

§ 35.936-20

amount involved in any one transaction, all items which should properly be grouped together must be included. Reasonable competition shall be obtained.

(b) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like may be used to minimize paperwork. Retention in the purchase files of these documents and of written quotations received, or references to catalogs or printed price lists used, will suffice as the record supporting the price paid.

§ 35.936-20 Allowable costs.

(a) Incurring costs under subagreements which are not awarded or administered in compliance with this part or part 33 of this subchapter, as appropriate, shall be cause for disallowance of those costs.

(b) Appropriate cost principles which apply to subagreements under EPA grants are identified in § 30.710 of this subchapter. Under that section, the contractor's actual costs, direct and indirect, eligible for Federal participation in a cost reimbursement contract shall be those allowable under the applicable provisions of 41 CFR 1-15.2 (Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations) and 41 CFR 1-15.4 (Construction and Architect-Engineer Contracts).

(c) Reasonable costs of compliance with the procurement and project management requirements of these regulations are allowable costs of administration under the grant. Costs of announcement, selection, negotiation, and cost review and analysis in connection with procurement of architectural or engineering services are allowable, even when conducted before award of the grant. Legal and engineering costs which a grantee is required to incur in a protest action under § 35.939 are allowable.

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

§ 35.936-21 Delegation to State agencies; certification of procurement systems.

(a) Under § 35.912 and subpart F of this part, the Regional Administrator may delegate authority to a State agency to review and certify the technical and administrative adequacy of procurement documentation required under these sections.

(b) If a State agency believes that State laws which govern municipal procurement include the same requirements or operate to provide the same protections as do §§ 35.936, 35.937 and 35.938, the State may request the Administrator to approve the State system instead of the procedures of these sections. EPA shall review the State system to determine its adequacy.

(c) If a State agency determines that an applicant's procurement ordinances or applicable statutes include the same requirements or operate to provide the same protections as do §§ 35.936, 35.937 and 35.938, the State may certify (accompanied by appropriate documentation) the adequacy of the municipality's ordinances and statutes and request the Administrator to approve the municipality's system instead of the procedures of these sections. EPA shall conduct or may request the State to conduct a review of the municipality's system to determine its adequacy.

§ 35.936-22 Bonding and insurance.

(a) On contracts for the building and erection of treatment works or contracts for sewer system rehabilitation exceeding \$100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition, the contractor awarded a construction contract for the building and erection of treatment works or sewer system rehabilitation must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. Construction contracts less than \$100,000 shall be subject to State and local requirements for bid guarantees, performance bonds, and payment bonds. For contracts or subcontracts in excess of \$100,000 the Regional Administrator

Environmental Protection Agency

§ 35.937-1

may authorize the grantee to use its own bonding policies and requirements if he determines, in writing, that the Government's interest is adequately protected.

(b) Contractors should obtain such construction insurance (e.g., fire and extended coverage, workmen's compensation, public liability and property damage, and "all risk" builder's risk or installation floater coverage) as is required by State or local law or the grantee or as is customary and appropriate. Under the Flood Disaster Protection Act of 1973, a contractor must purchase flood insurance to cover his risk of loss if the grantee has not purchased the insurance (see § 30.405-10 of this subchapter).

§ 35.937 Subagreements for architectural or engineering services.

(a) *Applicability.* Except as § 35.937-2 otherwise provides, the provisions of §§ 35.937 through 35.937-11 apply to all subagreements of grantees for architectural or engineering services where the aggregate amount of services involved is expected to exceed \$10,000. The provisions of §§ 35.937-2, 35.937-3, and 35.937-4 are not required, but may be followed, where the population of the grantee municipality is 25,000 or less according to the most recent U.S. census. When \$10,000 or less of services (e.g., for consultant or consultant subcontract services) is required, the small purchase provisions of § 35.936-19 apply.

(b) *Policy.* Step 1, step 2, or administration or management of step 3 project work may be performed by negotiated procurement of architectural or engineering services. The Federal Government's policy is to encourage public announcement of the requirements for personal and professional services, including engineering services. Subagreements for engineering services shall be negotiated with candidates selected on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices. All negotiated procurement shall be conducted in a manner that provides to the maximum practicable extent, open and free competition. Nothing in this subpart shall be con-

strued as requiring competitive bids or price competition in the procurement of architectural or engineering services.

(c) *Definitions.* As used in §§ 35.937 through 35.937-11 the following words and terms mean:

(1) *Architectural or engineering services.* Those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programing, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operation and maintenance manuals, and other related services.

(2) *Engineer.* A professional firm or individual engaged to provide services as defined in paragraph (c)(1) of this section by subagreement under a grant.

§ 35.937-1 Type of contract (subagreement).

(a) *General.* Cost-plus-percentage-of-cost and percentage-of-construction-cost contracts are prohibited. Cost reimbursement, fixed price, or per diem contracts or combinations of these may be negotiated for architectural or engineering services. A fixed price contract is generally used only when the scope and extent of work to be performed is clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate. A per diem contract may be used if no other type of contract is appropriate. An incentive fee may be used if the grantee submits an adequate independent cost estimate and price comparison under § 35.937-6.

(b) *Cost reimbursement contracts.* Each cost reimbursement contract must clearly establish a cost ceiling which the engineer may not exceed without formally amending the contract and a fixed dollar profit which may not be increased except in case of a contract amendment to increase the scope of work.

(c) *Fixed price contracts.* An acceptable fixed price contract is one which