

## Environmental Protection Agency

## § 35.4070

(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.