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(a) Litigation or underwriting legal actions such as paying for attorney fees or paying for the time of the Technical Advisor to assist an attorney in preparing a legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site;

(b) Political activity and lobbying in accordance with OMB Circular A-122;

(c) Other activities inconsistent with the cost principles stated in OMB Circular A-122, "Cost Principles for Non-Profit Organizations";

(d) Tuition or other expenses for recipient group members or Technical Advisors to attend training, seminars or courses, except for required Health and Safety training for the Technical Advisor to allow access to the local Superfund site, provided written permission is obtained in advance from the Regional EPA Office. Training may be approved for one time only at an amount not to exceed \$1,000.00;

(e) Any activities or expenditures for recipient group members' travel;

(f) Generation of new primary data such as well drilling and testing, including split sampling;

(g) Reopening final Agency decisions such as the Records of Decision or conducting disputes with the Agency in accordance with its dispute resolution procedures set forth at 40 CFR part 30, subpart L; and

(h) Epidemiological or health studies, such as blood or urine testing.

§ 35.4060 Eligible activities.

TAGs may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or a significant removal action at a facility that is listed on the NPL or proposed for listing and at which a response action has begun. TAGs shall be used to fund activities that will contribute to the public's ability to participate in the decision-making process by improving the public's understanding of overall conditions and activities.

40 CFR Ch. I (7-1-00 Edition)

§ 35.4065 Technical advisor's qualifications.

(a) A Technical Advisor must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues;

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering); and

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A Technical Advisor should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems;

(2) Experience in making technical presentations;

(3) Demonstrated writing skills; and

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

§ 35.4066 Procurement.

(a) *Competition.* (1) The recipient must provide maximum open and free competition.

(2) Recipients must not unduly restrict or eliminate competition.

(3) The individual(s) developing the specifications will be excluded from competition for the Technical Advisor and/or Grant Administrator position.

(b) *Documentation.* Recipients must document all procurement activities with written records that furnish reasons for decisions.

(c) *Cost.* (1) The recipient must determine that all costs are reasonable.

(2) The recipient must conduct a cost analysis of all contracts over \$25,000 and all change orders regardless of dollar value.

(d) *Debarment.* Recipients and contractors must not make any contract at any time to anyone who is on the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs."

(e) *Recipient responsibility.* (1) The recipient is responsible for the settlement and satisfactory completion of all contractual and administrative issues arising out of contracts entered into under a grant.

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(2) The recipient must ensure that the contractor(s) perform in accordance with the terms and conditions of the contract.

(f) *Responsible contractors.* The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract.

(g) *Disadvantaged business enterprises.* The recipient shall comply with the "Small, Minority, Women's, and Labor Surplus Area Business" requirements in § 33.240.

(h) *Illegal contracts.* Recipients may not award cost-plus-percentage-of-cost or percentage-of-construction-cost contracts.

(i) *Contract provisions.* The recipient must include the following provisions in each contract:

- (1) Statement of work;
- (2) Schedule for performance;
- (3) Due dates for deliverables;
- (4) Total cost of the contract;
- (5) Payment provisions; and
- (6) The following clauses from 40 CFR 33.1030, "Model contract clauses":
 - (i) Supersession;
 - (ii) Privity of Contract;
 - (iii) Termination;
 - (iv) Remedies;
 - (v) Audit, Access to Records;
 - (vi) Covenant Against Contingent Fees;
 - (vii) Gratuities;
 - (viii) Responsibility of the Contractor; and
 - (ix) Final Payment.

(j) *Subcontracting.* A contractor must comply with the following provisions in its award of subcontracts (these requirements do not apply to subcontractors for the supply of materials to produce equipment, materials, and subcontracts for catalog, off-the-shelf, or manufactured items.):

- (1) Section 35.4066(b) Documentation;
- (2) Section 35.4066(c) Cost;
- (3) Section 35.4066(d) Debarment;
- (4) Section 35.4066(f) Responsible contractor;
- (5) Section 35.4066(g) Disadvantaged business enterprises;
- (6) Section 35.4066(i) Illegal contracts; and
- (7) Section 35.4066(j) Contract provisions.

(k) *Bid protests.* The recipient must establish a procedure for resolving protests which complies with the provisions of 40 CFR part 33, Subpart G—Protests.

(l) *Competitive procurements.* Recipients shall not divide any procurements into smaller parts to get under any dollar limit.

(1) If the aggregate amount of the purchase is \$1,000 or less, the recipient may make the purchase as long as the recipient determines that the price is reasonable. No oral or written solicitations are necessary.

(2) If the aggregate amount of the proposed contract is over \$1,000 but less than \$25,000, the recipient must obtain and document oral or written price quotations from two or more qualified sources.

(3) If the aggregate amount of the proposed contract is \$25,000 to \$50,000, the recipient must:

- (i) Solicit written bids from three or more sources who are willing and able to do the work;
- (ii) Provide potential sources the scope of the work to be performed and the criteria the recipient will use to evaluate bids;
- (iii) Objectively evaluate all bids submitted; and
- (iv) Notify all unsuccessful bidders.

(4) If the aggregate amount of the proposed contract is greater than \$50,000, the recipient must follow the procurement rules in 40 CFR part 33.

(m) *Non-competitive procurements.* If an adequate number of potential sources cannot be identified, the recipient may request written authority from the EPA Award Official to award a contract to a sole bidder.

§ 35.4067 Contract review.

Each applicant must inform EPA of any proposed contract over \$1000 and must provide EPA the opportunity to review the contract before it is awarded or amended.

§ 35.4070 Sanctions.

If EPA determines that the recipient has failed to comply with any terms of the grant agreement, EPA will initiate an appropriate measure as set forth at 40 CFR part 30, subpart I.