, why non-EDA sources of funds cannot be secured, and certifying that the Recipient's borrowing capacity has been exhausted.
- 3. EDA's consideration of a request for additional EDA assistance does not indicate approval.

See 13 C.F.R. § 305.10.

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

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

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

1. In accordance with 2 C.F.R. § 200.339, an Award may be terminated in whole or in part as follows:
  - (a) *Termination by EDA for the Recipient's Failure to Comply with any Term or Condition of the Award.* Examples of recipient failure to comply with terms and conditions of the award include if:
    - (i) Any representation made by the Recipient to EDA in connection with the application for the Award is incorrect or incomplete in any material respect;
    - (ii) The project has changed substantially, without EDA approval, so as to affect significantly the accomplishment of the project as intended (including an unauthorized use of property as provided in 13 C.F.R. § 314.4.);
    - (iii) 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;
    - (iv) The conflicts-of-interest rules at 13 C.F.R. § 302.17 are violated; or
    - (v) The Recipient fails to report immediately to EDA any change of authorized representative acting in lieu of or on behalf of the Recipient.
  - (b) *Termination by EDA for Cause.* EDA may terminate the Award for cause if required by a circumstance beyond EDA's control, such as a Congressional

mandate.

- (c) *Termination by the Recipient.* The Recipient may terminate the Award in whole or in part upon sending the EDA Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the EDA Award will not accomplish the purposes for which the EDA Award was made, EDA may terminate the Award in its entirety.
  - (d) *Termination Upon Mutual Agreement.* EDA and the Recipient may mutually agree to terminate the Award in whole or in part. In such cases, EDA and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
2. If the Award is wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 C.F.R. §§ 200.343 and 200.344.
3. Failure to comply with the provisions of this Award may be grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.338, including initiating suspension and debarment proceedings in accordance with 2 CFR parts 180 and 1326. *See also* 2 C.F.R. § 200.213.
4. In taking any remedy for non-compliance, EDA will provide the Recipient an opportunity to object and provide information and documentation challenging the suspension or termination action. *See* 2 C.F.R. § 200.341.
5. Costs resulting from obligations incurred by the Recipient during a suspension or after termination of the Award are not allowable unless EDA expressly authorizes them in the notice of suspension or termination, or subsequently. However, costs during suspension or after termination are allowable if:
  - (a) The costs result from obligations that were properly incurred by the Recipient before the effective date of the suspension or termination, are not in anticipation of it; and
  - (b) The costs would be allowable if the Award were not suspended or expired normally at the end of the period of performance in which the termination takes effect. *See* 2 C.F.R. § 200.342.
6. When EDA terminates an award prior to the end of the period of performance due to the Recipient's material failure to comply with the Award terms and conditions, EDA must report the termination to the OMB-designated integrity and performance system accessible through SAM. *See* 2 C.F.R. § 200.339.
7. Other Federal agencies that consider making an Award to the Recipient during the five-year period an EDA termination is available in SAM, must consider that information in judging whether the Recipient is qualified to receive the Award, when the Federal share of the Award is expected to exceed \$150,000 over the period of performance. *See* 2 C.F.R. § 200.205.

## VIII. POST-CONSTRUCTION REQUIREMENTS

### A. ORGANIZATION-WIDE, PROGRAM-SPECIFIC, AND PROJECT AUDIT REQUIREMENTS

1. *Requirement to have an audit performed.* Organization-wide or program- specific audits must be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by subpart F of 2 C.F.R. part 200. Recipients that expend \$750,000 or more in Federal awards during their fiscal year shall have an audit conducted for that year in accordance with the requirements set forth in subpart F of 2 C.F.R. part 200.
2. *Requirement to submit audit to Federal Audit Clearinghouse.* Within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period, the Recipient must submit a copy of the audit to the Federal Audit Clearinghouse website at <http://harvester.census.gov/sac/>.

If it is necessary to submit using paper, the address for submission is:

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

Within 90 days of the end of the fiscal year of a Recipient subject to subpart F of 2 C.F.R. part 200, the entity is responsible for notifying the Grants Officer of the amount of Federal awards, including all EDA and non-EDA awards, the Recipient expended during its fiscal year.

A Recipient that expends less than \$750,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted at 2 C.F.R. § 200.503, but records must be available for review and audit by EDA, DOC, or other designated Government officials.

Failure to provide audit reports within the timeframes specified may result in appropriate enforcement action, up to and including termination of the Award, and may jeopardize eligibility for receiving future awards.

3. *EDA-specific audit requirements.* EDA's Public Works and Economic Adjustment Assistance programs generally have specific audit guidelines that will be incorporated into the Award and may be found in the annual Compliance Supplement, which is Appendix XI to 2 C.F.R. part 200 and is available on OMB's website ([https://www.whitehouse.gov/omb/circulars\\_default](https://www.whitehouse.gov/omb/circulars_default)). When EDA does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507. The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.
4. *Recipient responsibility.* Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 C.F.R. § 200.331(d)(3), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Award provided to a subrecipient.

5. *Requirement to submit audit to EDA.* If the Recipient's currently valid audit required under subpart F of 2 C.F.R. part 200 contains material findings, the Recipient must submit a copy of the audit to the Project Officer, who will review it with the Grants Officer.

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

1. Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), EDA or the Department's Office of the Inspector General ("OIG") may conduct an audit of the Award at any time. The Department's Inspector General, or any of his or her duly authorized representatives, shall have access to all pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. This right also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. *See* 2 C.F.R. § 200.336 and 13 C.F.R. § 302.14.

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

2. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (an account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence when disputing audit determinations.
3. In accordance with the *Federal Register* notice dated January 27, 1989 (54 *Fed. Reg.* 4053), a Recipient has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt after an audit:
  - (a) The Recipient has thirty (30) business days from the date of the transmittal of the OIG's "Draft Audit Report" to submit written comments and documentary evidence.
  - (b) The Recipient has thirty (30) business days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There will be no extension of this deadline.
  - (c) EDA will review any documentary evidence submitted by the Recipient, and will notify the Recipient of the results in an "Audit Resolution Determination Letter." The Recipient has thirty (30) business days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.
  - (d) An appeal of the Audit Resolution Determination Letter does not prevent the establishment of any audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the Recipient against funds due to the Recipient.
  - (e) EDA or the Department, as applicable, will review the Recipient's appeal. EDA

will notify the Recipient of the results in an “Appeal Determination Letter.” After the opportunity to appeal has expired or after the appeal determination has been rendered, EDA or the Department will not accept any further documentary evidence from the Recipient. No other EDA or Department administrative appeals are available.

### **C. PROPERTY MANAGEMENT**

1. Any property that is acquired or improved, in whole or in part, with EDA investment assistance, whether through a grant or a cooperative agreement, is subject to the requirements of PWEDA and the regulations at 13 C.F.R. part 314. Requirements related to title, authorized use, successor Recipient, property disposition, and Federal Share (as defined in 13 C.F.R. § 314.5) are set out at 13 C.F.R. part 314.
2. During the estimated useful life of the project involving the acquisition, construction or improvement of a building, as determined by EDA, EDA retains a Federal Interest in the project property. *See* section III.A. of this Summary; 13 C.F.R. § 314.2; and 2 C.F.R. §§ 200.41, 200.316. The Federal Interest secures compliance with the ownership, purpose, scope and intended use of the EDA project and may be reflected by a recorded lien, covenant, statement or other recordable instrument setting forth EDA’s property interest (*e.g.*, a mortgage). *See* 13 C.F.R. § 314.8.
3. A Recipient may request a release of the Federal Interest in property acquired or improved with EDA investment assistance and fully compensate EDA for its Federal Share in the property. A release pursuant to 13 C.F.R. § 314.2(b) gives the Recipient title to the property free and clear of any further governmental interest except with respect to non-discrimination requirements set forth in 13 C.F.R. § 302.20 and the inherently religious activities prohibition. *See* 13 C.F.R. §§ 302.20 and 314.10.

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

### **D. CLOSEOUT PROCEDURES**

1. After construction is completed and the project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate and maintain the project for its estimated useful life (as determined by EDA) in accordance with its original purpose. *See* 13 C.F.R. § 302.12. The Recipient must comply with all Award requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other government officials as required. When project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the project from the contractor, the Recipient may begin the closeout process by submitting the following documentation to EDA:
  - (a) A request for final disbursement on an executed SF-271.
  - (b) A written certification that all costs charged against the Award (EDA and non- EDA shares) are eligible activities and represent allowable costs, for which there is documentation in the Recipient’s records.

- (c) An executed certification of final acceptance signed by the Recipient and the Recipient's architect/engineer.
  - (d) The Recipient's certification that its currently valid single or program-specific audit in accordance with subpart F of 2 C.F.R. part 200, if applicable, does not contain material findings (if the Recipient's currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via email to the Project Officer, who will review with the Grants Officer).
  - (e) The Recipient's certification that its currently valid audit (in accordance with subpart F of 2 C.F.R. part 200), if applicable, has been submitted to the Federal Audit Clearinghouse.
  - (f) A copy of the completed "Checklist for Final Disbursement/Project Closeout" available on the *Post-Approval Construction Tool*.
  - (g) Other documentation as may be required by EDA.
2. If a Recipient chooses not to complete and submit the "Project Close-out Checklist" available on the *Post-Approval Construction Tool*, the Recipient must provide EDA the following documentation in addition to that listed above:
- (a) Verification of compliance with all Award terms and conditions, including special award conditions (if not already provided).
  - (b) Verification of procurement of permanent insurance for above-ground facilities.
  - (c) Verification of compliance with the requirement that all changes to the project have been brought to EDA's attention.
  - (d) Verification of recipient's 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) Verification of receipt of as-built drawings from the contractor or the architect/engineer.
  - (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) Documentation on any unresolved contract/contractor disputes.
  - (i) Documentation verifying 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) Certification that the project facility will be maintained by the recipient for its entire 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.
  - (k) Any other documentation required by the EDA Engineer/Construction Manager or Project Officer to ensure compliance with the terms and conditions of the Award.



3. The Recipient shall submit, within ninety (90) calendar days after the project closeout date, all financial, performance and other reports as required by the Terms and Conditions of the Award. The Grants Officer may extend the ninety (90) calendar day closeout period upon a written request from the Recipient.
4. Unless EDA authorizes an extension, the Recipient must liquidate all obligations incurred under the Award no later than ninety (90) calendar days after acceptance of the project from the contractor or within ninety (90) calendar days of the expiration date of the Award, whichever occurs earlier, as specified in the Terms and Conditions of the Award.
5. The closeout of an Award does not affect any of the following:
  - (a) The right of EDA to disallow costs and recover funds on the basis of a later audit or other project review;
  - (b) The Recipient's obligation to return any funds due as a result of later corrections or other transactions;
  - (c) Requirements for property management, records retention and performance measurement reports; or
  - (d) Single or program-specific audit requirements in accordance with subpart F of 2 C.F.R. part 200 or other project review;
  - (e) The Recipient's obligation to return any funds due as a result of later corrections or other transactions;
  - (f) Requirements for property management, records retention and performance measurement reports; or
  - (g) Single or program-specific audit requirements in accordance with subpart F of 2 C.F.R. part 200.

## IX. APPENDIX

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

1. [2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)
2. [2 C.F.R. part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension \(Nonprocurement\)](#)
3. [2 C.F.R. part 1326, Department of Commerce regulations on Nonprocurement Debarment and Suspension](#)
4. [2 C.F.R. part 182, Governmentwide Requirements for Drug-Free Workplace \(Financial Assistance\)](#)
5. [13 C.F.R. Chapter III](#) (EDA's regulations)
6. [48 C.F.R. part 31, Contract Cost Principles and Procedures](#)
7. [49 C.F.R. part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs](#)
8. Davis Bacon Wage Rate Determinations: [www.wdol.gov/](http://www.wdol.gov/)