TOWN OF WAYLAND MASSACHUSETTS

DOCUMENTS AND SPECIFICATIONS

FOR

STORMWATER MANAGEMENT IMPROVEMENTS

AND

CONSTRUCTION OF LAKE SHORE DRIVE

TOWN OF WAYLAND SURFACE WATER QUALITY COMMITTEE

FOR REVIEW

FEB 7 1986

Storch Engineers
1616 Soldiers Field Road
Boston, Massachusetts 02135

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ADVERTISEMENT

TOWN OF WAYLAND

INVITATION TO BID

for

Construction of

STORMWATER MANAGEMENT IMPROVEMENTS
AND
RECONSTRUCTION OF LAKE SHORE DRIVE

The Town of Wayland, acting by its Surface Water Quality Committee, Wayland Massachusetts, hereinafter referred to as the "Awarding Authority", hereby invites sealed bids for the Construction of STORMWATER MANAGEMENT IMPROVEMENTS AND RECONSTRUCTION OF LAKE SHORE DRIVE in accordance with GENERAL LAWS, CHAPTER 30, SECTION 39M and all other applicable provisions of Chapter 149 of the General Laws, as amended, and in accordance with the terms and provisions of the Contract Documents.

TIME AND PLACE FOR FILING BIDS

General bids will be received up until 10:00 A.M., on 1985 at the Office of the Town Engineer, 41 Cochituate Road, Wayland, Massachusetts 01778, at which time they will be opened and read aloud.

Proposals must be submitted on the Proposal Forms obtained from the Awarding Authority. The Proposal shall be completely filled in, signed, and enclosed in an envelope sealed and plainly marked with the description of the work to be done. The Proposal shall be accompanied by a bid deposit in the form of a bid bond, cash, a certified check, or a treasurer's check or cashier's check issued by a responsible bank or trust company payable to the Town of Wayland in the sum of five percent (5%) of the Bid. The Proposal shall be filed before the time stated above for the opening of Proposals.

BID FORMS AND CONTRACT DOCUMENTS

All Bids must be submitted on the forms obtained from the Awarding Authority. Any bid not submitted on the proper form will be rejected.

Contract Documents, including bid forms will be available on or after 1985, at the office of the Town of Engineer upon deposit of a certified check in the amount of twenty-five dollars ($25.00), payable to the Town of Wayland. The full amount of the deposit will be refunded upon return of all Contract Documents in good condition on or after the expiration of ten (10) days exclusive of Saturdays, Sundays, and legal holidays after the opening of bids.

The Awarding Authority requires the successful Bidder to furnish a Performance Bond a Labor and Material Payment Bond each in the amount of one hundred percent (100%) of the Contract Amount. Cost of premium for such bonds shall be included in the Contract Amount.

The attention of all bidders is specifically directed to the provisions of all Contract Documents including without limitation the Advertisement, Information for Bidders, and the Special Provisions with respect to bonds, insurance, equal employment opportunity, minimum wages, time performance, liquidated damages, and the requirements set forth on the Drawings and Specifications. No bidders shall be eligible for award on this Project unless they are able to demonstrate to the satisfaction of the Awarding Authority their ability to comply with these requirements.

Town of Wayland

Thomas Belote, Chairman
Surface Water Quality Committee

APPROVED AS TO FORM BY TOWN COUNSEL,
NOVEMBER 1980

INFORMATION FOR BIDDERS

TOWN OF WAYLAND

1. The Awarding Authority, the Surface Water Quality Committee acting for and in behalf of the Town of Wayland as designated in the Invitation to Bid invites proposals for doing of the work described in the Invitation to Bid.

2. Proposal shall be submitted on the designated forms. The Proposal shall be properly filled out, signed, enclosed in an envelope, sealed, and plainly marked with a description of the work to be done. The Proposal shall be filed with the Town Engineer at the place designated in the Invitation to Bid. The Proposal shall be filed before the proposed time designated in the Invitation to Bid for the Opening of Proposals.

3. A bid deposit in the form of a bid bond, cash, a certified check, or a treasurer's or cashier's check payable to the Town of Wayland in the sum called for in the Invitation to Bid shall accompany the Proposal filed with the Awarding Authority. The bid deposit shall become the property of the Town of Wayland as liquidated damages if, after an award is made to him, the bidder shall fail to enter into the required Contract within ten (10) business days after notice of said award is mailed or delivered to him.

4. Wherever the words Plans, Drawings, Specifications, Proposals, Bid Form, Contract, Bonds, and Notice to Proceed appear in these Contract Documents they refer to the coincidental items made a part of the bid packages and delivered to bidders as prescribed in the Invitation to Bid.

5. All bid deposits of Bidders except those of the three lowest responsible and eligible bidders shall be returned within three (3) days, Saturdays, Sundays, and legal holidays excluded, after the opening of the bids. The bid deposits of the three lowest responsible and eligible bidders shall be returned upon the execution and delivery of the Contractor, if no award is made upon the expiration of thirty (30) days, Saturday, Sundays, and legal holidays excluded, after the opening of the bids; provided, however, that if any bidder fails to perform his agreement to execute a Contract and furnish a Performance Bond and also a Labor and Materials Payment Bond as stated in his bid, his bid deposit shall become and be the property of the Town of Wayland as liquidated damages.

6. Before submitting his estimate the bidder shall visit the site, examine its condition, thoroughly acquaint himself with the obstacles and advantages for performing the work, and compare the drawings with the conditions found.

7. All questions as to the interpretation of the plans and specifications and other Contract Documents shall be submitted in writing to the Awarding Authority and written answers to such questions shall be sent by the Awarding Authority to every individual or firm on record as having taken a set of Contract Documents. No questions will be answered unless received at least five (5) business days prior to the date fixed for opening the bids.

8. The Awarding Authority shall furnish every person applying therefor a Form for Bid.

9. The Awarding Authority shall, upon deposit of the amount designated in the Invitation to bid, furnish one set of plans and specifications to each bidder requesting same. Upon returning such set within the time prescribed in the Invitation to Bid and in good condition, this deposit shall be refunded.

10. The Awarding Authority further reserves the right to reject any and all bids if it be in the public interest to do so.

11. The Contractor shall agree to comply with all applicable standards, orders, and regulations pursuant to the Clean Air Act of 1970.

12. The Contract includes wage determinations of the Commonwealth of Massachusetts.

13. Each bidder shall submit, on the form furnished for that purpose, a statement of the bidder's qualifications and his organization and equipment available for the work contemplated, and a detailed financial statement. The Awarding Authority shall have the right to take such steps as it deems necessary to determine the ability of the bidder to perform his obligation under the Contract and the bidder shall furnish the Awarding Authority all such information and data for this purpose as it may request. The right is reserved to reject any bid where an investigation of the available evidence or information does not satisfy the Awarding Authority that the bidder is qualified to carry out properly the terms of the Contract.

14. The Awarding Authority reserves the right to award not more than one contract to perform work to any one contractor.

15. The Contractor will be required to complete such forms and make such certifications relative to the various requirements set forth in the Contract Documents as the Awarding Authority may reasonably require whether or not such forms or certifications are included in the Contract Documents at the time of receiving bids.

16. The Bidder shall comply with the equal employment opportunity requirements contained herein.

17. The Awarding Authority requires the successful Bidder to furnish a Performance Bond and a Labor and Material Payment Bond each in the amount of one hundred percent (100%) of the Contract Amount. Cost of premium for such bonds shall be included in the Contract Amount.

18. Failure of the Contractor to commence work on the site on or before the date set forth under the time of execution of the Contract, will result in the termination of the Contractor and the forfeiture of the bid deposit.

19. The Awarding Authority reserves the right to postpone the date for submitting and opening of Proposals and will give notice of any such postponement to each individual or firm on record as having taken a set of Contract Documents.

Town of Wayland

Thomas Belote, Chairman
Surface Water Quality Committee

FORM FOR BID

Wayland, Massachusetts

Date:

Project:

Proposal of _____
(hereinafter called "bidder")

A _____ (corporation/a partnership/an individual) (strike out inapplicable terms) doing business as

_____

To the Town of Wayland acting by and through the Surface Water Quality Committee (hereinafter called the "Awarding Authority").

The bidder, in compliance with your invitation for bids for the construction of Stormwater Management Improvements and Reconstruction of Lake Shore Drive.

having examined the Plans and Specifications with related documents and the site of the proposed work and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies to construct the Project in accordance with the Contract Documents within the time set forth therein and at the prices stated below. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents of which this Proposal is a part.

Bidder hereby agrees to commence work under this Contract on or before a date to be specified in written Notice to Proceed of the Awarding Authority and to substantially complete the work within (150) consecutive calendar days thereafter as stipulated in the Specifications. Bidder further agrees to pay as liquidated damages the sum of $50.00 for each consecutive calendar day thereafter during which the work is not completed as provided in Article 13 of the Contract.

PROPOSAL: Bidder agrees to perform all the work described in the Specifications and shown on the Plans for the sum of _____

_____ Dollars ($_____).
(Amount shall be shown in both words and figures. In case of discrepancy the amount in words shall govern.)

The Town shall not enter into a Contract with a Bidder which is a Foreign Corporation until such Foreign Corporation has filed with the Awarding Authority a Certificate of the State Secretary for the Commonwealth stating that such Corporation has complied with General Laws, Chapter 181, Sections 3 and 5, and the date of such compliance.

Have you ever defaulted on a contract? If so, where and why?

_____

List the more important contracts recently completed by you, stating the approximate cost of each, the month and year completed, and indicate which are similar to the work called for under this Contract _____

_____

_____

_____

Respectfully Submitted:

(Seal if bid is by a corporation)

By _____
(Signature of Bidder)

Title _____

The undersigned represents that this Proposal is made in good faith without fraud, collusion, or connection of any kind with any bidder for the same work; that he is competing in his own interests and in his own behalf without connection or obligation to any undisclosed person; that no other person has any interest in the profits of the Contract; that he has informed himself fully in regard to all conditions pertaining to the work and in regard to the place where it is to be done; and that he has made his own examination and estimates from which this Proposal is made.

The Bidder further agrees that the bid deposit left with the Awarding Authority shall become and be the property of the Town of Wayland as liquidated damages if, after an award is made to him, he shall fail to enter into the Contract therefor within ten (10) business days after notice of said award has been mailed or delivered to him.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work.

The Bidder is a (an) _____

(a) Individual (b) Partnership (c) Corporation (Indicate applicable one).

Fill in (a), (b), or (c).

(a) Individual Owner:

State full name and address of Owner. If business is carried on in any name other than that of the Owner, state such name and address:

_____

_____

_____

(b) Partnership:

State full name and address of all Partners:

_____

_____

_____

(c) Corporation:

Corporation is incorporated in the State of _____

President is _____

Treasurer is _____

If there are any principals other than those identified above, state the full names and addresses of each (specifiy officers and majority stockholders if a corporation, general partners if a partnership).

Place of business in Massachusetts is _____

If the Bidder is a Foreign Corporation, also state the following:

(1) The Power of Attorney required by General Laws, Chapter 181, Section 3, was filed on _____

(2) The Certificate and copy of its Charter, Articles, or Certificate of Incorporation required by General Laws, Chapter 181, Section 5, were filed on _____

If the business is conducted under any title other than the real name of the owner, state the time when, and place where, the Certificate required by General Laws, Chapter 110, Section 5, was filed:

_____

_____

_____

The Federal Social Security Identification Number of the Bidder (the number used on employer's quarterly Federal Tax return, U.S. Treasury Department Form 941) is _____

If the Bidder is an individual doing business under a name other than his own name, the Proposal must so state, giving the address of the individual.

If the Bidder is a partnership the Proposal msut so state, setting forth the names and addresses of all partners, and must be signed by a partner designated as such.

If the Bidder is a Corporation the Proposal must be signed by a duly authorized Officer or Agent of the Corporation.

BID PROPOSAL

The Contractor shall insert prices for each item in ink, in both words and figures, and show a total bid price. In the event of a discrepancy between the written words and figures, the written words shall govern. In the event of an error in the bidder's total bid price, the corrected total bid obtained by the summation of the products of the unit prices multiplied by the respective quantities shall stand as the bidder's total bid price.

The Contractor is advised to read the "Special Provisions" before inserting prices.

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	TOTAL PRICE
2A-1	CLEARING AND GRUBBING _____ dollars and _____ cents ($_____ lump sum.)	1 l.s.	$_____
2A-2	TREE REMOVED (Diameter under 24 Inches) _____ dollars and _____ cents ($_____ each.)	8 ea.	$_____
2A-3	TREE REMOVED (Diameter over 24 Inches) _____ dollars and _____ cents ($_____ each.)	2 ea.	$_____
2B-1	EARTH EXCAVATION _____ dollars and _____ cents ($_____ per cubic yard.)	1,770 cu. yd.	$_____
2B-2	LOAM BORROW _____ dollars and _____ cents ($_____ per cubic yard.)	10 cu. yd.	$_____
2B-3	GRAVEL BORROW _____ dollars and _____ cents ($_____ per cubic yard.)	1,090 cu. yd.	$_____
2B-4	CRUSHED STONE FOR DRAIN PIPE FOUNDATION _____ dollars and _____ cents ($_____ ton.)	10 ton	$_____
2B-5	CLASS B ROCK EXCAVATION _____ dollars and _____ cents ($_____ per cubic yard.)	5 cu. yd.	$_____

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	TOTAL PRICE
2C-1	ABANDON DRAIN PIPE AND PLUG ENDS _____ dollars and _____ cents ($_____ each.)	13 ea.	$_____
2C-2	ADJUST DRAINAGE STRUCTURE _____ dollars and _____ cents ($_____ each.)	6 ea.	$_____
2C-3	12 INCH REINFORCED CONCRETE PIPE CLASS IV _____ dollars and _____ cents ($_____ per linear foot.)	3,050 lin. ft.	$_____
2C-4	CATCH BASIN _____ dollars and _____ cents ($_____ each.)	20 ea.	$_____
2C-5	STANDARD MANHOLE _____ dollars and _____ cents ($_____ each.)	5 ea.	$_____
2C-6	STANDARD MANHOLE, 9' TO 14' DEPTH _____ dollars and _____ cents ($_____ each.)	2 ea.	$_____
2C-7	LEACHING BASIN, TYPE A _____ dollars and _____ cents ($_____ each.)	27 ea.	$_____
2C-8	LEACHING BASIN, TYPE B _____ dollars and _____ cents ($_____ each.)	2 ea.	$_____
2D-1	HAY BALES FOR EROSION CONTROL _____ dollars and _____ cents ($_____ each.)	60 ea.	$_____
2E-1	BITUMINOUS CONCRETE BINDER COURSE _____ dollars and _____ cents ($_____ per ton.)	590 ton	$_____

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	TOTAL PRICE
2E-2	BITUMINOUS CONCRETE TOP COURSE _____ dollars and _____ cents ($ _____ per ton.)	300 ton	$ _____
2E-3	BITUMINOUS CONCRETE BERM, TYPE A MODIFIED _____ dollars and _____ cents ($ _____ per linear foot.)	1,650 lin. ft.	$ _____
2F-1	6 INCH DUCTILE IRON CEMENT LINED WATER PIPE _____ dollars and _____ cents ($ _____ per linear foot.)	1,300 lin. ft.	$ _____
2F-2	8 INCH DUCTILE IRON CEMENT LINED WATER PIPE _____ dollars and _____ cents ($ _____ per linear foot.)	690 lin. ft.	$ _____
2F-3	6 INCH GATE VALVE _____ dollars and _____ cents ($ _____ each.)	3 ea.	$ _____
2F-4	8 INCH GATE VALVE _____ dollars and _____ cents ($ _____ each.)	1 ea.	$ _____
2F-5	HYDRANT _____ dollars and _____ cents ($ _____ each.)	1 ea.	$ _____
2G-1	FIELD STONE SLOPE PAVING _____ dollars and _____ cents ($ _____ per square yard.)	100 sq. yd.	$ _____
2H-1	FENCE REMOVED AND RESET _____ dollars and _____ cents ($ _____ per linear foot.)	20 lin. ft.	$ _____
2I-1	WOODCHIP MULCH _____ dollars and _____ cents ($ _____ per square yard.)	10 sq. yd.	$ _____

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	TOTAL PRICE
2I-2	SOD _____ dollars and _____ cents ($ _____ per square yard.)	330 sq. yd.	$ _____
2I-3	PEASTONE _____ dollars and _____ cents ($ _____ per square yard.)	10 sq. yd.	$ _____
2J-1	TRASH RACK _____ dollars and _____ cents ($ _____ per lump sum.)	1 l.s.	$ _____
2K-1	CONCRETE SIDEWALK _____ dollars and _____ cents ($ _____ per square yard.)	10 sq. yd.	$ _____

TOTAL BID PRICE $_____

_____ dollars

and _____ cents

CONTRACT

The Town of Wayland, a municipal corporation in the Commonwealth of Massachusetts, said party being intended whenever the word "Town" is used, acting through its Surface Water Quality Committee said party being intended whenever the word "Awarding Authority" is used, and being represented by its' Engineer, the official designated by the Awarding Authority to have charge of the work on behalf of the Awarding Authority whenever the word "Official" is used and the other party to this contract, said other party being intended whenever the words "contractor" or "General Contractor" are used agree as hereinafter set forth:

ARTICLE 1

The Contractor shall do the work as set forth in the bid proposal and in the manner set forth in the Specifications. The Contractor shall carry on the work with due diligence and dispatch. All work performed and materials furnished shall be of the best quality and workmanship and to the satisfaction of the Official and shall be in strict accordance with the Contract requirements.

It is understood and agreed that wherever in this Contract or in the Plans, Specifications, Addenda or other documents incorporated in and made a part of this Contract, an item to be furnished is named or described, an item equal to that named or described may be furnished. An item shall be considered equal to the item named or described if (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or for the material being purchased and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in said Contract, Plans, Specifications, Addenda or other documents.

It is further understood ans agreed that wherever in this Contract or in the Plans, Specifications, Addenda or other documents incorporated in and made a part of this Contract the words "or equal" or equivalent words are used, nothing shall be considered "equal" unless the Awarding Authority shall have deemed it as "equal".

ARTICLE 2

It is understood and agreed that time is of the essence of this Contract and that the Contractor shall commence work under this Contract forthwith upon the execution of this Contract and the

delivery of a written "Notice to Proceed" and to substantially complet the project within 150 consecutive calendar days thereafter. The Contractor further agrees to pay, as liquidated damages, the sum of $50.00 for each consecutive calendar day thereafter during which the work is incomplete in accordance with ARTICLE 13 of this contract.

ARTICLE 3

The Contractor shall:

(a) Provide, at its sole expense, any and all necessary licenses, permits, or other authorizations required by the Town of Wayland, the Commonwealth of Massachusetts or any other governmental agency with proper jurisdiction.

(b) Do all cutting and patching of the work of whatever material wherever necessary or required.

(c) Make due allowance for work to be performed by others and cooperate in the case of work to be performed by others.

(d) Upon the written request of the Official discharge any person in his employ who appears to the Official to be disorderly, careless or incompetent or to be employed in violation of any of the terms of this Contract.

(e) Give personal supervision to the work, keep a competent foreman and sufficient number of competent employees thereon and carry on the work subject to the approval of the Official.

(f) Protect everything on the premises from injury by water, frost, wind, fire, accident or other causes, and any interference.

(g) Within twenty-four hours after receiving written notice from the Official to the effect, proceed to remove from th e grounds or buildings all materials condemned by him, whether worked or unworked, and to take down all portions of the work which the Official shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the Drawings and the Specifications, and make good all work damaged or destroyed thereby.

(h) Take charge of, protect, and be liable for any loss of or injury to the materials for use under this Contract

delivered at or in the vicinity of the site, and whether or not suitably stored at the site (or at some location agreed upon) by whomsoever furnished.

(i) Notify the Official as soon as any such materials are so delivered, allow the Official to examine the same, and furnish men to assist such examination.

(j) Keep in proper piles, so placed as not to interfere with the work, all such materials as are from time to time accepted and promptly remove from the premises all such materials not so accepted.

(k) Furnish or pay for all water required by persons doing the work at the site, whether employed by him or others.

(l) Cause to be stacked, and from time to time removed all rubbish or waste material resulting from the work and not needed in same, keeping the premises at all times in a condition satisfactory to the Official.

(m) Take all proper precautions to protect the Town's or adjoining owner's property from injury or unnecessary interference; provide proper means of access to the property and replace or put in good condition every public or private way, conduit, catch basin, fence, tree or other thing injured by the Contractor in carrying on the work unless permanently done away with on approval of the Official for the proper carrying on of the Contract.

(n) Take all proper precautions to protect persons from injury, unnecessary interference or inconvenience and be responsible for the results of any failure in so doing.

(o) Leave an unobstructed way along public and private places for pedestrians and vehicular traffic and leave direct access to hydrants; provide proper walks over and around any obstruction made in a public place in carrying on the Contract, and maintain from the beginning of twilight, through the whole of every night, on or near the obstruction, sufficient lights and guards to protect travelers from injury thereby; when the work is suspended keep all roadways and sidewalks in proper condition at the termination of the work, all to the satisfaction of the Official.

(p) Provide, set up and maintain all necessary derricks, hoisting machinery, scaffolds and stagings required for

the work, except such as are particularly specified to be furnished by others, and do all customary hoisting and give all customary and proper assistance to all subcontractors.

(q) Furnish such guaranty bonds as are called for in the Specifications.

(r) Furnish to the Official satisfactory proof that he has taken out and is maintaining all the insurance required hereunder.

ARTICLE 4

The Contractor shall make written application to the Official for drawings or other information to be furnished by him, such application to be made at least two (2) weeks, and not more than four (4) weeks, in advance of the time such drawings of information are to be needed. The Drawings an d the Specifications are cooperative and it is expressly understood that any labor or material required to carry out fully and to complete the intention of the Drawings or Plans, whether or not particularly mentioned in the Contract, shall be provided by the Contractor and executed as apart of this Contract; provided, however, that when Specifications, Plans and detailed Drawings do not show all the labor and materials that may be required, the Contractor shall be governed by the rquirements of the building law applying to the Town of Wayland and shall comply with approved methods of construction.

ARTICLE 5

It is agreed and understood that the Contractor has made his own examinations and estimates and shall not hold the Town, its agents or employees responsible for or bound by any schedule, estimate, sounding, boring or any Plan thereof and shall take all responsibility for the prosecution of the work and shall bear all losses resulting to him in such prosecution of the work. He shall assume the defense of and hold the Town, its agents and employees harmless from all suits and claims against them or any of them arising from the use of any invention, patent or patent right, and by or from any act or omission or neglect of the Contractor, his agents or employees or any subcontractor in carrying on the Contract. He shall conform to all requirements of law and all other public authorities, state or local, relating to the methods or materials to be used or to the persons to be employed in doing the work. He shall hold the Town harmless from any and all liability of every nature and description which it

may have suffered through damage to property or personal injuries, including death, or otherwise by means of negligence of the Contractor, his agents or employees or any subcontractor including the reasonable costs of defense of any such claims or liability.

ARTICLE 6

Pursuant to Section 39N of Chapter 30 of the General Laws, if during the progress of the work, the Contractor or the Awarding Authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either the Contractor or the Contracting Authority may request an equitable adjustment in the contract price of the Contract applying to work affected by the differing site conditions. A request for such adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the Contracting Authority shall make an investigation of such physical conditions and, if they differ substantially or materially from those shown on the plans or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the Contracting Authority shall make an equitable adjustment in the contract price and the Contract shall be modified in writing accordingly.

ARTICLE 7

The Contractor in carrying on the Contract shall conform to all determinations and directions of the Official relating to the proper interpretations of the Specifications, Plans or Drawings. The suitability, amount, quality and value of anything done or used, any injury or loss sustained by the Contractor, and the amount therefor, or any expense, loss or damage incurred by the Town, and the amount thereof, or the date of the completion of the work shall be determined by the Official; the Official shall be the sole reference of both parties to make such determinations and directions and the Contractor shall permit the Official and persons designated by him to enter upon the work and inspect the same at all times and in all places, and shall provide safe and convenient facilities for making such entry and inspection.

The Official shall decide all questions which may arise as to the quantity, quality, acceptability, fitness and rate of progress of the several kinds of work to be performed and materials to be furnished under the Contract, and shall decide all questions which may arise as to this Contract on the part of the Contractor, and the determination and decision of the Official shall be final and conclusive; and acceptance by the Contractor of such determination and decision, in case any question shall arise, shall be a condition precedent to the right of the Contractor to receive any payment under this Contract.

ARTICLE 8

Pursuant to Section 390 of Chapter 30 of the General Laws:

(a) The Awarding Authority may order the General Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Awarding Authority; provided however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the Awarding Authority to act within the time specified in this Contract, the Awarding Authority shall make an adjustment in the contract price for any increase in the cost of performance of this Contract but shall not include any profit to the General Contractor on such increase; and provided further, that the Awarding Authority shall not make any adjustment in the Contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Contract price under any other Contract provisions.

(b) The General Contractor must submit the amount of a claim under provision (a) to the Awarding Authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the Awarding Authority shall not approve any costs in the claim incurred more than twenty days before the General Contractor notified the Awarding Authority in writing of the act or failure to act involved in the claim.

If the Contractor claims any loss or injury resulting to him from any act or neglect of the Town, its agents or employees, the Contractor shall, within one week of the occurrence of such act or neglect, deliver to the Official a detailed written statement of the loss or injury resulting therefrom. and no reimbursement shall be made by the Town unless th eContractor shall have delivered such written statement and the Official approves the sum.

ARTICLE 9

Pursuant to Section 39F of Chapter 30 of the General Laws:

(a) Forthwith after the General Contractor receives payment on account of a periodic estimate, the General Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court procedings barring such payment and also less any amount claimed due from the subcontractor by the General Contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the Plans and Specifications, the entire balance due under the subcontract less amounts retained by the Awarding Authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the Awarding Authority shall pay that amount to the General Contractor. The General Contractor shall forthwith pay to the subcontractor the full amount received from the Awarding Authority less any amount specified in any court procedings barring such payment and also less any amount claimed due from the subcontractor by the General Contractor.

(c) Each payment made by the Awarding Authority to the General Contractor pursuant to subparagraphs (a) and (b) of this Article for the labor performed and the materials furnished by a subcontractor shall be made to the General Contractor for the account of that subcontractor; and the Awarding Authority shall take reasonable steps to compel the General Contractor to make each such payment to each subcontractor. If the Awarding Authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the General Contractor or which is to be included in a payment to the General Contractor for payment to the subcontractor as provided in subparagraphs (a) and (b), the Awarding Authority shall act upon the demand as provided in this section.

(d) If, within seventy (70) days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the General Contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the General Contractor, less any amount retained by the Awarding Authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the Awarding Authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the Awarding Authority, and a copy shall be delivered to or sent by certified mail to the

General Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten (10) days after the subcontractor has delivered or so mailed the demand to the Awarding Authority and delivered and so mailed a copy to the General Contractor, the General Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Awarding Authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the General Contractor and of the amount due for each claim made by the General Contractor against the subcontractor.

(e) Within fifteen (15) days after receipt of the demand by the Awarding Authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Awarding Authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the General Contractor, less any amount (i) retained by the Awarding Authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court procedings barring such payment, or (iii) disputed by the General Contractor in the sworn reply; provided, that the Awarding Authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The Awarding Authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this paragraph.

(f) The Awarding Authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest bearing joint account in the names of the General Contractor and the subcontractor in a bank in Massachusetts selected by the Awarding Authority or agreed upon by the General Contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the General Contractor and the subcontractor or as determined by decree of a court of a competent jurisdiction.

(g) All direct payments and all deductible from demands for direct payments deposited in an interest bearing account or accounts in a bank pursuant to suparagraph (f) shall be made out of amounts payable to the General Contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the General Contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the Awarding Authority to the General Contractor to the extent of such payment.

(h) The Awarding Authority shall deduct from payments to a General Contractor amounts which, together with the deposits in interest bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payments received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the General Contractor.

ARTICLE 10

The Contractor hereby agrees that he and all subcontractors on the work under this Contract shall: (i) pay for all labor performed or furnished and materials used or employed in the performance of the work under this Contract, including lumber so employed which is not incorporated in such work and is not wholly or necessarily consumed or made so worthless as to lose its identity, but only to the extent of its' purchase price less its' fair salvage value, and including also any material specially fabricated at the order of the Contractor or subcontractor for use as a component part of the work under the Contract so as to be unsuitable for use elsewhere, even though such material has not been delivered or incorporated into such work, but only to the extent of its purchase price less its fair salvage value and only to the extent that such specially fabricated material is in conformity with the Contract, Plans and Specifications or any changes therein duly made; (ii) pay the transportation charges for materials used or employed therein which are consigned to the Contractor or to a subcontractor who has a direct contractural relationship with the Contractor; (iii) pay all sums due for the rental or hire of vehicles, steam shovels, rollers propelled by steam or other power, concrete mixers, tools and other appliances and equipment employed in such work; (iv) pay the transportation charges directly related to such rental or hire; (v) and pay all sums due trustees or other persons authorized to collect such payments from the Contractor or subcontractors, based upon the labor performed or furnished as aforesaid for a maximum of one hundred and twenty (120) consecutive calendar days, for health

and welfare plans and other fringe benefits which are payable in cash and provided for in collective bargaining agreements between organized labor and the Contractor or subcontractor.

The Contractor further agrees that he shall pay, or cause to be paid, all rental and transportation charges for the hire or use, in the carrying out of the work under this Contract, of dump trucks, whether such charges are incurred by the Contractor, subcontractors or suppliers or transporters of materials to be incorporated in such work.

ARTICLE 11

In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, because of race, color, religious creed, national origin, sex, age or ancestry. The aforesaid provisions shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation and apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination of the Commonwealth. The aforesaid provision shall be binding upon all subcontractors except subcontractors for standard commercial supplies or raw materials.

ARTICLE 12

Every employee in the work to be performed under this Contract shall be allowed to lodge, board and trade where and with whom he elects and the Contractor shall not directly or indirectly require, as a condition of employment in said work, that an employee shall lodge, board or trade at a particular place or with a particular person. Neither the Contractor nor any subcontractor shall obstruct any person in doing work for the Town. The Contractor and any subcontractor shall conform to all labor laws of the Commonwealth, and without limiting the generality of the foregoing, shall conform to the provisions of Sections 25, 26, 27, 27B and 30 of Chapter 149 of the General Laws, as amended, which Sections are incorporated herein by reference and made a part hereof.

The Contractor and any subcontracto shall give preference in the employment of mechanics and apprentices, teamsters, chauffeurs and laborers, first to citizens of the Commonwealth who

have served in the Armed Services of the United States in time of war and have been honorably discharged therefrom or released from active duty therein and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the Commonwealth generally, and if they cannot be obtained in sufficient numbers, then to citizens of the United States; and shall give preference to veterans and citizens who are residents of the Town of Wayland.

No laborer, workman or mechanic working within the Commonwealth, in the emply of the Contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by this Contract, shall be required or permitted to work more than eight hours in any one day, or more than forty-eight hours in any week, or more than six days in any one week, except in cases of extraordinary emergency.

The rate per hour of the wages to be paid to mechanics and apprentices, teamsters, chauffeurs and laborers in the work to be performed under this Contract shall not be less than the rate of wages in the Schedule annexed hereto and made a part hereof as determined by the Commissioner of Labor and Industries of the Commonwealth. This Schedule shall continue to be the minimum rate of wages for said employees during the life of this Contract.

ARTICLE 13

If the Contractor shall neglect, fail or refuse to complete the work within the time above specified, or any proper extensions granted by the Official, Contractor agrees that as a part of the consideration for the execution of this Contract by the Town, to pay the Town, not as penalty, liquidated damages for such breach of Contract, as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completion of the work. The said amount is so fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Town would in such event sustain, and said amount is agreed to be the amount of damages which the Town would sustain. These liquidated damages are $50.00 per day.

ARTICLE 14

Before commencing performance of this Contract, the Contractor shall provide by insurance for the payment of compensation and thefurnishing of other benefits under Chapter 152 of the General Laws (the so-called Workmen's Compensation Act) to all

persons to be employed under this Contract. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this Contract and shall operate as an immediate termination hereof. The Contractor shall, without limiting the generality of the foregoing, conform to the provisions of Section 34A of Chapter 149 of the General Laws, which Section is incorporated herein by reference and made a part hereof.

ARTICLE 15

The Contractor shall take out and maintain during the life of this Contract such Public Liability and Property Damage Insurance as shall protect him and any subcontractor performing work covered by this Contract, from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them and the amount of such insurance shall be as follows:

(a) Public Liability Insurance in an amount not less than five hundred thousand dollars ($500,000.00) for injuries, including accidental death, to any one person, and in an amount not less than one million dollars ($1,000,000.00) on account of any one accident.

(b) Property Damage Insurance in an amount not less than five hundred thousand dollars ($500,000.00) for damage on account of any one accident and in an amount not less than one million dollars ($1,000,000.00) for damages on account of all accidents.

(c) Vehicular Liability of five hundred thousand dollars ($500,000.00) for any one person or one million dollars ($1,000,000.00) for each occurrence.

(d) The Contractor shall either (i) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage and Vehicular Liability of the type and in the same amounts as specified in the preceding paragraphs, or (ii) insure the activities of his subcontractors in his own policy.

ARTICLE 16

The reasonable cost of inspection incurred by the Official for the inspection of all fabrication of materials required in

the performance of this Contract which may be fabricated outside of the corporate limits of the Town of Wayland will be charged to the Contractor.

ARTICLE 17

The Official and his authorized representatives shall have access to the premises at all times. They shall have the authority to stop, alter or ina any way affect the progress of the work if it is not being performed in conformity with the Contract, Plans or Specifications.

ARTICLE 18

On or before the first day of each month the Contractor shall submit in writing to the Official for approval a detailed schedule setting forth the nature of the work, and the days and times during which work is to be performed by the Contractor.

ARTICLE 19

If the Contractor is adjudged a bankrupt or if he makes a general assignment for the benefit of his creditors or if a receiver of his property is appointed, or if the work to be done under this Contract is abandoned, or if this Contract or any part thereof is sublet without the previous written consent of the Official, or if this Contract is assigned without the previous written consent of the Official, or if the Contractor becomes insolvent, or if at any time the Official shall certify in writing that the Contractor has refused or neglected to supply a sufficiency of properly skilled workmen or of materials of the proper quality, or has failed in the performance of any of the agreements herein contained, the Town, acting by the Official and at his discretion, may notify the Contractor to discontinue all work and thereupon the Contractor shall discontinue the work and the Town, acting by the Official and at his discretion, may thereupon, by Contract or otherwise, complete the work and charge the entire expense of so completing the work to the Contractor; and the Contractor shall not be entitled to receive any further payment under this Contract until the work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this Contract shall exceed the expense incurred by the Town in finishing the work, such expense shall be paid by the Townto the Contractor; but if such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Town. For the purpose of completing the work, the Town, acting by the Official, may take possession of and use, or cause to be used, any materials, implements, machinery and tools of every description as may be found upon the site of the work.

ARTICLE 20

Pursuant to Section 39K of Chapter 30 of the General Laws:

Within fifteen days after receipt from the Contractor, at the place designated by the Awarding Authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the Awarding Authority will make a periodic payment to the Contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title or to which a subcontractor has title and has authorized the Contractor to transfer title to the Awarding Authority, less (1) a retention based on its estimate of the fair value of its claims against the Contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of Section 39F, and less (3) a retention not exceeding five per cent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sxty-five days after (a) the Contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the Awarding Authority, less than one per cent of the original Contract price, or (b) the Contractor substantially completes the work and the Awarding Authority takes possession for occupancy, whichever occurs first, the Awarding Authority shall pay the Contractor the entire balance due on the Contract less (1) a retention bases on its estimate of the fair value of its claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of Section 39F, or based on the record of payments by the Contractor to the subcontractors under this Contract if such record of payment indicates that the Contractor has not paid subcontractors as provided in Section 39F. If the Awarding Authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate them charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the Contractor; provided, that no interest shall be due in any event, on the amount due on a periodic estimate for final payment until fifteen days after receipt of such a periodic estimate from the Contractor, at the place designated by the Awarding Authority if such place is so designated. The Contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The Official shall deduct from any such periodic payment (a) all sums, if any, previously paid the Contractor for carrying on this Contract, and (b) such sums as the Official shall determine to be deducted as Liquidated Damages under ARTICLE 13.

ARTICLE 21

All defective work shall be removed, repaired or made good, notwithstanding that such work has previously been inspected and approved or estimated for payment. If the work or any part thereof shall be found defective at any time before final acceptance of the whole work, the Contractor shall at his own expense make good such defect in a satisfactory manner.

Any work done beyond the lines and grades shown on the plans or as approved by the Official, or any extra work done without written authority, shall be considered as unauthorized and at the expense of the Contractor. Such work will not be measured nor compensation allowed therefor. Work so done may be ordered removed at the Contractor's expense. All work under this Contract and all deviations from the Plans and Specifications are subject to Chapter 30, Section 39I of the General Laws.

Upon failure of the Contractor to remove and satisfactorily dispose of any or all defective or unauthorized work, and to remedy the same after being so notified, the Official may cause defective work to be remedied, removed and replaced, and such unauthorized work to be removed, and to deduct the cost therefor, from any monies due or to become due the Contractor.

Before acceptance of the entire project, the Official will make a complete inspection of the work done for compliance with the Contract Documents. If the work or any part thereof is not acceptable to the Official, he shall notify the Contractor in writing of the particular defect or parts to be remedied. If the Contractor has not arranged within a five (5) day period after transmittal of the notice to complete the work speedily, the Official may without notice and without affecting the Contract, make such other arrangements as he may consider necessary to insure the satisfactory completion of the project. The cost of so completing the work shall be deducted from any payments due or which may become due the Contractor under the Contract.

ARTICLE 22

It is hereby agreed and understood by the parties hereto that the Town shall pay the Contractor as full compensation for everything furnished or done by or resulting to the Contractor in carrying out this Contract the sum of _____ _____Dollars ($_____), said sum to be subject to additions and deductions and to be paid in accordance with the provisions of this Contract.

The Contractor shall, if so requested by the Official, furnish on the printed forms from the Official such itemized information as to the subdivision of the Contract price or price submitted for extra work as may be required. No payment will be made on the work until the subdivision, if requested, has been submitted by the Contractor and approved by the Official.

ARTICLE 23

The ADVERTISEMENT, INFORMATION FOR BIDDERS, PROPOSAL (completed Bid Form), SUPPLEMENTARY CONDITIONS, STANDARD FORMS, MINIMUM WAGE RATES, SPECIFICATIONS, DRAWINGS, attached Special Provisions, Ammendments, and Addenda, are hereby made a part hereof, to the same extent as if each were herein set forth in its entirety, and shall be recognized throughout as the Contract Documents.

ARTICLE 24

In consideration of the execution of this Contract by the Town, the Contractor agrees that simultaneously with the acceptance of the amount tendered by the Town as the final payment by it under this Contract, he will execute and deliver to the Town an instrument under seal releasing and forever discharging the Town of and from any and all claims, demands, and liabilities whatsoever of every name and nature, both at law and in equity, arising from,growing out of, or in any way connected with this Contract, save only such claims, demands and liabilities as are expressly excepted in said instrument.

ARTICLE 25

This Contract is made subject to all laws of the Commonwealth of Massachusetts.

This Contract is subject to an appropriation being available therefor.

This Contract, is executed by the Town of Wayland and by the Contractor as of this day of , 198 .

TOWN OF WAYLAND

Approved as to
Availability of
Appropriation

By: _____

_____
Town Auditor

CONTRACTOR:

_____
(Name)

_____
(Address)

By: _____
(Name)

Approved as to Form:

_____
Town Counsel

_____
(Title)

(Affix Corporate Seal Here)

THE COMMONWEALTH OF MASSACHUSETTS

SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY
ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

I. For purposes of this contract, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.

II. During the performance of this contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:

1. In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer: recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).

2. In connection with the performance of work under this contract, the Contractor, shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.

III. 1. As part of his obligation of remedial action under the foregoing section, the Contractor shall maintain on this project a not less than 5% percent ratio of minority employee man hours to total man hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in Section 44C of Chapter 149 of the Massachusetts General Laws.

2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the Commission.

IV. 1. At the discretion of the Commission there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering this project, hereinafter called the administering agency, the Commission and such other representatives as may be designated by the Commission in conjunction with the administering agency.

2. The Contractor (or his agent, if any, designated by him as the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

3. The Contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, or workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Commission and Liaison Committee.

4. Records of employment referral orders, prepared by the Contractor, shall be made available to the Commission and to the Liaison Committee on request.

5. The Contractor shall prepare weekly reports in a form approved by the Commission of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Commission and to the Liaison Committee.

V. If the Contractor shall use any subcontractor on any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods. It shall include notification to the Office of Minority Business Assistance (within the Executive Office of Communities and Development) or its designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.

VI. In the employment of journeymen, apprentices, trainees and advanced trainees, the Contractor shall give preference, first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates, and, secondly, to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States.

I. A designee of the Commission and a designee of the Liaison Committee shall each have right of access to the construction site.

Compliance with Requirements

The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 116 dated May 1, 1975, and of Chapter 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this contract.

IX. Non-Discrimination

The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment.

X. Solicitations for Sub-Contracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action.

XI. Bidders Certification Requirement

1. The bidders certification form currently in use will be deleted from all future bid documents.

2. The following certification statement will be inserted in the bid document just above the bidder's signature, as a substitute for the present bidder certification form:

> "The bidder hereby certifies he shall comply with the minority manpower ratio and specific action steps contained in the appendix EEO attached hereto, including compliance with the minority contractor compliance specified in Section V of said appendix. The contractor receiving the award of the contract shall be required to obtain from each of its subcontractors and submit to the contracting or administering agency prior to the performance of any work under said contract a certification by said subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in the appendix EEO."

XII. Contractor's Certification

The Contractor's certification form must be signed by all successful low bidder(s) prior to award by the contracting agency. (See attachment).

XIII. Compliance-Information, Reports and Sanctions

1. The Contractor will provide all information and reports required by the administering agency or the Commission on instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.

2. Whenever the administering agency, the Commission, or the Liaison Committee believes the General Contractor or any Subcontractor may not be operating in compliance with the terms of this Section, the Commission directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Section. If the Commission or its agent finds the General Contractor or any subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission shall make a final report of non-compliance, and recommend to the administering agency the imposition of one or more of the sanctions listed below. If, however, the Commission believes the General Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the administering agency shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

   a. The recovery by the administering agency from the General Contractor of 1/100 of 1% of the contract award price or $1000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the administering agency from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the subcontract price, or $400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;

b. The suspension of any payment or part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;

c. The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;

d. The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering agency for a period of up to three years.

3. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that he is in compliance with this Section, he may request the administering agency, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the administering agency, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

4. Sanctions enumerated under Sections XI-2 shall not be imposed by the administering agency except after an adjudicatory proceeding, as that term is used M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

XIV. Severability

The provisions of this section are serverable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

A contractor will not be eligible for award of a contract unless such contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

_____ certifies that:
Contractor

1. it tends to use the following listed construction trades in the work under the contrac

_____

_____; and

2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and

3. will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions.

_____
(Signature of authorized representative of contractor)

B. Subcontractors' Certification

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTORS' CERTIFICATION

_____ certifies that:
Subcontractor

1. it tends to use the following listed construction trades in the work under the subcontract _____

_____; and

2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and

3. will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these bid conditions.

_____
(Signature of authorized representative of subcontractor)

In order to ensure that the said subcontractors' certification becomes a part of all subcontracts under the prime contract, no subcontract shall be executed until an authorized representative of the state agency (or agencies) administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

MINIMUM MINORITY PERCENTAGES TO BE APPLIED TO STATE AND STATE ASSISTED CONTRACTS WITHIN THE COMMONWEALTH OF MASSACHUSETTS

The following percentages shall apply:		No Less Than
Boston:	Impact Area (Jamaica Plain (part), Mattapan, South Cove, Chinatown, Bay Village, Roxbury, Dorchester, South End)	30%
	Others	10%
Cambridge		12%
New Bedford		18%
Springfield		10%
All other cities and towns		5%

12-2-75

Town of Wayland

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____
(Name of Contractor)

_____ a _____
(Corporation, Partnership or Individual)

as Principal and _____
(Surety)

of _____, State of _____ as Surety, are held and firmly bound unto the Town of Wayland, Massachusetts, as Obligee, in the penal sum of _____

_____

Dollars ($_____) well and truly to be paid for the payment of which we and each of us hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THIS OBLIGATION IS UPON THE CONDITION that if the person or persons designated in the contract annexed hereto as the Contractor, and all subcontractors under said contract, shall faithfully furnish and perform everything required to be furnished and performed by them under the provisions of ARTICLE 1 of the Contract then this obligation shall be void; otherwise it remains in full force and effect. Said surety hereby further agrees that it shall, if requested in writing by the Town, acting by the Official, take such action as is necessary to complete said contract.

FOR VALUE RECEIVED, said surety company hereby stipulates and agrees that no change, extension of time, alteration or addition

to the terms of said contract or to the work to be performed thereunder or the Contract Documents accompanying the same shall in any wise affect its obligation on this bond, and does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract or to the work or to the Specifications.

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this instrument at Wayland, Massachusetts, this

day of 198 .

_____
(Principal)

BY: _____
Name & Title
(Affix business seal)

_____
(Surety)

BY: _____
Attorney-in-fact

(Affix business seal)

(Attach Power of Attorney to this Page)

Approved as to form by Town Counsel, November, 1980

THIS FORM IS VOID AND WITHOUT EFFECT IF ALTERED IN ANY WAY.

Town of Wayland

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____
(Name of Contractor)

_____ a _____
(Corporation, Partnership or Individual)

as Principal and _____
(Surety)

of _____, State of _____ as Surety, are held and firmly bound unto the Town of Wayland, Massachusetts, as Obligee, inthe penal sum of _____

_____

Dollars ($_____) well and truly to be for the payment of which we and each of us hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

THIS OBLIGATION IS UPON THE CONDITION that if the person or persons designated in the contract annexed hereto as the Contractor, and all subcontractors under said contract, shall promptly pay for all labor performed or furnished and materials used or employed in the work, all as and to the extent specified in Massachusetts General Laws (Ter. Ed.) Chapter 149, Section 29, as amended, and any authorized extension or modification to the said contract, including lumber so employed which is not incorporated in such work and is not wholly or necessarily consumed or made so worthless as to lose its identity, but only to the extent of its purchase price less its fair salvage value, and incuding also any material specially fabricated at the order of the Contractor or subcontractor for use as a component part of the work under said contract so as to be unsuitable for use elsewhere, even though such material has not been delivered and incorporated into such work, but only to the extent that such specially fabricated material is in conformity with the Contract Documents or any changes therein duly made; and shall pay the transportation charges for materials used or employed therein which are consigned to the Contractor or to a subcontractor who has a direct contractural relationshaip with the Contractor; and shall pay all sums due for the rental and hire of vehicles, steam shovels, rollers propelled by steam or other power, concrete mixers, tools and other appliances and equipment employed in such

work; and shall pay the transportation charges directly related to such rental or hire and shall pay all sums due trustees or other persons authorized to collect such payments from the Contractor or subcontractor, based upon the labor performed or furnished as aforesaid for a maximum of one hundred and twenty consecutive calendar days, for health and welfare plans and other fringe benefits which are payable in cash and provided for in collective bargaining agreements between organized labor and the Contractor or subcontractors, this obligation shall be null and void; otherwise it shall remain in full force and effect.

Said surety hereby further agrees that no final settlement between the Obligee and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

FOR VALUE RECEIVED, said surety company hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said contract or to the work to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the SPECIFICATIONS.

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this instrument at Wayland, Massachusetts, this day of 198 .

_____
(Principal)

BY: _____
Name & Title
(affix business seal)

_____
(Surety)

BY: _____
Attorney-in-fact
(affix business seal)

Approved as to form by Town Counsel, November, 1980

THIS FORM IS VOID AND WITHOUT EFFECT IF ALTERED IN ANY WAY

CERTIFICATE OF AUTHORITY

MEETING OF BOARD OF DIRECTORS

_____,198

At a meeting of the Directors of the _____

_____

duly called and held at _____

on the _____ day of _____, 198 at which a quorum was presented and acting, it was

Voted, that _____

THE _____ of this Corporation is hereby authorized and empowered to make, enter into, sign, seal, and deliver, in behalf of this Corporation a Contract for _____

_____

with the Town of Wayland, and performance and payment bonds (each in the full amount of the Contract) in connection with such Contract.

I do hereby certify that the above is a true and correct copy of the record, that said vote has not been amended or repealed and is in full force and effect as of this date, and that _____

_____

is duly elected _____

of this Corporation.

_____

Clerk or Secretary of the Corporation

Approved as to form by Town Counsel, November, 1980

THIS FORM IS VOID AND WITHOUT EFFECT IF ALTERED IN ANY WAY

Town of Wayland

NOTICE TO PROCEED

TO: _____

_____

_____

RE: Project/Contract No.: _____

Amount of Contract: _____

You are hereby notified to commence work on this Contract on or before _____ and are to fully complete the work (on or before _____)[1/] or (within _____ consecutive calendar days thereafter. Your Contract completion date is, therefore, _____).

The Contract provide for assessment of the sum of _____ as liquidated damages for each consecutive calendar day after the above established Contract Completion Date that the work remains incomplete.

_____
Official

Date;

1/ The date specified in the Contract.

Approved as to form by Town
Counsel, November 1980

SPECIAL PROVISIONS

1. LOCATION AND WORK TO BE DONE

The work to be done consist of the installation of leaching basins, drain pipe and drainage structures, water mains, and roadway paving on Lake Shore Drive from Mansion Road to Castle Gate, and in Castle Gate and Castle Gate Extension, and the installation of leaching basins and appurtenances in portions of West Plain Street, Mansion Road, Knollwood Lane, Dudley Road, Bayfield Road, Sunset Road, Simpson Road, Emerson Road, Russell Road, Richard Road, and Beech Road in Wayland Massachusetts. The work includes but is not limited to installation of leaching basins, catch basins and drain manholes, concrete drain pipe, water mains, and site preparation, excavation, borrow, bituminous concrete pavement, bituminous berm and all other work required for the completion of the Contract.

2. ENGINEER

The Engineer shall mean the Town Engineer representing the Awarding Authority.

3. CONTRACT DOCUMENTS

These Special Provisions form a part of the Commonwealth of Massachusetts Department of Public Works, Standard Specifications for Highways and Bridges, 1973 Edition as amended, hereinafter referred to as the "Standard Specifications".

4. STANDARD SPECIFICATIONS

When references are made in these specifications to Sections of other specifications, the reference is made to the latest revised edition of the Commonwealth of Massachusetts, Department of Public Works Standard Specifications for Highways and Bridges. Said specifications shall govern as fully as if they were recited at length herein.

All work not specifically indicated or specified otherwise, shall conform to the applicable portions of the "Standard Specifications". Where there is a conflict between the Standard Specifications and these SPECIAL PROVISIONS, the SPECIAL PROVISIONS shall govern, except in cases of governmental codes and regulations.

5. COMMENCEMENT AND COMPLETION

The Contractor shall commence work at such points as the Engineer may approve within 10 days after receipt of the Notice to Proceed from the Awarding Authority, and shall prosecute the work with diligence until its substantial completion and acceptance in the manner fixed by Contract and within 150 days after receipt of the Notice to Proceed.

6. INSURANCE

The Contractor's attention is directed to the specific types of insurance required and the appropriate limits of coverage;

a. Workmen's Compensation and Employer's Liability Insurance are required by General Laws of the Commonwealth of Massachusetts.

b. Bodily Injury Insurance covering the operation of all motor vehicles owned by the Contractor in the amounts of $500,000 for any one person and $1,000,000 for any one accident.

c. Property Damage Insurance covering the operation of all motor vehicles owned by the Contractor in the amounts of $500,000 for any one accident and $1,000,000 for all accidents.

d. Insurance to cover bodily injuries and property damage resulting from the use of motor vehicles operated in connection with the prosecution of the work under this Contract, in the amounts required under (b) and (c) above.

e. Public Liability Insurance and Contractor's Protective Public Liability Insurance in the amounts of $500,000 per person and $1,000,000 for all accidents.

All policies shall be so written that the Owner will be notified in writing of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of cancellation or amendment.

7. MINIMUM WAGE RATES

The minimum wage rates to be used for this Contract are shown on the schedules on following pages. In the event of conflict between the schedules for any classification, the greater amount for the classification shall prevail as the minimum wage rate.

If the Contractor finds it necessary during the progress of the work to secure a minimum wage rate for some additional classifications, he shall make a request for such additional classification to the Awarding Authority, who in turn will obtain the additional and corresponding minimum wage rate from the State Department of Labor and Industries and advise the Contractor of the same. These additional classifications and minimum wage rates are then to be considered a part of the Contract and the Contractor shall have no claim for additional compensation because of the additional classification and minimum wage rates.

Where a question arises as to the classification in the schedule of the Department of Labor and Industries in which any employee is to be included, the decision is to be made by the State Department of Labor and Industries, through their duly authorized representative.

8. SANITARY REGULATIONS

The Contractor shall provide adequate sanitary facilities for the use of those employed on the work. Such facilities shall be made available when the first employees arrives on the site of the work, shall be properly secluded from public observation and shall be constructed and maintained during the progress of the work in suitable numbers and at such points and in such manner as may be required or approved.

9. UTILITIES

The Contractor shall provide for or arrange for, at his own expense, water, heat, and electricity for construction purposes.

Water for all purposes shall be obtained from specifically designated hydrants on the Wayland water system. The Contractor shall provide a quick closing valve at the hydrant to use in filling his tank truck. Drinking water shall be supplied to all workmen and satisfactorily cooled.

The Contractor shall make all necessary applications and arrangements and pay all fees and charges for electrical energy for power and light necessary for proper completion of the work and during its progress.

10. DEBRIS AND SURPLUS MATERIAL

All debris and waste material, scrap or salvageable material generated by the construction and which is unsuitable for reuse shall be removed form the project site by the Contractor. The Contractor will be permitted to dispose of broken up concrte and bituminous materials, and excess fill and excavated materials at the Town-owned landfill as directed by the Engineer. The maximum dimension of debris shall not exceed three feet. Debris shall not be permitted to accumulate and the work shall be kept satisfactorily clean at all times.

11. WORK BY OTHERS

The Contractor shall be responsible for conducting all his operations so as not to create any hindrance, hazard, delay or obstacle or to cause any damage to any concurrent work being performed by others or to any existing trees, installations etc. It shall be the Contractor's responsibility to cooperate with all other contractors doing work on the Project.

12. TRAFFIC MAINTENANCE

Through traffic shall be maintained between the limits of construction throughout the contract. No detouring of traffic will be permitted unless approved in writing by the Town of Wayland. It will be the Contractor's responsibility to maintain available access during construction and to sign, light, and warn all vehicles throughout the construction site.

13. TRAFFIC OFFICERS

When, in the opinion of the Engineer, it is necessary that uniformed police be used to direct traffic during construction, he will obtain a detail of Wayland Police for this purpose.

All expenses for uniformed police hours will be borne directly by the Town of Wayland. No other uniformed police will be utilized for work on this Contract.

14. LINES, GRADES, AND MEASUREMENTS

The Contractor shall employ a Registered Professional Engineer or Land Surveyor registered in the Commonwealth of Massachusetts to establish all lines, grades, reference marks, batter boards, etc. needed by the Contractor during the progress of the work, and from time to time to verify such marks by instrument or other appropriate means.

The Contractor shall have the Engineer check the lines, elevations, reference marks, etc., prior to any excavations, but the Contractor shall be responsible for the accuracy of same.

15. SUBMITTALS

As soon as possible after execution of the CONTRACT, the Contractor shall submit to the Engineer the names and addresses of the manufacturers and suppliers of all materials and equipment he proposes to incorporate into the work.

The Contractor shall submit data and samples where required in the specifications, sufficiently early to permit consideration, inspection, and testing before the materials and equipment are needed for incorporation in the work. The consequences of his failure to do so shall be the Contractor's sole responsibility.

The Contractor shall submit (in reproducible transparency form unless otherwise specified) shop and working drawings of materials fabricated especially for the Contract, and materials and equipment for which such drawings are specifically requested.

Such drawings shall show the principal dimensions, weight, structural and operating features, space required, clearances, type, and/or brand of finish or shop coat, etc., depending on the subject of the drawing. The dimensions shall be certified by the manufacturer or fabricator as correct for the Contract.

When so specified or if considered by the Engineer to be acceptable, manufacturer's specifications, catalog data, descriptive matter, illustrations, etc., may be submitted in place of shop and working drawings.

The Contractor shall be responsible for the prompt and timely submittal of all shop and working drawings so that there shall be no delay to the work due to the absence of such drawings.

Until the necessary review has been made, the Contractor shall not proceed with any portion of the Work (such as the construction of foundations), the design or details of which are dependent upon the design or details of work, materials, equipment, or other features for which review is required.

All shop and working drawings shall be submitted to the Engineer by and through the Contractor, who shall be responsible for obtaining shop and working drawings from his subcontractors and returning reviewed drawings to them. All drawings shall be clearly marked with the names of the Owner, Contractor, and building, equipment, or structure to which the drawing applies, and shall be suitably numbered. Each shipment of drawings shall be accompanied by a letter of transmittal giving a list of the drawing numbers and the names mentioned above.

Only drawings which have been checked and corrected by the fabricator shall be submitted to the Contractor by his subcontractors and vendors. Prior to submitting drawings, the Contractor shall check throughly all such drawings to satisfy himself that the subject matter thereof conforms to the Drawings and Specifications in all respects. All drawings which are correct shall be marked with the date, checker's name, and indication of the Contractor's approval, and then shall be submitted to the Engineer; other drawings shall be returned for correction.

If a shop drawing shows any deviation from the Contract requirements, the Contractor shall make specific mention of the deviations in his letter of transmittal.

The review of shop and working drawings herein will be general only, and nothing contained shall relieve, diminish, or alter in any respect the responsibilities of the Contractor under the Contract Documents and in particular, the specific responsibility of the Contractor for details of design and dimensions necessary for the proper fitting and construction of the Work as required by the Contract, and for achieving the result and performance specified thereunder.

Should the Contractor submit equipment that requires modifications to the structures, piping, electrical conduit, wires and appurtenances, layout, etc., detailed on the Drawings, he shall also submit details of the proposed modifications. If such equipment and modifications are accepted, the Contractor, at no additional cost to the Awarding Authority, shall do all the work necessary to make such modifications.

The marked-up reproducible of the shop and working drawings or one marked-up copy of the catalog cuts will be returned to the Contractor. The Contractor shall furnish additional copies of such drawings or catalog cuts when so requested.

16. PLANS

The location and details of the proposed work are shown on plans on file at the office of the Awarding Authority, 41 Cochituate Road, Wayland, Massachusetts, and are referred to and made part of these Special Provisions.

17. MASSACHUSETTS SALES TAX EXEMPTION

The Town of Wayland is an exempt purchaser under the Sales Act, Chapter 14 of the Acts of 1966 to the extent of materials and supplies that are used or incorporated in the performance of this Contract. The Massachusetts tax exemption number for Wayland is obtainable from the Town.

18. PHOTOGRAPHS

The Contractor shall, at his own expense, furnish the Engineer suitable 8 x 10 in. glossy photographs of the Project. Three copies of each photograph, showing progress shall be furnished along with monthly pay request.

19. RECORD DRAWINGS AND SPECIFICATIONS ON-SITE

From the sets of drawings furnished by the Awarding Authority at the beginning of the work, the Contractor shall reserve one set for record purposes.

The Contractor and Subcontractors shall keep their respective record set available for inspection by the Awarding Authority or authorized representatives at the site at all times, together with one copy of the Standard Specifications, addenda, and printed data, and shall note thereon, neatly, legibly and accurately, as the work progresses, the exact location of their work as actually installed, any modifications of the Contract Documents and any information requested.

Upon Substantial Completion of the Work, the Contractor shall return the complete set of record drawings (including plans and all sections) to the Engineer. The Engineer will review these drawings and return them to the Contractor with any necessary comments. The Contractor shall revise the same until satisfactory to the Engineer, as evidenced by his approval endorsed thereon.

Upon receipt of the Engineer's approval, the Contractor shall, at his own expense, make reproducible mylar transparencies (4 mil, double matte). The Contractor shall transfer the record information shown on the record drawings onto said transparencies. The drafting shall be done by experienced draftsmen and shall match the original drawings.

The Contractor also shall prepare two complete sets of black line prints, and submit the transparencies, and these prints thereof to the Engineer before the Contractor shall be entitled to final payment.

All costs which are associated with the record drawings and specifications shall be incidental to the various pay items.

20. CONSTRUCTION SCHEDULE

The work shall be scheduled so that construction is substantially complete within 150 days of receipt of Notice to Proceed.

21. PRE-CONSTRUCTION CONFERENCE

Following award of the Contract, a pre-construction conference will be held, at a date to be determined, at the office of the Awarding Authority. At this time the Contractor will be required to submit for acceptance his proposed schedules for construction and construction sequencing.

22. JOB SIGN AND ADVERTISING

The General Contractor shall provide and install one permanent sign on the site. The sign shall conform to the requirements specified hereinafter. Lower edge of the sign shall be approximately 5 feet above the ground. Location of the sign will be determined by the Engineer. No other signs or advertising matter except as specified herein, of any kind, shall be allowed, unless approved by the Engineer in writing.

23. WATER SUPPLY

The Contractor shall provide at his own expense sufficient potable water to complete the work to be done.

24. ELECTRICAL ENERGY

The Contractor shall make all necessary applications and arrangements and pay all fees and charges for electrical energy for power and light necessary for the proper completion of the work and during its entire progress. The Contractor shall provide and pay for all temporary wiring, switches, connections, and meters.

25. TEMPORARY HEAT

If temporary heat is required for the protection of the work, the Contractor shall provide and install suitable heating apparatus, shall provide adequate and proper fuel, and shall maintain heat as required.

Temporary heating apparatus shall be installed and operated in such manner that finished work will not be damaged thereby.

26. SAFETY

The Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. The Contractor shall provide protection for all persons including but not limited to his employees and employees of other contractors or subcontractors; the public; and employees, agents, and representatives of the Awarding Authority, the Engineer, and regulatory agencies that may be on or about the work. The Contractor shall provide protection for all public and private property including but not limited to structures, pipes, and utilities, above and below ground.

The Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill his obligations under this subsection.

27. GENERAL REQUIREMENTS AND COVENANTS (DIVISION 1) STANDARD SPECIFICATIONS

Following are specific modifications and additions to Division 1 of the Standard Specifications.

1.01 Definitions of Terms:

GENERAL REQUIREMENTS AND COVENANTS

All terms and abbreviations shall be as defined in the State Department of Public Works' Standard Specifications for Highways and Bridges, as amended the Department's Standard Nomenclature and Designation of Items, and the Special Provisions, below.

Abbreviations:

AISC - American Institute of Steel Construction.
AWPA - American Wood-Preserver's Association.
Fed. Spec. - Federal Specifications issued by the Federal Supply Service of the General Services Administration, Washington, D.C.
125-lb. ANSI - American National Standard for Cast-Iron.
250-lb. ANSI - Pipe Flanges and Flanged Fittings, Designation B16 1-1967, for the appropriate class.

Terms:

Elevation: Distance in feet above the datum adopted by the Engineer.

Rock: Only boulders and pieces of concrete or masonry exceeding 1 cu. yd. in volume, or solid ledge rock which, in the opinion of the Engineer, requires for its removal, drilling and blasting, wedging, sledging, barring, or breaking up with a power-operated tool. No soft or disintegrated rock which can be removed with a hand pick or power-operated excavator or shovel, no loose, shaken, or previously blasted rock or broken stone in rock fillings or elsewhere, and no rock exterior to the maximum limits of measurement allowed, which may fall into the excavation, will be measured or allowed as "rock".

Earth: All kinds of material other than rock as defined above.

Contract Documents: The Plans Contract Specifications, and the Contract.

Owner, Awarding Authority: The Town of Wayland, Party of the First Part to The Contract.

Department: The Owner, as defined in these Special Provisions.

Engineer: Town Engineer, Town of Wayland

Commissioner, Chief Engineer: The Owner, as defined in these Special Provisions.

Commonwealth: The Town of Wayland.

The words "as directed", "as permitted", "as required", or words of like effect shall mean the direction, permission or requirement of the Engineer is intended, and similarly the works "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, or acceptable or satisfactory to the Engineer, unless otherwise provided herein.

28. FUNDING OF THE PROJECT

The Contractor will submit invoices directly to the Town of Wayland for payment.

The words, "necessary", "satisfactory", "suitable", "equal", or words of like import shall mean necessary, suitable, or equal in the opinion of the Engineer.

Determination of Lowest Bid

The Owner reserves the right to eliminate any portion of the work under this contract in order to bring the total expenditure within the amount available for this Project, and to limit the prosecution of the work to such points and in such order as may be directed.

29. SAMPLES AND TESTS

Testing of materials will be made by an approved Testing Laboratory in accordance with the standards of the specified test.

30. DISPOSAL OF SURPLUS EXCAVATED MATERIALS

All surplus materials resulting from excavation and not needed for use on the project or designated for salvage as determined by the Engineer shall become the property of the Contractor, and shall be disposed of by the Contractor outside and away from the limits of the Project.

31. PUBLIC SAFETY AND CONVENIENCE

The Contractor shall furnish, install, maintain, and move all warning devices, barricades, signs, slow-moving vehicle emblems, bridging materials, special apparel, and other safety measures and controls deemed necessary by the Engineer for the protection of motorists, or pedestrians, and of his own personnel. All automotive equipment, not protected by traffic cones or flares, that is working on a public way under this project, shall have one amber flashing warning light mounted on the cab roof or on the highest practical point of the machinery visible to both oncoming an overtaking vehicles, at least 32 candlepower and 50-60 flashes per minute. This light shall be in operation and a slow moving vehicle emblem shall be displayed while the equipment is working or traveling in the work area at less than 25 MPH.

Trenches shall not be opened in traveled ways until all materials and equipment required for the work are at the site and available for immediate use. When work is not in progress, trenches in areas subject to public travel shall be covered with steel plates capable of safely sustaining a 20-ton truck load with impact. The work at each trench shall be practically continuous, with the placing of conduit and piping, backfilling, and patching of the surface closely following each preceding operation.

32. PRECAUTIONS UNDER ELECTRIC LINES

The bidders attention is directed to the AASHTO Guide on Occupational Safety on Highway Construction Projects, Subpart N, 1926.550, relating to construction equipment clearances at overhead electric lines, which states in part "...the minimum clearance between the lines and any part of the crane or load must be at least 10 feet from lines rated 50 KV or below, and greater distances for higher voltage..." For the protection of personnel and equipment, the Contractor is responsible for being aware of this regulation, and incorporating all necessary precautions into his operations, especially during paving operations using large semi-trailer vehicles.

33. NOTICE TO OWNERS OF UTILITIES

The Contractor shall give written notice to all public service corporations or officials, owning or having charge of public or privately owned utilities, of his intention to commence operations affecting such utilities one week in advance of the commencement of such operations. The Contractor shall, at the same time, file a copy of such notice with the Engineer.

All work involving utility companies shall meet each company's respective requirements. In the event of conflict between utility company requirements and Mass DPW requirements, the Engineer shall be notified.

34. PROTECTION OF UTILITIES AND PROPERTY

The Contractor, in constructing facilities alongside or near sewers, drains, water or gas pipes, electric or telephone conduits, poles, sidewalks, walls or other structures shall, at his expense, sustain them securely in place, cooperating with the agents of the various utility companies and municipal departments which control them, so that the services of these structures shall be maintained. He shall also be responsible for the repair or replacement, at his own expense, of damage to such structures caused by his acts or neglect, and shall leave them in the same condition as they existed prior to the commencement of work. In case of damage to utilities, the Contractor shall promptly notify the Engineer and utility owner and shall, if requested by the Engineer, furnish laborers to work temporarily under the utility owner's direction to provide access to the utility. Pipes or other structures damaged by the operation of the Contractor may be repaired by the Town of Wayland or by the utility company which suffers the loss.

The cost of such repairs shall be borne by the Contractor, without compensation therefor.

If as the work progresses, it is found that any of the utility structures are placed so as to render it impracticable, in the judgment of the Engineer, to do the work called for under this Contract, the Contractor shall protect and maintain the services in such utilities and structures and the Owner will, as soon thereafter as it reasonably can, cause the position of the utilities to be changed or take such other action as it deems suitable and proper.

If live service connections are to be interrupted by excavations, the Contractor shall not break the service until new services are provided by the Town of Wayland, or the utility company affected. Abandoned services shall be plugged or otherwise made secure by the Town of Wayland or utility company involved.

Full compensation for furnishing all labor, materials, tools, equipment and incidentals and for doing all the work involved in protecting or repairing property as specified in this section, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

35. PROSECUTION OF WORK

The Contractor shall satisfy himself as to the existing conditions of the areas in which he is to perform the work.

The proposed work schedule including approvals, staging and testing must be approved by the Engineer before any work is started.

No work will be permitted on Sundays and holidays unless it becomes necessary because of unforseen circumstances and then only with the written approval of the Engineer.

With the suspension of construction activities during holidays, weekends, or other periods, the Contractor shall remove temporary traffic control devices, as requested, and return them to their positions when work begins again. Signs that do not apply to existing conditions shall be removed, covered or turned so as not to be readable by oncoming traffic, phase by phase.

The Contractor shall provide and maintain access and egress at all times to all properties abutting the work.

36. LIMITATIONS OF OPERATIONS

The Contractor shall confine his operations to the actual work sites, access routes and storage areas designated by the Engineer. Storage spaces, if required by the Contractor, shall be approved by the Engineer. Parking of Contractor's equipment shall be restricted to the construction area as defined by the particular stage of the work.

The Contractor shall, before the start of any work or at the request of the Engineer, submit to the Engineer for approval his complete schedule of operations, phase by phase, affecting traffic, including his methods of access to and exit from the work areas.

37. TIME FOR COMPLETION

The work which the Contractor is required to perform under this Contract shall be commenced at the time the contract is signed. Time is of the essence of the contract. The work shall proceed uninterrupted, diligently, and at such a rate of progress as ensures completion within the time specified.

OFFICE OF THE COMMISSIONER
George W. Ripley

The Commonwealth of Massachusetts

Executive Office of Labor

Department of Labor and Industries

Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston, 02202

RE: Statement of Compliance

Dear

In conjunction with the Commissioner issuing prevailing wage rates, as stated in Sections 27 and 27A Chapter 149, to a public body or public official; he will also issue a statement of compliance to be incorporated with each specification and contract. The statement of compliance is in Chapter 149 Section 27B, which states:

Each such contractor, subcontractor or public body shall furnish to the Commissioner of Labor and Industries within fifteen days after completion of its portion of the work a statement, executed by the contractor, subcontractor or public body or by any authorized officer or employer of the contractor, subcontractor or public body who supervises the payment of wages.

Commissioner

George W. Ripley

George W. Ripley

The Commonwealth of Massachusetts
Executive Office of Manpower Affairs
Department of Labor and Industries
Division of Industrial Safety
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston, 02202

STATEMENT OF COMPLIANCE

..... 19 .....

I, ...
(Name of signatory party) (Title)

do hereby state:

That I pay or supervise the payment of the persons employed by.....

.....on the .....
(Contractor, subcontractor of public body) (Building or Project)

and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of Sections twenty-seven (27) and twenty-seven A (27A) of Chapter one hundred and forty-nine (149) of the General Laws.

Signature .....

Title.....

(Signed under penalties of perjury as provided for under Section 27B of Chapter 149, General Laws.)

The Commonwealth Massachusetts

DEPARTMENT OF LABOR AND INDUSTRIES

DIVISION OF INDUSTRIAL SAFETY

Minimum Wage Rates for Apprentices employed on Public Works. Determined as a percentage of the Pre-determined Hourly Wage Rate established by the COMMISSIONER under the provisions of the Massachusetts General Laws, Chapter 149, Sections 26 through 27-D inclusive, as amended.

All apprentices shall be registered with the Division of Apprentice Training in accordance with Mass. G.L., Chapter 23, Section 11-H.

CLASSIFICATIONS	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8
Asbestos Worker	50	50	60	60	70	70	80	80
Boilermaker	70	72.5	75	77.5	80	85	90	95
Bricklayer/Plasterer	40/50	60	70	80	90	95		
Carpenter	50	55	60	65	70	75	80	85
Electrician	35	43	47	51	58	65	70	75
Glazier	40	45	50	55	60	70	80	90
Iron Worker	60	70	75	80	85	90		
Lineman	60	65	70	75	80	85	90	
Painter	50	55	60	70	80	90		
Plumber/Pipefitter	30	30	45	45	55	55	70	70
Roofer	50	55	65	70	80	85		
Sheet Metal Worker	45	50	55	65	75	80	90	95
Sprinkler Fitter	40	45	50	60	65	70	80	85

The Commonwealth of Massachusetts
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL SAFETY

MINIMUM WAGE RATES
LABORERS----EAST
Revised 01/22/85

as determined by the Commissioner under the provisions of the Massachusetts General Laws, Chapter 149, Sections 26 to 27D

Central Park Site

PROJECT Lowell # TOWN Wayland

AWARDING AUTHORITY Town of Wayland LOCATION Pelham Island Rd.

Classification	Date	Total Rate	Date	Total Rate	Date	Total Rate
LABORER	12-01-83	15.75	06-01-84	16.30	12-01-84	16.75
CARPENTER TENDER	12-01-83	15.75	06-01-84	16.30	12-01-84	16.75
CAISSON TENDER	12-01-83	15.75	06-01-84	16.30	12-01-84	16.75
ASPHALT RAKER	12-01-83	16.00	06-01-84	16.55	12-01-84	17.00
PIPELAYER	12-01-83	16.00	06-01-84	16.55	12-01-84	17.00
JACK HAMMER OPER.	12-01-83	16.00	06-01-84	16.55	12-01-84	17.00
MASON TENDER	12-01-83	16.00	06-01-84	16.55	12-01-84	17.00
PLASTER'S TENDER	12-01-83	16.00	06-01-84	16.55	12-01-84	17.00
STONE SPREADER	12-01-83	16.00	06-01-84	16.55	12-01-84	17.00
FENCE ERECTOR	12-01-83	16.00	06-01-84	16.55	12-01-84	17.00
PRE CAST FLOOR	12-01-83	16.25	06-01-84	16.80	12-01-84	17.25
AIR TRACK DRLR. OP.	12-01-83	16.50	06-01-84	17.05	12-01-84	17.50
CURB SETTER	12-01-83	16.50	06-01-84	17.05	12-01-84	17.50
BLASTER	12-01-83	16.75	06-01-84	17.30	12-01-84	17.75
MINERS	12-01-83	16.75	06-01-84	17.30	12-01-84	17.75
ASBESTOS REMOVAL	12-01-83	16.25	06-01-84	16.80	12-01-84	17.25
DECONTAMINATION WORK	12-01-83	16.25	06-01-84	16.80	12-01-84	17.25
TRUCK DRIVER	05-01-84	16.78	11-01-84	17.03	05-01-85	17.78
OPER. 3 AXLE EQUIP.	05-01-84	16.85	11-01-84	17.10	05-01-85	17.85
OPER. 4 & 5 AXLE "	05-01-84	16.97	11-01-84	17.22	05-01-85	17.97
EUCLID OPERATOR	05-01-84	17.07	11-01-84	17.32	05-01-85	18.07
GRAVEL & FILL TRUCK DRIVER	05-01-84	15.22	11-01-84	15.47	05-01-85	16.22
OPER. 3 AXLE EQUIP.	05-01-84	15.29	11-01-84	15.54	05-01-85	16.29
OPER. 4 & 5 AXLE	05-01-84	15.41	11-01-84	15.65	05-01-85	16.41
SIGN ERECTOR	06-01-84	15.44	06-01-85	16.14	06-01-86	16.84
ASPH. DRVR.	08-09-84	15.34				
ASPH. 1 MAN SPRAY	08-09-84	13.20				
ASPH. HELPER	08-09-84	15.13				
DIVER	05-01-83	26.51				
TENDER	05-01-83	19.55				
PILE DRIVER	05-01-83	20.10	05-01-84	20.60	11-01-84	21.10
BOILER MAKER	10-01-83	21.501				
MILLWRIGHT	08-01-83	20.60	01-01-84	20.85	06-01-84	21.65
MARBLE SETTER	02-01-85	21.75				
TILE SETTER	02-01-85	21.75				
TERRAZZO SETTER	02-01-85	21.75				

The Commonwealth of Massachusetts
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL SAFETY

*FRAMINGHAM**

MINIMUM WAGE RATES
Revised 01/07/85

as determined by the Commissioner under the provisions of the Massachusetts General Laws, Chapter 149, Sections 26 to 27D.

Court at Park Site

PROJECT Local # TOWN Wayland

AWARDING AUTHORITY Town of Wayland LOCATION Fulton Island Rd

Classification	Date	Total Rate	Date	Total Rate	Date	Total Rate
Master Mechanic	11-01-83	23.05	05-01-84	23.60	11-01-84	24.15
Maint. Mechanic	11-01-83	21.52	05-01-84	21.77	11-01-84	22.27
Hoisting Engineer	11-01-83	21.34	05-01-84	21.89	11-01-84	23.39
Crane Oper.	11-01-83	21.34	05-01-84	21.89	11-01-84	23.39
Power Shovel Oper.	11-01-83	21.34	05-01-84	21.89	11-01-84	23.39
Grader Oper.	11-01-83	21.22	05-01-84	21.77	11-01-84	22.27
Bulldozer Oper.	11-01-83	21.22	05-01-84	21.77	11-01-84	22.27
Roller Oper.	11-01-83	21.22	05-01-84	21.77	11-01-84	22.27
Oth. Power Dr. Equ.	11-01-83	21.22	05-01-84	21.77	11-01-84	22.27
Compressor Oper.	11-01-83	18.39	05-01-84	18.83	11-01-84	19.27
Pumpman	11-01-83	18.39	05-01-84	18.83	11-01-84	19.27
Asst. Engineers						
-Steam-Fireman	11-01-83	19.76	05-01-84	20.23	11-01-84	20.70
-Tr. Crane-Gradall	11-01-83	17.49	05-01-84	17.91	11-01-84	18.33
-Other Equip.	11-01-83	16.66	05-01-84	17.06	11-01-84	17.46
Roofer-Comp.	12-01-83	20.86	05-01-84	21.86		
Roofer-Slate	12-01-83	21.11	05-01-84	22.11		
Damproofer	12-01-83	20.86	05-01-84	21.86		
Elev. Constructor	10-12-83	22.215				
Elev. Const. Helper	10-12-83	16.425				
Glazier	10-29-83	20.71	10-17-84	22.06		
Sprinkler Fitter	09-16-83	24.05				
Asbestos Worker	09-01-83	21.80	09-01-84	22.81		
Sheet Metal Worker	09-10-84	25.52	03-01-85	26.02	09-01-85	26.62
Ironworkers	01-01-84	21.90	07-01-84	22.40	01-01-85	22.90
Bricklayer	08-01-84	21.70	02-01-85	22.45		
Cement Finisher	08-01-84	21.70	02-01-85	22.45		
Waterproofer	08-01-84	21.70	02-01-85	22.45		
Plasterer	08-01-84	21.70	02-01-85	22.45		
Carpenter	01-01-85	20.91				
Electrician	03-01-84	24.30	09-01-84	25.08	03-01-85	25.86
Plumber	09-01-84	23.03	03-01-85	23.48		
Pipefitter	09-01-84	23.03	03-01-85	23.48		
Painter	01-01-84	16.95				
S/S Painter	01-01-84	18.20				
Spray Painter	01-01-84	17.95				

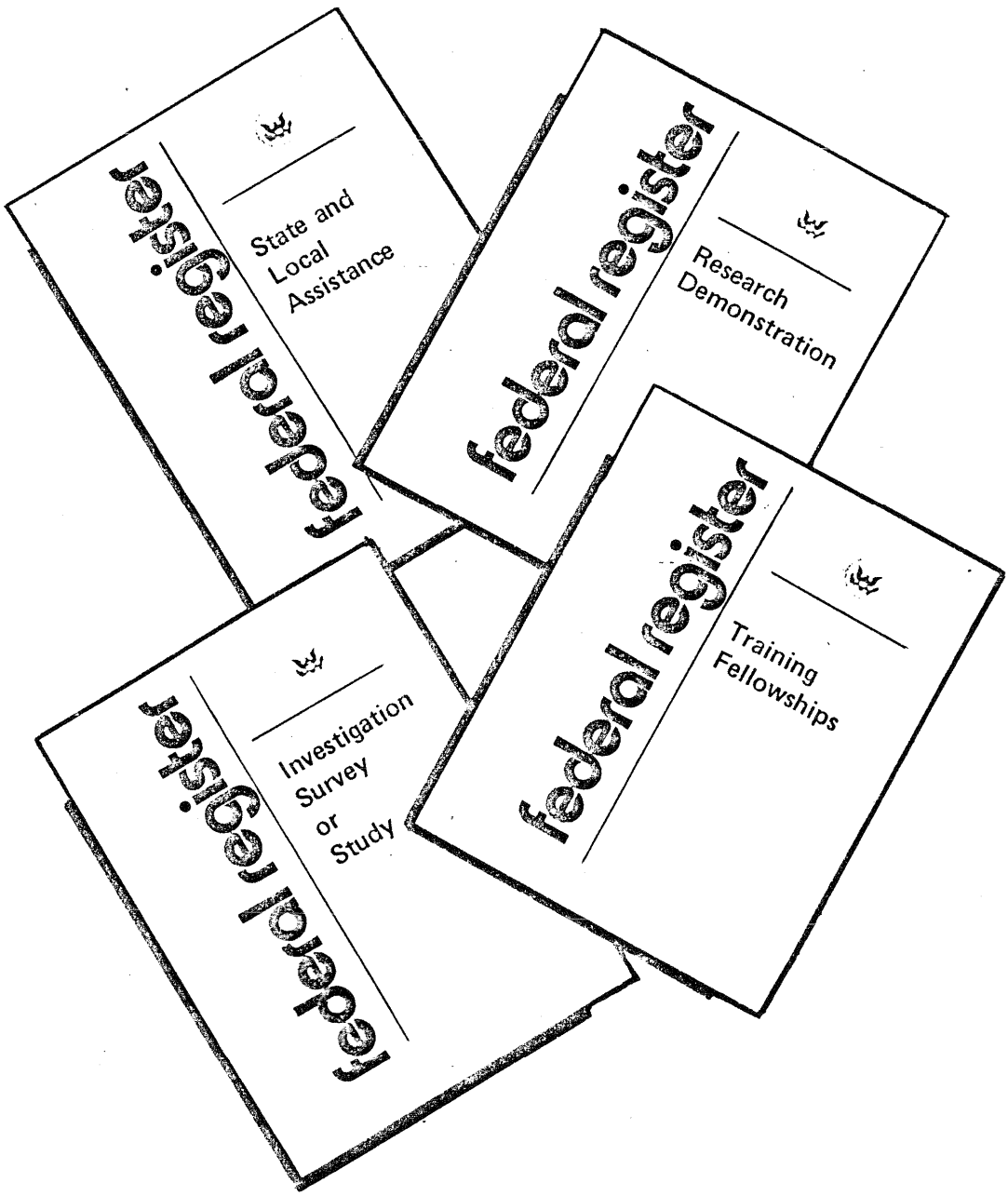
United States
Environmental Protection
Agency

Grants Administration
Division (PM-216)
Washington, D.C. 20460

EPA GAD/7-78-01
November 1978

EPA

General Grant Regulations and Procedures Applicable To



ENVIRONMENTAL PROTECTION AGENCY

(40 CFR 30, Revised as of June 30, 1978)

PART 30—GENERAL GRANT REGULATIONS AND PROCEDURES

(Editor's note: 40 CFR 30 was replaced in its entirety by a new 40 CFR 30 on May 8, 1975, in 40 FR 20231.)

AUTHORITY: Sec. 20 and 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135); (33 U.S.C. 1251; 42 U.S.C. 241, 242b, 243, 246, 300j–1, 300j–2, 300j–3, 1857, 1891, and 3251) et seq.

§ 30.100 Purpose.

This Subchapter establishes and codifies uniform policies and procedures for all grants awarded by the U.S. Environmental Protection Agency (EPA).

§ 30.101 Authority.

This Subchapter is promulgated by the Administrator of the Environmental Protection Agency pursuant to the authority conferred by Reorganization Plan No. 3 of 1970 and pursuant to the following statutes which authorize the award of assistance by the Environmental Protection Agency:

(a) Clean Water Act, as amended (33 U.S.C. §§ 1251 et seq.).

[43 FR 28484, June 30, 1978]

(b) The Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(c) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.);

[42 FR 56050, October 20, 1977]

(d) The Safe Drinking Water Act (42 U.S.C. 300j–1, 300j–2, 300j–3);

(e) Section 301 et seq. of the Public Health Service Act, as amended (42 U.S.C. 241, 242b, 243, and 246);

(f) Sections 20 and 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135); and

(g) Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501); and

(h) Toxic Substances Control Act (15 U.S.C. 2601).

[43 FR 28484, June 30, 1978]

§ 30.105 Applicability and scope

(a) Parts 30 through 34 of this Subchapter contain policies and procedures which apply to all grants made by the Environmental Protection Agency and are designed to achieve maximum uniformity throughout the various grant programs of the Environmental Protection Agency and, where possible, consistency with other Federal agencies. These policies and procedures are mandatory with respect to all Environmental Protectio Agency grants and apply to grants awarded or administered within and outside the United States, unless otherwise specified. Supplementary policies and procedures applicable to only certain grant programs are issued in regulations specifically pertaining to those programs under Part 35 (State and Local Assistance), Part 40 (Research and Demonstration), Part 45 (Training) and Part 46 (Fellowships). Grants or agreements entered into with funds under the Scientific Activities Overseas Program which utilize U.S.-owned excess foreign currencies shall not be subject to this Subchapter.

(b) Assistance agreements designated as grants or cooperative agreements under the Federal Grant and Cooperative Agreement Act shall be subject to part 30 and other provisions of this subchapter which are applicable to grants.

[43 FR 28484, June 30, 1978]

§ 30.110 Publication.

This Subchapter is published (in Title 40) in the daily issue of the FEDERAL REGISTER and in cumulated form in the Code of Federal Regulations.

§ 30.115 Copies.

Copies of this Subchapter in FEDERAL REGISTER and Code of Federal Regula-

tions form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 30.120 Citation

This Subchapter will be cited in accordance with FEDERAL REGISTER standards. For example, this section, when referred to in divisions of this Subchapter, should be cited as "40 CFR 30.120."

§ 30.125 Public comment.

This Subchapter will be amended from time to time to establish new or improved grant policies and procedures, to simplify and abbreviate grant application procedures, to simplify and standardize grant conditions and related requirements, to include or provide for statutory changes, and to improve Agency and grantee administration of grants. Therefore, public comment is solicited on a continuous basis and may be addressed to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460.

§ 30.130 Grant information.

Application forms and information concerning Agency grants may be obtained through the Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460, or any EPA regional grants administration office. Addresses of EPA Regional Offices are as follows:

Region	Address	States
I	John F. Kennedy Federal Bldg., Boston, Mass. 02203	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II	26 Federal Plaza, New York, N.Y. 10007	New Jersey, New York, Puerto Rico, Virgin Islands.
III	6th and Walnut, Curtis Bldg., Philadelphia, Pa. 19106.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV	345 Courtland St., N.E., Atlanta, Ga. 30308	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V	230 South Dearborn St., Chicago, Ill. 60604	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI	1201 Elm St., Dallas, Tex. 75270	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII	1735 Baltimore Ave., Kansas City, Mo. 64108	Iowa, Kansas, Missouri, Nebraska.
VIII	Lincoln Tower, 1860 Lincoln St., Denver, Colo. 80203	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX	215 Fremont St., San Francisco, Calif. 94105	Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territories of Pacific Islands, Wake Island.
X	1200 6th Ave., Seattle, Wash. 98101	Alaska, Idaho, Oregon, Washington.

§ 30.135 Definitions.

All terms used in this Subchapter which are defined in the statutes cited in § 30.101 and which are not defined in this Section, shall have the meaning given to them in the relevant statutes. As used throughout this Subchapter, the words and terms defined in this Section shall have the meanings set forth below, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular part or portion thereof. The words and terms defined in this Section shall have the meanings set forth herein whenever used in any correspondence, directives, orders, or other documents of the Environmental Protection Agency relating to grants, unless the context clearly requires a different meaning.

§ 30.135–1 Administrator.

The Administrator of the Environmental Protection Agency, or any person authorized to act for him.

§ 30.135–2 Agency.

The United States Environmental Protection Agency (EPA).

§ 30.135–3 Allowable costs.

Those eligible, reasonable, necessary, and allocable costs which are permitted under the appropriate Federal cost principles, in accordance with EPA policy, within the scope of the project and authorized for EPA participation.

[41 FR 20656, May 20, 1976]

§ 30.135–4 Applicant.

Any individual, agency, or entity which has filed a preapplication or an application for a grant pursuant to this Subchapter.

§ 30.135–5 Budget.

The financial plan for expenditure of all Federal and non-Federal funds for a project, including other Federal assistance, developed by cost components in the grant application.

§ 30 135–6 Budget period.

The period specified in the grant agreement during which granted Federal funds are authorized to be expended, obligated, or firmly committed by the grantee for the purposes specified in the grant agreement.

§ 30.135–7 Educational institution.

Any institution which (a) has a faculty, (b) offers courses of instruction, and (c) is authorized to award a degree or certificate upon completion of a specific course of study.

§ 30.135–8 Eligible costs.

Those costs in which Federal participation is authorized pursuant to applicable statute.

[41 FR 20656, May 20, 1976]

§ 30.135–9 Federal assistance.

The entire Federal contribution for a project including, but not limited to, the EPA grant amount.

§ 30.135–10 Grant.

An award of funds or other assistance by a written grant agreement purusant to this Subchapter, except fellowships.

§ 30.135–11 Grant agreement.

The written agreement and amendments thereto between EPA and a grantee in which the terms and conditions governing the grant are stated and agreed to by both parties pursuant to § 30.345.

§ 30.135–12 Grant approving official.

The EPA official designated to approve grants and take other grant related actions authorized by Environmental Protection Agency Orders or this Subchapter (sometimes referred to as the Decision Official).

§ 30.135–13 Grant award official.

The EPA official authorized to execute a grant agreement on behalf of the Government.

§ 30.135–14 Grantee.

Any individual, agency, or entity which has been awarded a grant pursuant to § 30.345.

§ 30.135–15 In-kind contribution.

The value of a non-cash contribution provided by (a) the grantee, (b) other public agencies and institutions, (c) private organizations and individuals, or (d) EPA. An in-kind contribution may consist of charges for real property and equipment and value of goods and services directly benefiting and specifically identifiable to the grant program.

§ 30.135–16 Nonprofit organization.

Any corporation, trust, foundation, or institution (a) which is entitled to ex-

emption under section 501(c)(3) of the Internal Revenue Code, or (b) which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

§ 30.135–17 Project.

The undertaking identified in the grant agreement which will receive EPA assistance. The term project may refer to a program (e.g., State water pollution control program, air pollution control program) for the budget period for which EPA assistance is provided.

§ 30.135–18 Project costs.

All costs incurred by a grantee in accomplishing the objectives of a grant project, not limited to those costs which are allowable in computing the final EPA grant amount or total Federal assistance.

§ 30.135–19 Project Officer.

The EPA official designated in the grant agreement as the Agency's principal contact with the grantee on a particular grant. This person is the individual responsible for the performance and/or coordination of project monitoring.

§ 30.135–20 Project period.

The period of time specified in the grant agreement as estimated to be required for completion of the project for which Federal grant support has been requested. It is composed of one or more budget periods.

§ 30.135–21 Regional Administrator.

The Regional Administrator of one of the 10 EPA Regional Offices, or any person authorized to act for him.

§ 30.135–22 Subagreement.

A written agreement between an EPA grantee and another party (other than another public agency) and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded. These agreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

[43 FR 28484, June 30, 1978]

Subpart A—Basic Policies

§ 30.200 Grant simplification goals and policy.

It is EPA policy that, consistent with protection of the public interest, procedures used in administering and implementing grant programs shall encourage the minimization of paperwork and intraagency decision procedures, and the best use of available manpower and funds, to prevent needless duplication and unnecessary delays.

§ 30.205 Role of EPA.

The Environmental Protection Agency has a mandate to protect and enhance the environment. Grants and fellowships are among EPA's principal means of achieving its objectives. EPA financial assistance may be awarded to support State and local governments, research, demonstration, or training projects, fellowships and such other programs that advance the Agency's mission.

§ 30.210 Role of the grantee.

An award of a grant shall be deemed to constitute a public trust. It is the responsibility of the grantee to comply with this Subchapter and all terms and conditions of the grant agreement, efficiently and effectively manage grant funds within the approved budget, complete the undertaking in a diligent and professional manner, and monitor and report performance. This responsibility may be neither delegated nor transferred by the grantee.

§ 30.215 Records of grant actions.

(a) An official EPA file shall be established for each EPA grant. To the extent that retained copies of documents do not represent all significant actions taken, suitable memoranda or summary statements of such undocumented actions must be prepared promptly and retained in the grant file.

(b) The grantee shall establish an official file for each grant received from EPA. The file should contain documentation of all actions taken with respect to the grant (see § 30.805).

§ 30.220 Consolidated grants.

A consolidated grant is a grant funded under more than one grant authority by EPA or a grant awarded in conjunction with one or more Federal agencies (e.g., Joint Funded Assistance). Application for and award and administration of a consolidated grant must conform to this Subchapter, except as the Director, Grants Administration Division, may otherwise direct with respect to substantutory requirements. Those conditions and procedures will conform to this Subchapter to the greatest extent practicable.

[43 FR 28484, June 30, 1978]

§ 30.225 Foreign grants.

(a) A foreign grant, as used in this Part, means an EPA award for such project, all or any part of which will be performed in a foreign country by (1) a U.S. grantee, (2) a foreign grantee, or (3) an international organization.

(b) Grant applications for work performed in the United States shall generally be given preference over applications for similar work to be performed in a foreign country.

(c) Foreign grants shall comply with this Subchapter and shall be awarded and administered pursuant to such additional conditions and procedures as may be established by EPA. Grants or agreements entered into with funds under the Scientific Activities Overseas Program which utilize U.S.-owned excess foreign currencies shall not be subject to this Subchapter.

§ 30.225–1 Clearance requirements.

The total amount of foreign awards financed by EPA during a fiscal year may not exceed any ceilings on foreign obligations which may be established for that fiscal year by the Office of Management and Budget. Department of State clearance must be obtained by EPA through the EPA Office of International Activities prior to the award of a foreign grant.

§ 30.225–2 Criteria for award.

All of the following criteria must be met before a foreign grant may be awarded:

(a) The foreign proposal is outstanding or original in concept and important to the achievement of EPA program objectives;

(b) The proposed work must be performed outside the United States because of unusual personnel or material resources available, or other existing conditions;

(c) The proposed work is urgently needed by the sponsoring program office and constitutes a timely opportunity which would be lost if not supported at this time; and

(d) An adequate level of funding cannot be obtained for the foreign work by the applicant without financial support from EPA.

§ 30.225–3 Allowability of costs.

(a) Travel costs are allowable for foreign grants if itemized in the application and approved by EPA as part of the grant agreement or if approved in writing by EPA in advance of each trip.

(b) Indirect costs are not allowable for foreign grants unless an established or provisional indirect cost rate is in effect at the time of grant award. In the case of a U.S. grantee performing only a part of a project in a foreign country, indirect costs are al-

lowed for that part of the work performed in the United States.

[43 FR 28484, June 30, 1978]

(c) [Revoked, 41 FR 20656, May 20, 1976]

§ 30.225–4 Payments.

(a) All payments will be made in U.S. currency unless otherwise specified in the grant agreement. If payment is made in foreign currency, payments will be in an amount equal at the time of payment to the United States dollars awarded.

(b) Refunds and rebates should be made in the currency of the original payment and shall be in an amount equal, at the time of payment, to United States dollars awarded.

§ 30.230 Grants administration review.

The Director, Grants Administration Division, shall conduct such review, as he deems appropriate, of the administration of each EPA grant program or of grants awarded by a particular EPA office to determine compliance with the policies and procedures of this Subchapter and to determine further steps necessary to implement § 30.200.

§ 30.235 Disclosure of information.

(a) EPA policy concerning release of information under the Freedom of Information Act, 5 U.S.C. 552, is stated in Part 2 of this Chapter. Applicants for grants, grantees, and their contractors should be aware that information provided to EPA is subject to disclosure to others pursuant to the Freedom of Information Act. In addition EPA acquires the right, unless otherwise provided in a grant agreement, to use and disclose project data, pursuant to Appendix C to this Part.

(b) Any person who submits to EPA any information under this Part, and who desires that EPA not disclose any or all of the information, may place on (or attach to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "business confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. Applicants should also comply with further instructions in application forms concerning the assertion of confidentiality claims. See §§ 2.203 and 2.204 of this chapter.

[41 FR 36918, September 1, 1976]

(c) Unless a specific provision (special condition) in the grant otherwise provides, information submitted in an application or other submission with a restrictive marking will nevertheless be subject to the Government's duty to disclose information pursuant to the Freedom of Information Act and the Government's rights to utilize data pursuant to Appendix C of this Part.

§ 30.245 Fraud and other unlawful or corrupt practices.

(a) The award and administration of EPA grants, and of subagreements awarded by grantees under those grants, must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct; Federal administrative or other legally available remedies will be pursued, however, to the extent appropriate.

(b) The grantee must effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee must advise the Project Officer immediately when such allegation or evidence comes to its attention, and must periodically advise the Project Officer of the status and ultimate disposition of any matter, including those referred pursuant to Paragraph (c) of this section.

(c) If any allegations, evidence or even appearance of such illegality or corrupt practices comes to the attention of the EPA Project Officer, he must promptly report briefly in writing the substance of the allegations or evidence to the Director, EPA Security and Inspection Division. When so advised by the Director, EPA Security and Inspection Division, he must bring the matter to the attention of the grantee for action.

(d) If any allegations, evidence or even appearance of such illegality or corrupt practices comes to the attention of any other EPA employee, he must promptly report briefly in writing the substance of the allegation or evidence to the Director, EPA Security and Inspection Division.

(e) A person, firm, or organization which is demonstrated upon adequate evidence to have been involved in bribery or other unlawful or corrupt practices on a Federally-assisted project may be determined nonresponsible and ineligible by the Director, Grant Administration Division, or an EPA grant award or for the award of a contract under an EPA grant, pursuant to § 30.340–2(c). The Director, Grants Administration Division, shall make such determination whenever he determines there is adequate evidence of such involvement, after opportunity for conference (with right of counsel) has been afforded to the affected person, firm, or organization. Such determination shall be binding upon EPA grant personnel. The Director, Grants Administration Division, shall notify EPA grant personnel and other appropriate persons of such determination or of any termination, modification, or suspension of the determination. The grantee may appeal a determination of the Director, Grants Administration Division, made pursuant to this section (see Subpart J of this part).

Subpart B—Application and Award

§ 30.300 Preapplication procedures.

(a) Informal inquiries by potential grant applicants prior to application submission are encouraged to expedite preparation and evaluation of the grant application documents. Such inquiries may relate to procedural or substantive matters and may range from informal telephone advice to pre-arranged briefings of individuals or classes of potential applicants. Questions should be directed to the appropriate Environmental Protection Agency program office from which funding is being sought or to the grants administration office in Headquarters or in the region in which the applicant is located. Inquiries may be directed to State officials for applications which include State participation in the review process (e.g., grants for construction of treatment works.)

(b) Submission of preapplications to EPA is encouraged for all research, demonstration, and training grant programs to (1) establish communication between EPA and the applicant; (2) determine applicant's eligibility; (3) determine how well the project can compete with similar applications; and (4) eliminate any proposal which has no chance for funding.

(c) An applicant submitting a preapplication to the grants administration office shall be promptly notified that (1) the preapplication has been received; (2) it has been forwarded to the appropriate program for an expression of interest, and (3) the program office will contact the applicant directly regarding possible followup action.

(d) Generally, preapplication processing requires 45 days and is not part of the 90 day review period for formal grant applications.

§ 30.305 A–95 procedures.

[41 FR 20656, May 20, 1976]

(a) Office of Management and Budget Circular A–95 (revised) (41 FR 2052, January 13, 1976) provides for State and

areawide clearinghouse evaluation, review, and coordination of Federally-assisted programs and projects. Therefore, applicants applying for a planning, program, survey, demonstration, or construction grant must comply with appropriate coordination procedures outlined in the A-95 Circular. Generally, coordination is required prior to submitting an application. However, in certain cases clearinghouses will be afforded the opportunity to comment during the initial phases of project work in conjunction with the development of plans and application materials.

(b) A-95 procedures include but are not limited to the provisions set forth below in § 30.305-1 through § 30.305-8.

§ 30.305-1 Specific areas of clearinghouse evaluation.

[41 FR 20656, May 20, 1976]

The following specific areas are normally considered during clearinghouse evaluation. It should be recognized, however, that clearinghouses are responsible for the comprehensive planning needs of their jurisdictional area and may, therefore, consider areas other than those listed.

(a) The extent to which the project is consistent with or contributes to the fulfillment of the State, areawide, and local comprehensive plans.

(b) The extent to which the proposed project:

(1) Duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area; or

(2) Might be revised to increase its effectiveness or efficiency.

(c) The extent to which the project contributes to the achievement of State, areawide, and local objectives and priorities relating to natural and human resources and economic and community development as specified in Section 401 of the Intergovernmental Cooperation Act of 1968, including:

(1) Appropriate land uses for housing, commercial, industrial, government, institutional, and other purposes;

(2) Wise development and consideration of natural resources, including land, water, mineral, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical, archeological, architectural, and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design.

(d) The extent to which the project significantly affects the environment including:

(1) The environmental impact of the proposed project;

(2) Any adverse environmental effects which cannot be avoided should the proposed project be implemented;

(3) Alternatives to the proposed project;

(4) The relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity; and

(5) Any irreversible or irretrievable commitments of resources which would be involved in the proposed project or action, should it be implemented.

(e) The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.

(f) In the case of a project for which assistance is being sought by a special purpose unit of government, whether the unit of general local government having jurisdiction over the area in which the project is to be located has applied for or plans to apply for assistance for the same or a similar type project.

§ 30.305-2 Notification of intent (A-95, Part I).

[41 FR 20656, May 20, 1976]

(a) General (for specific requirements for the construction grants program see § 30.305-8). Applicants or potential applicants for assistance under an EPA grant are required to notify both State and areawide planning and development clearinghouses, in the jurisdiction in which the project is to be located, of their intent to apply for EPA assistance. In the case of an application in any State for an activity that is Statewide or broader in nature (such as for various types of research) and does not affect nor have specific applicability to areawide or local planning and programs, the notification need be sent only to the State clearinghouse. Involvement of areawide clearinghouses in the review in such cases will be at the initiative of the State clearinghouse. If notification of intent to apply for EPA assistance was not furnished the clearinghouse(s), the completed application must be submitted to the clearinghouse(s) prior to submission to EPA. However, prior notification of intent to apply is preferable to submitting the final completed application. In addition, grantees must notify State and areawide clearinghouse(s) of any major modifications in a project. The current list of EPA grant programs which must comply with the A-95 procedures are listed below. Any additions to this listing will be indicated in the Catalog of Federal Domestic Assistance (see § 30.305-2.c.(5)).

(1) 66.001-Air Pollution Control Program Grants;

(2) 66.005-Air Pollution Control Survey and Demonstration Grants;

(3) 66.451 Solid and Hazardous Waste Management Program Support Grants;

(4) 66.452 Solid Waste Management Demonstration Grants;

[42 FR 56050, October 20, 1977]

(5) 66.418-Construction Grants for Wastewater Treatment Works;

(6) 66.419-Water Pollution Control-State and Interstate Program Grants;

(7) 66.420-Water Pollution Control-State and Local Manpower Program Development;

(8) 66.426-Water Pollution Control State and Areawide Waste Treatment Management Planning Grants;

(9) 66.432-State Public Water System Supervision Program Grants;

(10) 66.433-State Underground Water Source Protection Program Grants;

(11) 66.505-Water Pollution Control-Research, Developmental, and Demonstration Grants (Demonstration only);

(12) 66.506-Safe Drinking Water Research and Demonstration Grants (Demonstration Only);

(13) 66.600-Environmental Protection Consolidated Grants-Program Support;

(14) 66.602 Environmental Protection Consolidated Grants—Special Purpose;

(15) 66.453 Solid Waste Management Training Grants;

(16) 66.504 Solid Waste Disposal Research Grants.

(17) 66.700 Pesticides enforcement and applicator training and certification grant program.

(18) 66.438 Water pollution control State management assistance grants.

[43 FR 28484, June 30, 1978]

Applications from Federally recognized Indian Tribes are excluded from this requirement. However, they may voluntarily participate in the procedures of this section and are encouraged to do so. EPA will notify the appropriate State and areawide clearinghouse(s) of any applications from Federally recognized Indian tribes upon their receipt.

(b) Notification will normally precede the preparation of the application. It will be mailed to the clearinghouse at the earliest feasible time to assure maximum time for effective coordination and to avoid delay in the timely submission of

the completed application to EPA. Earliest feasible time means at such time as the applicant determines it will develop an application.

(c) The notification to each clearinghouse will be accompanied by a summary description which should include the following:

(1) Identity of the applicant agency organization, or individual.

(2) The geographic location of the project to be assisted. A map should be provided, if appropriate.

(3) A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that might be affected by the proposed projects.

(4) A statement as to whether or not the applicant has been advised by EPA that he will be required to submit environmental impact information in connection with the proposed project.

(5) The EPA program title and number under which assistance will be sought as indicated in the latest Catalog of Federal Domestic Assistance (The Catalog is issued annually in the spring and is updated during the year). In the case of programs not listed therein, programs will be identified by Public Law number or U.S. Code citation. Applicants uncertain as to appropriate program identification should contact the EPA program or grants administration office.

(6) The estimated date the applicant expects to formally file an application.

(7) When available any more detailed documentation describing the proposed project (e.g., plans and preapplication material).

§ 30.305–3 Time limitations.

[41 FR 20656, May 20, 1976]

(a) *Time limitations.* (1) State and areawide clearinghouse(s) may have a period of 30 calendar days after receipt of a project notification of intent to apply for assistance in which to inform State and multistate agencies and local or regional governments or agencies that may be affected by the project, to arrange, as may be necessary, to consult with the applicant thereon and to complete review and submit comments to the applicant. If the review cannot be completed during this period, however, the clearinghouse(s) may work with the applicant in the resolution of any problems raised by the proposed project during the period in which the application is being completed. Clearinghouses are strongly urged to notify applicants if they cannot complete their review within the 30 day comment period.

(2) When no notification of intent to apply for assistance has been submitted and the clearinghouse has received instead a completed application, it may have 60 calendar days from date of receipt to review the completed application. However, if clearinghouses cannot complete their reviews within a 30 calendar day period they are strongly urged to give the applicant formal notice to that effect at the beginning of the comment period. Where reviews have been completed prior to completion of an application, a copy of the completed application will be supplied to the clearinghouse, upon request, when the application is submitted to EPA.

(b) *Submission of Comments.* (1) Areawide clearinghouses will include, as attachments to their comments: (i) all written comments submitted to the areawide clearinghouse by other jurisdictions, agencies, or parties, when they are at variance with the clearinghouse comments; and (ii) a list of parties from whom comments were solicited.

(2) Applicants will include with the completed application all comments and recommendations made by or through clearinghouse(s), with a statement that such comments have been considered prior to submission of the application. Where no comments have been received from a clearinghouse(s) a statement must be included with the application that the procedures outlined in this section have been followed and that no comments or recommendations have been received.

§ 30.305–4 EPA processing.

[41 FR 20656, May 20, 1976]

(a) Applications that do not evidence that both areawide and State clearinghouses have been given an opportunity to review the application will be returned to the applicant with instruction to fulfill the requirements of Part I of OMB Circular A–95.

(b) Any comments accompanying applications must be utilized in evaluating the applications.

(c) EPA will notify clearinghouse(s) within seven (7) working days of any major action taken on applications reviewed by the clearinghouse(s). Major actions will include awards (including subsequent Step 2 and Step 3 awards for wastewater treatment projects), rejections, returns for amendments, deferrals, or withdrawals. The standard multipurpose form, Standard Form 424, as prescribed by Federal Management Circular 74–7, will be used for this purpose.

(d) Where a clearinghouse has recommended against approval of an application or approval only wth specific and major substantive changes, and EPA approves the project without incorporating the recommendations of the clearinghouse, EPA will provide the clearinghouse, in writing, with an explanation therefor along with the notice of action under subsection 30.305–4c.

(e) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or Federally-assisted project, the EPA program office reviewing the application will consult with the agency or agencies assisting the referenced projects prior to approving the application.

(f) If comments accompanying an application from a special purpose unit of government indicate that a similar application is forthcoming from the general purpose unit of government in the areas in which the applicant and/or the proposed project is located, preference will be given to the general purpose unit as specified in Section 402 of the Intergovernmental Cooperation Act of 1968. Where such preference cannot be so accorded, EPA will notify in writing, the unit of general local government and the Office of Management and Budget of the reasons therefor.

§ 30.305–5 Programs requiring state plans and jointly funded projects (A–95 Part III).

[41 FR 20656, May 20, 1976]

(a) *Applicability.* This section applies to air pollution control program grants, water pollution control State and interstate program grants, solid and hazardous waste management program support grants, State public water system supervision program grants, State underground water source protection program grants, safe drinking water State and local program development grants, and environmental protection consolidated grants-program support to the extent they involve State plans.

[43 FR 28484, June 30, 1978]

(b) *Definitions.* (1) State Plan. A State plan is a plan prepared by a State agency that includes any required supporting planning reports or documentation that indicates the programs, projects, and activities for which EPA funds will be used.

(2) Jointly Funded Projects. A jointly funded project is a project for which assistance is sought, on a combined or coordinated basis, involving two or more Federal programs or funding authorities.

(c) *Review.* (1) Prior to funding any grant requiring, by statute or EPA administrative regulations, a State plan as a condition of assistance, the EPA program office must insure that the Gov-

ernor, or his designated agency, has been given the opportunity to comment on the relationship of the program to be funded to the State plan. EPA encourages the Governor to include the appropriate areawide clearinghouse in State plan review.

(2) Prior to funding a jointly funded project, the EPA program office must insure that the State and areawide clearinghouse(s) have been given the opportunity to comment on the relationship of the proposed jointly funded project to State or areawide comprehensive plans and programs.

(d) *Time Limitations and Submission of Comments.* (1) The Governor or his designated agency may have a period of 45 calendar days for review and comment.

(2) Applicants must secure and submit with the application comments received pursuant to § 30.305–5c. If the applicant fails to receive comments within the prescribed 45 calendar day period, a statement must be included with the application that the procedures outlined in this section have been followed and no comments or recommendations have been received.

§ 30.305–6 Coordination of planning in multijurisdictional areas (A–95, Part IV).

[41 FR 20656, May 20, 1976]

(a) Applicability. This section applies only to Water Pollution Control State and Areawide Waste Treatment Management Planning Grants.

(b) Requirements of Applicants. (1) Applicants for State and Areawide Waste Treatment Management Planning grants must demonstrate in the application that the proposed activity is consistent and takes into account the relationship with affected State, local and Federal programs, and with other applicable resource and developmental planning programs in the multijurisdictional areas.

(i) For areawide designated planning agencies, the application must adequately:

(A) Certify that affected general purpose units of local governments within the boundaries of the designated planning area have submitted or intend to submit resolutions of intent to have in operation a coordinated waste treatment management system and that such affected units of local government have the legal authority to enter into agreements for coordinated wastewater management.

(B) Provide a certification document submitted by the State designated planning agency which states that the State has reviewed the application pursuant to 40 CFR 35.208–2(b).

(ii) For State designated planning agencies, the application must show evidence that adequate communication was made with chief elected officials of local units of governments in the designation of local multijurisdictional areas.

(iii) For intrastate and interstate areawide planning agencies, the application must provide a certification document submitted by the State planning agency in the State which includes the largest portion of the area's population pursuant to 40 CFR 35.210–1(d).

(2) The completed application will be submitted to the Office of the Governor(s) of the State(s) before it is submitted to EPA. The Governor(s) shall have 45 calendar days in which to certify that the proposed work complies or does not comply with all State requirements; that the proposed planning work program is or is not adequate and necessary to accomplish the development of a plan; that the planning will or will not duplicate any work which has been done or is being done to meet the facilities planning requirements of 40 CFR 35.917 through 35.917–9; and that the State(s) either recommends or does not recommend that the grant application should be approved by EPA.

§ 30.305–7 Confidential information.

[41 FR 20656, May 20, 1976]

Under some programs, applicants are required to submit confidential information to EPA. Such information may relate to the applicant's financial status or structure, personnel, or may involve proprietory information and need not be included with applications submitted to clearinghouse(s) for review. EPA's policy concerning disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, is stated in 40 CFR Chapter 1, Part 2.

§ 30.305–8 Specific requirements for the Construction Grant Program.

[41 FR 20656, May 20, 1976]

(a) *General.* Applicants for grants for the planning or construction of a wastewater treatment facility (P.L. 92–500, 40 CFR Part 35) must comply with the following specific requirements. Where provisions of this section differ from the general A–95 procedures set forth in other sections of Part 30 the requirements of this section shall prevail.

(b) *Specific Procedures.* (1) Plans of Study (POS) for facilities planning and any related Step 1 application materials should be submitted to the appropriate A–95 clearinghouse prior to the time for formal submission to the State and EPA of application for Step 1 assistance. The submission of the POS and related materials shall constitute a notification of intent to apply for assistance as provided in § 30.305–2 and § 30.305–3 above. The clearinghouse shall have 30 calendar days to review the POS and related materials. The comments of the clearinghouse on the POS should then accompany the application through the review process. The POS should be sent to the clearinghouse sufficiently early to avoid delays in the later submission of the Step 1 application.

(2) Thirty (30) calendar or more days prior to the public hearing on the draft facility plan, or, if no public hearing is held, a reasonable time before submittal of a facility plan to the State and EPA for approval, the draft facility plan, and any associated grant application materials, should be submitted to the A–95 clearinghouse for a second review. The submission of the draft facility plan and related materials shall constitute a notification of intent to apply for assistance as provided in § 30.305–2 and § 30.305–3 above. The clearinghouse shall have 30 calendar days to review the draft facility plan.

(3) Any prior clearinghouse comments on the facility plan will be considered as part of the application for any subsequent Step 2 or Step 3 grant. EPA will notify the clearinghouse of subsequent Step 2 or Step 3 awards within 7 work days after grant award. Where an application is approved over clearinghouse objections, an explanation must be furnished to the clearinghouse as to why any specific recommendation was not followed.

(4) Once A–95 review has been obtained on a POS and a Step 1 facility plan, no further A–95 review of the Step 2 and Step 3 applications, which implement the plan, will be required except (i) when there are significant departures from or additions to what was covered in the Step 1 facility, (ii) when the clearinghouse requests opportunity for additional review on a specific project, or (iii) when State policy requires additional A–95 review of Step 2 or 3 grant applications. The clearinghouse shall have 30 calendar days to make these additional reviews, when required."

§ 30.310 Unsolicited proposal.

(a) For purposes of this Subchapter, an unsolicited proposal is a written offer to perform work which (1) does not result from (i) a formal written EPA request for contract proposals or quotations, or (ii) an oral quotation solicited under EPA small purchase procedures, (2) is not submitted on a grant preapplication or application form, and (3) is in-

tended to result in award of an EPA grant or contract.

(b) Unsolicited proposals received by any organizational element of EPA shall be forwarded immediately to the Grants Administration Division for official receipt and processing. The Grants Administration Division will acknowledge receipt to the person or organization submitting the proposal and transmit the proposal to the appropriate program office for evaluation. If the program office decides to consider the proposal for a grant award, a grant application pursuant to § 30.315 will be required. If the proposal is to be recommended for funding under the contract mechanism, appropriate notification will be forwarded from the program office to the Grants Administration Division for closeout of the file.

§ 30.315 Application requirements.

Submittals which substantially comply with this Subchapter shall be deemed to be applications. An application shall include the completed application form, technical documents and supplementary materials furnished by the applicant. Submittals which do not substantially comply with this Subchapter shall be returned to the applicant.

§ 30.315–1 Signature.

(a) Applications must be signed by the applicant or a person authorized to obligate the applicant to the terms and conditions of the grant, if approved. At least one copy of the application must have an original signature.

(b) Each grant application shall constitute an offer to accept the requirements of this Subchapter and the terms and conditions of the grant agreement.

(c) An applicant may be prosecuted under Federal, State, or local statutes for any false statement, misrepresentation, or concealment made as part of an application for EPA grant funds.

[43 FR 28484, June 30, 1978]

§ 30.315–2 Forms.

The following forms shall be used in applying for an EPA grant.

Type of application	Type of applicant	
	Other than State and local	State and local governmental agencies
Preapplication (optional).	EPA Form 5700–12 (optional).	EPA Form 5700-30.
Research, demonstration, and training grants.	EPA Form 5700–12.	EPA Form 5700–12 (or EPA Form 5700–33).
Program and planning grants.	Not applicable....	EPA Form 5700–33.
Consolidated grants.	EPA Form 5700–12.	Do.
Wastewater treatment construction grants.	Not applicable....	EPA Form 5700–32.
Water pollution control State management assistance grants.	Not applicable.	EPA Form 5700–31.

[43 FR 28484, June 30, 1978]

§ 30.315–3 Time of submission.

Applications should be submitted well in advance of the desired grant award date. Generally, processing of a complete grant application requires 90 days after receipt of the application by EPA.

§ 30.315–4 Place of submission.

Place of submission varies with type of grant for which application is being made. Therefore, instructions regarding place of submission are included in each grant application kit.

§ 30.320 Use and disclosure of information.

(a) All grant applications, preapplications, and unsolicited proposals, when received by EPA, constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and must be disclosed to the requester unless exempt from disclosure under 5 U.S.C. 552(b). EPA regulations implementing 5 U.S.C. 552 are published in Part 2 of this Chapter.

(b) An assertion of entitlement to confidential treatment of part or all of the information in an application may be made using the procedure described in § 30.235(b). See also § § 2.203 and 2.204 of this chapter.

[41 FR 36918, September 1, 1976]

(c) Any person who submits a grant application, preapplication or unsolicited proposal to EPA shall be deemed by EPA to have thereby consented to review of that application, preapplication or proposal by extramural reviewers, as appropriate under § 40.150(a) of this Chapter, unless a specific and conspicuous statement to the contrary appears on the face of the document. Extramural reviewers' recommendations shall not be disclosed.

(d) If a grant or subagreement is awarded to a submitter in response to his application, preapplication or unsolicited proposal, EPA shall treat the information in the application, preapplication, unsolicited proposal or resulting grant or contract as available to the public and free from any limitation on use or disclosure, notwithstanding any legend asserting a claim for nondisclosure except to the extent otherwise expressly provided by special condition in the grant.

§ 30.325 Evaluation of application.

Each applicant shall be notified that the application has been received and is in the process of evaluation pursuant to this Subchapter. Each application shall be subjected to a (a) preliminary administrative review to determine the completeness of the application, (b) program, technical, and scientific evaluation to determine the merit and relevance of the project to EPA program objectives, (c) budget evaluation to determine whether proposed project costs are eligible, reasonable, applicable, and allowable, and (d) final administrative evaluation. Recommendations and comments received as a result of extramural review pursuant to § 40.150(a) of this Subchapter shall be considered in the evaluation process.

§ 30.330 Supplemental information.

The applicant may, at any stage during the evaluation process, be requested to furnish documents or information required by this Subchapter and necessary to complete the application. The evaluation may be suspended until such additional information or documents have been received.

§ 30.335 Criteria for award of grant.

Each application shall be evaluated in accordance with the requirements and criteria established pursuant to this Subchapter and promulgated herein. Program award criteria may be found in Parts 35, 40, 45, and 46 of this Subchapter. Grants may be awarded without regard to substatutory criteria in exceptional cases if a deviation pursuant to Subpart I of this Subchapter has been approved.

§ 30.340 Responsible grantee.

The policy and procedures established by this section shall be followed to deter-

mine, prior to award of any grant, whether an applicant will qualify as a responsible grantee. A responsible grantee is one which meets, and will maintain for the life of the grant, the minimum standards set forth in § 30.340–2 and such additional standards as may be prescribed and promulgated for a specific purpose.

§ 30.340–1 General policy.

The award of grants to applicants who are not responsible is a disservice to the public, which is entitled to receive full benefit from the award of grants for the protection and enhancement of the environment. It frequently is inequitable to the applicants themselves, who may suffer hardship, sometimes even financial failure, as a result of inability to meet grant or project requirements. Moreover, such awards are unfair to other competing applicants capable of performance, and may discourage them from applying for future grants. It is essential, therefore, that precautions be taken to award grants only to reliable and capable applicants who can reasonably be expected to comply with grant and project requirements.

§ 30.340–2 Standards.

To qualify as responsible, an applicant must meet and maintain for the life of the proposed grant the following standards as they relate to a particular project:

(a) Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(b) Be able to comply with the proposed or required completion schedule for the project;

(c) Have a satisfactory record of integrity, judgment, and performance, including in particular, any prior performance upon grants and contracts from the Federal Government;

(d) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and assets. Applicable standards are further defined in § 30.800;

(e) Maintain a standard of procurement which will comply with Part 33 of this Subchapter;

(f) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding, and disposition of all property. Applicable standards are further defined in § 30.810;

(g) Conform with the civil rights, equal employment opportunity, and labor law requirements of this Chapter;

(h) Be otherwise qualified and eligible to receive a grant award under applicable laws and regulations.

§ 30.340–3 Determination of responsibility.

Submission of a grant application shall constitute an applicant's assurance that he can and will meet the standards set forth in § 30.340–2. An applicant may be presumed to be responsible in the absence of any question as to his ability to meet the standards. This presumption of responsibility, however, shall not preclude EPA from performing a preaward audit or other review of an applicant's ability to comply with any or all of the above standards. Any applicant who is determined to be not responsible will be notified in writing of such finding and the basis therefor. A copy of such written notification shall be included in the official EPA file.

§ 30.345 Award of grant.

Generally, within 90 days after receipt of a completed application (excluding suspension periods for submission of supplemental information), the EPA Grant Approving Official will take one of the following actions: (a) Approve for grant award, (b) defer due to lack of funding, or (c) disapprove the application. The applicant shall be promptly notified in writing of any deferral or disapproval. A deferral or disapproval of an application shall not preclude its reconsideration or a reapplication. The applicant shall not be notified by EPA of an approval or grant award prior to transmittal of the grant agreement for execution by the applicant pursuant to § 30.345–3.

§ 30.345–1 Amount and term of grant.

The amount and term of a grant shall be determined at the time of grant award.

§ 30.345–2 Federal share.

The Federal share shall be set forth in the grant agreement expressed both as a dollar amount and as a percentage of approved eligible project costs. Such dollar amount shall represent the grant ceiling. The grantee must exert its best efforts to perform the project work as specified in the grant agreement within the approved cost ceiling. If at any time the grantee becomes aware that the costs which it expects to incur in the performance of the project will exceed or be substantially less than the then-approved estimated total project cost, the grantee must notify the Project Officer promptly in writing to that effect, pursuant to § 30.900. The United States shall not be obligated to participate in costs incurred in excess of the budget approved in the grant agreement or any amendments thereto. Grant payments will be made pursuant to § 30.615.

§ 30.345–3 Grant agreement.

Upon execution of the grant agreement by EPA, the appropriate EPA grants administration office will transmit the grant agreement (certified mail, return receipt requested) to the applicant for execution. The grant agreement must be executed by the applicant and returned within 3 calendar weeks after receipt, or within any extension of such time that may be granted by the EPA grants administration office. The grant agreement shall set forth the approved project scope, budget (including the EPA share), total project costs, and the approved commencement and completion dates for the project or major phases thereof.

§ 30.345–4 Costs incurred prior to execution.

Except as may be otherwise provided by statute or this subchapter, costs may not be incurred prior to the execution of the grant agreement by both parties thereto. However, costs incurred after the date of execution of the grant agreement by the EPA grant award official are allowable, if (a) there is explicit provision in the grant agreement, and (b) the agreement is executed without change by the grantee.

[43 FR 28484, June 30, 1978]

§ 30.345–5 Effect of grant award.

(a) The grant shall become effective and shall constitute an obligation of Federal funds in the amount and for the purposes stated in the grant agreement, at the time of execution of the grant agreement by the EPA grant award official.

(b) Neither the approval of a project nor the award of any grant shall commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

§ 30.350 Limitation on award.

(a) No grant may be awarded if the project will be performed at a facility listed by the Director, Office of Federal Activities, in violation of the requirements set forth in § 30.420–3 and Part 15 of this Chapter.

(b) No grant may be awarded if there is a personal or organizational conflict of interest, or the appearance of such conflict of interest (see § 30.420).

§ 30.355 Continuation grants.

(a) When an original grant award includes a provision for more than one budget period within the project period, EPA presumes that continuation grants for the subsequent budget periods will be awarded, subject to availability of funds and Agency priorities, as determined by the Administrator, if the grantee:

(1) Has demonstrated satisfactory performance during all previous budget periods; and

(2) Submits no later than 90 days prior to the end of the budget period a continuation application which includes a detailed progress report; a financial statement for the current budget period, including an estimate of the amount of unspent, uncommitted funds which will be carried over beyond the term of the prior grant; a budget for the new budget period; an updated work plan revised to account for actual progress accomplished during the current budget period; and any other reports as may be required by the grant agreement.

(b) Review of continuation applications will be conducted expeditiously. Generally, no extramural review will be required.

(c) Costs incurred after the end of the previous budget period may be allowed under the continuation grant provided that no longer than 30 days has elapsed between the end of the budget period and the execution of the continuation grant agreement.

Subpart C—Other Federal Requirements

§ 30.400 General grant conditions.

It shall be a condition of every EPA grant award that the grantee comply with the applicable provisions of this subchapter and special conditions in the grant agreement (see § 30.425).

[43 FR 28484, June 30, 1978]

§ 30.405 Statutory conditions.

Compliance with the following statutory requirements, in addition to such other statutory provisions as may be applicable to particular grants or grantees or classes of grants or grantees, is a condition to each EPA grant.

§ 30.405–1 National Environmental Policy Act.

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., as amended, and regulations issued thereunder, 40 CFR Part 6, particularly as it relates to the assessment of the environmental impact of federally assisted projects. Where an environmental assessment is required by 40 CFR Part 6, an adequate environmental assessment must be prepared for each project by the applicant or grantee.

§ 30.405–2 Uniform Relocation Assistance and Real Property Acquisition Policies Act.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq., 4651 et seq., and the regulations issued thereunder, 40 CFR Part 4. Grantees must assure that any acquisition of interest in real property or any displacement of persons, businesses, or farm operations is conducted in compliance with the requirements of the act and the regulations.

[43 FR 28484, June 30, 1978]

§ 30.405–3 Civil Rights Act of 1964.

The Civil Rights Act of 1964, 42 U.S.C. 2000a et seq., as amended, and particularly Title VI thereof, which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, as implemented by regulations issued thereunder, 40 CFR Part 7. The grantee must assure compliance with the provisions of the Act and regulations.

§ 30.405–4 Federal Water Pollution Control Act Amendments of 1972, Section 13.

Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) provides that no person in the United States shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving assistance under the Federal Water Pollution Control Act, as amended (86 Stat. 816) or the Environmental Financing Act (86 Stat. 899). The applicant or grantee must assure compliance with the provisions of section 13 and the regulations issued thereunder including 40 CFR Part 12.

§ 30.405–5 Title IX of the Education Amendments of 1972.

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

§ 30.405–6 Hatch Act.

The Hatch Act, 5 U.S.C. 1501 et seq., as amended, relating to certain political activities of certain State and local employees. State and local government grantees must ensure compliance on the part of their employees who are covered by the Hatch Act. A State or local officer or employee is covered by the Hatch Act on political activity if his principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency. He is subject to the Act, if as a normal and foreseeable incident to his principal job or position, he performs duties in connection with an activity financed in whole or in part by Federal loans or grants. Specifically excluded is an individual who exercises no functions in connection with that activity; or an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

§ 30.405–7 National Historic Preservation Act.

The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., as amended, relating to the preservation of historic landmarks. Applicants must consult the National Register of Historic Places (published in the FEDERAL REGISTER) to determine if a National Register property (or one eligible for inclusion in the Register) is located within the area of the proposed project's environmental impact and observe required procedures.

§ 30.405–8 Public Law 93–291.

Public Law 93–291 (referred to as Archeological and Historic Preservation Act of 1974) relating to potential loss or destruction of significant scientific, historical, or archeological data in connection with Federally assisted activities.

§ 30.405–9 Demonstration Cities and Metropolitan Development Act and Intergovernmental Cooperation Act.

The Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301 et seq., as amended, and particularly Section 204 thereof, requires that applications for Federal assistance for a wide variety of public facilities projects in metropolitan areas must be accompanied by the comments of an areawide comprehensive planning agency covering the relationship of the proposed project to the planned development of the area. The Intergovernmental Coop-

eration Act of 1968, 42 U.S.C. 4201 et seq., as amended, requires coordination by and among local, regional, State, and Federal agencies with reference to plans, programs, and development projects and activities. Compliance with these two Acts is ensured by adherence to procedures in OMB Circular No. A-95 (revised) (38 FR 32874, Nov. 28, 1973). Applicants must follow the coordination procedures established by that Circular prior to submitting an application (see § 30.305).

§ 30.405–10 Flood Disaster Protection Act.

(a) *General.* (1) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 31, 1973), requires grantees to purchase flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal assistance for construction purposes or for the acquisition of any real or nonexpendable personal property in an identified special flood hazard area that is located within any community currently participating in the National Flood Insurance Program. The National Flood Insurance Program is a Federal program authorized by the National Flood Insurance Act of 1968, 42 U.S.C. 4001–4127, as amended.

(2) For any community that is not participating in the flood insurance program on the date of execution of the grant agreement by both parties, the statutory requirement for the purchase of flood insurance does not apply. However, after July 1, 1975, or one year after notification of identification as a flood-prone community, whichever is later, the requirement will apply to all identified special flood hazard areas within the United States, which have been delineated on Flood Hazard Boundary Maps or Flood Insurance Rate Maps issued by the Department of Housing and Urban Development (HUD). Thereafter, no financial assistance can legally be provided for real or nonexpendable personal property or for construction purposes in these areas unless the community has entered the program and flood insurance is purchased.

(3) Regulations pertaining to the National Flood Insurance Program are published in Title 24 of the Code of Federal Regulations, commencing at Part 1909. HUD guidelines regarding the mandatory purchase of insurance have been published in the FEDERAL REGISTER at 39 FR 26186–93, July 17, 1974. Additional information may be obtained from the regional offices of the Department of Housing and Urban Development, or from the Federal Insurance Administration, HUD, Washington, D.C. 20410.

(b) *Wastewater treatment construction grants.* (1) The grantee (or the construction contractor, as appropriate) must acquire any flood insurance made available to it under the National Flood Insurance Act of 1968 as amended beginning with the period of construction and maintain such insurance for the entire useful life of the project, if the total value of insurable improvements is $10,000 or more.

(2) The amount of insurance required is the total project cost, excluding facilities which are uninsurable under the National Flood Insurance Program such as bridges, dams, water and sewer lines, and underground structures, and excluding the cost of the land, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, whichever is less.

(3) The required insurance premium for the period of construction is an allowable project cost.

(c) *Other grant programs.* (1) A grantee must acquire and maintain any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, if the approved project includes (i) any construction-type activity, or (ii) any acquisition of real or nonexpendable personal property, and the total cost of such activities and acquisition is $10,000 or more.

(2) The amount of insurance required is the total cost of any insurable nonexpendable personal or real property acquired, improved, or constructed, excluding the cost of land, with any portion of this grant, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, as amended, whichever is less, for the entire useful life of the property.

(3) The required insurance premium for the period of project support is an allowable project cost.

(4) If EPA provides financial assistance for personal property to a grantee that the Agency has previously assisted with respect to real estate at the same facility in the same location, EPA must require flood insurance on the previously-assisted building as well as on the personal property. The amount of flood insurance required on the building will be based upon its current value, however, and not on the amount of assistance previously provided.

§ 30.405–11 Clean Air Act, Section 306.

Section 306 of the Clean Air Act, 42 U.S.C. 1857h–4, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities (see § 30.410–4, Executive Order 11738).

§ 30.405–12 Federal Water Pollution Control Act, Section 508.

Section 508 of the Federal Water Pollution Control Act, 33 U.S.C. 1251, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities (see § 30.410–4, Executive Order 11738).

§ 30.410 Executive Orders.

Compliance with the following Executive Orders is a condition of each EPA grant.

§ 30.410–1 Executive Order 11246.

Executive Order 11246 dated September 24, 1965, as amended, with regard to equal employment opportunities, and all rules, regulations and procedures prescribed pursuant thereto (40 CFR Part 8).

§ 30.410-2 Executive Order 11988.

Executive Order 11988 dated May 24, 1977, provides that each Federal agency shall evaluate the potential effects of any actions it may take in a floodplain. Any action taken on a floodplain shall seek to reduce the risk of flood loss to minimize potential harm to people and property and to restore and preserve the natural and beneficial values served by the floodplain.

[43 FR 28484, June 30, 1978]

§ 30.410–3 Executive Order 11514.

Executive Order 11514 dated March 5, 1970, providing for the protection and enhancement of environmental quality in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (40 CFR Part 6).

§ 30.410–4 Executive Order 11738.

Executive Order 11738 dated September 12, 1973, which prohibits any Federal agency, grantee, contractor, or subcontractor from entering into, renewing, or extending any nonexempt grant or subagreement (contract or subcontract) which in the performance of the grant or subagreement utilizes any facility included on the EPA List of Violating Facilities (40 CFR Part 15). By so doing, the Executive Order requires compliance with the Clean Air Act and the Federal Water Pollution Control Act (see § 30.-420–3).

§ 30.410-5 Executive Order 11990.

Executive Order 11990 dated May 24, 1977, provides that each Federal agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of

the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands.

[43 FR 28484, June 30, 1978]

§ 30.415 Additional requirements—federally assisted construction.

Grants for projects that involve construction are subject to the following additional requirements.

§ 30.415–1 Davis-Bacon Act.

The Davis-Bacon Act, as amended, 40 U.S.C. 276a et seq., and the regulations issued thereunder, 29 CFR 5.1 et seq., respecting wage rates for federally assisted construction contracts in excess of $2,000.

§ 30.415–2 The Copeland Act.

The Copeland (Anti-Kickback) Act, 18 U.S.C. 874, 40 U.S.C. 276c, and the regulations issued thereunder, 29 CFR 3.1 et seq.

§ 30.415–3 The Contract Work Hours and Safety Standards Act.

The Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 et seq., and the regulations issued thereunder, 29 CFR Parts 5 and 1518.

§ 30.415–4 Convict labor.

Convict labor shall not be used in EPA assisted construction unless it is labor performed by convicts who are on work release, parole or probation.

§ 30.420 Additional requirements—all EPA grants.

Compliance with the following requirements is a condition of each EPA grant.

§ 30.420–1 Prohibition against contingent fees.

No person or agency may be employed or retained to solicit or secure a grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For violation of this prohibition, EPA shall have the right to annul the grant without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of any commission, percentage, brokerage or contingent fee.

§ 30.420–2 Officials not to benefit.

No member of, or delegate to Congress or Resident Commissioner, shall be permitted to any share or part of a grant, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to a grant if made with a corporation for its general benefit.

§ 30.420–3 Prohibition against violating facilities.

(a) *List of violating facilities.* Pursuant to 40 CFR Part 15, the Director, Office of Federal Activities, EPA, shall maintain a list that includes those facilities which have been designated to be in noncompliance with either the Clean Air Act or the Federal Water Pollution Control Act and with which no Federal agency, grantee, contractor, or subcontractor shall enter into, renew, or extend any nonexempt grant, contract, or subcontract. For the purpose of this subsection, the term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by an applicant, contractor, subcontractor, or grantee to be utilized in the performance of a grant, contract or subcontract. Where a location or site of construction or other operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility, except where the Director, Office of Federal Activities, EPA, determines that independent facilities are co-located in one geographic area.

(b) *Exempt transactions.* The following are exempt:

(1) Grants, contracts, and subcontracts not exceeding $100,000.

(2) Contracts and subcontracts for indefinite quantities that are not anticipated to exceed $100,000 for any 12 month period.

(3) Grants, contracts, or subcontracts, where the principal purpose is to assist a facility or facilities to comply with any Federal, State, or local law, regulation, limitation, guideline, standard, or other requirement relating to the abatement, control, or prevention of environmental pollution. This exemption does not apply to (i) subcontracts for materials, supplies, or equipment where an existing facility is modified or altered or (ii) grants, contracts, or subcontracts for new construction.

(4) Facilities located outside the United States.

(5) The foregoing exemptions shall not apply to the use of a facility that has been convicted of a violation under section 113(c)(1) of the Clean Air Act, or under section 309(c) of the Federal Water Pollution Control Act. The List of Violating Facilities will specify which facilities have been convicted.

(c) *Grant condition.* No nonexempt project work may be performed at a facility listed by the Director, Office of Federal Activities, EPA, in violation of the requirements of 40 CFR Part 15.

(d) *Contract stipulations.* Each grantee, contractor, and subcontractor must include or cause to be included in every nonexempt subagreement (including contract or subcontract) the criteria and requirements in paragraphs (d) through (f) of this section.

(e) *Notification.* Each applicant, grantee, bidder, contractor, and subcontractor must give prompt notification if at any time prior to or after the award of a nonexempt grant or contract, notification is received from the Director, Office of Federal Activities, indicating that a facility to be utilized in the performance of a nonexempt grant or subagreement has been listed or is under consideration to be listed on the EPA List of Violating Facilities.

(1) An applicant or grantee must notify the project officer.

(2) A bidder, contractor or subcontractor must notify the grantee which will notify the Project Officer.

(f) *Deferral of award.* The Director, Office of Federal Activities, EPA may request that the award of the grant, contract or subcontract be withheld for a period not to exceed 15 working days.

(g) *Compliance.* Each applicant, grantee, bidder, contractor, and subcontractor must comply with all the requirements of Section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information as well as all other requirements specified in section 114 and section 308 of the Clean Air Act and Federal Water Pollution Control Act, respectively, and all regulations and guidelines issued thereunder.

(h) *Failure to comply.* In the event any grantee, contractor or subcontractor fails to comply with clean air or water, standards at any facility used in the performance of a nonexempt grant or subagreement, the grantee, contractor, or subcontractor shall undertake the necessary corrective action to bring the facility into compliance. If the grantee, contractor, or subcontractor is unable or unable or unwilling to do so, the grant will be suspended, annulled, or terminated, in whole or in part, unless the best interests of the Government would not thereby be served.

§ 30.420–4 Conflict of interest.

(a) The purpose of this section is to establish policies and procedures for the prevention of conflicts of interest, and the appearance of such conflicts of interest, involving former and current EPA employees in the award and administration of grants. This section does not apply to

former EPA employees performing duties as an elected or appointed official or full time employee of a State or local government (excluding State or local institutions of higher education and hospitals).

(b) It is EPA policy that personal or organizational conflict of interest, or the appearance of such conflict of interest, be prevented in the award and administration of EPA grants, including subagreements.

(c) Conflict of interest provisions for EPA employees are published in 40 CFR Part 3. In cases where an employee's action in the review, award, or administration of a grant would create an apparent conflict of interest, the employee shall disqualify himself and refer any necessary action to his superior.

(d) 18 U.S.C. 207 establishes penalties for certain actions on the part of former Federal employees.

(e) It shall be improper for a grant to be awarded, or for a subagreement to be awarded or approved, when the grant applicant or proposed contractor employs a person who served in EPA as a regular employee or as a special employee if either one of the following conditions exist:

(1) If the grant relates to a project in which the former EPA employee participated personally and substantially as an EPA employee, through decision, approval, disapproval, recommendation, and if the former EPA employee (i) was involved in developing or negotiating the application for the prospective grantee; (ii) will be involved in the management or administration of the project, or (iii) has a substantial financial interest (generally, a 20% or greater stock, partnership, or equivalent interest);

(2) If the former EPA employee's official duties involved, within one year prior to the termination of his employment with EPA, decision, approval, disapproval, or recommendation responsibilities concerning the subject matter of the grant or application, and the former EPA employee, within one year following the termination of his employment with EPA, (i) was involved in developing or negotiating the application for the prospective grantee; (ii) will be involved in management or administration of the project; or (iii) has a substantial financial interest (generally a 20% or greater stock, partnership or equivalent interest);

[43 FR 28484, June 30, 1978]

(f) Costs incurred on grants in violation of subparagraph (e) above shall be unallowable costs.

(g) Definitions pertaining to this section may be found in 40 CFR 3.102.

(h) The provisions of this section may be waived only by the Administrator or Deputy Administrator (1) upon a written determination of the General Counsel that the award or the administration of the project would not be likely to involve a violation of 18 U.S.C. 207 or other EPA regulations respecting conflicts of interest, 40 CFR Part 3, and (2) if the Administrator or Deputy Administrator determines that the best interests of the Government would be served by an award of the grant or subagreement or existing administration of the grant in view of the limited extent of the conflict of interest and the outstanding expertise of the former employee.

§ 30.420–5 Employment practices.

A grantee or a party to a subagreement shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under any project, program, or activity receiving assistance from EPA. Each grantee or party to a subagreement shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

§ 30.420–6 Conservation and efficient use of energy.

Grantees must participate in the National Energy Conservation Program by fostering, promoting, and achieving energy conservation in their grant programs. Grantees must utilize to the maximum practical extent the most energy-efficient equipment, materials, and construction and operating procedures available.

§ 30.425 Special conditions.

The grant agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project or of EPA objectives. However, special conditions inconsistent with the provision and intent of this Subchapter may not be utilized.

§ 30.430 Noncompliance.

Noncompliance with the provisions of this subchapter or of the grant agreement shall be cause for any one or more of the following sanctions, as determined appropriate by the grant award official, upon the recommendation of the Project Officer, subject to consultation with the Office of General Counsel:

(a) The grant may be terminated or annulled under § 30.920 of this subchapter;

(b) Project costs directly related to the noncompliance may be disallowed;

(c) Payment otherwise due to the grantee may be withheld (see § 30.615-3 of this subchapter);

(d) Project work may be suspended under §30.915 of this subchapter;

(e) A noncomplying grantee may be found nonresponsible or ineligible for future Federal assistance or a noncomplying contractor may be found nonresponsible or ineligible for approval for future contract award under EPA grants;

(f) An injunction may be entered or other equitable relief afforded by a court of appropriate jurisdiction;

(g) Such other administrative or judicial action may be instituted as may be legally available and appropriate.

[43 FR 28484, June 30, 1978]

Subpart D—Patents, Data, and Copyrights

§ 30.500 General.

This subpart sets forth policy and procedure regarding patents, data, and copyrights under EPA grants or fellowships, and the grant clauses and regulations which define and implement that policy.

§ 30.502 Definitions.

Definitions applicable to this Subpart D, in addition to those in § 30.135, are set forth in Appendixes B and C to this Part.

§ 30.505 Required provision regarding patent and copyright infringement.

(a) The grantee shall report to the Project Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee shall furnish to the Government, when requested by the Project Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

(c) The grantee shall include in each subagreement (including any tier subagreement) in excess of $10,000 a clause substantially similar to the foregoing provisions.

§ 30.510 Patents and inventions.

It is the policy of EPA to allocate rights to inventions that result from fed-

erally supported grants or fellowships in accordance with the guidance and criteria set forth in the Statement of Government Patent Policy by the President of the United States on August 23, 1971 (36 FR 16887), hereinafter referred to as "Statement." Section 1 of the Statement sets forth three major categories (1(a), 1(b), and 1(c)) of contract or grant objectives, and prescribes the manner for allocation of rights to inventions that result from a grant or contract which falls within the particular category.

(a) Under Section 1(a) of the Statement, the United States, at the time of grant award, normally acquires or reserves the right to acquire the principal or exclusive rights to any invention made under the grant or contract. Generally, this is implemented by the United States taking all domestic rights to such invention. However, section 1(a) permits the grantee in exceptional circumstances, to acquire greater rights than a nonexclusive license at the time of grant award where the Administrator certifies that such action will best serve the public interest. Section 1(a) also prescribe circumstances under which the grantee or contractor may acquire such greater rights after an invention is identified.

(b) Under section 1(b) of the Statement, the grantee normally acquires principal rights at the time of grant award.

(c) Section 1(c) applies to grants that are not covered by Section 1(a) or 1(b), and provides that allocation of rights is deferred until after inventions have been identified.

§ 30.515 Required patent provision.

(a) Every EPA grant involving research, developmental, experimental, or demonstration work shall be deemed subject to Section 1(a) of the Statement and shall be subject to the patent provisions set forth in Appendix B to this Part. The requirement is not applicable to fellowships.

(b) Inventions made under the Resource Conservation and Recovery Act of 1976 are subject to section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974. This is implemented by Appendix B.

[42 FR 56050, October 20, 1977]

§ 30.520 Optional patent provision.

The following clause may be inserted as a special condition in the grant agreement when requested by an applicant or grantee:

Authorization and consent. The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this grant project or any part hereof or any amendment hereto or any subagreement hereunder (including any lower tier subcontract).

§ 30.525 Data and copyrights.

EPA's data policy is to expedite general utilization or further development of new or improved pollution prevention and abatement technology and procedures developed under EPA grants and fellowships. Therefore, it is most important that the results of EPA sponsored research include data that is sufficient to enable those skilled in the particular area to promptly utilize or further develop such technology and procedures. Availability of adequate data permits accurate assessment of the progress achieved under a grant or fellowship so that EPA priorities can be established. Access to data accumulated by the grantee shall be made available to the Project Officer on request.

§ 30.530 Required data and copyright provision.

Every EPA grant or fellowship shall be subject to the rights in data and copyrights provisions set forth in Appendix C to this Part.

§ 30.540 Deviations.

Any request for deviation from the patent provisions in Appendix B and from the rights in data and copyrights provisions in Appendix C to this Part must be submitted in writing pursuant to Subpart I of this Regulation. No deviation or waiver of patent or data rights shall be granted without the concurrence of the EPA Patent Counsel.

Subpart E—Administration and Performance of Grants

§ 30.600 General.

The grantee bears primary responsibility for the administration and success of the grant project, including any subagreements made by the grantee for accomplishing grant objectives. Although grantees are encouraged to seek the advice and opinions of EPA on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to EPA. The primary concern of EPA is that grant funds awarded be used in conformance with applicable Federal requirements to achieve grant and program objectives and to make optimum contributions to the betterment of the environment.

§ 30.605 Access.

The grantee and its contractor and subcontractors must ensure that the Project Officer and any authorized representative of EPA, the Comptroller General of the United States or the Department of Labor, shall at all reasonable times during the period of EPA grant support and until three years following final settlement have access to the facilities, premises and records (as defined in § 30.805) related to the project. In addition, any person designated by the Project Officer shall have access, upon reasonable notice to the grantee by the Project Officer, to visit the facilities and premises related to the project. All subagreements (including any tier subagreement) in excess of $10,000 are subject to the requirements of this section and grantees must include in all such subagreements a clause which will ensure the access required by this section.

§ 30.610 Rebudgeting of funds.

(a) *Notice.* Prompt notification of all rebudgeting in excess of $1,000 is required under § 30.900(b). Such notification may be accomplished by submission of a revised copy of the budget forms contained in the grant application or in a letter.

[43 FR 28484, June 30, 1978]

(b) *Prior approval required.* Approval of minor adjustments to an approved budget is not required. Prior written EPA approval is required for any of the following changes under any grant except wastewater treatment construction grants (see Part 35, Subparts C and E of this subchapter):

(1) Where the total Federal share exceeds $100,000 and the cumulative amount of transfers among cost categories or program elements exceeds or is expected to exceed $10,000 or 5 percent of the budget period costs, whichever is greater.

(2) Where the total Federal share is $100,000 or less, and the cumulative amount of transfers among cost categories or program elements exceeds or is expected to exceed 10 percent of such budget period costs.

[43 FR 28484, June 30, 1978]

(3) Rebudgeting which involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs;

(4) Rebudgeting which pertains to the addition of items requiring approval pursuant to Federal Management Circulars 73–8 and 74–4;

(5) Any transfers between construction and nonconstruction work;

(6) Any transfer of funds allotted for training allowances (direct payments to trainees);

[43 FR 28484, June 30, 1978]

(7) Rebudgeting which indicates the need for additional EPA funds.

(c) *Approval.* Where approval of rebudgeting is required, approval or disapproval shall be promptly communicated in writing to the grantee within three (3) weeks from date of receipt of notification.

§ 30.615 Payment.

All payments are made subject to such conditions as are imposed by or pursuant to this Subchapter for allowable project costs. The payment basis and method of payment will be set forth in the grant agreement. Any adjustment to the amount of payment requested by a grantee will be explained in writing.

§ 30.615–1 Method of payment.

[41 FR 56196, December 27, 1976]

(a) Payment for waste treatment construction grants will be on a reimbursable basis (see §§35.845, 35.937-10, 35.938-6, and 35.945).

[43 FR 28484, June 30, 1978]

(b) Payment for other grant programs will be on an advance basis. Grantees must request the initial advance payment on SF270, Request for Advance or Reimbursement. The initial advance will be based on the grantee's projected cash requirements, not to exceed the first three months. The cash advance will be issued either in one check or one check each month at the agency's option. As the grantee incurs expenditures under the grant, the grantee will submit a request for payment at least quarterly, but generally no more frequently than monthly. This request will report cumulative expenditures incurred under the grant and the grantee's projected cash requirements for the next advance period. The agency will make payment for any expenditure exceeding the previous advance and will provide for the grantee's projected cash requirements for the next advance period.

(c) Payment for certain grants authorized advance financing will be made by letter-of-credit. Detailed procedures will be provided to the grantee when a grantee meets the Treasury Department's criteria for this method of payment.

(d) For grants paid on an advance basis, payments will be made in a manner that will minimize the time elapsing between the transfer of funds from the United States Treasury and the disbursement of those funds by the grantee. For grants which are paid on a reimbursable basis, payment will be made promptly upon submission by the grantee of the properly completed payment request. Grantees not complying with the timing requirements under advance payment methods may be transferred to the reimbursable payment method.

§ 30.615–2 Cash depositories.

(a) Physical segregation of cash depositories for EPA funds is neither required nor encouraged. However, a separate bank account shall be used when payments under a letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by the grantee, EPA, and the bank involved.

[41 FR 56196, December 27, 1976]

(b) Grantees are encouraged to use minority-owned banks (a bank which is owned by at least 50 percent minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230.

[43 FR 28484, June 30, 1978]

§ 30.615–3 Withholding of funds.

(a) It is EPA policy that full and prompt payment be made to the grantee for eligible project costs. Except as otherwise provided by this subchapter, the EPA grant approving official may only authorize the withholding of a grant payment where he determines in writing that a grantee has failed to comply with project objectives, grant award conditions, or EPA reporting requirements. Under such conditions, the EPA grant award official will inform the grantee by written notice that payments will not be made for obligations incurred after a specified date until the conditions are corrected. Such withholding shall be limited to that amount necessary to assure compliance.

(b) The grant approving official may authorize withholding of payment to the extent of any indebtedness to the United States, unless he determines that collection of the indebtedness will impare accomplishment of the project objectives and that continuation of the project is in the best interest of the United States.

[43 FR 28484, June 30, 1978]

§ 30.615–4 Assignment.

The right to receive payment under a grant may not be assigned, nor may payments due under a grant be similarly encumbered.

§ 30.620 Grant related income.

(a) "Grant related income" means income generated from charges which are directly related to a principal project objective (such as the sale of a solid waste by-product or of copies of reports or studies) except as otherwise provied by statute or the grant agreement.

[43 FR 28484, June 30, 1978]

(b) Except as otherwise provided herein a grantee is accountable to EPA for all grant related income. Grantees are required to record the receipt and expenditure of all grant related income. The net amount of such income shall be retained by the grantee and, except as may be otherwise provided in the grant agreement, shall be used to further support the project; or for grants with institutions of higher education, hospitals, and other nonprofit organizations may be used to finance the non-Federal share of the project, if approved by EPA. To the extent such funds are not used for the project, such amounts shall be deducted from the total project costs for the purpose of determining the net costs on which the EPA share will be based. In no event will EPA be entitled to a credit in excess of the grant amount.

[41 FR 56196, December 27, 1976]

(c) Revenue generated under the governing powers of a State or local government which may have been generated without grant support is not considered grant related income. Such revenues shall include fines or penalties levied under judicial or penal power and used as means to enforce laws; license or permit fees for the purpose of regulation, special assessment to abate nuisances and public irritations, inspection fees, and taxes.

§ 30.620–1 Proceeds from sale of real or personal property.

Income derived from the sale of real or personal property shall be treated in accordance with § 30.810.

§ 30.620–2 Royalties received from copyrights and patents.

[41 FR 56196, December 27, 1976]

Unless the grant agreement provides otherwise, grantees (other than profit making) shall have no obligations to EPA with respect to royalties they receive as a result of copyrights or patents produced under the grant. However, nothing in this section shall be construed to diminish or eliminate any

rights or privileges flowing to the Federal Government as a result of the provisions of 40 CFR Part 30, Appendix B—Patents and Inventions or Appendix C—Rights in Data and Copyrights.

30.620–3 Interest earned on grant funds.

(a) All grantees except those listed below must return to EPA all interest earned on Federal funds pending their disbursement for project purposes (see 42 Comp. Gen. 289).

(b) The only grantees exempt from this requirement are:

(1) A State and any agency or instrumentality of a State, pending their disbursement for project purposes (Section 203 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4201 et seq.); and

(2) A tribal organization (sections 102, 103, or 104 of the Indian Self Determination Act, Pub. L. 93-638).

[43 FR 28484, June 30, 1978]

§ 30.625 Grantee publications and publicity.

Pursuant to the Government Printing and Binding Regulations, no grant may be awarded primarily or substantially for the purpose of having material printed for the use of any Federal Department or Agency.

§ 30.625–1 Publicity.

Press releases and other public dissemination of information by the grantee concerning the project work shall acknowledge EPA grant support.

§ 30.625–2 Publications.

(a) *Policy.* EPA encourages and, when specified in the grant agreement, may require publication and distribution of reports of grant activity. The preparation, content, and editing of publications are the responsibilities of the grantee. Except for the final report, review of publications prior to distribution will not normally be made by EPA. Grantees must give notice in writing to the Project Officer at least 30 days prior to publication or other dissemination of project information (other than publicity) unless a shorter period has been approved by the Project Officer. This notice policy is intended to provide the EPA Project Officer with a minimal opportunity to discuss publication format, content, or to coordinate appropriate Agency activities; censorship is not intended nor permitted. This procedure does not apply to seminars, participation on panels, reporting to other research sponsors, or other similar nonpublishing activities.

(b) *Acknowledgement of support.* An acknowledgement of EPA support must be made in connection with the publishing of any material based on, or developed under, a project supported by EPA.

The acknowledgement shall be in the form of a statement substantially as follows:

This project has been financed (in part/entirely) with Federal funds from the Environmental Protection Agency under grant number_____. The contents do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

(c) *Copies of publications.* Upon publication, a minimum of six copies of the publication shall be furnished to the Project Officer. The Project Officer shall promptly file one copy of all publications resulting from EPA grant support in the official EPA grant file, EPA Headquarters Library, and with the National Technical Information Service, U.S. Department of Commerce.

§ 30.625–3 Signs.

A project identification sign shall be displayed in a prominent location at each publicly visible project site and facility (e.g., mobile laboratories, construction and demolition sites, buildings in which a substantial portion of the work is EPA-funded, etc.). The sign must identify the project and EPA grant support. Grantees may obtain information pertaining to the design and specifications for the signs from their Project Officer. Costs of preparation and erection of the project identification sign are allowable project costs.

§ 30.630 Surveys and questionnaires.

(a) Costs associated with the collection of data or information through surveys or questionnaires by a grantee (or party to subagreement) shall be allowable project costs only if prior written approval of the Project Officer has been obtained for such survey or questionnaire. The Project Officer shall not give such approval without the concurrence of the EPA Headquarters Reports Management Officer to assure compliance with the Federal Reports Act of 1942 (44 U.S.C. 3501-3511).

(b) A grantee (or party to subagreement) collecting information from the public on his own initiative may not represent that the information is being collected by or for EPA without prior agency approval. If reference is to be made to EPA, or the purpose of the grant is for collection of information from the public, prior clearance of plans and report forms must be requested by the grantee through the Project Officer.

§ 30.635 Reports.

§ 30.635–1 Interim progress reports.

(a) It is EPA policy that where progress reports are required such reports shall be submitted to the Project Officer no more frequently than quarterly. Specific reporting requirements are set forth in Parts 35, 40, and 45 of this Subchapter.

(b) Between the required performance reporting dates, the grantee shall promptly notify the Project Officer, in accordance with § 30.900–1, of events which have significant impact upon the project.

§ 30.635–2 Final report.

(a) For all EPA research, demonstration, and training grants, the grantee shall prepare and submit to the Project Officer an acceptable final report prior to the end of the project period. An acceptable report shall document project activities over the entire period of grant support and shall describe the grantee's achievements with respect to stated project purposes and objectives. Where appropriate, the report shall set forth in complete detail all technical aspects of the project, both negative and positive, grantee's findings, conclusions, and results, including, as applicable, an evaluation of the technical effectiveness and economic feasibility of the methods or techniques investigated or demonstrated. Grantees are required to submit a draft final report to the Project Officer at least 90 days prior to the end of the approved project period. The final report shall adequately reflect (e.g., as a footnote or an appendix) EPA comments when required by the Project Officer. Prior to the end of the project period, one reproducible copy suitable for printing and such other copies as may be stipulated in the grant agreement shall be transmitted to the Project Officer.

(b) State or local program grants and grants for construction of waste treatment works do not require a final report.

(c) For all planning grants, the plan itself constitutes the final report.

(d) One copy of all final reports must be filed in the EPA Headquarters Library and the appropriate EPA official grant file.

§ 30.635–3 Financial reports.

(a) For all EPA grants, except for fellowships and wastewater treatment construction grants, the grantee must submit a financial status report to the grants administration office (1) within 90 days after the end of each budget period, and (2) no later than 90 days following the end of the project period or the date of complete termination of

grant support, whichever occurs first, or within such additional time as EPA may allow for good cause.

(b) For wastewater treatment construction grants, the grantee is required to submit an Outlay Report and Request for Reimbursement for Construction Programs which will also serve as the financial report.

§ 30.635–4 Invention reports.

As provided in Appendix B of this Part, prompt reporting to the Project Officer of all inventions is required for EPA grants involving experimental, developmental, research or demonstration work. In addition:

(a) An annual invention statement is required with a continuation application.

(b) A final invention report is required to be submitted to the grants administration office within 90 days after completion of the project period.

(c) When a project director or principal investigator changes institutions or ceases to direct a project, an invention statement must be promptly submitted to the grants administration office with a listing of all inventions during his administration of the grant.

§ 30.635–5 Property reports.

(a) For all EPA grants a physical inventory of property shall be taken by the grantee and the results reconciled with the grantee's property records at least once every 2 years. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(b) For all EPA grants except grants for construction of waste treatment works the grantee must submit at the end of each project period a complete inventory of all property for which the grantee is accountable pursuant to § 30.-810. The submission must indicate the condition of each property item and recommendation for disposition. For the purposes of this subsection property for which the grantee is accountable means (1) property for which disposition instructions must be requested from EPA, or (2) property for which EPA must be compensated for its share.

(c) For all EPA grants, grantees shall submit an annual inventory of federally-owned property in their possession.

[41 FR 56196, December 27, 1976]

§ 30.635-6 [Reserved]

[43 FR 28484, June 30, 1978]

§ 30.635–7 Compliance.

Failure to comply with these reporting requirements in a timely manner will result in appropriate action pursuant to § 30.430.

§ 30.640 Utilization of Government procurement sources.

(a) Use of General Services Administration sources of supply and services by grantees is not allowed (see 37 FR 24113, November 14, 1972).

(b) Utilization of Government excess property by EPA grantees is not allowed.

§ 30.645 Force account work.

(a) Except as is otherwise provided in 40 CFR 35.936-14, the grantee must obtain specific written prior approval from the Project Officer for the utilization of the "force account" method (i.e., utilization of the grantee's own employees for construction, construction-related activities, or for facility repair or improvement) in lieu of subagreement for any construction activity in excess of $10,000 unless the force account method is stipulated in the grant agreement.

(b) The Project Officer, with the concurrence of the EPA grant approving official, may authorize in writing the use of the force account method in lieu of contracting if he determines, based on the grantee's certification, that the grantee possesses the necessary competence required to accomplish such work and (1) the work can be accomplished more economically by the use of the force account method, or (2) emergency circumstances so dictate.

[43 FR 28484, June 30, 1978]

(c) Authorizations to utilize the force account method will identify applicable Federal requirements and the allowability of various cost items.

Subpart F—Project Costs

§ 30.700 Use of funds.

(a) All Federal assistance received under an EPA grant shall be expended by the grantee solely for the reasonable and eligible costs of the approved project in accordance with the terms of the grant agreement and this subchapter. All project expenditures by the grantee shall be deemed to include the Federal share.

(b) The grantee may not delegate nor transfer his responsibility for the use of grant funds.

(c) No profit or other increment above cost in the nature of profit is allowed.

§ 30.705 Allowable costs.

Project costs shall be allowable if payment is authorized by applicable statutory provisions and the following conditions are met:

(a) The costs must be reasonable and within the scope of the project;

(b) The cost is allocable to the extent of benefit properly attributable to the project;

(c) Such costs must be accorded consistent treatment through application of generally accepted accounting principles;

(d) The cost must not be allocable to or included as a cost of any other federally assisted program in any accounting period (either current or prior); and

(e) The cost must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement or this Subchapter, including appropriate Federal cost principles of this Subpart.

§ 30.705-1 Payment to consultants.

For all grants awarded by EPA, the maximum daily rate paid to consultants retained by EPA, grantees, or contractors and subcontractors of grantees will not exceed the maximum daily rate for GS-18. This limitation applies only to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. Contracts negotiated with engineering or other firms under §§ 35.510-5 and 35.937-5 are not affected. This rate does not include transportation and subsistence costs for travel performed, which will be paid in accordance with the normal travel reimbursement practices. (SOURCE: The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1978, Pub. L. 95-119, dated October 4, 1977.)

[43 FR 28484, June 30, 1978]

§ 30.710 Federal cost principles.

The following cost principles are applicable to all EPA grants and subagreements of grantees, except as otherwise provided by statute or this Subchapter:

(a) *For state and local governments.* Federal Management Circular 74–4 (34 CFR Part 255) provides principles for determining allowable costs for all grants and subagreements awarded to State and local governments.

(b) *For educational institutions.* (1) Federal Management Circular 73–8 (34 CFR Part 254) provides cost principles for research and development, training, and other educational services under grants and subagreements with educational institutions.

(2) Federal Management Circular 73-6 (34 CFR Part 252) provides principles for coordinating (i) the establishment of indirect cost rates for, and (ii) the auditing of grants and subagreements with educational institutions.

(c) *For other nonprofit institutions.* Department of Health, Education, and Welfare publication OASC-5 (Revised) will be used for grants and subagreements awarded to other nonprofit institutions.

(d) *For all other grants and subagreements.* Federal Procurement Regulations (41 CFR Ch. I, Subpart 1-15.2 or 1-15.4, as appropriate) provide, to the greatest practical extent, comparable principles and procedures for use in cost-reimbursement for all other grants and subagreements.

[40 FR 20232, May 8, 1975, as amended at 41 FR 20658, May 20, 1976]

§ 30.715 Direct and indirect costs.

(a) Project costs will generally be comprised of allowable direct costs and allowable indirect costs.

(b) Each item of cost must be treated consistently as either a direct or an indirect cost.

(c) Any cost allocable to a particular grant or cost objective under the appropriate Federal cost principles may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreement, or for other reasons.

§ 30.715-1 Direct costs.

Direct costs are those than can be identified specifically with a particular cost objective. These costs may be charged directly to a project.

§ 30.715-2 Indirect costs.

[41 FR 20656, May 20, 1976]

Indirect costs are those incurred for a common or joint purpose but benefiting more than one cost objective, and not readily identifiable to the cost objectives specifically benefited. Federal Management Circulars 73-6 and 74-4 govern the methods that may be used in determining the amount of grantee departmental indirect cost allocable to a grant program. These directives provide for the assignment of cognizance to single Federal Departments and agencies for conducting indirect cost negotiations and audits at educational institutions and State and local governments. Procedures governing the application and disposition of indirect costs for subagreements with commercial organizations and architectural and engineering firms are covered by 41 CFR 1-15.2 and 1-15.4 respectively. The rate(s) negotiated by the cognizant Federal agency are normally accepted by all Federal agencies. Organizations not covered by the above directives may have rates established by negotiation with EPA or another Federal agency. The following guidance is furnished:

(a) EPA uses the latest available negotiated rate as a basis for computing indirect costs for the applicant. In those cases where the indirect cost budgeted in the grant agreement is based on a provisional rate, the actual indirect costs may be adjusted only as follows:

(1) If a final rate is established and that rate is less than the provisional rate, the indirect costs will be adjusted downward.

(2) If a final rate is greater than the provisional rate, the grantee may transfer funds from the direct cost categories to indirect costs; however, payment may not exceed the total approved grant amount.

[43 FR 28484, June 30, 1978]

(b) A special indirect cost rate may be applied to a project (or portion of a project) to be carried out at an off-campus or off-site location. A special indirect cost rate may be negotiated for a large nonrecurring project when such project costs would distort the normal direct cost base used in computing the overhead rate.

(c) The following guidelines are to be used for determining the allowability and reimbursement of indirect costs claimed by a grantee:

(1) For indirect costs to be allowable under a grant, they must be provided for in the grant agreement.

(2) Provisional indirect cost rates may be used for billing purposes under EPA grants. Fixed or predetermined indirect cost rates may also be used where there is advance agreement between the grantee and the grant award official.

(3) A separate indirect cost proposal must be prepared for each fiscal year for which the grantee desires to claim indirect costs. However, there are different requirements for State agencies than for local agencies with respect to the submission of indirect cost proposals to the Federal Government: (i) All State unit indirect cost proposals must be submitted to the cognizant Federal agency within 6 months after the close of each fiscal year; and (ii) local unit indirect cost proposals must be retained but need not be submitted for approval unless required for a pending grant award or requested by the cognizant Federal agency or its authorized representative. Pertinent financial records which substantiate the claim for indirect cost reimbursement must be retained by the grantee. If the required data is not retained and made available to the auditor upon his request at the time he initiates his audit of grant costs, the claim for indirect costs will be disallowed for that year.

(4) The audit of an indirect cost proposal will provide the basis for determining acceptable indirect cost rates.

[43 FR 28484, June 30, 1978]

§ 30.720 Cost sharing.

(a) Except as may be otherwise provided by law or this Subchapter, EPA grantees must share project costs. If there is no statutory matching requirement, a grantee must contribute not less than 5% of allowable project costs within each budget period. Such contributions may be reflected in either direct or indirect costs; in-kind contributions are permitted.

[41 FR 20656, May 20, 1976]

(b) Cost sharing must be negotiated prior to award of a grant and must be set forth in the grant agreement as a percentage of the total allowable project costs for each budget period. Criteria to be used in the negotiation concerning the extent of cost sharing may include the benefits the grantee will derive from the project; the financial risk the grantee will bear; and the resources the grantee has available.

(c) Contributions to cost sharing are allowable only if they: Are verifiable from the grantee's records; are not included as cost sharing or matching contributions for any other federally assisted program; are otherwise properly allocable to the project; constitute allowable project costs; are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and the laws and regulations it is subject to and; are provided for in the approved budget.

[43 FR 28484, June 30, 1978]

(d) Institutional cost sharing agreements are not permitted.

§ 30.725 Cost and price analysis.

§ 30.725-1 Policy.

The reasonableness of the price or cost of each grant application or negotiated subagreement proposal must be considered. The method and degree of analysis shall depend on the circumstances of the particular grant or subagreement action.

§ 30.725–2 Price analysis.

A price analysis is the process of examining and evaluating a prospective price by comparison without evaluation of the composition of separate cost elements and proposed profit.

§ 30.725–3 Cost analysis.

A cost analysis is the process of examining, verifying and evaluating cost data and the judgmental factors applied in projecting from the basic cost data to a reasonable estimated price that will be representative of the total cost of performance of the grant or negotiated subagreement.

§ 30.725–4 Reequirements.

(a) A formal cost analysis shall be made and a summary of findings prepared for all research, demonstration, planning and training grant applications deemed relevant and requesting EPA funds in excess of $150,000 for the budget period.

(b) A formal cost analysis shall be made and a summary of findings prepared for all grant applications from profit making organizations deemed relevant.

(c) Any other grant application or subagreement may receive a cost analysis where EPA's program office or grants administration office considers it appropriate.

(d) Price analysis techniques may be used instead of or to supplement cost analysis wherever appropriate.

Subpart G—Grantee Accountability

§ 30.800 Financial management.

The grantee is responsible for maintaining a financial management system which shall adequately provide for:

(a) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with EPA reporting requirements. Accounting for project funds will be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

(b) Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all project funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized projects.

(d) Comparison of actual with budgeted amounts for each grant. If appropriate and required by the grant agreement, relation of financial information with performance or productivity data, including the production of unit cost information.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury through his commercial bank as close as possible to the time of making the disbursements.

(f) Procedures for determining the allowability and allocability of costs in accordance with the provisions of § 30.705.

(g) Accounting records which are supported by source documentation.

(h) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with the terms of the grant agreement. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds. Audits should be made in accordance with generally accepted auditing standards published by the General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. It is not required that each grant awarded a grantee be audited. Generally, examination should be conducted on an organization-wide basis. The grantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size and complexity of the activity. The grantee shall provide EPA with a copy of audits made by the grantee or at his direction.

[43 FR 28484, June 30, 1978]

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 30.805 Records.

The following record and audit policies are applicable to all EPA grants and to all subagreements in excess of $10,000 under grants.

(a) The grantee shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (1) the amount, receipt, and disposition by the grantee of all assistance received for the project, including both Federal assistance and any matching share or cost sharing, and (2) the total costs of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the EPA grant has been awarded. In addition, contractors of grantees, including contractors for professional services, shall also maintain books, documents, papers, and records which are pertinent to a specific EPA grant award. The foregoing constitute "records" for the purposes of this subpart.

(b) The grantee's records and the records of his contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying, and audit by EPA, the Comptroller General of the United States, the Department of Labor, or any authorized representative.

(c) The grantee and contractors of grantees shall preserve and make their records available to EPA, the Comptroller General of the United States, Department of Labor, or any authorized representative until expiration of 3 years, except that (1) if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved, (2) records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition, and (3) when records are transferred to or maintained by EPA, the 3-year retention requirement is not applicable to the grantee. The 3-year retention period starts (i) from the date of submission of the final financial status report for project grants, or, for grants which are awarded annually, from the date of the submission of the annual financial status report, (ii) from the date of approval of the final payment request for the last project of a construction grant for WWT works, and (iii) for such longer period, if any, as is required by applicable statute or lawful requirement, or by paragraphs (c)(2) (i) or (ii) of this section.

[43 FR 28484, June 30, 1978]

(i) If a grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

(ii) Records which relate to (a) appeals under the Subpart J–Disputes, of this Part, (b) litigation on the settlement of claims arising out of the performance of the project for which a grant was awarded, or (c) costs and expenses of the project to which exception has been taken by EPA or any of its duly authorized representatives, shall be retained until any appeals, litigation, claims or exceptions have been finally resolved.

§ 30.810 Property.

Except as otherwise prescribed by statute or the grant agreement, §§ 30.-810–1 through 30.810–9 prescribe policies and procedures governing management and ownership of real property and tangible personal property whose acquisition cost is borne in whole or in part by EPA as a direct cost under a grant. Grantees are authorized to use their own property management standards and procedures as long as the minimum standards of these sections are included.

§ 30.810–1 Definitions.

The following definitions apply for the purpose of §§ 30.180–1 through 30.810–9.

(a) *Acquisition cost of purchased nonexpendable personal property.* The net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was required. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

[43 FR 28484, June 30, 1978]

(b) *Real property.* Except as otherwise defined by State law, land or any interest therein including land improvements, structures, fixtures and appurtenances thereto, but excluding movable machinery and equipment.

(c) *Personal property.* Except as otherwise defined by State law, tangible property of any kind except real property.

(d) *Nonexpendable personal property.* Tangible personal property having a useful life of more than 1 year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all nonexpendable personal property as defined herein.

(e) *Expendable personal property.* Expendable personal property refers to all tangible personal property (including consumable materials) other than nonexpendable personal property.

§ 30.810–2 Purchase of property.

Expenditures of project funds for property may be allowed as direct costs only to the extent that such property is necessary for the approved project during the project period. Purchase orders for purchase of personal property are subagreements as defined in this Part.

§ 30.810–3 Property management standards.

The grantee's property management standards for nonexpendable personal property shall include as a minimum the following elements:

(a) Accurately maintained property records which include:

(1) A description of the property,

(2) Manufacturer's serial number, model number, or other identification number,

(3) Source of the property, including contract or grant number,

(4) Whether title vests in the grantee or the Federal Government,

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost,

(6) Location, use, condition of property, and date the information was reported.

[41 FR 56196, December 27, 1976]

(7) Ultimate disposition data, including sales price or the method used to determine current fair market value where a grantee compensates EPA for its share.

8) Unit acquisition cost.

[41 FR 56196, December 27, 1976]

(b) A physical inventory of property that is taken, and the results reconciled with the property records, at least once every 2 years. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(c) A control system which insures adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the Project Officer.

(d) Adequate maintenance procedures which insure that the property is maintained in good condition and that instruments used for precision measurement are periodically calibrated.

(e) Proper sales procedures for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(f) Identification of property owned by the Federal Government to indicate Federal ownership.

§ 30.810–4 Title to property.

Except as may be otherwise provided by law or in this Subchapter or in the grant agreement, title to all real or personal property whose acquisition cost is a direct cost under a grant project shall vest in the grantee, subject to such interest in the United States as may be provided for in this Subchapter or in the grant agreement. For all property with an acquisition cost of $10,000 or more per unit the grantee shall assure that the interest of the United States in the property is adequately reflected and protected in compliance with all recordation or registration requirements of the Uniform Commercial Code or other applicable local laws.

§ 30.810–5 Real property.

(a) The grantee shall use the real property for the purpose of the original grant.

(b) The grantee shall obtain approval from EPA for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by EPA.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the grantee shall request disposition instructions from EPA.

(d) EPA shall observe the following rules in the disposition instructions for real property:

(1) In the case of real property furnished by EPA or purchased wholly with EPA funds, the grantee shall return all such real property to the control of EPA.

(2) In the case of real property purchased in part with EPA funds, the grantee, at the direction of the Project Officer, may:

(i) Retain title with Federal restrictions removed if it compensates the Federal Government an amount computed by applying the Federal percentage of participation in the net cost of the project to the current fair market value of the property, or

(ii) Sell the property under guidelines provided by EPA, using proper sales procedures that provide for competition to the extent practicable and result in the highest possible return, and, except as provided in §30.810-5(d)(3), pay the Federal Government an amount computed by applying the Federal percentage of participation in the net cost of the project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds), or

[43 FR 28484, June 30, 1978]

(iii) Transfer title of the property to the Federal Government with its consent provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the net cost of the project to the current fair market value of the property.

(3) In the case of real property purchased in part with EPA funds allotted for purposes set forth in §35.940-3(a), the grantee, at the direction of the Project Officer, may sell the real property under procedures approved by EPA and may retain the amount of the Federal interest, as determined in §30.810-5(d)(2)(ii), to be used solely for paying the eligible costs (in accordance with §35.940) of the upgrading, expansion, replacement, or reconstruction of treatment works associated with the project.

[43 FR 28484, June 30, 1978]

§ 30.810-6 Federally-owned nonexpendable personal property.

(a) Title to federally owned property (property to which the Federal Government retains title) remains vested by law in the Federal Government.

(b) Upon termination of the grant or need for the property, such property shall be reported to EPA for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of EPA review. Under no circumstances shall grantees sell Government-owned property.

§ 30.810-7 Nonexpendable personal property acquired with Federal funds.

(a) *Use.*

(1) When nonexpendable personal property is acquired by a grantee as a direct cost under a grant, the grantee shall retain the property in the grant program for its useful life or as long as there is a need for the property to accomplish the purpose of the grant program, whichever is shorter.

(2) During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government is permissible subject to prior approval by EPA. User charges will be made, if appropriate.

(3) Except as may be provided in the grant agreement, when there is no longer a need for such property for the grant program, the grantee may utilize the property in the following order of priority:

(i) Other grant activities sponsored by EPA,

(ii) Grant activities sponsored by other Federal agencies.

[41 FR 56196, December 27, 1976]

(b) *Disposition.* When the grantee no longer has need for the property in any of its Federal grant programs, property disposition will be as follows:

(1) For all grantees except profit-making organizations, nonexpendable property with an acquisition cost of less than $1,000 may be used for a grantee's own activities without reimbursement to the Federal Government or the grantee may sell the property and retain the proceeds. Profit-making organizations may retain the property provided that EPA is compensated for its proportionate share of the property. Compensation shall be computed by applying the percentage of EPA participation in the cost of the project to the fair market value of the property.

(2) Nonexpendable property with an acquisition cost of $1,000 or more may be retained by the grantee provided that EPA is compensated for its proportionate share of the current market value of the property.

(3) When a grantee does not wish to retain property with an acquisition cost of $1,000 or more, as provided in paragraph (b)(2) of this section, or when a profit-making organization does not wish to retain property as provided in (b)(1) of this section, the grantee shall request disposition instructions from EPA. EPA shall determine whether the property can be used to meet other Agency requirements; if not, EPA shall report the availability of the property to the General Services Administration to determine whether a requirement for the property exists in other Federal agencies.

(4) EPA shall observe the following rules in the disposition instructions for nonexpendable personal property with an acquisition cost of $1,000 or more.

(i) EPA may waive title to the property with all Federal restrictions and conditions removed, if the grantee is a nonprofit institution of higher education or nonprofit research organization, in accordance with the provisions of the Grants Act (Pub. L. 85-934)

(ii) EPA may instruct the grantee to ship the property elsewhere. Compensation will be made to the grantee by the benefiting Federal agency. Compensation shall be computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(iii) EPA may instruct the grantee to otherwise dispose of the property. Compensation will be made to the grantee by EPA. Compensation shall be computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any costs incurred in its disposition.

(iv) EPA shall issue disposition instructions to the grantee within 120 days. If disposition instructions are not received within 120 days after reporting, the grantee shall sell the property and reimburse EPA an amount which is computed by applying the percentage of Federal participation in the grant program to the sales proceeds, less $100 or 10 percent of the proceeds, whichever is greater, for selling and handling expenses.

§ 30.810-8 Expendable personal property acquired with grant funds.

Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value upon termination or at the conclusion of the project period, and the property is not currently needed for any other federally-sponsored project or program, the grantee shall retain the property for use on nonfederally-sponsored activities, or sell it, but must in either case, compensate EPA for its share. The amount of such compensation shall be computed by applying the percentage of Federal participation in the net cost of the project to the current fair market value of the property.

[41 FR 56196, December 27, 1976]

§ 30.810–9 Property reports.

Property reports must be furnished in accordance with § 30.635–5.

§ 30.815 Final settlement.

Upon submission of the final financial status report pursuant to § 30.635–3, there shall be payable to the United States as final settlement the total sum of (a) any unexpended grant funds, (b) any amounts payable for equipment, materials, or supplies, pursuant to § 30.-810, (c) other grant related income, pursuant to § 30.620, and (d) an amount equivalent to that portion of project costs which are unallowable, in proportion to the EPA share and to the extent grant payments therefor have been made. Any settlement made prior to the final audit is subject to adjustment based on the audit. Final settlement will not be considered complete until all audit findings, appeals, litigations, or claims have been resolved. Any debt owed by the grantee to the United States, and not paid at the time of final settlement shall be recovered from the grantee or its successors by setoff or other action as provided by law.

§ 30.820 Audit.

(a) Preaward or interim audits may be performed on grant applications and awards.

(b) A final audit shall be requested by the grant award official after the submission of or the due date of the final financial status report under § 30.635-3. Any settlement made prior to the final audit is subject to adjustment based on the audit. Grantees and subcontractors of grantees shall preserve and make their records available under § 30.805.

[43 FR 28484, June 30, 1978]

Subpart H—Modification, Suspension and Termination

§ 30.900 Project changes and grant modifications.

(a) A grant modification means any written alteration in the grant amount, grant terms or conditions, budget or project period, or other administrative, technical, or financial agreement whether accomplished by unilateral action of the grantee or the Government in accordance with a provision of the grant agreement or this Subchapter, or by mutual action of the parties to the grant.

(b) The grantee must promptly notify the Project Officer in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant modification, such as:

(1) Rebudgeting (see § 30.610);

(2) Changes in approved technical plans or specifications for the project;

(3) Changes which may affect the approved scope or objective of a project;

(4) Significant changed conditions at the project site;

(5) Acceleration or deceleration in the time for performance of the project, or any major phase thereof;

(6) Changes which may increase or substantially decrease the total cost of a project (see § 30.900–1); or

(7) Changes in the Project Director or other key personnel identified in the grant agreement or a reduction in time or effort devoted to the project on the part of such personnel.

(c) Grant modifications are of four general types: formal grant amendments, administrative grant changes, transfer of grants and change of name agreements, and grantee project changes (see § 30.900–1 through § 30.900–4).

(d) A copy of each document pertaining to grant modifications or requests therefor (any administrative change, approved or disapproved project changes and any letter of approval or disapproval, grant amendment, or agreement for transfer of a grant or change of name agreement) shall be retained in the official EPA grant file.

(e) The document which effects a grant modification shall establish the effective date of the action. If no such date is specified, then the date of execution of the document shall be the effective date for the action.

§ 30.900–1 Formal grant amendments.

(a) Project changes which substantially alter the cost or time of performance of the project or any major phase thereof, which substantially alter the objective or scope of the project, or which substantially reduce the time or effort devoted to the project on the part of key personnel will require a formal grant amendment to increase or decrease the dollar amount, the term, or other principal provisions of a grant. This should not be constructed as to apply to estimated payment schedules under grants for construction of treatment works.

(b) No formal grant amendment may be entered into unless the Project Officer has received timely notification of the proposed project change. However, if the Project Officer determines that circumstances justify such action, he may receive and act upon any request for formal grant amendment submitted (1) prior to final payment under grants for which payments of the Federal share have been made by reimbursement and (2) prior to grant closeout of other grants. Formal grant amendments may be executed subsequently only with respect to matters which are the subject of final audit or dispute appeals.

(c) A formal grant amendment shall be effected only by a written amendment to the grant agreement. Such amendments shall be bilaterally executed by the EPA grant award official and the authorized representative of the grantee. However, in cases where this Subchapter or the grant agreement give the government a unilateral right (for example, the suspension or termination rights set forth in §§ 30.915 and 30.920, the withholding of grant payment pursuant to §30.615-3, or the reduction of the grant amount under §35.556 of this subchapter, any such right may be exercised by the appropriate EPA official (generally, the grant award official) in accordance with this Subchapter.

(d) The grants administration office shall prepare all formal grant amendments after approval of the modification by the Project Officer or Grant Approving Official, as appropriate.

§ 30.900–2 Administrative grant changes.

These changes, such as a change in the designation of the Project Officer, or of the office to which a report is to be transmitted, or a change in the payment schedule for grants for construction of treatment works, constitute changes to the grant agreement (but not necessarily to the project work) and do not affect the substantive rights of the Government or the grantee. Such changes may be issued unilaterally by the EPA grant award official or Project Officer and do not require the concurrence of the grantee. Such changes must be in writing and will generally be effected by a letter (certified mail, return receipt requested) to the grantee.

§ 30.900–3 Transfer of grants; change of name agreements.

Transfers of grants and change of name agreements require the prior written approval of the grant award official. The grant award official may not approve any transfer of a grant without the concurrence of the grant approving official and consultation with the Regional Counsel or the Assistant General Counsel, Grants, nor may he approve any change of name agreement without consultation with the Regional Counsel or the Assistant General Counsel, Grants. The grants administration office shall prepare the necessary documents upon receipt from the Project Officer of appropriate information and documentation submitted by the grantee.

§ 30.900–4 Grantee project changes.

Project changes not covered by §§ 30.900–1 through 30.900–3 shall be considered grantee project changes not requiring formal grant amendments.

(a) Rebudgeting changes may require prior written approval pursuant to § 30.610.

(b) All other grantee project changes shall be considered approved unless the Project Officer notifies the grantee of disapproval, with adequate explanation of the reason therefor, or the necessity for the execution of a grant amendment, in writing (certified mail, return receipt requested) not later than 3 weeks after receipt of notice pursuant to § 30.900(b). No action taken pursuant to this section shall commit or obligate the United States to any increase in the amount of a grant or payments thereunder, but shall not preclude consideration of a request for a formal grant amendment pursuant to § 30.900–1.

§ 30.915 Suspension of grants—stop work orders.

Work on a project or on a portion or phase of a project for which a grant has been awarded may be ordered stopped by the grant award official, except for grants to educational institutions or nonprofit research organizations.

§ 30.915–1 Use of stop-work orders.

Work stoppage may be required for good cause such as default by the grantee, failure to comply with the terms and conditions of the grant, realignment of programs, lack of adequate funding, or advancements in the state of the art. Inasmuch as stop-work orders may result in increased costs to the Government by reason of standby costs, such orders will be issued only after concurrence by the grant approving official and the Regional Counsel or the Assistant General Counsel, Grants. Generally, use of a stop-work order will be limited to those situations where it is advisable to suspend work on the project or a portion or phase of the project for important program or agency considerations and a supplemental agreement providing for such suspension is not feasible. Although a stop-work order may be used pending a decision to terminate by mutual agreement or for other cause, it will not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

§ 30.915–2 Contents of stop-work orders.

Prior to issuance, stop-work orders should be discussed with the grantee and should be appropriately modified, in the light of such discussions. Stop-work orders should include (a) a clear description of the work to be suspended, (b) instructions as to the issuance of further orders by the grantee for materials or services, (c) guidance as to action to be taken on subagreements, and (d) other suggestions to the grantee for minimizing costs.

§ 30.915–3 Issuance of stop-work order.

After appropriate concurrence in the proposed action has been obtained, the EPA grant award official may, by written order to the grantee (certified mail, return receipt requested), require the grantee to stop all, or any part of the project work for a period of not more than forty-five (45) days after the order is delivered to the grantee, and for any further period to which the parties may agree. The grants administration office shall prepare the stop-work order. Any such order shall be specifically identified as a stop-work order issued pursuant to this section.

§ 30.915–4 Effect of stop-work order.

(a) Upon receipt of a stop-work order, the grantee shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed. EPA shall either:

(1) Cancel the stop-work order, in full or in part,

(2) Terminate the work covered by such order as provided in § 30.920, or

(3) Authorize resumption of work.

(b) If a stop-work order is canceled or the period of the order or any extension thereof expires, the grantee shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant instrument shall be amended accordingly, if:

(1) The stop-work order results in an increase in the time required for, or an increase in the grantee's cost properly allocable to the performance of any part of the project, and

(2) The grantee asserts a written claim for such adjustment within sixty (60) days after the end of the period of work stoppage. However, if the Project Officer determines the circumstances justify such action, he may receive and act upon any such claim asserted in accordance with § 30.900–1(b).

(c) If a stop-work order is not canceled and the grant-related project work covered by such order is within the scope of a subsequently-issued termination order, the reasonable costs resulting from the stop-work order shall be allowed in arriving at the termination settlement.

(d) Costs incurred by the grantee or its contractors, subcontractors, or representatives, after a stop-work order is delivered, or within any extension of the stop-work period to which the parties shall have agreed, with respect to the project work suspended by such order or agreement which are not authorized by this Section or specifically authorized in writing by the grant award official, shall not be allowable costs.

§ 30.915–5 Disputes provision.

Failure to agree upon the amount of an equitable adjustment due under a stop-work order shall constitute a dispute (see Subpart J of this part).

§ 30.920 Termination of grants.

A grant may be terminated in whole or in part by the grant award official upon the recommendation of the Project Officer and after concurrence of the grant approving official in the proposed action and consultation with the Regional Counsel or the Assistant General Counsel, Grants.

§ 30.920–1 Termination agreement.

The parties may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with this Subchapter. The agreement shall establish the effective date of termination of the project and grant, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party. The grants administration office will prepare the termination document.

§ 30.920–2 Project termination by grantee.

A grantee may not unilaterally terminate the project work for which a grant has been awarded, except for good cause. The grantee must promptly give written notice to the Project Officer of any complete or partial termination of the project work by the grantee. If the Project Officer determines, with the concurrence of the EPA grant approving official, that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, the EPA grant award official may enter into a termination agreement or unilaterally terminate the grant pursuant to § 30.920–3, effective with the

date of cessation of the project work by the grantee. If the Project Officer, with the concurrence of the EPA grant approving official, determines that a grantee has ceased work on the project without good cause, the grant award official may unilaterally terminate the grant pursuant to § 30.920–3 or annul the grant pursuant to § 30.920–5.

§ 30.920–3 Grant termination by EPA.

(a) *Notice of intent to terminate.* After concurrence in the issuance of a termination notice has been obtained from the EPA grant approving official and the Regional Counsel or the Assistant General Counsel, Grants, the grant award official shall give not less than ten (10) days written notice to the grantee (certified mail, return receipt requested) of intent to terminate a grant in whole or in part.

(b) *Termination action.* The grantee must be afforded an opportunity for consultation prior to any termination. After the EPA grant approving official and the Regional Council or the Assistant General Counsel, Grants, have been informed of any expressed views of the grantee and concur in the proposed termination, the grant award official may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(c) *Basis for termination.* A grant may be terminated by EPA for good cause subject to negotiation and payment of appropriate termination settlement costs.

(d) *Method of Termination.* The preferred method of grant termination shall be by mutual agreement through a bilaterally executed grant agreement providing for payment of termination costs. However, if such agreement is not feasible, then the grant award official may unilaterally terminate the grant, in whole or in part.

[43 FR 28484, June 30, 1978]

§ 30.920–4 Effect of termination.

Upon termination, the grantee must refund or credit to the United States that portion of grant funds paid or owed to the grantee and allocable to the terminated project work, except such portion thereof as may be required to meet commitments which had become firm prior to the effective date of termination and are otherwise allowable. The grantee shall not make any new commitments without EPA approval. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the Project Officer the uncommitted balance of funds awarded under the grant. The allowability of termination costs will be determined in conformance with applicable Federal cost principles listed in § 30.710.

§ 30.920–5 Annulment of grant.

(a) The grant award official may unilaterally annul the grant if the Project Officer determines, with the concurrence of the appropriate Assistant Administrator or Regional Administrator and the Regional Counsel or Assistant General Counsel, Grants, that:

(1) There has been no substantial performance of the project work without good cause;

(2) There is convincing evidence the grant was obtained by fraud; or

(3) There is convincing evidence of gross abuse or corrupt practices in the administration of the project.

(4) The grantee has inordinately delayed completion of the project without good cause; or

(5) The grantee has failed to achieve the project purpose (e.g., preparation of a research report) or to utilize the project (e.g., construction) to the extent that the fundamental purpose of the grant is frustrated.

[43 FR 28484, June 30, 1978]

(b) In addition to such remedies as may be available to the United States under Federal, State, or local law, all EPA grant funds previously paid to the grantee shall be returned or credited to the United States, and no further payments shall be made to the grantee.

§ 30.920–6 Disputes provision.

The grantee may appeal a termination or annulment action taken pursuant to this section (see Subpart J of this part).

Subpart I—Deviations

§ 30.1000 General.

The Director, Grants Administration Division, is authorized to approve deviations from substatutory requirements of this Subchapter or grant related requirements of this Chapter when he determines that such deviations are essential to effect necessary grant actions or EPA objectives where special circumstances make such deviations in the best interest of the Government.

§ 30.1000–1 Applicability.

A deviation shall be considered to be any of the following:

(a) when limitations are imposed by this Subchapter or by grant related requirements of this Chapter upon the use of a procedure, form, grant clause, or any other grant action, the imposition of lesser or greater limitations,

(b) when a policy, procedure, method or practice of administering or conducting grant actions is prescribed by this Subchapter or by grant related requirements of this Chapter, any policy, procedure, method, or practice inconsistent therewith,

(c) when a prescribed grant clause is set forth verbatim in this Subchapter, use of a clause covering the same subject matter which varies from, or has the effect of altering, the prescribed clause or changing its application,

(d) when a limitation on award or grant condition is set forth in this Subchapter but not for use verbatim, use of a special condition covering the same subject matter which is inconsistent with the intent, principle, or substance of the limitation or condition, or related coverage of the subject matter,

(e) omission of any mandatory grant provision,

(f) when an EPA or other form is prescribed by this Subchapter, use of any other form for the same purpose, or

(g) alteration of an EPA or other form prescribed in this Subchapter.

§ 30.1000–2 Request for deviation.

A request for a deviation shall be submitted in writing to the Director, Grants Administration Division, as far in advance as the exigencies of the situation will permit. Each request for a deviation shall contain as a minimum:

(a) the name of the applicant or the grantee and the grant identification number of the application or grant affected, and the dollar value,

(b) identification of the section of this Subchapter or the grant related requirements of this Chapter from which a deviation is sought,

(c) an adequate description of the deviation and the circumstances in which it will be used, including any pertinent background information which will contribute to a fuller understanding of the deviation sought, and

(d) a statement as to whether the same or a similar deviation has been requested previously, and if so, circumstances of the previous request.

§ 30.1000–3 Approval of deviation.

Deviations may be approved only by the Director of the Grants Administration Division or his duly authorized representative. A copy of each such written approval shall be retained in the official EPA grant file. Concurrence in the approval of the deviation by the appropriate Assistant Administrator(s) is required prior to its effectiveness, where the deviation would involve more than a unique, special situation, e.g., will affect grantees as a class.

Subpart J—Disputes

§ 30.1100 Final Disputes Decision.

(a) Any dispute arising under a grant, or any preaward dispute authorized by this subchapter (see, for example, §§ 35.236 and 35.960), shall be decided, at the request of the applicant or grantee, by the Grant Approving Official or by the Project Officer (with the concurrence of the Grant Approving Official).

(b) Each final decision must adequately notify the recipient in writing (with proof of delivery) that the decision is a final decision which shall become final and conclusive, unless timely appealed. The following paragraph or alternate language approved by the Office of General Counsel must be utilized as the final paragraph of each final decision letter:

This is a final Disputes decision by me, the Grant Approving Official. Under applicable EPA regulations (see particularly Subpart J or 40 CFR Part 30), this decision will be final and conclusive *unless, within thirty (30) days from the date of receipt* of this decision, a brief written notice of appeal, addressed to the Administrator, Environmental Protection Agency (Attention: Office of General Counsel), is mailed by certified mail (return receipt requested) or otherwise delivered to [insert name and address of either the Grant Approving Official or the Project Officer, as appropriate]. (You will be notified of further procedural requirements applicable to your appeal by a subsequent letter.) Your notice of appeal need only indicate that an appeal is intended, refer to this final decision by date, and briefly state the ultimate reasons why the decision is considered to be erroneous.

(c) An EPA official who receives a notice of appeal from a final decision should preserve the envelope in which the appeal was transmitted and other data evidencing the date of mailing of the notice of appeal (or the date of receipt, if the notice was otherwise delivered) and should promptly forward such information and the original of the notice of appeal to the Office of the General Counsel.

[43 FR 28484, June 30, 1978]

§ 30.1105 Grantee appeal.

A decision of the Project Officer made pursuant to § 30.1100 shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the grantee mails (certified mail, return receipt requested) or otherwise delivers to EPA (generally, to the Project Officer) a written appeal addressed to the Administrator.

§ 30.1115 Rights of the grantee and the Government.

In connection with an appeal proceeding pursuant to § 30.1110 the grantee shall be afforded an opportunity to be heard, to be represented by legal counsel, to offer evidence and testimony in support of any appeal, and to cross-examine Government witnesses and to examine documentation or exhibits offered in evidence by the Government or admitted to the appeal record (subject to the Government's right to offer its own evidence and testimony, to cross-examine the appellant's witnesses, and to examine documentation or exhibits offered in evidence by the appellant or admitted to the appeal record). The appeal shall be determined solely upon the appeal record.

§ 30.1120 Decision of the Administrator.

The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as to imply bad faith, or not supported by substantial evidence.

§ 30.1125 Questions of law.

Any question of law may be considered in connection with decisions provided for by this Subpart. Nothing in the grant agreement or related regulations, however, shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

§ 30.1130 Delegation of authority.

The General Counsel is authorized to appoint hearing examiners to hear and decide grant appeals from final dispute determinations under this subpart.

[43 FR 28484, June 30, 1978]

§ 30.1150 Appeal procedures.

The procedures for grant appeals under this subpart shall be those designated by the General Counsel. A copy of such procedures may be obtained from the Office of General Counsel.

[43 FR 28484, June 30, 1978]

Appendix A—General Grant Conditions

a. General Conditions. The grantee covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this grant, in accordance with the applicable grant provisions of 40 CFR Subchapter B. The grantee warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with 40 CFR Subchapter B, the following General Conditions, the applicable supplemental conditions of 40 CFR Subchapter B, as amended, and any Special Conditions set forth in this grant agreement or any grant amendment.

1. *Access.* The grantee agrees that it will provide access to the facilities, premises and records related to the project as provided in §§ 30.605 and 30.805 of 40 CFR Subchapter B.

2. *Audit and records.* The grantee agrees that it will maintain an adequate system for financial management, property management and grantee audit in accordance with §§ 30.800 and 30.810-3, and that it will maintain, preserve and make available to the Government all project records for the purpose of inspection, interim and final audit, and copying as required by §§ 30.605 30.805, and 30.820 of 40 CFR Subchapter B.

3. *Reports.* The grantee agrees to timely file with EPA such reports as are specifically required by the grant agreement or pursuant to 40 CFR Subchapter B, including progress reports (§ 30.635-1), financial reports (§ 30.635-3), invention reports (§ 30.635-4), property reports (§ 30.635-5), relocation and acquisition reports (§ 30.635-6) and a final report (§ 30.635-2), and that failure to timely file a report may cause EPA to invoke the remedies provided in 40 CFR 30.430.

4. *Project changes; Grant modifications.* The grantee agrees that notification of project changes will be given pursuant to 40 CFR 30.900(b) and that all grant modifications will be effected in accordance with 40 CFR 30.900 through 30.900-4.

5. *Requirements pertaining to federally assisted construction.* The grantee agrees that it will comply, and that its contractors, subcontractors, employees and representatives will comply, with the requirements pertaining to federally assisted construction identified in 40 CFR 30.415.

6. *Suspension.* (a) The grantee agrees that the grant award official may, at any time, require the grantee to stop all, or any part, of the work within the scope of the project for which EPA grant assistance was awarded, by a written stop-work order, for a period of not more than forty-five (45) days after the order is delivered to the grantee, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop-work order issued pursuant to this clause. Upon receipt of such an order, the grantee agrees to forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. This suspension article shall not be applicable to educational institutions or nonprofit research organizations.

(b) The grantee agrees that, within any such suspension period, EPA may either (1) cancel the stop-work order, in full or in part; or (2) initiate action to terminate the grant, in part or in full, as provided in Article 7, below; or (3) authorize resumption of work.

(c) If a stop-work order is canceled or if the suspension period or any extension thereof expires, the grantee agrees to promptly resume the previously suspended project work.

(d) An equitable adjustment shall be made in the project period, budget period, or the grant amount, or all of these as appropriate, if:

must concurrently transmit a copy of the documents and any attachments to all other parties with a direct financial interest which may be adversely affected by the determination of the protest. Also, a party which submits a document to the award official during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.

§ 33.1130 Deferral of procurement action.

(a) The recipient should review each protest filed with it to determine whether it is appropriate to defer the protested procurement action.

(b) When the award official receives a protest appeal, the award official must promptly request that the recipient defer the protested procurement action, if it has not already done so, until the award official notifies the recipient of the formal or informal resolution of the appeal. Such deferral of the procurement action shall be limited to the award of the subagreement, or subitem which is the basis of the protest.

(c) If the recipient does not defer the procurement action it bears the risk that the award official will disallow the cost of the protested procurement action if the protest appeal is upheld.

(d) If the protester does not agree to the recipient's request for a reasonable extension of the bid and bid bond period, the recipient or award official can summarily dismiss the protest appeal.

§ 33.1135 Award official's review.

(a) The award official will give both the recipient and the protester, as well as any other party with a financial interest which may be adversely affected by the determination of protest, an opportunity to present arguments in support of their views in writing or at a conference.

(b) The award official shall review the record considerd by the recipient, and any other documents or arguments presented by the parties, to determine whether the recipient has complied with the procurement requirements of this Part and has a rational basis for its determination of protest.

(c) After the award official's announced date for receipt of written arguments, the record shall be closed.

(d) The award official's determination shall constitute final EPA action, from which there shall be no further administrative appeal. No party may appeal an award official's determination of appeal to the EPA Board of Assistance Appeals.

(e) Nothing in this subpart precludes the award official from reviewing the recipient's procurement action. (See § 33.115.)

(f) Noncompliance with the award official's determination of protest shall be cause for enforcement action under 40 CFR Parts 30 and 32.

(g) If an appeal involves legal issues not explicitly addressed by this Part or State or local law, the award official shall resolve the issue by referring to other protest determinations under this section and decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this Part.

Appendix A—Procedural Requirements for Recipients Who Do Not Certify Their Procurement System, or for Recipients Who Have Their Procurement Certification Revoked by EPA

(a) The following procedural requirements apply to recipients who:

(1) Do not certify to EPA that their procurement system meets the minimum procurement requirements in this Part, or

(2) Have their procurement certification revoked by the award official as stated in § 33.115(b).

(b) Those recipients must comply with the requirements in this Part, plus the following procedural requirements. These procedural requirements supplement the requirements in the sections cited.

(1) To comply with § 33.250, "Documentation," the recipient must submit to the award official the records required by this section.

(2) To comply with § 33.290, "Cost and price considerations," the recipient's contractors and subcontractors must submit their cost or price data of EPA Form 5700–41 "Cost or Price Summary Format for Subagreements Under U.S. EPA Grants," or on a form which contains information similar to that required by the EPA Form 5700–41.

(3) To comply with § 33.420, "Time for preparing bids," the recipient must generally allow at least 30 days between the date when it first publishes the public notice and the date by which bids must be submitted.

(4) To comply with § 33.415, "Public notice and solicitation of bids," when the estimated cost of construction is expected to exceed $10 million, the recipient must generally publish the notice in trade journals of nationwide distribution for a least 30 days.

(5) To comply with § 33.510, "Adequate public notice," the recipient must generally publish the notice in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days. The recipient may use posted public notices or written notification directed to interested persons, firms or professional organizations.

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(1) the stop-work order results in an increase in the time required for, or in the grantee's costs properly allocable to, the performance of any part of the project, and

(2) the grantee asserts a written claim for such adjustment within sixty (60) days after the end of the period of work stoppage, *provided*, That if the Project Officer determines that the circumstances justify such action (for example, if the impact of cost or time factors resulting from a stop-work order could not have been ascertained prior to written submission of the claim), he may receive and act upon any such claim asserted at any time prior to final payment under this grant.

(e) If a stop-work order is not canceled and grant-related project work covered by such order is within the scope of a subsequently-issued termination order, the reasonable costs resulting from the stop-work order shall be allowed in arriving at the termination settlement.

(f) The grantee agrees that costs incurred by the grantee or its contractors, subcontractors or representatives, after a stop-work order is delivered, or within any extension of the suspension period to which the parties may have agreed, with respect to the project work suspended by such order or agreement, which are not authorized by this article or specifically authorized in writing by the Project Officer shall not be allowable costs.

7. *Termination; Annulment*—(a) *Grant Termination by EPA.* The grantee agrees that the grant award official may, at any time, after written notice and after opportunity for consultation has been afforded to the grantee, terminate the grant, in whole or in part, through a written termination notice specifying the effective date of the termination action.

(1) A grant may be terminated by EPA for good cause, subject to negotiation and payment of termination settlement costs.

(2) The grantee agrees that, upon such termination, it will return or credit to the United States that portion of grant funds paid or owed to the grantee and allocable to the terminated project work, except such portion as may be required by the grantee to meet commitments which had become firm prior to the effective date of termination and are otherwise allowable.

(3) Whenever feasible, the grant award official and the grantee shall enter into a termination agreement as soon as possible after any such termination action to establish the basis for settlement of grant termination costs and the amount and date of payment of any sums due to either party.

(b) *Project termination by grantee.* The grantee agrees that it will not unilaterally terminate work on the project for which EPA grant assistance has been awarded, except for good cause. The grantee further agrees:

(1) that it will promptly give written notice to the Project Officer of any complete or partial termination of the project work by the grantee, and

(2) that, if the Project Officer determines that the grantee has terminated the project work without good cause, the grant award official may annul the grant and all EPA grant funds previously paid or owing to the grantee shall be promptly returned or credited to the United States.

Upon request of the grantee, and if the Project Officer determines that there is good cause for the termination of all or any portion of the project work for which EPA grant assistance has been awarded, the grant award official and the grantee may enter into a written termination agreement establishing the effective date of the grant and project termination, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due to either party.

(c) *Annulment.* The grantee agrees that the grant may be annuled pursuant to 40 CFR 30.920–5.

8. *Disputes.* (a) Except as otherwise provided by law or regulations, any dispute arising under this grant agreement shall be decided by the grant approving official or the Project Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the grantee. Such a decision shall be final and conclusive unless, within thirty (30) days from the date of receipt, the grantee mails or otherwise delivers to EPA (generally to the Project Officer) a written appeal addressed to the Administrator.

(b) The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as to imply bad faith, or not supported by substantial evidence.

(c) In connection with an appeal proceeding under this article, the grantee shall be afforded an opportunity to be heard, to be represented by legal counsel, to offer evidence and testimony in support of any appeal, and to cross-examine Government witnesses and to examine documentation or exhibits offered in evidence by the Government or admitted to the appeal record (subject to the Government's right to offer its own evidence and testimony, to cross-examine the appellant's witnesses, and to examine documentation or exhibits offered in evidence by the appellant or admitted to the appeal record). The appeal shall be determined solely upon the appeal record, in accordance with the applicable provisions of Subpart J of Part 30 of Title 40 CFR.

(d) This "Disputes" article shall not preclude consideration of any question of law in connection with decisions provided for by this article; provided, that nothing in this grant or related regulations shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

(9) *Patents; rights in data,* copyright. (a) Every EPA grant involving research, developmental, experimental, or demonstration work shall be subject to the patent provisions of Appendix B to 40 CFR Part 30.

(b) Every EPA grant shall be subject to the rights in data, and copyright provisions of Appendix C to 40 CFR Part 30.

10. *Notice and assistance regarding patent and copyright infringement.* (a) The grantee agrees to report to the Project Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee agrees to furnish to the Government, when requested by the Project Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

Note: EPA Form 5700–20, Grant Agreement/Amendment was filed as part of the original document

Appendix B—Patents and Inventions

A. *Definitions.* (1) "Background Patent" means a foreign or domestic patent (regardless of its date of issue relative to the date of the EPA grant):

(i) Which the grantee, but not the Government, has the right to license to others, and

(ii) Infringement of which cannot be avoided upon the practice of a Subject Invention or Specified Work Object.

(2) "Commercial Item" means—

(i) Any machine, manufacture, or composition of matter which, at the time of a request for a license pursuant to Part D of this Appendix, has been sold, offered for sale or otherwise made available commercially to the public in the regular course of business, at terms reasonable in the circumstances, and

(ii) Any process which, at the time of a request for a license, is in commercial use, or is offered for commercial use, so the results of the process or the products produced thereby are or will be accessible to the public at terms reasonable in the circumstances.

(3) "Specified Work Object" means the specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is the subject of the experimental, developmental, research or demonstration work performed under this grant.

(4) "Grantee" is the party which has accepted this grant award and includes entities controlled by the grantee. The term "controlled" means the direct or indirect ownership of more than 50 percent of outstanding stock entitled to vote for the election of directors, or a directing influence over such stock; provided, however, that foreign entities not wholly owned by the grantee shall not be considered as "controlled."

(5) "Subagreement" includes subagreements at any tier under this grant.

(6) "Domestic" and "foreign" refer, respectively, (i) to the United States of America, including its territories and possessions, Puerto Rico and the District of Columbia and (ii) to countries other than the United States of America.

(7) "Government" means the Federal Government of the United States of America.

(8) "Subject Invention" means any invention, discovery, improvement or development (whether or not patentable) made in the course of or under this grant or any subagreement (at any tier) thereunder.

(9) "Made," when used in connection with any invention, means the conception or first actual reduction to practice of such invention.

(10) To "practice an invention or patent" means the right of a licensee on his own behalf to make, have made, use or have used,

sell or have sold, or otherwise dispose of according to law, any machine, design, manufacture, or composition of matter physicially embodying the invention, or to use or have used the process or method comprising the invention.

(11) The phrase "to bring to the point of practical application" means to manufacture in the case of composition or product, to use in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(12) "Statement" means the President's Patent Policy Statement of August 23, 1971, 36 F.R. 16839, August 26, 1971.

B. *Domestic patent rights in Subject Inventions.* (1) The grantee agrees that he will promptly disclose to the Project Officer in writing each Subject Invention in a manner sufficiently complete as to technical details to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation and, as the case may be, the physical, chemical, biological, or electrical characteristics of the invention. However, if any Subject Invention is obviously unpatentable under the patent laws of the United States, such disclosure need not be made thereon. On request of the Project Officer, the grantee shall comment respecting the differences or similarities between the invention and the closest prior art drawn to his attention.

(2) Except in the instance of a determination, pursuant to paragraph (3) of this Section, by the Administrator to leave to the grantee rights greater than a nonexclusive license, the grantee agrees to grant and does hereby grant to the Government the full and entire domestic right, title, and interest in the Subject Invention, subject to retention by the grantee of a revocable, nonexclusive, royalty-free license to practice the Subject Invention. Any such license granted shall extend to any existing and future companies controlled by, controlling or under common control with the grantee and shall be assignable to the successor of the part of the grantee's business to which such invention pertains. Said license to the grantee may be revoked by the Administrator or his designee if it is determined that it is necessary to issue an exclusive license, pursuant to then applicable Government regulations, in order to more expeditiously bring the invention to commercialization; provided, however, that the grantee shall be provided the opportunity to present to the Administrator reasons why said license should not be revoked.

(3) Not later than three (3) months after the disclosure of a Subject Invention pursuant to paragraph (1) of this Section, and without regard to whether the invention is a primary object of this grant, the grantee may submit a request in writing to the Project Officer for a determination by the Administrator leaving the grantee greater rights than that reserved to the grantee in paragraph (2) of this Section. Such request should set forth information and facts which in the grantee's opinion, should justify a determination that:

(i) In the case of a Subject Invention which is clearly a primary object of this grant, the acquisition of such greater rights by the grantee is both consistent with the intent of Section 1(a) of the Statement and is either a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application or is justified because the Government's contribution to such invention is small compared to that of the grantee; or that

(ii) The Subject Invention is not a primary object of this grant, and that the acquisition of such greater rights will serve the public interest as expressed in the Statement, particularly when taking into account the scope and nature of the grantee's stated intentions to bring the invention to the point of practical application and the guidelines of Section 1(a) of the Statement. The Administrator will review the grantee's request for greater rights and will make a determination, either granting the request in whole or in part, or denying the request in its entirety. The grantee will be notified of such determination.

(4) In the event greater rights in any Subject Invention are vested in or granted to the grantee pursuant to paragraph (3) of this Section:

(i) The grantee's rights in such inventions shall, as a minimum, be subject to a nonexclusive, nontransferable, paid-up license to the Government to practice the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Administrator determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments; and said license shall include the right to sublicense any foreign government pursuant to any existing or future treaty or agreement if the Administrator determines it would be in the national interest to acquire this right; and

(ii) The grantee further agrees to and does hereby grant to the Government the right to require the granting of a license to a responsible applicant(s) under any such invention:

(a) On a nonexclusive or exclusive basis on terms that are reasonable under the circumstances, unless the grantee, its licensees or its assignees demonstrate to the Government, at the Government's request, that effective steps have been taken within three (3) years after a patent was issued on any such invention to bring it to the point of practical application, or that it has been made available for licensing royalty-free or in terms that are reasonable in the circumstances, or can show cause why the time period should be extended, or

(b) On a nonexclusive or exclusive basis on terms that are reasonable in the circumstances to the extent that the invention is required for public use by Governmental regulations or as may be necessary to fulfill health or safety needs or for such other public purposes as are stipulated in this grant; and

(iii) The grantee shall file in due form and within six (6) months of the granting of such greater rights a U.S. patent application claiming the Subject Invention and shall furnish, as soon as practicable, the information and materials required under paragraph (2) of Section F. As to each Subject Invention in which the grantee has been given greater rights, the grantee shall notify the Project Officer at the end of six (6) months period if he has failed to file or caused to be filed a patent application covering such invention. If the grantee has filed or caused to be filed such an application within a six (6) month period but elects not to continue prosecution of such application, he shall so notify the Project Officer, and EPA Patent Counsel not less than forty-five (45) days before the expiration of the response period. In either of the situations covered by the two immediately preceding sentences, the Government shall be entitled to all right, title, and interest in such Subject Invention subject to the reservation to the grantee of a revocable royalty-free, nonexclusive license therein.

(iv) The grantee shall, if requested by the Government, either before or after final closeout of this grant, furnish written reports at reasonable intervals, as to:

(a) The commercial use that is being made or is intended to be made of such invention;

(b) The steps taken by the grantee to bring such invention to the point of practical application, or to make the invention available for licensing.

(5) Even in the event the Government elects to take the full and entire domestic title and interest in a Subject Invention, the Project Officer may request, prior to grant closeout, that the grantee prepare a domestic patent application for filing in the United States Patent Office on such invention and deliver it to the Project Officer for filing by EPA. Reasonable costs incurred for the preparation of such application or any revision thereof requested by EPA shall be allowable project costs.

C. *Foreign rights and obligations.* (1) Subject to the waiver provisions of paragraph (2) of this section, it is agreed that the entire foreign right, title, and interest in any Subject Invention shall be in the Government, as represented for this purpose by the Administrator. The Government agrees to grant and does hereby grant to the grantee a royalty-free nonexclusive license to practice the invention under any patent obtained on such Subject Invention in any foreign country. The license shall extend to existing and any future companies controlled by, controlling or under common control with the grantee, and shall be assignable to the successor of the part of the grantee's business to which such invention pertains.

(2) The grantee may request the foreign rights to a Subject Invention at any time subsequent to the reporting of such invention. The response to such request and notification thereof to the grantee will not be unreasonably delayed. The Government will waive title to the grantee to such Subject Invention in foreign countries in which the Government will not file an application for a patent for such invention, or otherwise secure protection therefor. Whenever the grantee is authorized to file in any foreign country the Government will not thereafter proceed with filing in such country except on the written agreement of the grantee, unless such authorization has been revoked pursuant to paragraph (3) of this Section.

(3) In the event the grantee is authorized to file a foreign patent application on a Subject Invention, the Government agrees that it will use its best efforts not to publish a description of such invention until a United States or foreign application on such invention is filed, whichever is earlier, but neither the Government, its officers, agents, or employees shall be liable for an inadvertent publication thereof. If the grantee is au-

thorized to file in any foreign country, he shall, on request of the Project Officer, furnish to the Government a patent specification in English within six (6) months after such authorization is granted, prior to any foreign filing and without additional compensation. The Project Officer, after concurrence by the EPA Patent Counsel, may revoke such authorization on failure on the part of the grantee to file any such foreign application within nine (9) months after such authorization has been granted.

(4) If the grantee files patent applications in foreign countries pursuant to authorization granted under paragraph (2) of this section, the grantee agrees to grant to the Government an irrevocable, nonexclusive, paid-up license to practice by or on its behalf the invention under any patents which may issue thereon in any foreign country. Such license shall include the right to issue sublicenses pursuant to any existing or future treaties or agreements between the Government and a foreign government for uses of such foreign government, provided the Administrator determines that it is in the national interest to acquire such right to sublicense.

(5) In the event the Government or the grantee elects not to continue prosecuting any foreign application or to maintain any foreign patent on a Subject Invention, the other party shall be notified no less than sixty (60) days before the expiration of the response period or maintenance tax due date, and upon written request, shall execute such instruments (prepared by the party wishing to continue the prosecution or to maintain such patent) as are necessary to enable such party to carry out its wishes in this regard.

D. *Licenses under background patents.* (1) The grantee agrees that he will make his Background Patent(s) available for use in conjunction with a Subject Invention or Specified Work Object for use in the specific field of technology in which the purpose of this grant or the work called for or required thereunder falls. This may be done (i) by making available, in quality, quantity, and price all of which are reasonable to the circumstances, an embodiment of the Subject Invention or Specified Work Object, which incorporates the invention covered by such Background Patent, as a Commercial Item, or (ii) by the sale of an embodiment of such Background Patent as a Commercial Item in a form which can be employed in the practice of a Subject Invention or Specified Work Object or can be so employed with relatively minor modifications, or (iii) by the licensing of the domestic Background Patent(s) at reasonable royalty to responsible applicants on their request.

(2) If the Administrator determines after a hearing that the quality, quantity, or price of embodiments of the Subject Invention or Specified Work Object sold or otherwise made available commercially as set forth in (D)(1)(i) is unreasonable in the circumstances, he may require the grantee to license such domestic Background Patent to a responsible applicant at reasonable terms, including a reasonable royalty, for use in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, and for use in connection with (i) a Specified Work Object, or (ii) a Subject Invention.

(3)(i) When a license to practice a domestic Background Patent in conjunction with a Subject Invention or Specified Work Object is requested in writing by a responsible applicant, for use in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, and such Background Patent is not available as set forth in D(1) (i) or (ii), the grantee shall have six (6) months from the date of his receipt of such request to decide whether to make such Background Patent so available. The grantee shall promptly notify EPA in writing of any request for a license to practice a Background Patent in conjunction with a Subject Invention or Specified Work Object, which the grantee or his exclusive licensee wish to attempt to make available as set forth in D(1) (i) or (ii).

(ii) If the grantee decides to make such domestic Background Patent so available either by himself or by an exclusive licensee, he shall so notify the Administrator within the said six (6) months, whereupon the Administrator shall then designate the reasonable time within which the grantee must make such Background Patent available in reasonable quantity and quality, and at a reasonable price. If the grantee or his exclusive licensee decides not to make such Background Patent so available, or fails to make it available within the time designated by the Administrator, the Background Patent shall be licensed to a responsible applicant at reasonable terms, including a reasonable royalty, in conjunction with (a) a Specified Work Object, or (b) a Subject Invention, and may be limited to the specific field of technology in which the purpose of this grant or the work called for thereunder falls.

(iii) The grantee agrees to grant or have granted to a designated applicant, upon the written request of the Government, a nonexclusive license at reasonable terms, including reasonable royalties, under any foreign Background Patent in furtherance of any treaty or agreement between the Government of the United States and a foreign government for practice by or on the behalf of such foreign government, if an embodiment of the Background Patent is not commercially available in that country; provided, however, that no such license will be required unless the Administrator determines that issuance of such license is in the national interest. Such license may be limited by the licensor to the practice of such Background Patent in conjunction with a Subject Invention or a Specified Work Object and for use in only the specific field of technology in which the purpose of this grant or the work called for thereunder falls.

(iv) The grantee agrees it will not seek injunctive relief or other prohibition of the use of the invention in enforcing its rights against any responsible applicant for such license and that it will not join with others in any such action. It is understood and agreed that the foregoing shall not affect the grantee's right to injunctive relief or other prohibition of the use of Background Patents in areas not connected with the practice of a Subject Invention or Specified Work Object in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, or where the grantee has made available a Commercial Item as set out in paragraph D(1) (i) or (ii).

(4) For use in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, and in conjunction with a Subject Invention or a Specified Work Object, the grantee agrees to grant to the Government a license under any Background Patent. Such license shall be nonexclusive, nontransferable, royalty-free and worldwide to practice such patent which is not available as a Commercial Item as specified in Paragraph D(1)(ii) for use of the Federal Government in connection with pilot plants, demonstration plants, test beds, and test modules. For all other Government uses, any royalty charged the Government under such license shall be reasonable and shall give due credit and allowance for the Government's contribution, if any, toward the making, commercial development, or enhancement of the invention(s) covered by the Background Patent.

(5) Any license granted under a process Background Patent for use with a specified Work Object shall be additionally limited to employment of the Background Patent under conditions and parameters reasonably equivalent to those called for or employed under this grant.

(6) It is understood and agreed that the grantee's obligation to grant licenses under Background Patents shall be limited to the extent of the grantee's right to grant the same without breaching any unexpired contract it had entered into prior to this grant or prior to the identification of a Background Patent, or without incurring any obligation to another solely on account of said grant. However, where such obligation is the payment of royalties or other compensation, the grantee's obligation to license his Background Patents shall continue and the reasonable license terms shall include such payments by the applicant as will at least fully compensate the grantee under said obligation to another.

(7) On the request of the Project Officer, the grantee shall identify and describe any license agreement which would limit his right to grant licenses under any Background Patent.

(8) In the event the grantee has a parent or an affiliated company, which has the right to license a patent which would be a Background Patent if owned by the grantee, but which is not available as a Commercial Item as specified in paragraph D(1) (i) or (ii), and a qualified applicant requests a license under such patent for use in the specific field of technology in which the purpose of this contract or the work called for thereunder falls, and in connection with the use of a Subject Invention or Specified Work Object, the grantee shall, at the written request of the Government, recommend to his parent company, or affiliated company, as the case may be, the granting of the requested license on reasonable terms, including reasonable royalties, and actively assist and participate with the Government and such applicant, as to technical matters and in liaison functions between the parties, as may reasonably be required in connection with any negotiations for issuance of such license. For the purpose of this subparagraph, (i) a parent company is one which owns or controls, through direct or indirect ownership of more than 50 percent of the outstanding stock entitled to vote for the election of directors, another company or other entity, and (ii) affiliated companies are companies or other entities owned or controlled by the same parent company.

E. *Related inventions.* At the request of the Project Officer made during or subsequent to the term of this grant including any extensions for additional research and development work, the grantee shall furnish information concerning any invention which appears to the Project Officer to reasonably have the possibility of being a Subject Invention.

All information supplied by the grantee hereunder shall be of such nature and character as to enable the Project Officer, with the concurrence of the EPA Patent Counsel, reasonably to ascertain whether or not the invention concerned is a Subject Invention. Failure to furnish such information called for herein shall, in any subsequent proceeding, place on the grantee the burden of going forward with the evidence to establish that such invention is not a Subject Invention. If such evidence is not then presented, the invention shall be deemed to be a Subject Invention. After receipt of information furnished pursuant hereto, the Project Officer shall not unduly delay rendering his opinion on the matter. The Project Officer's decision shall be subject to the Disputes Clause of the grant. The grantee may furnish the information required under this Section E as grantee confidential information, which shall be identified as such.

F. *General provisions.* (1) The grantee shall obtain the execution of and deliver to the Project Officer any document, including domestic patent applications (see B(5) hereof), relating to Subject Inventions as the Project Officer may require under the terms hereof to enable the Government to file and prosecute patent applications therefor in any country and to evidence and preserve its rights. Each party hereto agrees to execute and deliver to the other party on its request suitable documents to evidence and preserve license rights derived from this Appendix.

(2) The Government and the grantee shall promptly notify each other of the filing of a patent application on a Subject Invention in any country, identifying the country or countries in which such filing occurs and the date and serial number of the application, and on request shall furnish a copy of such application to the other party and a copy of any action on such patent application by any Patent Office and the responses thereto. Any applications or responses furnished shall be kept confidential, unless the Government has title to the invention.

(3) Any other provisions of this Appendix notwithstanding, the Project Officer, or any authorized EPA representative shall, until the expiration of three (3) years after submission of the final financial status report under this grant, have the right to examine in confidence any books, records, documents, and other supporting data of the grantee which the Project Officer or any authorized EPA representative shall reasonably deem directly pertinent to the discovery or identification of Subject Inventions or to the compliance by the grantee with the requirements of this Appendix.

(4) Notwithstanding the grant of a license under any patents to the Government pursuant to any provisions of this Appendix, the Government shall not be prevented from contesting the validity, enforceability, scope, or title of such licensed patent.

(5) The grantee shall furnish to the Project Officer every 12 months, or earlier as may be agreed in this grant (the initial period shall commence with the date of award of this grant) an interim report listing all Subject Inventions required to be disclosed which were made during the interim reporting period or certify that there are no such unreported inventions.

(6) The grantee shall submit a final report under this grant listing all Subject Inventions required to be disclosed which were made in the course of the work performed under this grant, and all subagreements subject to this Appendix. If to the best of the grantee's knowledge and belief, no Subject Inventions have resulted from this grant the grantee shall so certify to the Project Officer. If there are no such subagreements, a negative report is required.

(7) The interim and final reports submitted under F (5) and (6) and Subject Invention disclosures required under B(1) shall be submitted on EPA forms which will be furnished by the Project Officer on request. Any equivalent form approved by the Project Officer with the concurrence of the EPA Patent Counsel may be used in lieu of EPA forms. Such reports and disclosures shall be submitted in triplicate.

(8) Any action required by or of the Government under this patent provision shall be undertaken by the Project Officer or other authorized EPA official as its duly authorized representative unless otherwise stated.

(9) The Government may duplicate and disclose reports and disclosures of Subject Inventions required to be furnished by the grantee pursuant to this Appendix without additional compensation.

(10) The grantees shall furnish to the Project Officer, in writing, and as soon as practicable, information as to the date and identity of any first public use, sale or publication of any Subject Invention made by or known to the grantee, or of any contemplated publication of the grantee.

(11) The Administrator shall determine the responsibility of an applicant for a license under any provision of this patent provision when this matter is in dispute and his determination thereof shall be final and binding.

(12) The grantee shall furnish promptly to the Project Officer or other authorized EPA official on request an irrevocable power to inspect and make copies of each U.S. patent application filed by or on behalf of the grantee covering any Subject Invention.

(13) The grantee shall include in the first paragraph in any U.S. patent application which it may file on a Subject Invention the following statement:

This invention resulted from work done under Grant No. ____ with the Environmental Protection Agency and is subject to the terms and provisions of said Grant.

(14) All information furnished in confidence pursuant to this Appendix shall be clearly identified by an appropriate written legend. Such information shall be subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552, and shall in any event cease to be confidential if it is or becomes generally available to the public, or has been made or becomes available to the Government (i) from other sources, or (ii) by the grantee without limitation as to use, or was already known to the Government when furnished to it.

(15) Any action by the Project Officer affecting the disposition of rights to patents or inventions pursuant to this Appendix shall be taken only after review by the Office of General Counsel.

G. *Warranties.* (1) The grantee warrants that whenever he has divested himself of the right to license any Background Patent (or any invention owned by the grantee which could become the subject of a Background Patent) prior to the date of this grant, such divestment was not done to avoid the licensing requirements set forth in Section D of this Appendix. After a Background Patent, or invention which could become the subject of a Background Patent, is identified, the grantee shall take no action which shall impair the performance of his obligation to issue Background Patent licenses pursuant to this grant.

(2) The grantee warrants that he will take no action which will impair his obligation to assign to the Government any invention first actually conceived or reduced to practice in the course of or under this grant.

(3) The grantee warrants that he has full authority to make obligations of this Appendix effective by reason of agreements with all of the personnel, including consultants who might reasonably be expected to make inventions, and who will be employed in work on the project for which the grant has been awarded, to assign to the grantee all discoveries and inventions made within the scope of their employment.

H. *Subagreements.* This Appendix shall be included in any subagreement over $10,000 under this grant where a purpose of the subagreement is the conduct of experimental, developmental, research, or demonstration work, unless the Grant Approving Official with the concurrence of the EPA Patent Counsel, authorizes the omission or modification of this Appendix. The grantee shall not acquire any rights to Subject Inventions made under such subagreement for his own use (as distinguished from such rights as may be required solely to fulfil his grant obligations to the Government in performance of this grant). Upon completion of work under such a subagreement, the grantee shall promptly notify the Project Officer in writing of such completion, and shall upon request furnish a copy of the subagreement to the Project Officer. The grantee hereby assigns to the Government all rights of the grantee to enforce the obligations of the party to such subagreement with respect to Subject Inventions, Background Patents, and pursuant to Section E of this Appendix. The grantee shall cooperate with the Government at the Government's request and expense in any legal action to secure the Government's rights.

Appendix C—Rights in Data and Copyrights

1. The term "Subject Data" as used herein includes writings, technical reports, sound recordings, magnetic recordings, computer programs, computerized data bases, pictorial reproductions, plans, drawings, specifications, or other graphical representations, and works of any similar nature (whether or not copyrighted) which are submitted with a proposal or grant application or which are specified to be delivered under this grant or which are developed or produced and paid for under this grant. The term does not include financial reports, cost analyses, and other information incidental to grant administration.

2. Except as may otherwise be provided in the grant agreement, when publications,

films, or similar materials are developed directly or indirectly from a project supported by the Environmental Protection Agency, the author is free to arrange for copyright without approval. However, such materials shall include acknowledgement of EPA grant assistance. The grantee agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data, or copyrightable material based on such data, now or hereafter covered by copyright.

3. The grantee shall not include in the Subject Data any copyrighted matter, without the written approval of the Project Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in Article 2 above.

4. The grantee shall report to the Project Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the grantee with respect to all Subject Data delivered under this grant.

5. Nothing contained in this Appendix shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other rights otherwise granted to the Government under any patent.

6. Unless otherwise limited below, the Government may, without additional compensation to the grantee, duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data.

7. Notwithstanding any provisions of this grant concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate, or ignore any marking not authorized by the terms of this grant on any piece of Subject Data furnished under this grant.

8. Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed or investigated, if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, proprietary data need not be furnished for other items or processes which were developed at private expense and previously sold or offered for sale or commercially practiced in the case of a process, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed or investigated, if in lieu thereof the grantee shall identify such other items or processes and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a grantee's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the grantee has protected such information from unrestricted use by others.

Federal Register

Wednesday
May 12, 1982

Part III

Environmental Protection Agency

Procurement Under Assistance Agreements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 33

[OA-FRL 2102-8]

Procurement Under Assistance Agreements

AGENCY: Environmental Protection Agency.

ACTION: Interim-final rule.

SUMMARY: This document establishes interim-final rules for procurement actions taken by assistance recipients under EPA's program for the "Grants for Construction of Treatment Works" program (40 CFR Part 35, Subpart I, CFDA 66.418). It is designed to eliminate the procedural requirements formerly applying to that program and to rely to the maximum extent on recipient procurement systems, in accordance with Attachment O to OMB Circular A-102.

DATE: For the "Grants for Construction of Treatment Works" program, this regulation is effective for awards made after May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Administration Division (PM-216), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0860.

SUPPLEMENTARY INFORMATION: On March 2, 1982, EPA published a proposed regulation governing procurement under all assistance programs (47 FR 8960). At that time, we indicated that we planned to make the regulation effective for grants for construction of treatment works when the program regulation becomes effective in April, 1982. This regulation implements that statement. The program regulation is also being published today elsewhere in this issue of the Federal Register.

Description of Major Issues

The preamble to the March 2, 1982 proposed regulation discussed in detail a number of issues which arose in the drafting of the Part 33 regulations. Since EPA's position has not changed, we have not repeated those discussions here. Our discussion of issues here is limited to areas on which a significant number of comments were received and to those on which we have made changes in the regulation. The remainder of the comments received and those received too late to be considered in drafting this interim-final regulation will be addressed when Part 33 is published in final.

Applicability of Procurement Requirements to Facilities Planning and Design Services

The Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97-117), enacted December 29, 1981, prohibit EPA grants exclusively for facilities planning or design services. Instead, EPA will make an allowance in its grant assistance for non-Federal funds expended by the recipient for facilities planning and design services. Therefore, services for facilities planning and project design will not be subject to EPA procurement requirements in order for the allowance to be awarded. However, if the recipient chooses to use the architect or engineer who provided facilities planning and design services for services during construction, it must follow some of the requirements in this Part. (See § 33.715.)

Applicability of the Revised Procurement Regulation to Active Grants in the Construction Grant Program

The new Part 33 procurement regulations are effective for all subagreements under construction grants awarded after May 12, 1982. EPA has received several requests from recipients who have active construction grants that they also be allowed to voluntarily follow the new Part 33 procurement requirements. EPA believes that recipients should be given this opportunity. Therefore, EPA will allow any construction grant recipient who has a current grant to choose to follow the new Part 33 procurement procedures for any procurement action, including change orders, which the recipient executes after the date the recipient self-certifies its procurement system with EPA or the delegated State. However, the procurement requirements in effect when EPA awarded the grant (i.e., 40 CFR 35.936 through 35.939) will still apply to those actions executed before the date that a recipient with a current grant self-certifies.

Procedural Requirements for Recipients Who Do Not Certify Their Procurement Systems, and for Recipients Who Have Their Procurement Certification Revoked by EPA

We have received several questions concerning the procedural requirements that EPA will require of recipients who do not certify their procurement systems, or for recipients who have their procurement certification revoked by the award official. To make these procedural requirements known and to have all of EPA's procurement requirements in one place, we have added Appendix A, "Procedural Requirements for Recipients Who Do Not Certify Their Procurement System, or for Recipients Who Have Their Procurement Certification Revoked by EPA," to Part 33. Appendix A contains the additional procedural requirements which are not contained in the body of Part 33, but which EPA will review when EPA conducts a pre-award review and approval (see § 33.115, "Procurement system review"). Recipients are not required to follow these additional procedural requirements if they have a certified procurement system.

Specifications

We received several comments on the language in the preamble to the March 2, 1982 proposed regulation which implied that a single material specification restricts competition, and which required that the recipient's procurement official justify the use of a specification which limits competition before the recipient issues the specification.

OMB Circular A-102, Attachment O, requires that all procurement transactions be conducted in a manner that provides maximum free and open competition. Any specification which has the effect of limiting competition is restrictive in the sense that it prevents a bidder from offering a product or a service which could meet the project's requirements.

Because a specification limits competition, however, does not mean it is improper. A specification is restrictive only when the restricted features are unnecessary, and therefore unduly restrict competition. (See Nash and Cibinic, *Federal Procurement Law*, Volume I, (3rd. edition, 1977) page 236.) Recipients may use restrictive specifications if the specifications reflect the recipient's minimum essential needs. (See Shnitzer, *Government Contract Bidding*, (1976) page 179.) Whether a specification represents the minimum essential needs of the recipient or unduly restricts competition depends on the facts in each procurement action. Consequently, the recipient's procurement officials must justify the use of a specification which does not provide for maximum free and open competition and must document their procurement file to this effect. The documentation should ordinarily be done before the recipient issues the specification to avoid the appearance of *post hoc* rationalization, and the recipient should justify adequately in writing the rational basis for the specification. In the event of a protest,

the protestor has the burden of showing that the specification, as written or as applied by the recipient, excludes the protestor from competition.

Minority and Women's Businesses

We received several comments on EPA's changes to the minority and women's businesses policy (MBE/WBE). As stated in the March 2, 1982 proposed regulation, EPA is in the process of developing a new minority business and women's business policy. Therefore, the comments we received concerning this issue will be used during the development of that policy. Also, our March 2, 1982 proposed regulation reserved the definition of a minority business and a women's business. We will define these terms in the new policy. Therefore, until EPA writes a definition for these terms in its new policy, the recipient should define these terms. However, any requirements or definitions which a recipient chooses to include in the contract specifications with regard to minority and women's business requirements will be mandatory for bidders and offerors.

Use of the Same Architect or Engineer During Construction

The new Part 33 procurement requirements allow recipients the option of using the same individual or firm who provided the facilities planning or design services for the project for architectural or engineering services during Step 3 construction of the project (see § 33.715 "Use of the same architect or engineer during construction"). In order to used this option, the recipient must ensure that the subagreements for the facility planning or design services meet the requirements in § 33.715. Those subagreements are subject only to the requirements listed in § 33.715.

However, when the recipient receives a Step 3 construction grant from EPA, the recipient must ensure that any subagreement, including any subagreement awarded to the firm or individual who will provide the services during construction, must meet all of the procurement requirements in Part 33. This may mean that the recipient will have to amend or renegotiate the individual's or firm's existing subagreement.

Regulation Development Process

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We have determined that this regulation is not "major" as it will not have a substantial impact on the economy. Consequently, the regulation is not subject to the impact analysis requirements of Executive Order 12291.

In accordance with the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq* (the Act), the reporting or recordkeeping provisions that are included in this interim-final rule have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Act.

List of Subjects in 40 CFR Part 33

Advertising, Conflict of interest, Environmental protection, Grant programs—environmental protection.

This regulation was submitted to OMB for review as required by Executive Order 12291.

Dated: May 4, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

PROCUREMENT SYSTEM CERTIFICATION FORM FOR APPLICANTS FOR EPA ASSISTANCE

Form approved OMB No. ——

Section I.—Instructions

This form must accompany each application for EPA assistance. If the applicant has certified its procurement system to EPA within the past two years and the system has not been substantially revised, check block *a* in Section II, then sign and date the form. If the system has not been certified within the past two years, part *b* of Section II must be completed.

Section II.—Certification

☐ a. I affirm that the applicant has within the past two years certified its procurement system to EPA as complying with 40 CFR Part 33 and that the system has not been substantially revised. The date of the applicant's latest certification is (month, year).

b. Based upon my evaluation of the applicant's procurement system, I, as authorized representative of the applicant: (Check one of the following)

☐ 1. *Certify* that the applicant's procurement system will meet all of the requirements of 40 CFR Part 33 including the attached subparts before undertaking any procurement action with EPA assistance/funds.

Please furnish citations to applicable state or local ordinances and regulations. Citations

☐ 2. *Do not certify.* The applicant will follow the requirements of 40 CFR Part 33 with EPA review and pre-award approval of proposed procurement actions that will use EPA assistance/funds.

Typed name and title of Chief Executive Officer

Signature ——

Date ——

EPA form 5700–48.

Below is a list of subparts and sections of 40 CFR Part 33 which contain some but not all of the requirements for procurements under EPA assistance. The purpose of this list is to assist in the evaluation of the applicant's procurement system to determine if it is certifiable as meeting the basic Federal procurement principles as articulated in Part 33. As such, this section highlights certain aspects of the regulations which the recipient shall use in its evaluation process and is not intended to replace a detailed reading of the Part 33 requirements themselves.

Part 33 reference	Section title—summary of requirements
33.210	*Subagreement Administration*—system must ensure that contractors perform in accordance with all applicable contract requirements.
33.220	*Limitation on recipient award*—system must consider listed factors in determining contractor responsibility.
33.230	*Competition*—system must have procurement transaction procedures that provide maximum open and free competition.
33.235	*Profits*—system procedures must allow only fair and reasonable profits to contractors.
33.240	*Small, minority, women's and labor surplus area businesses*—system must provide for use of these businesses as specified in this section.
33.250	*Documentation*—system must require that procurement records and files for purchases over $10,000 include items specified in this section.
33.255	*Specifications*—system procedures for establishing specifications for products or services to be procured must meet requirements of this section.
33.265	*Bonding and insurance*—system procedures and requirements related to bonding and insurance must meet requirements of this section.
33.270	*Code of conduct*—system must have a written code of standards of conduct meeting the requirements of this section.
33.275	*Federal cost principles*—system procedures for determining allowable costs must comply with the cost principles specified in this section.
33.285	*Prohibited types of contracts*—system may not allow use of cost-plus-percentage-of-cost (multiplier) or percentage-of-construction-cost types of contracts.
33.290	*Cost and price considerations*—system procedures must allow for consideration of cost and price as required in this section.
33.295	*Lower tier subagreements*—system must provide that subagreements below the first tier comply with all provisions of 40 CFR specified in this section.
33.305–.315	*Small purchase*—system small purchase procedure must meet requirements of these sections.
33.405–.415	*Formal advertising*—system procedures related to formal advertising, including those for bidding documents and contract awards, must meet the requirements of these sections.
33.505–.535	*Competitive negotiation*—system procedures for competitive negotiation must meet the requirements of these sections.
33.605	*Noncompetitive negotiation*—systems procedures for noncompetitive negotiation must meet the requirements of this section.

Subparts C-G	System must comply with requirements in these subparts—
C	*Clean Water Act Requirements*—subpart applies to procurement under assistance agreements for construction of treatment works under the Clean Water Act.
D	*Requirements for Institutions of Higher Education and Other Non-profit Organizations*—subpart describes the procurement requirements for nonprofit organizations.
E	*Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980*—subpart describes the procurement method requirements for recipients of these cooperative agreements.
F	*Subagreement Provisions*—subagreements for procurement under EPA assistance must contain the appropriate clauses, or [illegible] specified in this subpart.
G	[illegible] subpart applies to all applicants for [illegible] assistance except for nonprofit organizations.

Accordingly, Title 40 Chapter I is amended by revising Part 33 to read as follows:

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

Sec.
33.001 Applicability and scope of this Part.
33.005 Definitions.

Subpart A—Procurement System Evaluation

33.105 Applicability and scope of this subpart.
33.110 Applicant and recipient certification.
33.115 Procurement system review.

Subpart B—Procurement Requirements

33.205 Applicability and scope of this subpart.
33.210 Recipient responsibility.
33.215 EPA responsibility.
33.220 Limitation on subagreement award.
33.225 Violations.
33.230 Competition.
33.235 Profits
33.240 Small, minority, women's, and labor surplus area businesses.
33.245 Privity of subagreement.
33.250 Documentation.
33.255 Specifications.
33.260 Intergovernmental agreements.
33.265 Bonding and insurance.
33.270 Code of Conduct.
33.275 Federal cost principles.
33.280 Payment to consultants.
33.285 Prohibited types of subagreements.
33.290 Cost and price considerations.
33.295 [illegible] subagreements.

Small Purchases

33.305 Small purchase procurement method.
33.310 Small purchase procedures.
33.315 Requirements for competition.

Formal Advertising

33.405 Formal advertising procurement method.
33.410 Public notice and solicitation of bids.
33.415 Time for preparing bids.
33.420 Adequate bidding documents.
33.425 Public opening of bids.
33.430 Award to lowest, responsive, responsible bidder.

Competitive Negotiation

Sec.
33.505 Competitive negotiation procurement method.
33.510 Public notice.
33.515 Evaluation of proposals.
33.520 Negotiation and award of subagreement.
33.525 Optional procedure for negotiation and award of subagreement for architectural and engineering services.

Noncompetitive Negotiation

33.605 Noncompetitive negotiation procurement method.

Subpart C—Clean Water Act Requirements

33.705 Applicability and scope of this subpart.
33.710 Buy American.
33.715 Use of the same architect or engineer during construction.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

33.805 Applicability and scope of this subpart.
33.810 Nonapplicable subagreement clauses.
33.815 Nonapplicable procurement provisions.
33.820 Additional procurement requirements.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

33.905 Applicability and scope of this subpart.
33.910 Preference for formal advertising.
33.915 Award official approval.

Subpart F—Subagreement Provisions

33.1005 Applicability and scope of this subpart.
33.1010 Requirements for subagreement clauses.
33.1015 Subagreement provisions clause.
33.1018 Equal employment opportunity clauses.
33.1019 Anti-kickback clause.
33.1020 Minimum wage clause.
33.1021 Work hours and safety standards clause.
33.1022 Patents, data and copyrights clause.
33.1023 Violating facilities clause.
33.1024 Energy efficiency clause.
33.1030 Model subagreement clause.

Subpart G—Protests

33.1105 Applicability and scope of this subpart.
33.1110 Limitations on protest appeals.
33.1115 General requirements.
33.1120 Filing requirements for protest appeals.
33.1125 Protest appeal documents.
33.1130 Deferral of procurement action.
33.1135 Award official's review.

Authority: 7 U.S.C. 135 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300j–1, 300j–2, 300j–3, 1857 et seq., 6901 et seq.; and 42 U.S.C. 9601 et seq.

§ 33.001 Applicability and scope of this part.

(a) This Part applies to all assistance agreements awarded after the effective date of this Part. For assistance agreements awarded before the effective date, this Part will apply only to those procurement actions conducted by the recipient after the date the recipient's self-certification request under § 33.110 of this Part is accepted by the award official.

(b) This Part:

(1) Describes EPA's procurement system evaluation process.

(2) Identifies the minimum requirements for the procurement of supplies, services, and construction under EPA assistance agreements.

(3) Identifies an additional specification requirement for procurement under assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subpart E and I.

(4) Identifies the procurement standards that institutions of higher education and other nonprofit organizations must follow.

(5) Identifies the provisions that recipients of EPA assistance agreements must include in their subagreements.

(6) Describes the procedures that EPA will use to handle appeals concerning the award of a subagreement by the recipient of an EPA assistance agreement.

(c) This Part does not apply to work beyond the scope of the project for which an assistance agreement is awarded (i.e., ineligible work).

(d) This Part does not apply to expenses for services for which the recipient will receive an allowance or a potential recipient will receive an advance of an allowance under 40 CFR Part 35, Subpart I.

(e) This Part supplements the requirements in (1) 40 CFR Part 30 "General Assistance Regulations," and (2) 40 CFR Part 32, "Debarments and Suspensions under EPA Assistance Programs."

(f) The following types of recipients must comply with the specified subparts in this Part:

(1) Recipients of assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subpart E and I must follow the requirements in all of the subparts except Subpart D.

(2) All other State and local government recipients must follow the requirements in all subparts in this Part except Subparts C and D.

(3) Institutions of higher education, hospitals, and other nonprofit

organizations must follow the requirements in all Subparts of this Part except as stated in Subpart D.

(4) Recipients of cooperative agreements under the Comprehensive Response, Compensation, and Liability Act of 1980, must follow the requirements in all subparts except Subparts C and D.

(g) In the construction of treatment works program under the Clean Water Act (33 U.S.C. 1251 et seq.), it is EPA's policy to delegate determinations on individual projects to State agencies to the maximum extent possible (see 40 CFR Part 35, Subpart F). This Part uses the term award official. To the extent that the award official for a treatment works assistance agreement delegates responsibility for determining compliance with the requirements of this Part (except for Subpart G "Protests") to a State agency under a delegation agreement (40 CFR 35.1130), the term award official may be read State agency.

§ 33.005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Part 30 and 40 CFR Part 35.

(b) As used in this Part, the following words and terms mean:

Architectural or engineering (A/E) services. Consultation, investigations, and reports, and services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

Construction. Erection, building, acquisition, alteration, remodeling, improvement, extension, modification, replacement, or correction of buildings, structures or other property. Construction also includes remedial actions in response to a release or a threat of a release at an uncontrolled hazardous waste facility as determined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Contractor. Any party to whom a recipient awards a subagreement.

Cost analysis. The review and evaluation of each element of subagreement cost to determine reasonableness, allocability, and allowability.

Minority Business. [Reserved]

Price analysis. The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed subagreement price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.

Profit. The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this defintion of profit is based on Federal procurement principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee.")

Services. A contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents, e.g., reports, design drawings, specifications. This term does not include employment agreements or collective bargaining agreements.

Small business. A business as defined in section 3 of the Small Business Act, as amended (15 U.S.C. 632).

Subagreement. A written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, equipment, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

Women's Business. [Reserved]

Subpart A—Procurement System Evaluation

§ 33.105 Applicability and scope of this subpart.

(a) This subpart applies to all recipients of EPA assistance agreements.

(b) For procurements involving EPA funds, recipients shall use their own procurement policies and procedures if those policies and procedures reflect applicable Federal, State, and local laws and regulations, and at least meet the standards set forth in this Part.

(c) This subpart describes when EPA will review the recipient's procurement practices.

§ 33.110 Applicant and recipient certification.

(a) It is the applicant's and recipient's responsibility to evaluate its own procurement system and to determine whether its system meets the requirements in this Part.

(b) After evaluating its procurement system, the applicant or recipient will complete the Procurement System Certification Form For Applicants For EPA Assistance (EPA Form 5700-48). The applicant or recipient will certify that:

(1) Its system will meet the intent of all the requirements in this Part before any procurement action with EPA assistance is undertaken.

(2) Its current system does not meet the intent of the requirements of this Part, and instead, the applicant will follow the requirements of 40 CFR Part 33 and will allow EPA review and approval of proposed procurement actions that will use EPA funds. The additional requirements for EPA review and approval are contained in Appendix A to this Part.

(c) The applicant must submit the signed certification form to the award official with the assistance application.

(d) The certification will be valid for two years or the project period specified in the assistance agreement, whichever is greater, unless the recipient substantially revises its procurement system, or the award official determines that the recipient is not following the requirements in this Part, see § 33.115(b). If the recipient substantially revises its procurement system, the recipient must evaluate its revised system to ensure that the system still meets the requirements in this Part.

§ 33.115 Procurement review.

(a) EPA reserves the right to review a recipient's procurement system or procurement action:

(1) To determine if the recipient is following the procurement requirement in this part; or

(2) When there is sufficient reason to do so based on the following sources of information:

(i) Information concerning the review or certification of the recipient's procurement system or actions by other Federal agencies or Congress;

(ii) Information from the recipient's cognizant audit agency;

(iii) Information from State agencies and organizations independent of the recipient's procurement activity;

(iv) Recipient responses to the procurement system certification form;

(v) Previous EPA experience with the recipient; and

(vi) Information from contractors or prospective contractors.

(b) If the award official determines that the recipient is not following the procurement requirements it certified it would follow, the award official shall revoke the recipient's certification and:

(1) Apply the sanctions in 40 CFR Part 30; or

(2) Require that the recipient follow the procurement requirements in this Part, including the procedural requirements in Appendix A, for future procurement actions.

(c) The recipient may re-certify its procurement system if it shows the

award official that it has corrected the procurement deficiencies noted by the award official.

Subpart B—Procurement Requirements

§ 33.205 Applicability and scope of this subpart.

This subpart contains:

(a) The recipient's and EPA's responsibilities: and

(b) The minimum procurement standards for each recipient's procurement system.

§ 33.210 Recipient responsibilities.

(a) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of subagreements entered into under the assistance agreement. This includes issuance of invitations for bids or requests for proposals, selection of contractors, award of subagreements, settlement of protests, claims, disputes, and other related procurement matters.

(b) A recipient may request technical and legal assistance from the award official for the administration and enforcement of any subagreement awarded under this Part. The award official's assistance does not relieve the recipient from its responsibilities identified in this Part.

(c) The recipient shall maintain a subagreement administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their subagreements.

(d) The recipient shall review its proposed procurement actions to avoid purchasing unnecessary or duplicative items.

(e) The recipient shall consider consolidating its procurement or dividing it into parts to obtain a more economical purchase.

(f) Where appropriate, the recipient shall make an analysis of lease versus purchase alternatives in its procurements actions.

(g) A recipient of a remedial action cooperative agreement awarded under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, must obtain the EPA award official's approval to use a procurement method other than the formal advertising method (see Subpart E).

(h) Innovative procurement methods or procedures may be used by recipients with the prior written approval of the award official.

§ 33.215 EPA responsibility.

(a) EPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern.

(b) If the recipient has not certified its procurement system under § 33.110 and if the procurement action or change order is expected to exceed $100,000, EPA may review the recipient's proposed subagreements and related procurement documents (see Appendix A), and approve the recipient's compliance with the requirements of this Part.

§ 33.220 Limitation on subagreement award.

(a) The recipient shall award subagreements only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement.

(b) Contractors shall meet the requirements of § 30.340–2(a) through (d) and (g) of this subchapter.

(c) The recipient shall not make awards to contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32 or to contractors on the EPA List of Violating Facilities (see 40 CFR Part 15).

§ 33.225 Violations.

Violations of law are to be referred to the local, State, or Federal authority having the proper jurisdiction.

§ 33.230 Competition.

(a) All procurement transactions, without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition.

(b) Procurement practices shall not unduly restrict or eliminate competition. Examples of practices considered to be unduly restrictive include:

(1) Noncompetitive practices between firms;

(2) Organizational conflicts of interest;

(3) Unnecessary experience and bonding requirements;

(4) State or local laws, ordinances, regulations or procedures which give local or in-State bidders or proposers preference over other bidders or proposers in evaluating bids or proposals; and

(5) Placing unreasonable requirements on firms in order for them to qualify to do business.

(c) The recipient may use a prequalification system if it:

(i) Updates the prequalified list at least every six months;

(ii) Reviews and acts on each request for prequalification, if the request is made more than 30 days before the closing date for receipt of proposals or bid opening, as appropriate; and

(iii) Gives adequate public notice of its prequalification procedure in accordance with the public notice procedures in §§ 33.415 or 33.510, as appropriate.

(iv) If the recipient uses a prequalified list for persons or firms doing business with the recipient, it must follow the requirements in (c) (i) through (iii) of this section, but a prequalified list of persons or firms may not be used unless that procedure enhances competition. However, this restriction does not apply to § 33.525 "Optional procedures for negotiation and award of a subagreement for architectural and engineering services."

§ 33.235 Profit.

(a) Recipients must assure that only fair and reasonable profits are paid to contractors awarded subagreements under EPA assistance agreements.

(b) For each subagreement in which there is no price competition and where price is based on cost analysis, any profit shall be negotiated as a separate element of price.

(c) Profit included in a formally advertised, competitively bid, fixed price subagreement shall be considered reasonable.

(d) Commercially available products sold to the general public shall not be covered by this section.

§ 33.240 Small, minority, women's, and labor surplus area businesses.

(a) It is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall include the following:

(1) Including qualified small, minority, and women's businesses on solicitation lists.

(2) Assuring that small, minority, and women's businesses are solicited whenever they are potential sources.

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses.

(4) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses.

(5) Using the services and assistance of the Small Business Administration

and the Office of Minority Business Enterprise of the U.S. Department of Commerce.

(6) Requiring each party to a subagreement to take the affirmative steps in paragraphs (a)(1) through (a)(5) of this section.

(b) [Reserved]

(c) Recipients are encouraged to procure goods and services from labor surplus area firms.

§ 33.245 Privity of subagreement.

Neither EPA nor the United States shall be a party to any subagreement nor to any solicitation or request for proposals.

§ 33.250 Documentation.

(a) Procurement records and files for procurements in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Written justification for selection of the procurement method;

(3) Written justification for use of any specification which does not provide for maximum free and open competition;

(4) Selection of type of subagreement; and

(5) Basis for award cost or price, including a copy of the cost of price analysis made under § 33.290 and documentation of negotiations.

(b) The reasons for rejecting any or all bids and the justification for procurements on noncompetitively negotiated basis shall be available for public inspection.

§ 33.255 Specifications.

Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description shall include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated. (An additional specification requirement for the construction of treatment works under 40 CFR Part 35, Subpart E and I is contained in § 33.710.)

§ 33.260 Intergovernmental agreements.

(a) To foster greater economy and efficiency, recipients are encouraged to enter into State and local intergovernmental agreements for common procurement or use of goods and services.

(b) All procurements under an intergovernmental agreement must follow the procurement requirements in this Part except for procurements that are:

(1) Incidental to the purpose of the assistance agreement, and

(2) Made through a central public procurement unit.

§ 33.265 Bonding and insurance.

(a) These requirements apply to subagreements for construction only.

(b) The recipient shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction subagreement exceeds $100,000.

(c) For those subagreements exceeding $100,000, the award official may accept the recipient's bonding policy and requirements provided that the Government's interest is adequately protected. Otherwise the minimum bonding requirements are:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall 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.

(2) A performance bond on the part of the contractor for 100 percent of the subagreement price. A "performance bond" is one executed in connection with a subagreement to secure fulfillment of all the contractor's obligations under such subagreement.

(3) A payment bond on the part of the contractor for 100 percent of the subagreement price. A "payment bond" is one executed in connection with a subagreement to assure payment as required by law to all persons supplying labor and material in the execution of the work provided for in the subagreement.

(d) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

(e) The flood hazard area requirements of the Flood Disaster Protection Act of 1973 contained in Part 30 apply.

§ 33.270 Code of conduct.

(a) Recipients shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of subagreements supported by EPA funds. No employee,officer, or agent of the recipient shall participate in selection, or in the award or administration of a subagreement supported by EPA funds if a conflict of interest, real or apparent, would be involved.

(b) Such a conflict would arise when:

(1) Any employee, officer, or agent of the recipient, any member of their immediate families, or their partners, have a financial or other interest in the firm selected for award; or when

(2) An organization which may receive or has been awarded a subagreement employs, or is about to employ any person under paragraph(b)(1) of this section.

(c) The recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or other parties to subagreements.

(d) Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(e) To the extent permitted by State or local law or regulations, the code of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of the code by the recipient's officers, employees, or agents, or by contractors or their agents.

§ 33.275 Federal cost principles.

The following are the cost principles applicable to assistance arguments and subagreements:

(a) State and local governments must comply with OMB Circular A-87 to determine allowable costs.

(b) Educational institutions must comply with OMB Circular A-21 to determine allowable costs and with OMB Circular A-88 for indirect cost rates.

(c) Nonprofit institutions must comply with OMB Circular A-122 to determine allowable costs.

(d) All other recipients, contractors, and subcontractors must comply with the cost principles contained in the Federal Procurement Regulations (41 CFR 1-15.2 and, if appropriate, 1-15.4) to determine allowable costs.

§ 33.280 Payment to consultants.

(a) For all EPA assistance agreements, the maximum daily rate paid to individual consultants retained by recipients, or a recipient's contractors or subcontractor will not exceed the maximum daily rate for a GS–18. This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed, which will be paid in accordance with the normal travel reimbursement practices.

(b) Subagreements for services which are awarded using the procurement requirements in this Part are not affected by this limitation.

§33.285 Prohibited types of subagreements.

The cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) and the percentage-of-construction-cost types of subagreements shall not be used.

§ 33.290 Cost and price considerations.

(a) The recipient shall conduct a cost analysis of all negotiated change orders and all negotiated subagreements estimated to exceed $10,000.

(b) The recipient shall conduct a price analysis of all formally advertised procurements estimated to exceed $10,000 if there are fewer than three bidders.

(c) For negotiated procurement, contractors and subcontractors shall submit to the recipient cost or pricing data in support of their proposals.

§ 33.295 Lower tier subagreements.

All subagreements below the first tier must comply with the following provisions:

(a) Section 33.285 (Prohibited types of subagreements);

(b) Section 33.240 (Small, minority, women's, and labor surplus area businesses);

(c) Section 33.290 (Cost and price considerations);

(d) Applicable subagreement clauses contained in Subpart F;

(e) Section 33.275 (Federal cost principles);

(f) 40 CFR Part 32 (Debarment and Suspension) and the prohibition in Part 30 against fraud and other unlawful or corrupt practices; and

(g) Subpart C (Clean Water Act Requirement), if applicable.

Small Purchases

§ 33.305 Small purchase procurement method.

If the aggregate amount involved in any one procurement transaction does not exceed $10,000, including all estimated handling and freight charges, overhead, and profit, the recipient may use small purchase procedures.

§ 33.310 Small purchase procedures.

Small purchase procedures are relatively simple procurement methods that are sound and appropriate for a procurement of services, supplies, or other property costing in the aggregate not more than $10,000.

§ 33.315 Requirements for competition.

(a) Recipients shall not divide a procurement into smaller parts to avoid the dollar limitation for competitive procurement.

(b) Recipients shall obtain price or rate quotations from an adequate number of qualified sources.

Formal Advertising

§ 33.405 Formal advertising procurement method.

(a) The requirements in §§ 33.405 through 33.430 apply to all formally advertised subagreements in excess of $10,000. Formal advertising means the public solicitation of sealed bids and subagreement award based on a fixed price (lump sum, unit price, or a combination of the two) to the lowest, responsive, responsible bidder.

(b) Formal advertising requires at a minimum:

(1) A complete, adequate, and realistic specification or purchase description of what is required;

(2) Two or more responsible bidders which are willing and able to compete effectively for the recipient's business;

(3) A procurement that lends itself to the award of a fixed-price subagreement; and

(4) The selection of the successful bidder made principally on the basis of price.

§ 33.410 Public notice and solicitation of bids.

The recipient shall give adequate public notice of the solicitation, inviting bids and stating when and how the bidding documents may be obtained and examined.

§ 33.415 Time for preparing bids.

The recipient must allow adequate time between the date the public notice is first published and the date by which bids must be submitted.

§ 33.420 Bidding documents.

Bidding documents shall include:

(a) A complete statement of work to be performed, including, where appropriate, design drawings and specifications and the required performance schedule;

(b) The terms and conditions of the subagreement to be awarded, including, where appropriate, payment, delivery schedules, point of delivery, and acceptance criteria;

(c) A clear explanation of the method of biding and the method of evaluating bid prices, and the basis and method for awarding the subagreement;

(d) The responsibility requirements or criteria which will be employed in evaluating bidders;

(e) The prevailing wage determination, made under the Davis-Bacon Act, if applicable; and

(f) The deadline and place to submit bids and a copy of § 33.295, Subpart F and Subpart G.

§ 33.425 Public opening of bids.

The recipient shall publicly open bids at the place, date, and time announced in the bidding documents.

§ 33.430 Award to the lowest, responsive, responsible bidder.

(a) The recipient shall evaluate all bids in accordance with the methods and criteria in the bidding documents.

(b) The recipient shall award a fixed-price subagreement to the lowest, responsive, responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining the low bid. Payment discounts may be used to determine low bid only when prior experience of the recipient indicates that such discounts are generally taken.

(c) The recipient may reject all bids only when it has sound, documented business reasons which are in the best interest of the program for which EPA assistance is awarded (see § 33.250 "Documentation").

Competitive Negotiation

§ 33.505 Competitive negotiation procurement method.

(a) The requirements in §§ 33.505 through 33.525 apply to all competitively negotiated subagreements in excess of $10,000.

(b) Competitive negotiation may be used only if conditions are not appropriate for the use of the formal advertising method of procurement.

§ 33.510 Public notice.

(a) The recipient must give adequate public notice for competitively negotiated procurements.

(b) The notice of a request for proposals shall invite proposals and state the method by which associated documents may be obtained and examined and the basis upon which the award will be made.

(c) Requests for proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal.

(d) Offerors must be informed of all evaluation criteria, and of the relative importance attached to each criterion.

(e) Requests for proposals must clearly state the deadline and place to submit proposals.

§ 33.515 Evaluation of proposals.

(a) Recipients must uniformly and objectively evaluate all proposals submitted in response to the request for proposals.

(b) Recipients must base their determination of best qualified and qualified offerors solely on the evaluation criteria sated in the request for proposals.

§ 33.520 Negotiation and award of subagreement.

(a) If the recipient does not base its award of the subagreement on initial proposals, the recipient may conduct negotiations with all of the best qualified offerors to clarify that the offerors fully understand, and conform to, the solicitation requirements. All of the best qualified offerors shall be given the same opportunities to negotiate or revise their proposals as to price and other evaluation criteria. Before the recipient makes the award, the recipient may permit revisions for the purpose of obtaining best and final offers. During negotiations, the recipient shall not disclose the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

(b) The recipient shall award the subagreement to the responsible offeror whose proposal is determined in writing to be the most advantageous to the recipient, taking into consideration price and other evaluation criteria set forth in the request for proposal.

(c) The recipient shall promptly notify unsuccessful offerors that their proposals were rejected.

§ 33.525 Optional procedure for negotiation and award of a subagreement for architectural and engineering services.

(a) This optional procedure for negotiating and awarding a subagreement for architectural and engineering services may be used if price is not an evaluation criterion set forth in the request for proposals.

(b) The recipient may negotiate and award a subagreement for architectural or engineering services with an offeror on a prequalified list.

(c) The recipient shall negotiate fair and reasonable compensation with the best qualified offeror. If the recipient and the best qualified offeror cannot agree on the amount of compensation, the recipient shall formally terminate negotiations with the selected offeror. The recipient shall then negotiate with other qualified offerors, in the order of their respective qualification, until compensation can be agreed upon.

(d) The recipient shall award the subagreement to the offeror whose proposal is determined in writing to be the best qualified based upon the evaluation criteria set forth in the request for proposals, and after the negotiation of fair and reasonable compensation.

(e) The recipient shall promptly notify unsuccessful offerors that their proposals were rejected.

Noncompetitive Negotiation

§ 33.605 Noncompetitive negotiation procurement method.

(a) Noncompetitive negotiation may be used only when the award of a subagreement is not feasible under small purchase, formal advertising, or competitive negotiation procedures.

(b) The recipient may award a noncompetitively negotiated subagreement only under the following circumstances:

(1) When the item is available only from a single source;

(2) When a public exigency or emergency exists and the urgency for the requirement will not permit a delay incident to competitive procurement;

(3) When, after solicitation from a number of sources, competition is determined to be inadequate; or

(4) When the EPA award official authorizes noncompetitive negotiation, subject to the limitation in § 33.715(a)(2).

Subpart C—Clean Water Act Requirements

§ 33.705 Applicability and scope of this subpart.

Recipients of an assistance agreement awarded under 40 CFR Part 35, Subparts E and I must comply with the following requirements.

§ 33.710 Buy American.

Section 215 of the Clean Water Act requires that contractors give preference for the use of domestic material in the construction of the treatment works for which EPA awards assistance.

(a) Domestic construction material must be used in preference to nondomestic materials if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic materials including all costs of delivery to the construction site, and any applicable duty, whether or not assessed. Computations will normally be based on costs on the date of opening of bids or proposals.

(b) The award official may waive the Buy American provision based upon those factors that the award official considers relevant, including:

(1) Such use is not in the public interest;

(2) The cost is unreasonable;

(3) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(4) The articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured and not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(5) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(c) Notwithstanding any other provision of this Part, bidding documents and subagreements shall contain the "Buy American" provision in § 33.1030.

§ 33.715 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided facilities planning or design services for the project and wishes to retain that firm or individual to provide architectural or engineering services during construction of the project, it may do so without further public notice and evaluation of qualifications provided:

(1) EPA awarded the recipient a facilities planning (Step 1) and a design grant (Step 2), or only a design grant (Step 2), and the recipient procured the architect or engineer using the EPA procurement regulations in effect when EPA awarded the grant;

(2) The award official's approval for noncompetitive procurement under § 33.605(b)(4) is based on justification other than the use of the same individual or firm for architectural or engineering services during construction that provided facilities planning or design services for the project; or

(3) The initial request for proposals clearly stated that there is a possibility that the firm or individual who is selected may be awarded a subagreement for services during construction; and

(4) The recipient attests that the firm or individual was selected for facilities planning or design services in accordance with procedures in:

(i) Section 33.230 "Competition," and

(ii) Section 33.250(a) (1), (2) and (3), and (b) "Documentation," and

(iii) No employee, officer, or agent of the recipient, any member of their immediate families, or their partners, have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees, or agents solicited nor accepted gratuities, favors, or anything of monetary value from contractors, or other parties to subagreements, and

(v) Sections 33.305 through 33.315 "Small Purchase," or

(vi) Sections 33.405 through 33.430 "Formal Advertising," or

(vii) Sections 33.505 through 33.525 "Competitive Negotiation."

(b) If the recipient uses the same individual or firm which provided the facilities planning or design services to provide architectural or engineering services during construction, subagreements funded with EPA grant funds (i.e. Step 3) must meet all of the procurement provisions in this part.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

§ 33.805 Applicability and scope of this subpart.

Recipients who are subject to the provisions of A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" are not subject to all of the requirements in this Part.

§ 33.810 Nonapplicable subagreement provisions.

The following clauses in Subpart F of this Part do not apply to institutions of higher education and other nonprofit organizations:

(a) Energy efficiency (§ 33.1024);

(b) Changes (§ 33.1030,3);

(c) Differing site conditions (§ 33.1030,4); and

(d) Price reduction for defective cost or pricing data (§ 33.1030,8).

§ 33.815 Nonapplicable procurement provisions.

The following procurement provisions do not apply to institutions of higher education and other nonprofit organizations:

(a) Sections 33.405 through 33.430 "Formal advertising;"

(b) Sections 33.505 through 33.525 "Competitive negotiation;"

(c) Section 33.605 "Noncompetitive negotiations" (see §33.820(b));

(d) The requirement in 33.270(a) "Code of conduct" to have a written code of conduct;

(e) The provisions of § 33.240 "Small, minority, women's, and labor surplus area businesses" which:

(1) Encourage the award of a fair share of contracts to women's and labor surplus area businesses;

(2) Require the specific affirmative action steps in § 33.240(a) (1) through (6). However, nonprofit organizations are required to make positive efforts to use small businesses and minority owned businesses as sources of supplies and services.

(f) Subpart G "Protests."

§ 33.820 Additional procurement requirements.

(a) Contractors that develop or draft specifications, requirements, statements of work, invitation for bids, or requests for proposals must be excluded from competing for awards from institutions of higher education and other nonprofit organizations resulting from the prior effort.

(b) For all proposed sole source contracts and where only one bid or proposal is received, the recipient must request the award official's prior approval to award the contract if the aggregate expenditure is expected to exceed $10,000.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

§ 33.905 Applicability and scope of this subpart.

(a) The requirements in this subpart apply only to remedial actions which EPA funds as a part of a cooperative agreement under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. Activities under CERCLA other than remedial action activities are subject to the requirements in Subparts A, B, F and G.

(b) Studies, investigations, or engineering activities which precede a remedial action activity are not subject to the requirements in this subpart.

§ 33.910 Preference for formal advertising.

If a recipient wants to use a procurement method other than formal advertising, it must determine in writing that formal advertising is not appropriate and must receive the EPA award official's concurrence with the determination.

§ 33.915 Award official approval.

The award official shall approve the recipient's use of a procurement method other than formal advertising only after the recipient has completed remedial planning activities and selected a cost-effective alternative.

Subpart F—Subagreement Provisions

§ 33.1005 Applicability and scope of this subpart.

(a) This subpart applies to all EPA recipients and describes the minimum content of each subagreement (contract and subcontract).

(b) Nothing in this subpart shall be construed to prohibit a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a subagreement.

§ 33.1010 Requirements for subagreement clauses.

Recipients shall include clauses that meet the requirements of §§ 33.1015 through 33.1024, in each procurement subagreement.

§ 33.1015 Subagreement provisions clause.

Each subagreement must include provisions defining a sound and complete agreement, including the:

(a) Nature, scope, and extent of work to be performed;

(b) Timeframe for performance;

(c) Total cost of the subagreement; and

(d) Payment provisions.

§ 33.1018 Equal employment opportunity clause.

All subagreements awarded in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

§ 33.1019 Anti-kickback clause.

All subagreements for construction (as defined by the Secretary of Labor) or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in the Department of

Labor regulations (29 CFR Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to EPA.

§ 33.1020 Minimum wage clause.

When required by the EPA assistance program legislation, all construction (as determined by the Secretary of Labor) subagreements in excess of $2,000 awarded by recipients and any lower tier shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under the Act contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a subagreement shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to EPA.

§ 33.1021 Work hours and safety standards clause.

All subagreements in excess of $2,000 for construction contracts (as defined by the Secretary of Labor) and in excess of $2,500 for other subagreements which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than one and one half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or tramsmission of intelligence.

§ 33.1022 Patents, data, and copyrights clause.

Subagreements shall include notice of EPA requirements and regulations pertaining to reporting and patent rights under any subagreement involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such subagreement and of EPA requirements and regulations pertaining to copyrights and rights in data contained in 40 CFR Part 30.

§ 33.1023 Violating facilities clause.

Subagreements in excess of $100,000 shall contain a provision which requires contractor compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15) which prohibit the awarding of nonexempt Federal contracts, grants, or loans to facilities included on the EPA List of Violating Facilities. The provision shall require contractors to report violations to the EPA.

§ 33.1024 Energy efficiency clause.

Subagreements shall follow mandatory standards and policies on energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

§ 33.1030 Model subagreement clauses.

(a) Recipients must include, when appropriate, the following fourteen clauses or their equivalent in each subagreement.

(b) Recipients may substitute other terms for "recipient" and "contractor" in their subagreements.

1. Supersession

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 33.1030 or their equivalent apply to the EPA grant-eligible work to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

2. Privity of Subagreement

This subagreement is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this subagreement or any lower tier subagreement. This subagreement is to be subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

3. Changes

(a) This clause in paragraph (a) applies only to subagreements for construction.

(1) The recipient may, at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the subagreement, including but not limited to changes:

(i) In the specifications (including drawings and designs);

(ii) In the time, method, or manner of performance of the work;

(iii) In the recipient-furnished facilities, equipment, materials, services, or site; or

(iv) Directing acceleration in the performance of the work.

(2) A change order shall also be any other written or oral order (including direction, instruction, interpretation or determination) from the recipient, which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.

(3) Except as provided in this clause, no order, statement, or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

(4) If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the subagreement modified in writing and, except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with those defective specifications.

(5) If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under paragraph (1) of this change clause or the furnishing of a written notice under paragraph (2) of this clause, submit to the recipient a written statement setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day period. The statement of claim may be included in the notice under paragraph (2) of this change clause.

(6) No claim by the Contractor for an equitable adjustment shall be allowed if

made after final payment under this subagreement.

(b) The clause in this paragraph applies only to subagreements for services.

(1) The recipient may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the contractor of the notification of change unless the recipient grants additional time before the date of final payment.

(2) No services for which an additional compensation will be charged by the contractor shall be furnished without the written authorization of the recipient.

(c) This clause in paragraph (c) applies only to subagreements for supplies.

(1) The recipient may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this subagreement, in any one or more of the following:

(i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the recipient;

(ii) method of shipment or packing; and

(iii) place of delivery.

(2) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this subagreement, whether or not changed by any such order, an equitable adjustment shall be made in the subagreement price or delivery schedule, or both, and the subagreement shall be modified in writing. Any claim by the contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the contractor of the notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this subagreement. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the subagreement as changed.

4. Differing Site Conditions

(This clause is applicable only to construction subagreements.)

(a) The contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:

(1) subsurface or latent physical conditions at the site differing materially from those indicated in this subagreement, or

(2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this subagreement. The recipient shall promptly investigate the conditions, and if it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this subagreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the subagreement modified in writing.

(b) No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).

(c) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this subagreement.

5. Suspension of Work

(This clause is applicable only to construction subagreements.)

(a) The recipient may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.

(b) If the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the recipient in administration of this subagreement, or by the recipient's failure to act within the time specified in this subagreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this subagreement (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this subagreement.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act or failure to act involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the subagreement.

6. Termination

(a) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This subagreement may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this subagreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the contractor in performing this subagreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party of subagreement to complete the work under this subagreement.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the price provided for in this subagreement shall be made as provided in paragraph (c) of this clause.

7. Remedies

Except as may be otherwise provided in this subagreement, all claims, counter-claims, disputes, and other matters in question between the recipient and the contractor arising out of or relating to this subagreement or the breach thereof will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

8. Price Reduction for Defective Cost or Pricing Data

Note.—*This clause is applicable to (1) any subagreement negotiated between the recipient and its contractor in excess of $500,000; (2) negotiated subagreement amendments or change orders in excess of $500,000 or 10 percent of the subagreement*

whichever is less, affecting the price of a formally advertised, competitively awarded, fixed price subagreement; or (3) any lower tier subagreement or purchase order in excess of $500,000 or 10 percent of the assistance agreement, whichever is less, under a subagreement other than a formally advertised, competitively awarded, fixed price subagreement. This clause is not applicable for subagreements to the extent that they are awarded on the basis of effective price competition.

The contractor and subcontractor, where appropriate, warrant that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements, lower tier subagreements, and change orders is based on current, accurate, and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this subagreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and the subagreement shall be modified in writing to reflect such action.

Note.—*Since the subagreement is subject to reducton under this clause by reason of defective cost or pricing data submitted in connection with lower tier subagreements, the contractor may wish to include a clause in each lower tier subagreement requiring the lower tier subcontractor to appropriately indemnify the contractor. It is also expected that any lower tier subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by lower tier contractors.*

9. Audit; Access to Records

(a) The contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on EPA grant work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30, in effect on the date of execution of this subagreement. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, recipient, and [the State] or any of their authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(b) If this is a formally advertised, competitively awarded, fixed price subagreement, the contractor agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and subagreement amendments affecting the subagreement price. In the case of all other types of prime subagreements, the contractor agrees to include paragraphs (a) through (f) of this clause in all his subagreements in excess of $10,000 and all lower tier subagreements in excess of $10,000 and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause, to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above, shall be maintained and made available during performance of [EPA] assisted work under this subagreement and until three years from the date of final EPA payment for the project. In addition, those records which relate to any dispute or claim arising under an EPA assistance agreement or to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause, with respect to financial records, applies to:

(1) Negotiated prime subagreements,

(2) Negotiated change orders or subagreement amendments in excess of $10,000 affecting the price of any formally advertised, competitively awarded, fixed price subagreement, and

(3) Subagreements or purchase orders under any subagreement other than a formally advertised, competitively awarded, fixed price subagreement. However, this right of access does not apply to a prime subagreement, lower tier subagreement, or purchase order awarded after effective price competition, except:

(i) With respect to records pertaining directly to subagreement performance (excluding any financial records of the contractor,)

(ii) If there is any indication that fraud, gross abuse, or corrupt practices may be involved or

(iii) If the subagreement is terminated for default or for convenience.

10. Covenant Against Contingent Fees

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

11. Gratuities

(a) If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the recipient, the State or EPA in an attempt to secure subagreements or favorable treatment in awarding, funding, or [illegible] determination with respect to the performance of this agreement, the recipient may, by written notice to the contractor, terminate this agreement. The recipient may also pursue other rights and remedies that may be available under this agreement, law or equity. However, the existence of the facts upon which the recipient makes findings under this paragraph shall be in issue and may be reviewed in proceedings under the [illegible] clause of this agreement.

(b) In the event this agreement is terminated as provided in paragraph (a) of this clause, the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the subagreement by the contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the recipient may pursue exemplary damages in an amount (not less than three nor more than ten) times the cost incurred by the contractor in providing any such gratuities to any such official or employee.

12. Buy American

[This clause shall be included in all awarded subagreements (40 CFR Part 6, Subpart F and I.)]

In accordance with section 215 of the Clean Water Act, [33 USC 1251 et. seq.] and implementing EPA regulations and guidelines, the contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, materialmen, and suppliers in the performance of this subagreement.

13. Responsibility of the Contractor

(a) This [illegible] agrees to perform all subagreement work for [illegible].

(1) The contractor is responsible for the professional [illegible] work, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors, [illegible] deficiencies in its designs, drawings, specifications, reports, or other services.

[illegible] for the project [illegible] pertinent [illegible] accordance with [illegible] applicable [illegible] date of [illegible] for this project.

(3) The [illegible] drawings, [illegible] and incidental work or [illegible] furnished hereunder shall not in any way relieve [illegible]

contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance, or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

(4) The contractor shall be and shall remain liable, in accordance with applicable law, for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data, or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

(5) The contractor's obligations under this clause are in addition to the contractor's other express or implied warranties under this agreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment, or work.

(b) The clause in paragraph (b) applies only to subagreements for construction.

(1) The contractor agrees to perform all work under this agreement in accordance with this agreement's designs, drawings, and specifications.

(2) The contractor warrants and guarantees for a period of one (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials, equipment or workmanship; and the contractor shall promptly make whatever adjustments or corrections necessary to cure such defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall give notice to the contractor of observed defects with reasonable promptness. In the event that the contractor fails to make adjustments, repairs, corrections or other work that may be made necessary by such defect, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

(3) The contractor's obligations under this clause are in addition to the contractor's other express or implied warranties under this agreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment, or work.

14. Final Payment

Upon satisfactory completion of the work performed under this agreement, as a condition before final payment under this agreement, or as a termination settlement under this agreement, the contractor shall execute and deliver to the owner a release of all claims against the owner arising under or by virtue of this agreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this agreement or by State law or otherwise expressly agreed to by the parties to this agreement, final payment under this agreement or settlement upon termination of this agreement shall not constitute a waiver of the owner's claims against the contractor or his sureties under this agreement or applicable performance and payment bonds.

Subpart G—Protests

§ 33.1105 Applicability and scope of this subpart.

(a) This subpart sets forth the administrative process that EPA will use for the rapid resolution of protest appeals filed with the award official.

(b) A protest is a written complaint concerning the award of a recipient's subagreement filed with the recipient by a party with a direct financial interest adversely affected by a recipient's procurement action.

(c) A protest appeal is a complaint filed with the award official regarding the recipient's determination of protest.

§ 33.1110 Limitations on protest appeals.

(a) The award official shall not accept a protest appeal from a recipient's determination of protest until the protester has exhausted all administrative remedies at the recipient level.

(b) A protest appeal may only be filed with the award official for:

(1) Issues arising under the procurement provisions of this Part;

(2) Alleged violations of State or local law or ordinances and when the award official determines that there is a contravening Federal requirement;

(3) Provisions of Federal regulations applicable to direct Federal contracts, if such provisions are explicitly referred to or incorporated in this Part;

(4) Basic project design determinations which clearly relate to questions of source selection or application of restrictive specifications; or

(5) Award of lower tier subagreements;

(i) If the recipient mandated the award to a particular entity; or

(ii) If it were based on a violation of the requirements in § 33.295 "Lower tier subagreements."

§ 33.1115 General requirements.

(a) Any party with an adversely affected direct financial interest may file a written protest appeal with the award official in accordance with this subpart.

(b) The recipient is responsible for the prompt initial determination of the protest.

(c) The award official may summarily dismiss an appeal without proceedings under this subpart, if the protest or appeal is untimely or entirely addresses issues which are beyond the scope of this subpart, or the protester fails to comply with the intent of the procedural requirements of this subpart.

(d) The award official may summarily deny a protest appeal, without proceedings under this subpart, if, after considering the facts in a light most favorable to the protester, the award official believes that the protest lacks merit.

§ 33.1120 Filing requirements for protest appeals.

(a) A protest appeal to the award official must be in writing and must adequately state the basis for the protest appeal. Appeals must be received by the award official within one week after the complaining party has received the recipient's determination of protest. If the last day falls on a Saturday, Sunday or holiday, the last day to submit a request shall be the next working day. A copy of the recipient's determination of protest and other documentation in support of the appeal shall be transmitted with the appeal.

(b) The award official will dismiss as untimely any protest appeals based upon alleged improprieties in the solicitation which were apparent before bid opening or the closing date for receipt of initial proposals if the initial protest was not received by the recipient before bid opening or the closing date for receipt of proposals respectively. In the case of negotiated procurements, protests of alleged improprieties which were incorporated in a new solicitation must have been received by the recipient not later than the next closing date for receipt of proposals.

(c) In cases not based upon alleged improprieties in soliciation, the award official will dismiss as untimely any appeals if the initial protest was not received by the recipient within one week after the basis for the protest was known or should have been known, whichever is earlier.

(d) The protester may notify the award official of a protest or appeal by brief telegraphic notice but the protester must provide the award official with a more detailed statement of the basis for the protest appeal within seven days after the date on the telegraphic notice.

(e) The award official will not consider oral protest appeals.

§ 33.1125 Appeal documents.

(a) The protest appeal document must state the legal and factual grounds for the appeal and request a determination under this subpart.

(b) Upon filing of a protest or appeal with the award official the protester

DEQE PERMIT

TECHNICAL SPECIFICATIONS

SECTION 2A

SITE PREPARATION

2A.01 SCOPE OF WORK

1. Furnish all labor, materials, equipment and transportation necessary to clear and grub and remove and dispose of all trees, down timber, snags, brush vines, rubbish, stumps, roots and other debris from such areas required to complete this project, as areas indicated on the plans or as directed by the Engineer.

2A.02 METHOD OF CONSTRUCTION

1. Clearing and Grubbing shall conform to Subsections 101.20, 101.60, 101.61, 101.63 and 101.64 of the Standard Specifications.

2A.03 COMPENSATION

1. Measurement. Clearing and Grubbing and tree removal of the appropriate sizes shall be measured as described in Subsection 101.80 of the Standard Specifications.

2. Payment. Payment for all completed and accepted work under this Section shall conform with the relevant provisions of subsection 101.81, and shall be paid for at the Contract unit price per lump sum for Clearing and Grubbing and for tree removal of the appropriate sizes including stump and root removal.

3. Payment Items.

2A-1	Clearing and Grubbing	Lump Sum
2A-2	Trees Removed (diameter under 24 inches)	Each
2A-3	Trees Removed (diameter 24 inches and over)	Each

END OF SECTION

SECTION 2B

EARTHWORK

2B.01 SCOPE OF WORK

1. The work of this section consists of furnishing all labor, materials, equipment, supervision and performing all operations required, as shown on the drawings, as directed by the Engineer, as herein specified and as required to properly complete the work.

2. Description of Work: The work includes, but is not limited to the following items:

   A. Protection of existing utilities, roadways, sidewalks and/or abutting properties.

   B. Excavation and backfill as required to grade site to subgrade shown on the drawings for construction of bituminous concrete roadways.

   C. Trench excavation and backfill for storm drains, catch basins, manholes, leaching basins, water lines and related utility installations.

   D. Test pits required to locate buried utilities, sewers, drains, septic systems, and/or structures.

   E. Furnishing and compacting gravel borrow and crushed stone.

   F. Removing and legally disposing of surplus and unsuitable miscellaneous debris and materials away from the project site, including but not limited to bituminous pavement and curb, boulders, drain pipe and drainage structures, as indicated on the Drawings.

2B.02 WORK INCLUDED UNDER OTHER SECTIONS

1. The following related work is specified under this section but paid for under the work of the following sections for which it is required:

   A. Excavation, backfill and fill for:

      1. STORM DRAINS - SECTION 2C

      2. WATER SYSTEM - SECTION 2F

2B.03 MATERIALS

1. Existing materials shall be reused (backfilled) at the direction of the Engineer. All such materials shall be compacted as required for borrow material.

2. Borrow:

   A. General: At least 5 days prior to the placement of fill on the site the Contractor shall indicate to the Engineer the intended source of fill material or stockpile of on-site material, so as to allow the Engineer to obtain a representative sample of the material intended for use. In naming and showing an intended source of material, the Contractor implies that he intends to supply fill material with characteristics conforming generally to the material visible at the source. The acceptance of any material source by the Engineer as being suitable shall not relieve the Contractor of his responsibility to have the fill material used conform to the general type of material sampled by the Engineer.

   B. Loam borrow shall conform to Subsection M1.05.0 of the Standard Specifications.

   C. Gravel borrow shall conform to Subsection M1.03.0 of the Standard Specifications.

   D. Crushed stone shall conform to Subsection M2.01.0 and M2.01.1 of the Standard Specifications.

2B.04 METHOD OF CONSTRUCTION

1. General:

A. The Contractor shall upon the establishment of baselines and grade stakes in Lake Shore Drive, Castle Gate and Castle Gate Extension, allow the Engineer to examine and verify line and grade prior to any actual excavation or beginning of work.

B. The Contractor shall employ a Registered Land Surveyor or Registered Engineer to establish the baseline shown on the drawings and to accurately lay out all improvements related thereto. All work and control points shall be preserved by a system of offsets and/or ties in order to prevent destruction. Elevations shall be established from the benchmarks indicated on the Drawings.

C. All excavation with the exception of "Class B Rock Excavation" - shall be considered "unclassified" and therefore may include topsoil, subsoil, gravel, sand, debris, silt, stones, cobbles, building fragments and any other unsorted materials.

D. The Contractor shall notify the Engineer at least three working days in advance of commencing any work in the public ways and obtain all required permission to perform this work. The Contractor shall perform all work in the public ways in a manner required by the municipal authorities; obtain and pay for all necessary permits; pay for all backcharges by agencies performing necessary work. All excavation shall conform to the relevant provisions of Subsection 120.60 of the Standard Specifications except as modified herein.

E. The Contractor shall not close or otherwise obstruct any street or sidewalk until all necessary permits have been secured and charges paid. Storage areas, if any are permitted, shall be approved by the Engineer.

The Contractor shall conduct all operations so as to interfere as little as possible with the use ordinarily made of roads, driveways, sidewalks or other facilities.

F. Necessary groundwater and drainage control, sheeting, shoring and bracing, and any cutting, shaping and cleaning of the undisturbed contiguous portions of surfaces to a neat line to ensure a proper bond between the old and new construction shall be performed under this Section. Where a new pavement or overlay meets existing pavement, the joint shall be saw cut to a neat, vertical line. In the event that the saw cut edge is damaged, additional saw cuts shall be made at no additional costs.

G. Placing of stacked loam or loam borrow shall conform to the relevant provisions of Section 751 of the Standard Specifications and as specified herein. Immediately prior to placing and spreading the loam, the subgrade shall be loosened by discing or rototilling to a depth of at least three inches to permit bonding of the loam to the subgrade materials.

After all areas to receive loam have been tilled as specified above, the Contractor shall distribute the loam to the finish grade. The minimum depth of loam shall be four inches.

2. Site Excavation and Backfill:

A. Excavate site as shown on the drawings and cross-sections to subgrade. All suitable material must be stored on site and utilized as backfill or in embankments. Surplus or unsuitable material shall be disposed of off site by the Contractor at no additional compensation.

B. If unauthorized excavation occurs beyond the limits established on the drawings, the Contractor shall be responsible for the repair of the area by backfilling with approved material and compacting to 95 percent maximum density at no additional expense to the Town.

C. Side slopes of excavations must not exceed the angle of repose of the material encountered; otherwise shore and brace where sloping is not possible either because of space limitations or the stability of the material excavated. Maintain sides and slopes of excavations in a safe condition until completion of backfilling by benching, shelving or bracing.

D. Perform earthwork in a manner to prevent surface water and subsurface or groundwater from flowing into excavations and to prevent water from flooding the project site and abutting streets. Do not allow water to accumulate in excavations. Remove water using dewatering methods which will prevent softening adjacent areas, undercutting footings or causing other damage. Provide and maintain pumps, sumps, suction and discharge lines and other components that are necessary to convey water away from excavations.

E. Placement: Place backfill and fill materials in layers that do not exceed 12" in loose depth except as specified in Section I, below. Before compaction moisten or aerate each layer as necessary to provide optimum moisture content. Compact each layer to required percentage of maximum density. Do not place backfill or fill material on surfaces that are wet, muddy, frozen or contain frost or ice.

F. Gravel borrow shall be used to supplement backfill material.

G. General: Perform compaction of soil materials for backfills or fills using suitable soil compaction equipment for materials to be compacted and work area locations. Compaction percentages refer to ASTM D698-70.

H. Control soil compaction during construction for compliance with percentage of maximum density specified for each area classification.

I. Percentage of Maximum Density Requirements: Provide not less than following percentages of maximum density of the same soil material compacted at optimum moisture content, for the actual density of each layer of soil material-in- place.

1) Structures, Paved Areas and Slopes: Compact top 12 inches of subgrade and each layer of backfill or fill material at 95 percent maximum density.

2) Lawn and Upaved Areas: Compact top 6" of subgrade and each layer of backfill or fill material at 90 percent maximum density.

3) Walkways: Compact top 6" of subgrade and each layer of backfill or fill material at 95 percent maximum density.

F. Moisture Control: Where subgrade or layer of soil material must be moisture conditioned before compaction, uniformly apply water to surface of subgrade, or layer of soil material, to prevent free water appearing on surface during or subsequent to compaction operations. Remove and replace, or scarify and air dry, soil material that is too wet to permit compaction to specified density.

3. Trench Excavation and Backfill:

A. General: Excavate trenches to lines, grades and elevations. Install pipe bedding above the trench bottom throughout and excavate to accommodate joints and connections so the barrel of the pipe will receive bearing pressure throughout.

B. Trenching Guidelines: For excavation, trench width and depth shall be as follows: width, ample to allow a minimum free working space of 1' - 6" on each side of pipe barrel, except when hand dug; width of hand excavated trenches may be reduced providing approval is given, stability of soil is consistent with depth of trench required, and pipe can be satisfactorily installed to line and grade and properly backfilled; depth, as indicated or staked in field; carry trenches to a depth of 12" below pipe bottom; and excavate placements for thrust blocks at grade and trim sides straight upward to original ground; pump off water which has accumulated in low ground; and keep excavation drained of water.

C. Construct and maintain all shoring and sheeting necessary to protect the excavation, as needed for the safety of the employees and as required by applicable State and Federal laws.

D. Do not disturb or remove timber or other sheeting driven to a depth below the elevation of the top of the pipe.

E. As directed, remove all other sheeting and shoring when safe to do so. Any portion wholly buried by earth and at a distance of at least 18" from any timber members of permanent structures need not be stripped. The Contractor, at his option, may leave sheeting in place, provided it is cut off 24" below finished grade.

F. Use backfill or gravel borrow carefully placed in uniform layers not exceeding 6" in thickness to a depth of 2 feet over the top of the pipe. Place material and fill the area under the pipe haunches. Place each layer, moisten; then uniformly compact by use of hand, pneumatic or mechanical tampers exercising care to prevent lateral displacement. Areas of backfill 2 feet to 4 feet over top of pipe or 2 feet over top of pipe to top of trench, whichever is less, shall be backfilled with a material containing no rocks larger than 8" in the greatest dimension and shall be free of material with an exceptionally high void content. Backfill for over 4 feet over top of pipe, as approved, meeting above requirements except size of rocks will not be limited. Moisten backfill above 2 feet over the top of the pipe and place in 12" layers. Compact each layer with hand, pneumatic or mechanical compactor. Puddling or flooding of trench for consolidation of backfill or use of wheel rolling by construction equipment will not be permitted without the permission of the Engineer.

4. Structural Excavation and Backfill:

A. In order to minimize problems that could be created by differential settlement, it is essential that earth surfaces upon which structures will bear are properly prepared. Therefore special care shall be taken not to disturb the material below the bottom of the excavation and the final removal of the foundation material to grade shall not be made until footing construction and/or the installation of gravel borrow cushion is imminent. Any foundation material disturbed below plan grade shall be dressed and compacted; or if necessary, shall be removed and replaced with suitable material as directed by the Engineer at no expense to the Town. Exceptions will only be made when a gravel fill base course is specified.

B. The dry density of each layer of backfill, after compacting, shall be 95 percent of the dry density for the material when testing (AASHTO T-180 Method D or ASTM D1557).

2B.05 SHOP DRAWINGS, SAMPLES, TESTING

1. All fill materials and their placement shall be subject to quality control testing. A qualified laboratory will be selected by the Town to perform tests on materials, except as otherwise required. Test results and laboratory recommendations will be available to the Contractor. The Town shall pay for only those tests where the results are acceptable within the specifications. The Contractor shall be responsible for payment of tests where test results indicate materials that do not meet specifications and are rejected.

2. Provide samples of each fill material from the proposed source of supply. Allow sufficient time for testing and evaluation of results before material is needed. Submit samples from alternate source if required.

3. The Engineer will be sole and final judge of suitability of all material. However, approval of materials by the Engineer shall not be taken to waive the Contractor's responsibility for and guarantee of the work of this Contract.

4. Tests of materials as delivered may be made from time to time. Materials in question may not be used, pending test results, unless otherwise ordered by the Engineer.

2B.06 COMPENSATION

1. Measurement

   A. Measurement of all items in this Section shall be in accordance with Sections 120, 140, and 150 of the Standard Specifications.

2. Payment

   A. The basis of payment for all items in this Section shall be in accordance with Sections 120, 140, and 150 of the Standard Specifications.

3. Payment Items.

2B-1	Earth Excavation	Cubic Yard
2B-2	Loam Borrow	Cubic Yard
2B-3	Gravel Borrow	Cubic Yard
2B-4	Crushed Stone for Miscellaneous Uses	Ton
2B-5	Class B Rock Excavation	Cubic Yard

END OF SECTION

SECTION 2C

STORM DRAINS

2C.01 SCOPE OF WORK

1. The work of this section consists of furnishing all labor, materials, equipment, supervision, and performing all operations required including all sheeting, bracing, dewatering and control of water, as shown on the drawings, as directed by the Engineer, as herein specified and as required to properly complete the work.

2. Description of the Work: The work includes, but is not limited to, the following items:

   A. Furnishing and installing storm drainage lines as shown on the drawings.

   B. Furnishing and installing catchbasins, manholes and leaching basins as shown on the drawings.

   C. Abandoning and plugging existing drain pipes, and removing existing drainage structures and pipes as indicated on the Drawings or as directed by the Engineer.

2C.02 WORK INCLUDED UNDER OTHER SECTIONS

1. The following related work is specified and under Section 2B, but is included for payment under the items of this Section.

   A. EARTHWORK - SECTION 2B

   B. EXCAVATION AND BACKFILL - SECTION 2B

2C.03 MATERIALS

1. Reinforced concrete pipe shall conform to Subsection M5.02.01 of the Standard Specifications.

2. Standard catch basins and manholes shall conform to Section 201.40 of the Standard Specifications.

3. Leaching basins shall conform to Town Standards and the details on the Contract Drawings.

4. MDPW cascade type frames and grates Type A-1 shall be installed on catch basins.

2C.04 METHOD OF CONSTRUCTION

Method of construction shall conform to Section 200 of the Standard Specifications and the following.

1. Pipe Installation

A. Trenches shall be excavated and backfilled in accordance with Section 2B.

B. Each pipe shall be lifted into its position in the trench only in such manner, and by such means, as the Engineer approves as satisfactory. The Contractor will be required to furnish slings, straps and other approved devices to permit satisfactory support of all parts of the pipe when it is lifted.

C. Except where a concrete cradle or envelope is required, the pipe shall be laid on the composed trench grade or gravel borrow bedding as required. In trenches, no blocking or supporting of the pipe by concrete, stones, bricks, wooden wedges or method other than bedding the pipe will be permitted. Each length of pipe shall be securely held in position until backfilled. Joints shall not be "pulled" or "cramped" without approval of the Engineer.

D. Before any joint is made, the previously installed unit shall be checked to assure that a closed joint has been maintained and that the inverts are matched and conform to the required grade. The pipe shall not be driven down to the required grade by striking it with the backhoe bucket or other unyielding object.

E. After each pipe has been properly bedded, enough gravel shall be placed and compacted between the pipe and the sides of the trench to hold the pipe in correct alignment. Bell holes provided for jointing shall be filled with gravel and compacted, and then the backfilling operation may begin.

F. At all times when pipe laying is not in progress, the open end of the pipe shall be closed using a temporary, watertight plug. If water is in the trench when work is resumed, the plug shall not be removed until all danger of water entering the pipe has passed. Pipelines shall not be used as conductors for trench drainage during construction without the approval of the Engineer. If approved, the Contractor will be required to maintain suitable devices to control siltation during construction operations.

2. Structures

A. Standard manholes, catchbasins and leaching basins shall be constructed as indicated on the drawings or directed by the Engineer. In addition to the installation of new structures,

this work shall include adjusting manhole and catchbasin frames to grade, cutting into and rebuilding existing structures and other modifications necessary to complete the project.

B. Only clean bricks or blocks shall be used in masonry work. The units shall be moistened by suitable means or as directed by the Engineer, until they are neither so dry as to absorb water from the mortar nor so wet as to be slippery when laid. Each unit shall be laid with a full mortar bed and joint so as to eliminate the need for subsequent grouting, flushing or filling. Invert channels made of brick shall be smoothly shaped to meet the pipelines.

C. All outside and inside masonry faces shall receive a ½" mortar plaster. The masonry shall be moistened prior to the plaster application and the plaster shall be spread and troweled so that all cracks are thoroughly removed. Unsound or unbonded plaster shall be removed and replaced at the Contractor's expense.

D. Adjustment of drainage structures, abandonment of drainage structures, and plugging of pipe ends shall conform to the relevant provisions of Section 200 of the Standard Specifications. Frames shall be set in a mortar bed and positioned so that the cover or grate will meet the elevation and slope of the adjacent finished surface. The frame shall be encased in full mortar around its entire perimeter.

E. Upon completion, each new or adjusted structure shall be cleaned of any accumulation of silt, dirt, debris or foreign matter of any kind and shall be kept clear of such accumulations until final acceptance of the project, without additional compensation.

F. The following shall relate to the new structures as applicable:

1) Manholes, and catch basins shall be placed on a bed of screened gravel. Brick lined channels shall correspond in shape with the lower half of the pipe. The top of the shelf shall be set a minimum of 2 inches above the centerline of the pipe and shall be sloped to drain toward the flow-through channel.

2) Precast concrete barrel sections shall be set so as to be vertical and with sections in true alignment with a 1/4 inch maximum tolerance to be allowed. The outside and inside joint shall be filled with non-shrink mortar and finished flush with the adjoining surfaces. Allow joints to set for 24 hours before backfilling. Backfilling shall be done in a careful manner, in conformance with Section 2B of these

Specifications, bringing the fill up evenly on all sides. If any leaks appear in the manholes, the inside joints shall be caulked with lead wool to the satisfaction of the Engineer. The Contractor shall install the precast sections in a manner that will result in a watertight joint.

3) Holes in the concrete barrel sections required for handling or other purposes shall be plugged with a non-shrink grout or non-shrink grout in combination with concrete plugs, and finished flush on the inside.

4) Where holes must be cut in the precast sections to accommodate pipes, cutting shall be done prior to setting pipe in place to prevent any subsequent jarring which may loosen the mortar joints.

5) All work shall be protected against flooding and flotation.

6) The areas disturbed in constructing the structures shall be graded, and all site work necessary to achieve a finished surface as indicated on the Plans and as directed by the Engineer shall be performed. All grading and site work shall be completed to the satisfaction of the Engineer.

7) Manhole pipe connections may be accomplished in any of four ways:

   a) A tapered hole filled with non-shrink waterproof grout after the pipe is inserted is acceptable, providing the grout is placed carefully to completely fill around the pipe. If this method is used, place a concrete collar completely around the joint, the cost for which is included with this Item.

   b) The "Lock Joint Flexible Manhole Sleeve" shall be cast in the precast manhole base. The stainless steel strap shall be protected from corrosion with a bituminous coat.

   c) The "RES-SEAL", a cast iron compression ring which compresses a rubber ring into a tapered hole in the barrel, shall be used for sealing the pipe into the manhole barrel. Exposed metal shall be protected from corrosion with a bituminous coat.

   d) "KOR-N-SEAL" joint shall be installed as recommended by the manufacturer. The stainless steel clamp shall be protected from corrosion with a bituminous coat.

8) Manhole rungs shall be grouted into precast manhole and leaching basins sections by the manufacturer. Holes in riser and cone sections for rungs shall be pre-formed during casting. Holes for rungs shall be 1-1/8 inches in diameter and shall be a minimum of 3-1/2 inches deep. Rungs shall be

grouted into the sections immediately after they are cast and placed in the curing area, or immediately after holes are cored into base sections. Holes shall be filled with grout consisting of Portland Type II cement and mortar sand in a 1-1/2 ratio mixed to a putty consistency. The rungs shall then be driven into the holes a minimum of 3 inches. Grout shall then be troweled to form a smooth-looking section. If holes are cored into the base section they shall be cleaned out and wet with a brush before grouting. Those parts of the rung which are embedded in the grout shall receive a heavy coating of zinc chromate or other approved paint.

9) Section 201.62 of the Commonwealth of Massachusetts, Standard Specifications for Highways and Bridges, dated 1973, shall apply.

2C.05 SHOP DRAWINGS, SAMPLES, TESTING

1. Shop drawings or manufacturers' catalogues, shall be submitted to the Engineer. Approval of the Engineer must be obtained to delivery of the following materials to the site:

A. Catalogue cuts of frames and grates, frames and covers, steps, pipe, fittings and all pertinent features.

2C.06 COMPENSATION

1. Measurement

A. Manholes, catchbasins, leaching basins and modifications to existing structures shall be measured for payment by their respective units each, complete in place with bases, walls, steps, traps, frames, grates or covers and all appurtenances. Pipe shall be measured for payment by the actual number of linear feet installed for various types and sizes tabulated in the Proposal. The length shall be measured along the centerline of the pipe from end to end of the pipe barrel excluding the void created at structures. Fittings will not be measured for payment separately, but will be included in the payment for pipe.

2. Payment

The basis of payment for all items in this section shall be in accordance with the Standard Specifications.

A. The accepted quantities of structures, modifications and pipe will be paid for at their respective contract unit prices which shall constitute full compensation for excavation and backfill, furnishing, installing, testing and cleaning the complete item, sheeting, shoring and bracing, dewatering,

all connections of pipe to new and existing structures, for construction of inverts in drain manholes, all interior piping for Type B leaching basins, crushed stone for leaching basins as shown on the drawings and for all labor, tools, and incidentals necessary to complete the work as specified.

Gravel borrow when required for backfill or bedding shall be paid for under Section 2B. Compensation for removal and disposal of existing manholes to be replaced with leaching basins will not be paid for separately, but will be considered to be included in the cost of leaching basins.

Cost of frames and grates for catch basins and frames and covers for manholes and leaching basins shall be included in the cost of the applicable structure.

Cost for adjusting manhole frames and covers, and catch basins frames and grates shall include excavation, backfill, mortar, brick and all required works.

3. Payment Items

2C-1	Abandon Drain Pipe and Plug Ends	Each
2C-2	Adjust Drainage Structure	Each
2C-3	12" RCP, Class IV	Linear Feet
2C-5	Catch Basin	Each
2C-6	Standard Manhole	Each
2C-7	Standard Manhole 9' to 14' Depth	Each
2C-8	Leaching Basin, Type A	Each
2C-9	Leaching Basin, Type B	Each

END OF SECTION

SECTION 2D

EROSION AND SEDIMENTATION CONTROLS

2D.01 SCOPE OF WORK

1. The work of this section consists of furnishing all labor, materials, equipment, supervision and performing all operations required, as shown on the drawings, as directed by the Engineer, as herein specified and as evidently required to properly complete the work.

2. General: The work shall consist of temporary control measures as shown on the Drawings or as directed by the Engineer during the life of the contract to minimize sedimentation of surface waters outside of the project limits.

   Sediment control features installed by the Contractor shall be satisfactorily maintained by the Contractor until acceptance of the project.

   In the event that temporary erosion and sediment control measures are required due to the Contractor's negligence, carelessness, or failure to install permanent controls as a part of the work as scheduled, and such additional measures are ordered by the Engineer, the work shall be performed by the Contractor at his own expense. Temporary erosion and sediment control work which is not attributed to the Contractor's negligence, carelessness or failure to install permanent controls will be performed as ordered by the Engineer and be paid for under the contract unit price for the item required.

3. Description of the Work: The work includes, but is not limited to, the following items:

   A. Furnishing, installing, and subsequently removing hay bales for silt and sediementation control.

2D.02 MATERIALS

1. Hay bales shall be hay securely bound in bales approximately 36 inches by 18 inches by 24 inches. Stakes shall be 2 inch by 2 inch (nominal) hardwood and 36 inches long.

2D.03 METHOD OF CONSTRUCTION

1. Sedimentation control measures shall be installed as shown on the Drawings or as directed by the Engineer.

2. The Contractor shall remove sediment from behind hay bales and as directed by the Engineer. Payment for this work will be made under Item 2B-1 Earth Excavation.

3. Temporary Sedimentation control measures shall remain in place until their removal is directed by the Engineer. All temporary material to be removed shall be the property of the Contractor and shall be disposed of off site.

2D.04 COMPENSATION

1. Payment

The Contractor shall be paid the Contract unit price each for hay bales, which shall include installation, maintenance, wooden stakes, and subsequent removal.

2. Payment Items

2D-1	Hay Bales for Erosion Control	Each

END OF SECTION

SECTION 2E

BITUMINOUS PAVING AND BERM

2E.01 SCOPE OF WORK

1. Furnish all labor, materials, equipment and transportation necessary to construct bituminous concrete pavements and berm as shown on the Drawings and as directed by the Engineer, in accordance with Sections 420, 460 and 470, as applicable, of the Standard Specifications, and as specified herein.

2E.02 WORK INCLUDED UNDER OTHER SECTIONS

1. The following related work is specified and paid for in the following sections:

   A. EARTHWORK - SECTION 2B.

2E.03 MATERIALS

1. Bituminous Pavement Materials:

A.	1" Surface Course:	Mass. Standard Class I Top Course M 3.11.03
B.	2" Binder Course	Mass. Standard Class I Binder Course M 3.11.03
C.	Type A Berm	Mass Standard Class I Berm M3.11.03

2. Gravel Borrow Base Course:

   A. EARTHWORK - SECTION 2B.

2E.04 METHOD OF CONSTRUCTION

1. The construction of the bituminous concrete pavements and berm shall conform to the lines, grades and compacted thicknesses shown on the Drawings.

2. The installation of the gravel base course shall conform to Subsection 405.60 of the Standard Specifications. Installation methods for the bituminous concrete courses shall be in accordance with Subsections 420.60 and 460.60 of the Standard Specifications. Installation of bituminous concrete berm shall be in accordance with Subsections 470.60 and 470.61 of the Standard Specifications.

2E.05 SHOP DRAWINGS, SAMPLES, TESTING

1. Sampling and testing of materials will be conducted by the Town, at its discretion and at its cost, to determine compliance with the quality, gradation and compaction requirements of these specifications. In the event that any material fails to meet requirements, retesting of the material after replacement or recompaction shall be paid for by the Contractor.

2E.06 COMPENSATION

1. Measurement

   A. Bituminous concrete pavement shall be measured as described in Subsection 460.80 of the Standard Specifications.

   B. Bituminous concrete berm shall be measured by the linear foot.

2. Payment

   A. The Contractor shall be paid the contract unit price per ton for Class I bituminous concrete pavement, Type I-1 binder course and top course, for Class I bituminous concrete top course for patching, furnished and installed. Excavation and gravel shall be paid for under their respective Sections.

   B. The Contractor shall be paid the contract unit price per linear foot for Class I bituminous concrete Type A modified berm, furnished and installed.

3. Payment Items

2E-1	Bituminous Concrete Binder Course	Ton
2E-2	Bituminous Concrete Top Course	Ton
2E-3	Bituminous Concrete Berm, Type A Modified	Linear Foot

END OF SECTION

SECTION 2F

WATER SYSTEM

2F.01 SCOPE OF WORK

1. The scope of work under this Section includes furnishing all materials, labor and equipment including connections to existing Town water lines, necessary to install ductile iron cement lined pipe of the sizes shown on the drawings, gate valves, all trenching and any other materials or labor necessary to complete the project in the manner shown in the Drawings, described herein and direcrted by the Engineer. The Contractor shall restore roadways, plantings, grassed areas and any adjacent areas disturbed as a result of the work involved.

   The Contractor will coordinate the installation of the water with the Town Water Department which will install corporation stops and services.

2F.02 WORK INCLUDED UNDER OTHER SECTIONS

1. The following work is specified under Section 2B Earthwork, but is included for payment under the items of this Section.

   A. EARTHWORK - SECTION 2B.

2F.03 MATERIALS

1. Gate valves shall conform to Subsection 301.40 of the Standard Specifications.

2. Ductile iron cement lined pipe shall be furnished and installed in sizes as shown on the drawings and in accordance with the latest ANSI Standards' Designations A21.51 (AWWA 6151) for "Ductile Iron Pipe Centrifugally Cast in Metal Molds or Sand-Lines Molds for Water or Other Liquids" and A21.50 for "Thickness Design of Ductile Iron Pipe". All pipes shall be Class 51.

3. Fittings shall be furnished in accordance with the latest ANSI standards for "Gray Iron and Ductile Iron Fittings 2-Inch Through 48 Inch for Water and Other Liquids," Designation A21.10. FittingS shall be ductile iron, cement lined.

2F.04 METHOD OF CONSTRUCTION

1. Installation of pipes and fittings, and gate valves shall conform to Section 300 of the Standard Specifications, and the following:

   A. The minimum depth of cover over all water pipes shall be 4' - 6".

B. The Contractor shall arrange to make connections to existing water mains at off-peak hours so as not to disrupt existing water services longer than 8 hours and to make connections to existing mains in a sequence to allow for testing and disinfecting all sections of piping in accordance with the requirements of the Town of Wayland.

C. Active valves and hydrants on the site or adjacent thereto shall be opened or closed by authorized Town of Wayland Water Department personnel only.

D. Data relative to existing water mains shown on the plans has been compiled from survey and plans and information furnished by the Town of Wayland but such data is not guaranteed as to exact location or elevation. The Contractor shall verify the location, size and type of existing pipes at each location as necessary or as directed by the Engineer.

E. Hydrants shall be set plumb and shall have the steamer nozzle facing the roadway. A pit at least 12 inches in depth below the bottom of the hydrant and at least 18 inches in diameter shall be dug at each hydrant barrel, and shall be refilled to within 6 inches of the ground surface with clean crushed stone and shall be covered with suitably graded material to prevent the washing in of the remaining backfilling. The backfilling around the hydrant shall be thoroughly rammed. Concrete conforming to Class "C" Cement Concrete Masonry shall be placed between the back of the hydrant and the undisturbed trench bank. The concrete shall be opposite the hydrant inlet and shall bear against at least 9 square feet of the bank; the concrete must not obstruct the hydrant drip. Thrust blocks shall be so constructed that they will not interfere with recaulking joints should such work become necessary. Thrust blocks with bearing areas of 9 square feet shall be provided at locations of bends in 6" ductile iron pipe.

2. Pressure and Leakage Testing:

A. All new lines and services shall be subjected to hydrostatic pressure and leakage tests. The Contractor shall supply all equipment and labor necessary to conduct the test to the satisfaction of the Engineer and shall retest or repeat the testing if the Engineer so requires. The test pressure shall be 150 psi, based on the elevation of the lowest point in the line or section under test and corrected to the elevation of the test gage. All tests shall be conducted in accordance with the requirements of the Water Department.

The Contractor shall utilize a by-pass system for flushing, filling, testing and chlorinating water lines. The by-pass piping shall include corporation stops at the supply line and the main to be filled with two or more check valves installed in the by-pass line to prevent backflow. Fire hydrants may be utilized if they have been properly installed. Line valves shall not be utilized to fill, flush, test or chlorinate water main.

All mains and appurtenances shall be chlorinated by the Contractor in accordance with the requirements of AWWA Designation C-601 with latest revisions. The basic procedure shall be:

1) A fifty (50) ppm chlorine solution shall be bled into and retained within the pipe for a 24-hour period. After the 24 hour period the chlorine concentration shall be at least twenty-five (25) ppm. The heavily chlorinated solution shall then be flushed from the line leaving the chlorine in the line at approximately the same level as prevails in the system.

2) Subsequent to flushing and prior to placing the main in service, a bacteriological test shall be conducted. Samples shall be collected over a 24 hour period and tested to ensure that the water is free from chloriform organisms. If the testing proves positive, the entire process shall be repeated.

2F.05 SHOP DRAWINGS, SAMPLES AND TESTING

1. Shop drawings or manufacturers' catalogues, shall be submitted to the Engineer. Approval by the Town must be obtained prior to delivery of materials to the site.

A. The Contractor shall submit manufacturers' data for pipe, fittings, hydrants, valves, frames and covers, valve boxes and corporation stops.

B. No materials shall be shipped until manufacturers drawings or other identifying data, assuring compliance with these specifications, has been approved by the Department.

C. The approval of the shop drawings will be general and shall not relieve the Contractor from the responsibility for details of installation and dimensions necessary for the proper fitting and construction of the work as required by this Contract.

D. The Contractor shall notify the Engineer immediately of nonavailability of specified materials or delay of materials.

2F.06 COMPENSATION

1. Payment

The Contractor shall be paid by the contract unit price per linear foot for 6 inch and 8 inch ductile iron cement lined water pipe which shall include excavation and backfill, all fittings required to install the pipe, thrust blocks and tie rods as required and directed by the Engineer, chlorination, testing connections, and all necessary work required to complete the installation.

The Contractor shall be paid by the contract unit price, each, for hydrants, and for 6 inch and 8 inch gate valves, which price includes excavation and backfill, all fittings and connections, thrust blocks, tie rods, chlorination and testing, and all necessary work required to complete the installations.

2. Payment Items

2F-1 6 Inch Ductile Iron Cement Lined Pipe	Linear Foot
2F-2 8 Inch Ductile Iron Cement Lined Pipe	Linear Foot
2F-3 6 Inch Gate Valve	Each
2F-4 8 Inch Gate Valve	Each
2F-5 Hydrant	Each

END OF SECTION

SECTION 2G

FIELD STONE SLOPE PAVING

2G.01 SCOPE OF WORK

1. Furnish all labor material, and equipment necessary to construct field store slope paving as noted on the drawings and as directed by the Engineer.

2. Description of the work:

   A. Construct field store slope paving along the southerly side of Lake Shore Drive as indicated on the drawings, and as directed.

2G.02 MATERIALS

1. Field stone to be used for slope paving shall conform to Standard Specification M9.04.4 and to the relevant provisions of Section 983, excent that each stone shall have at least one reasonably flat face and a thickness perpendicular to the face of at least 9 inches, which shall be the least dimension of the stone.

2. Approximately 60 percent of the stones shall vary from 2 to 3 cubic feet, each, in volume and the remainder of stones shall vary from 1 to 2 cubic feet, each, in volume.

2G.03 METHOD OF CONSTRUCTION

1. Field stone slope paving shall conform to the relevant provisions of Subsection 983.63, the details shown on the drawings, and the directions of the Engineer.

2G.04 COMPENSATION

1. Measurement. Field stone slope paving shall be measured by the square yard, complete in place.

2. Payment. Payment shall be at the contract unit price per square yard, which price shall include excavation, gravel base, field stone, and all work required to construct the field stone slope paving.

3. Payment Item.

2G-1	Field Stone Slope Paving	Square Yard

END OF SECTION

SECTION 2H

FENCE REMOVED AND RESET

2H.01 SCOPE OF WORK

1. This item shall include all types of fences that may require removing, storing and subsequent resetting in order to constrcut Lake Shore Drive, Castle Gate and Castle Gate Extension.

2H.02 MATERIALS

1. Materials shall conform to Subsection 665.40.

2. In general, all existing material shall be reused.

2H.03 CONSTRUCTION METHOD

1. Construction methods shall conform to Subsections 665.60, 665.61 and 665.62.

2H.04 COMPENSATION

1. Measurement and payment shall conform to Subsections 665.80 and 665.81, respectively.

2. Payment Item.

2H-1	Fence Removed and Reset	Linear Foot

END OF SECTION

SECTION 2I

MISCELLANEOUS SURFACE TREATMENT

2I.01 SCOPE OF WORK

1. The items of this section shall include miscellaneous surface treatment at the side of the proposed roadway construction, as noted on the plans or directed by the Engineer.

2I.02 MATERIALS

1. Woodchip mulch shall conform to Standard Specification M6.04.3.

2. Sod shall conform to Standard Specification M6.05.0.

3. Peastone shall conform to Standard Specification M2.01.6.

2I.03 CONSTRUCTION METHODS

1. Woodchips shall be placed to a minimum depth of 3 inches, and shall conform to the appliciable provisions of Subsection 767.61.

2. Placing sod shall conform to the applicable provisions of Subsections 770.61, 770.62 and 770.63.

3. Peastone shall be placed to a depth of 3 inches and compacted with a hand roller to the satisfaction of the Engineer.

2I.04 COMPENSATION

1. Measurement. Woodchips, sod and peastone when placed to the required depths where noted on the plans and directed by the Engineer, shall be measured by the square yard.

2. Payment. Payment for woodchips, sod and peastone will be made at the contract unit price per square yard, which shall include all excavation, handling, materials, placement, labor and all incidental work required. Payment for woodchips shall also conform to the relevant provisions of Subsection 767.81; and payment for sod shall also conform to the relevant provisions of Subsection 770.81.

3. Payment Items.

2I-1	Woodchips Mulch	Square Yard
2I-2	Sod	Square yard
2I-3	Peastone	Square Yard

END OF SECTION

SECTION 2J

TRASH RACK

2J.01 SCOPE OF WORK

1. The work of this section consists of furnishing all labor, materials, equipment, and supervision, and performing all operations required to fabricate the trash rack on the spillway, including drilling, field welding, and bituminous painting, as shown on the drawings, as directed by the Engineer, as herein specified, and as required to properly complete the work.

2J.02 MATERIALS

1. Aluminum bars and angles, of the size indicated on the drawings, shall conform to ASTM B-221, Alloy 6061-T6 or 6063-T5. Expansion bolts shall be stainless steel and approved by the Engineer. Bitumastic paint shall be approved by the Engineer.

2. Shop drawings shall be submitted to the Engineer for approval prior to fabrication of the trash rack.

2J.03 METHODS OF CONSTRUCTION

1. All aluminum bar or angle surfaces which will not be exposed, shall be coated with an approved bitumastic paint prior to installation. Care shall be taken not to paint surfaces that will be subsequently welded. After fabrication, all exposed surfaces shall be painted with bitumastic.

2J.04 COMPENSATION

1. Measurement: Trash rack shall be measured for payment on a lump sum basis.

2. Payment: Trash rack shall be paid, upon the completion of its fabrication and installation, based upon the contract unit price bid per lump sum, which payment will constitute all material, equipment, labor, transportation, drilling of holes for expansions bolts, stainless steel expansion bolts, aluminum bars and angles, welding, painting with bitumastic, and all incidental work necessary to complete the work as specified, as shown on the drawings and as directed by the Engineer.

END OF SECTION

SECTION 2K

CONCRETE PAVING

2K.01 SCOPE OF WORK

1. Furnish all labor, materials, equipment and transportation necessary to construct concrete pavements as shown on the Drawings, in accordance with Section 700, as applicable, of the Standard Specifications, and as specified herein.

2K.02 WORK INCLUDED UNDER OTHER SECTIONS

1. The following related work is specified and paid for in the following sections:

   A. EARTHWORK - SECTION 2C.

2K.03 MATERIALS

1. Cement Concrete Pavement Materials:

   A. 4" Course: Mass. Standard M4.02.00

2. Gravel Borrow Base Course:

   A. EARTHWORK - SECTION 2B.

2K.05 METHOD OF CONSTRUCTION

1. The construction of concrete pavements shall conform to the lines, grades shown on the Drawings or directed by the Engineer.

2. The installation of the gravel base course shall conform to Subsection 405.60 of the Standard Specifications. Installation methods for the concrete pavement shall be in accordance with Subsection 701.61 of the Standard Specifications.

2K.05 SHOP DRAWINGS, SAMPLES, TESTING

1. Sampling and testing of materials will be conducted by the Town, at its discretion and at its cost, to determine compliance with the quality, gradation and compaction requirements of these specifications. In the event that at material fails to meet requirements, retesting of the material after replacement or recompaction shall be paid for by the Contractor.

2K.06 COMPENSATION

1. Measurement

   A. Cement concrete pavement shall be measured as described in Subsection 701.80 of the Standard Specifications.

2. Payment

   A. The Contractor shall be paid the contract unit price per square yard for cement concrete, furnished and installed. Excavation and gravel shall be paid for under their respective Sections.

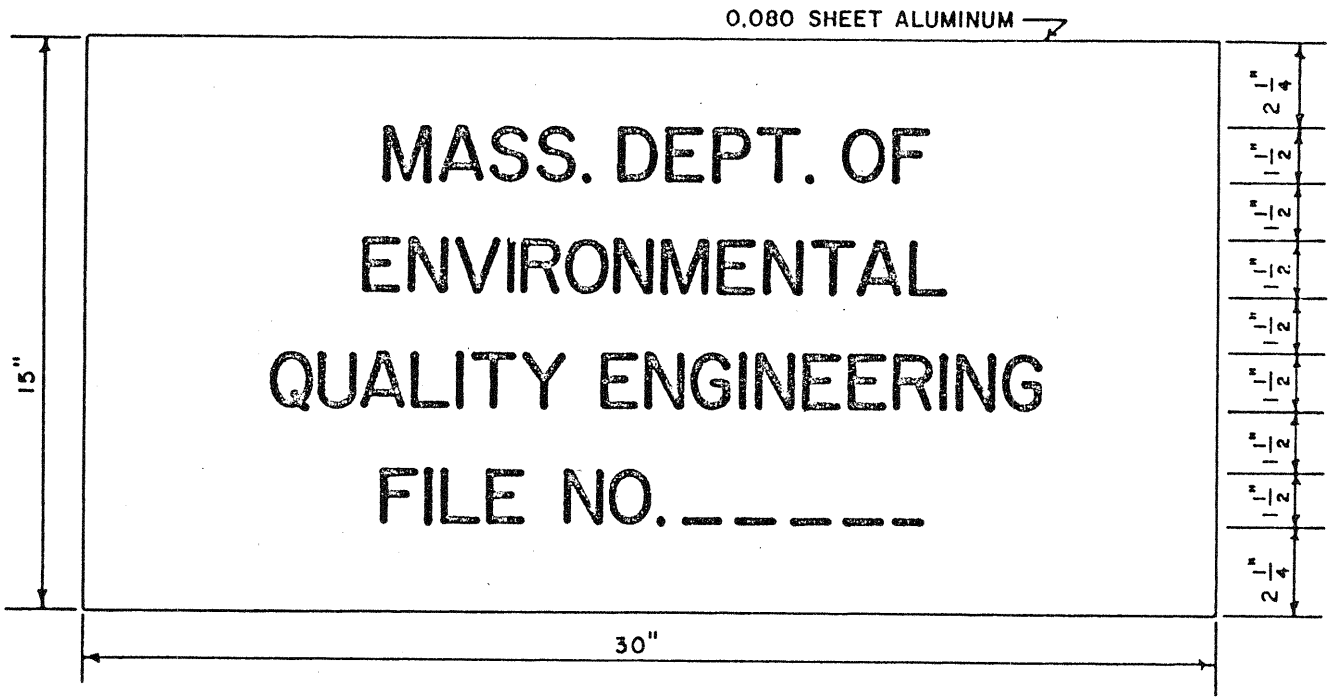
3. Payment Item

2K-1	Cement Concrete Pavement	Square Yard

END OF SECTION

DETAILS

WETLANDS PROTECTION ACT SIGN



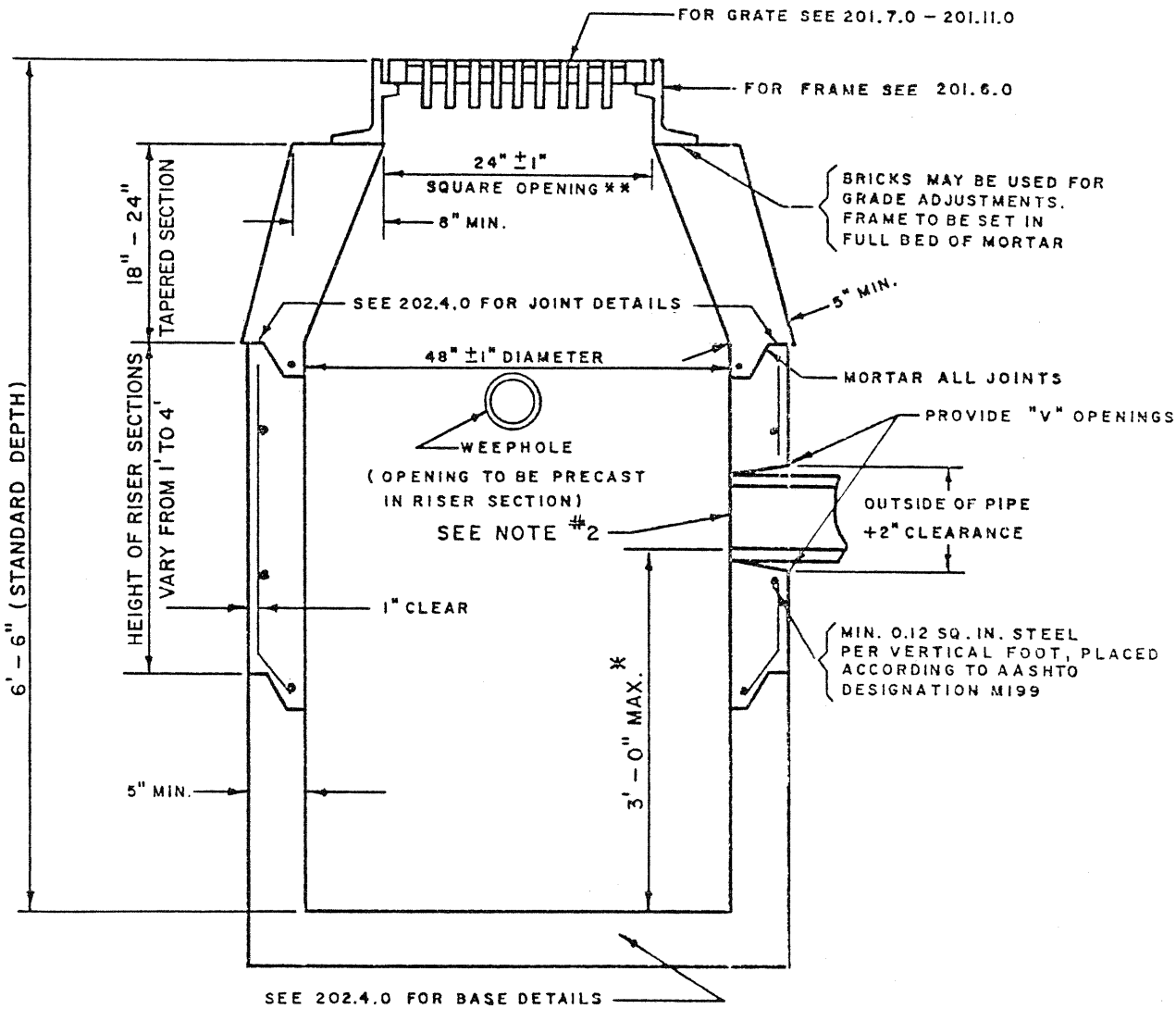
COLORS — LEGEND – BLACK (NON-REFLECTORIZED)
BACKGROUND – WHITE (REFLECTORIZED)

THE SIGN IS TO BE MOUNTED ON A MASSACHUSETTS DEPARTMENT OF PUBLIC WORKS STANDARD "P-5" POST

NOTES:

1. THE SIGN IS PLACED ON ALL PROJECTS SUBJECT TO THE PROVISIONS OF THE MASSACHUSETTS WETLANDS PROTECTION ACT
2. THE LOCATION OF THE SIGN IS TO BE DETERMINED BY THE ENGINEER
3. SEE SPECIAL PROVISIONS FOR THE MANUFACTURE, MAINTENANCE, ERECTION AND REMOVAL RESPONSIBILITIES
4. USE SERIES "D" FOR LETTERING

PRECAST CONCRETE CATCH BASIN



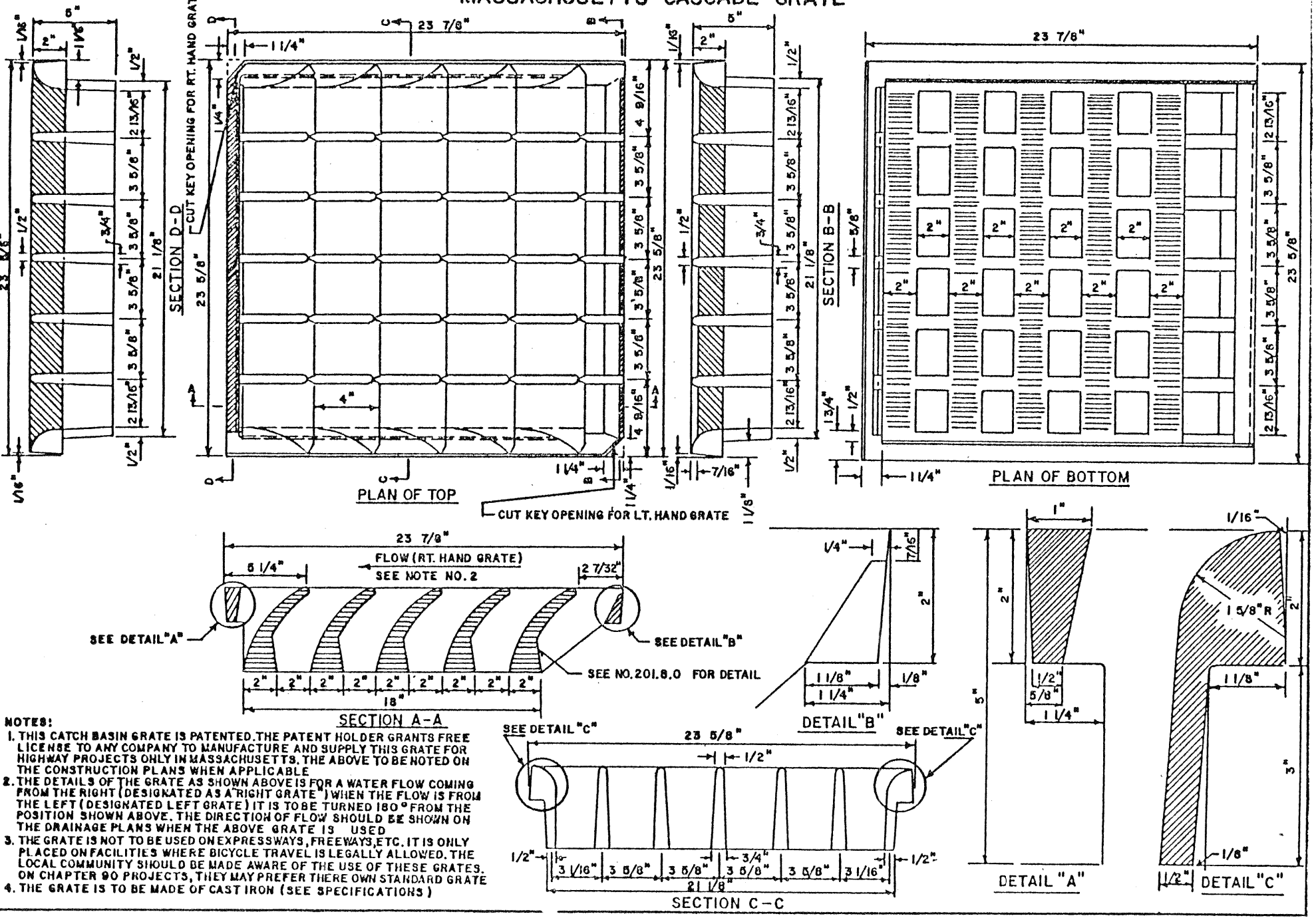
NOTES:

1. DETAILS NOT INDICATED ABOVE ARE TO BE SIMILAR TO THOSE SHOWN ON 201.2.0, 201.3.0
2. FACE OF PIPE FLUSH OR NOT TO PROJECT MORE THAN 4" FROM FACE OF WALL ALONG CENTERLINE OF PIPE.
3. FOR DESCRIPTION, MATERIALS AND CONSTRUCTION METHOD, SEE SPECIFICATIONS.

* MINIMUM DEPTH OF SUMP TO BE 2'

**. WHEN A CURB INLET IS INSTALLED, THE OPENING IS TO BE 24" ±1" X 27" ±1"

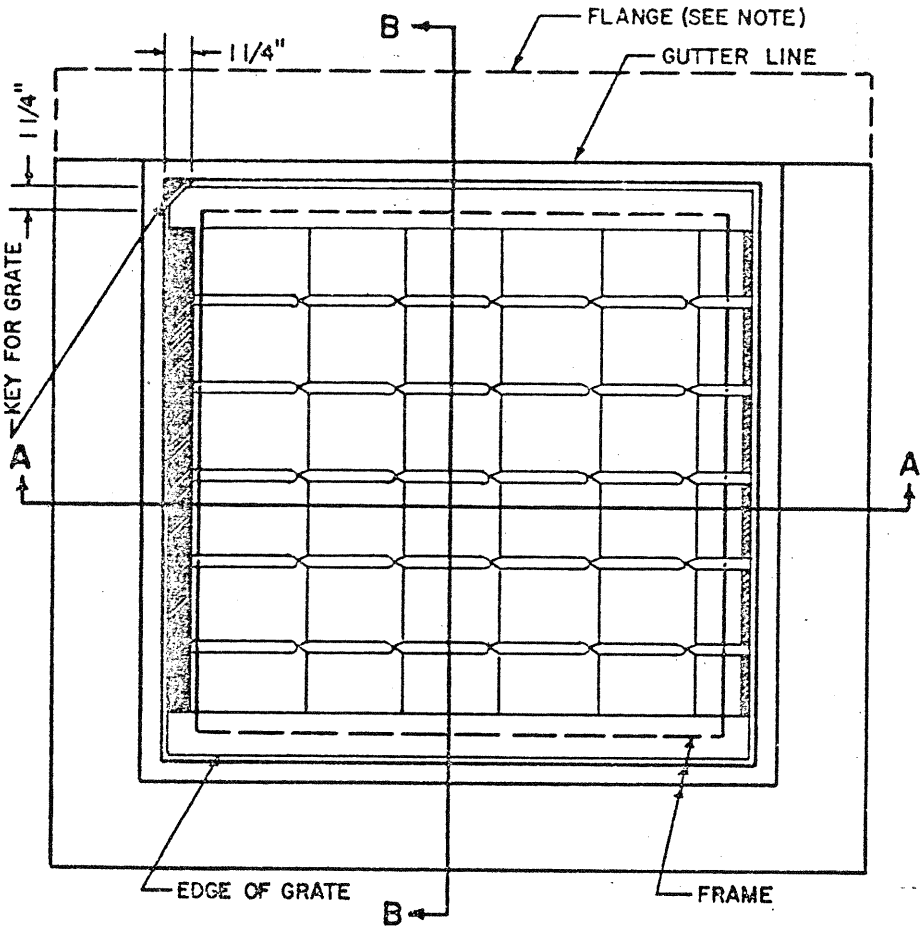
MASSACHUSETTS CASCADE GRATE



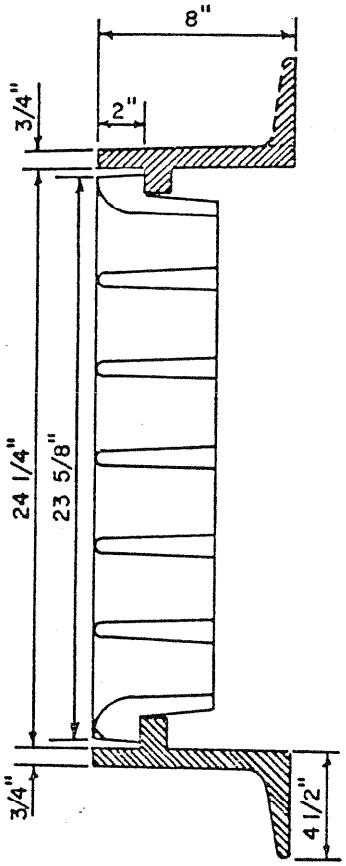
NOTES:

1. THIS CATCH BASIN GRATE IS PATENTED. THE PATENT HOLDER GRANTS FREE LICENSE TO ANY COMPANY TO MANUFACTURE AND SUPPLY THIS GRATE FOR HIGHWAY PROJECTS ONLY IN MASSACHUSETTS. THE ABOVE TO BE NOTED ON THE CONSTRUCTION PLANS WHEN APPLICABLE
2. THE DETAILS OF THE GRATE AS SHOWN ABOVE IS FOR A WATER FLOW COMING FROM THE RIGHT (DESIGNATED AS A "RIGHT GRATE") WHEN THE FLOW IS FROM THE LEFT (DESIGNATED LEFT GRATE) IT IS TO BE TURNED 180° FROM THE POSITION SHOWN ABOVE. THE DIRECTION OF FLOW SHOULD BE SHOWN ON THE DRAINAGE PLANS WHEN THE ABOVE GRATE IS USED
3. THE GRATE IS NOT TO BE USED ON EXPRESSWAYS, FREEWAYS, ETC. IT IS ONLY PLACED ON FACILITIES WHERE BICYCLE TRAVEL IS LEGALLY ALLOWED. THE LOCAL COMMUNITY SHOULD BE MADE AWARE OF THE USE OF THESE GRATES. ON CHAPTER 90 PROJECTS, THEY MAY PREFER THERE OWN STANDARD GRATE
4. THE GRATE IS TO BE MADE OF CAST IRON (SEE SPECIFICATIONS)

FRAME FOR MASSACHUSETTS CASCADE GRATE

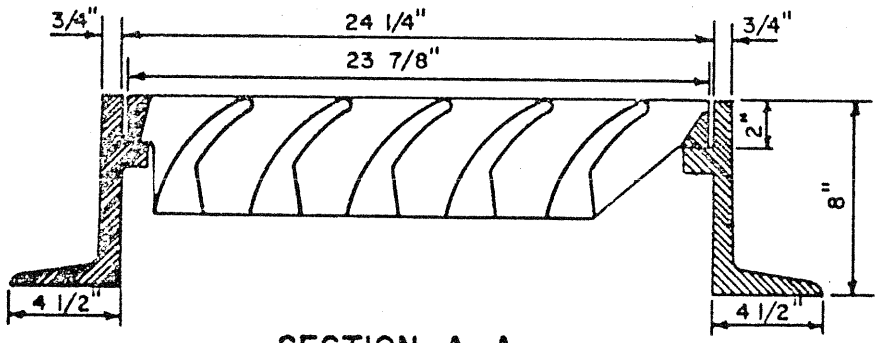


PLAN



SECTION B-B

FLOW (RIGHT HAND GRATE)
SEE NOTE NO. 4

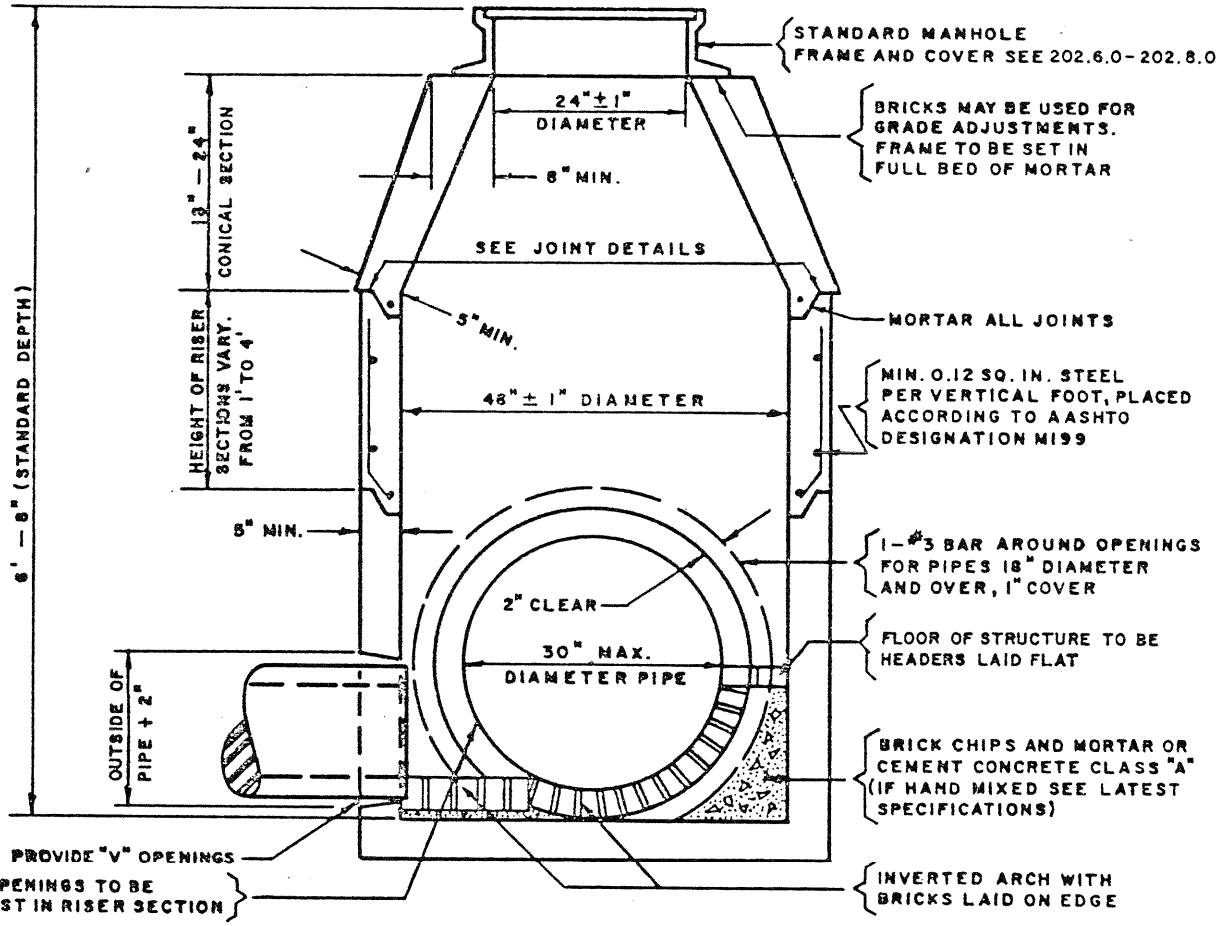


SECTION A-A

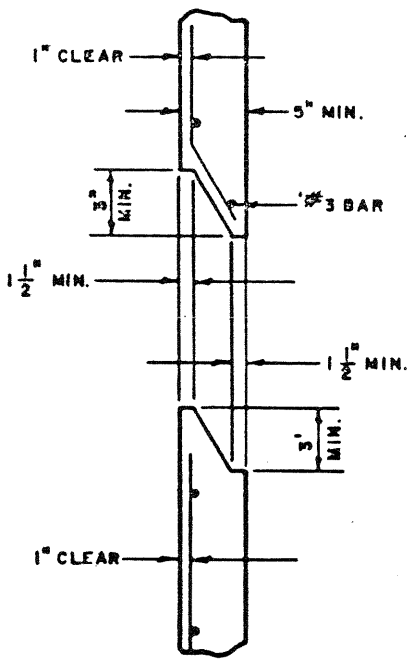
NOTES:

1. THE MASSACHUSETTS STANDARD FRAME IS TO BE USED, DETAILS AND DEMENSIONS NOT SHOWN ABOVE ARE TO BE THE SAME AS THOSE SHOWN ON CONSTRUCTION STANDARD 201.6.0
2. A THREE (3) FLANGE FRAME IS TO BE USED WHEN A CURB INLET IS REQUIRED
3. GRATE DETAILS ARE SHOWN ON CONSTRUCTION STANDARD 201.7.0
4. THE GRATE AS PLACED ABOVE IS FOR WATER COMING FROM THE RIGHT. TURN THE GRATE 180° FOR A WATER FLOW FROM THE LEFT. SEE NOTE NO. 2 ON CONSTRUCTION STANDARD 201.7.0
5. THE GRATE IS ONLY SHOWN SCHEMATICALLY

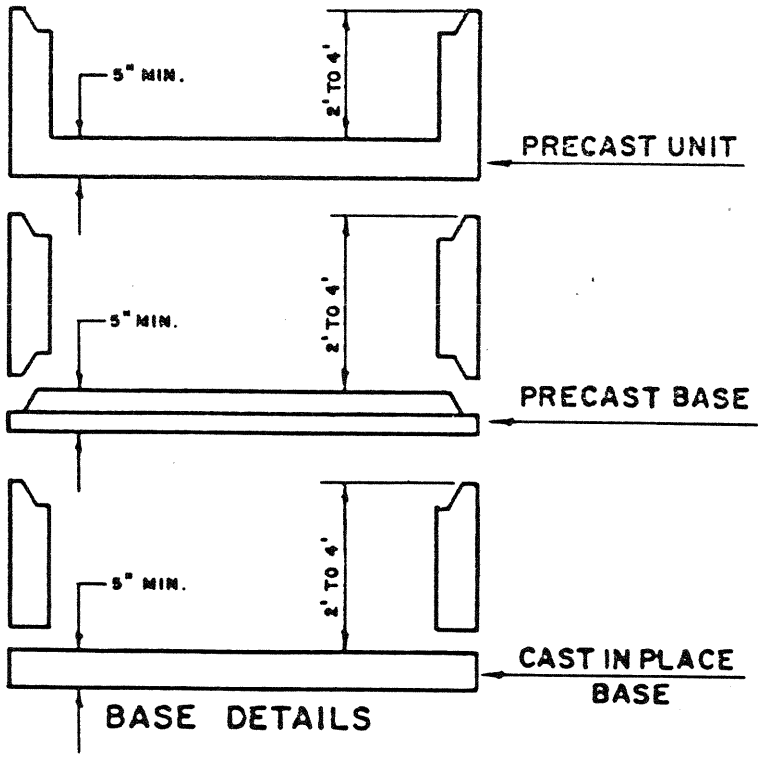
PRECAST CONCRETE MANHOLE
9 FEET OR LESS IN DEPTH



NOTE: – FOR DESCRIPTIONS, MATERIALS, AND CONSTRUCTION METHODS; SEE LATEST SPECIFICATIONS



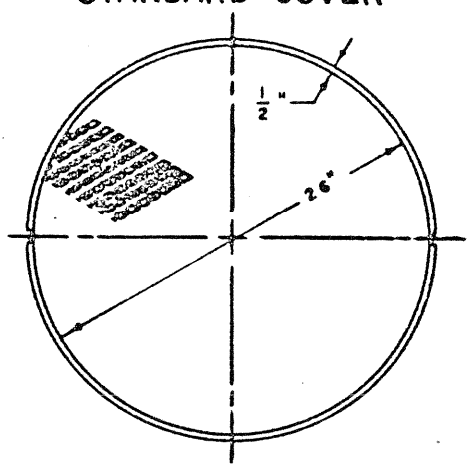
JOINT DETAILS



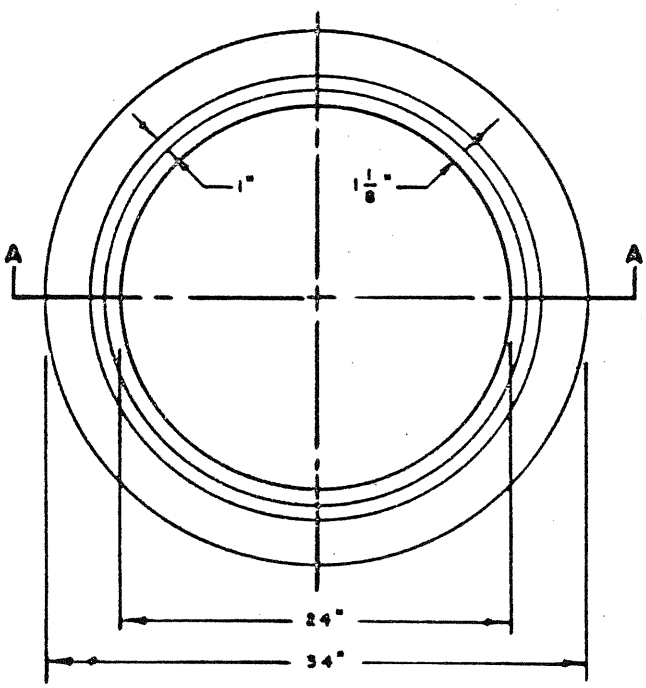
BASE DETAILS

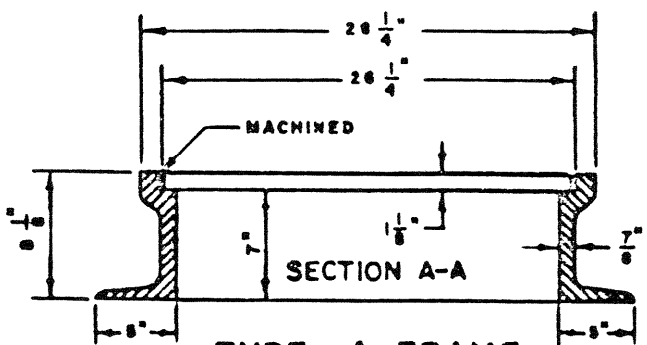
MANHOLE FRAME AND COVER

STANDARD COVER



FOR COVER DETAILS SEE 202.8.0

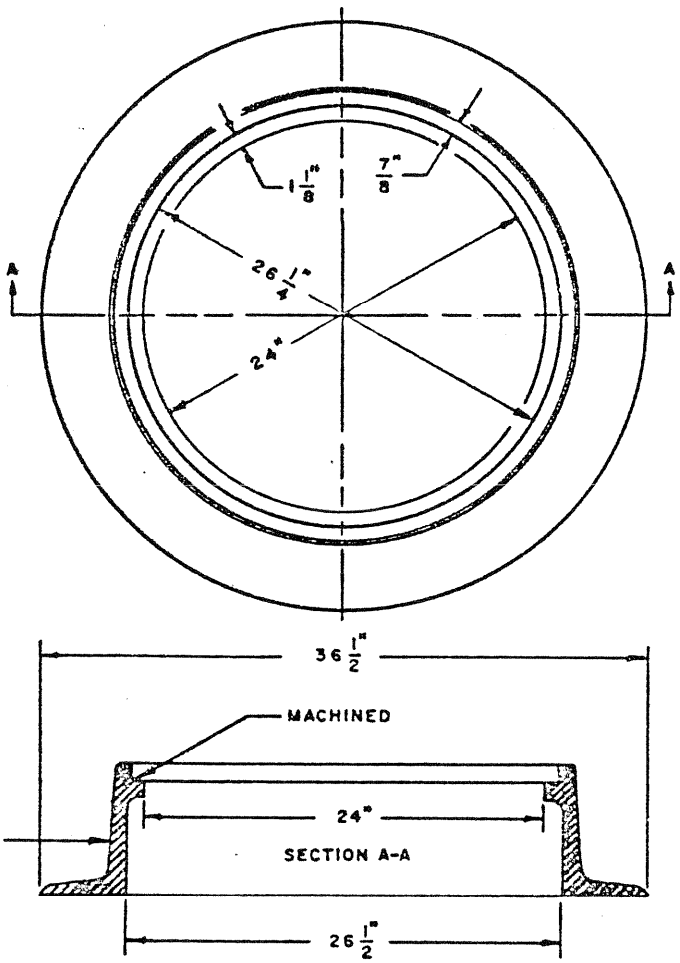




TYPE - A FRAME

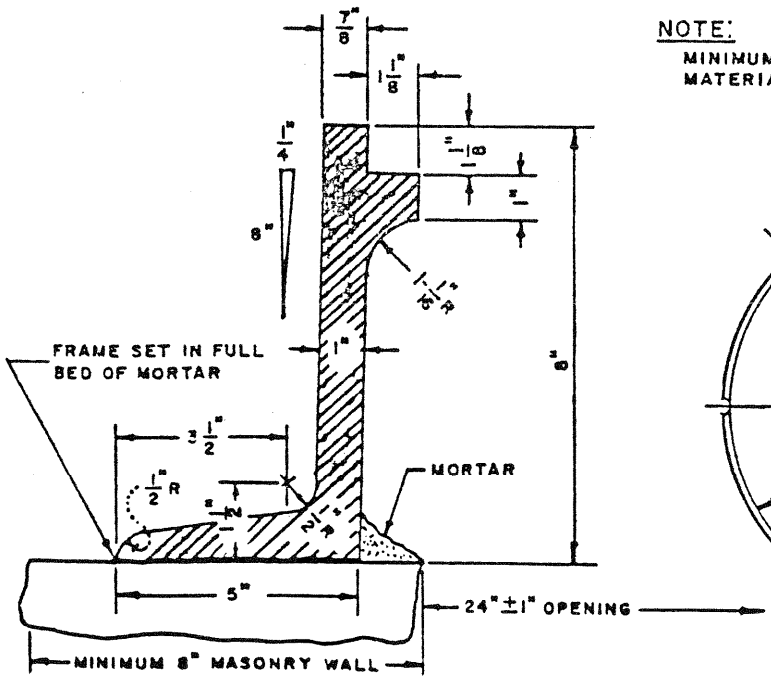
MINIMUM WEIGHT - 265 LBS.
MATERIAL - CAST IRON

MANHOLE FRAME AND COVER

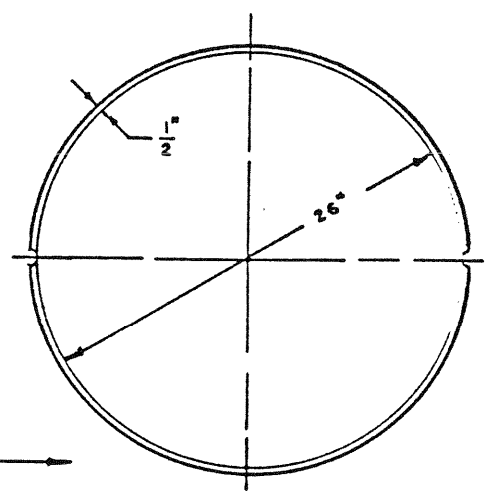


TYPE-B FRAME

NOTE:
MINIMUM FRAME WEIGHT 265 LBS.
MATERIAL — CAST IRON



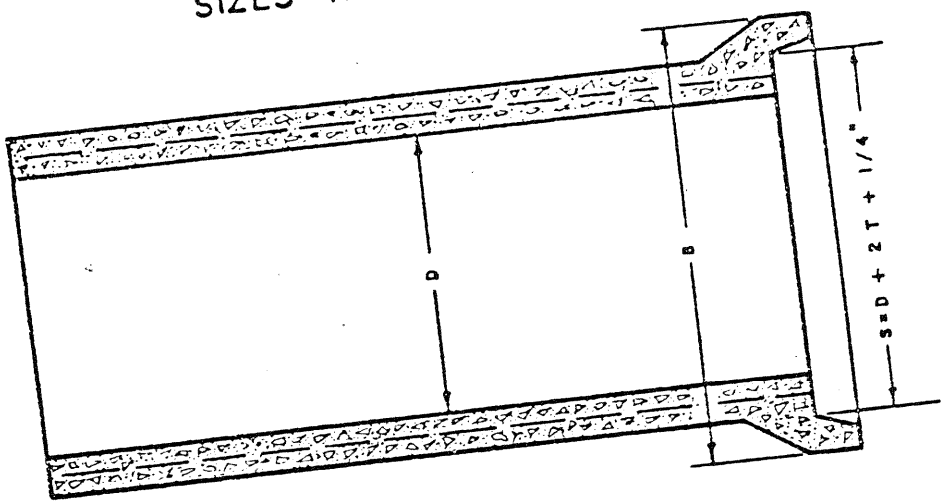
DETAIL Y

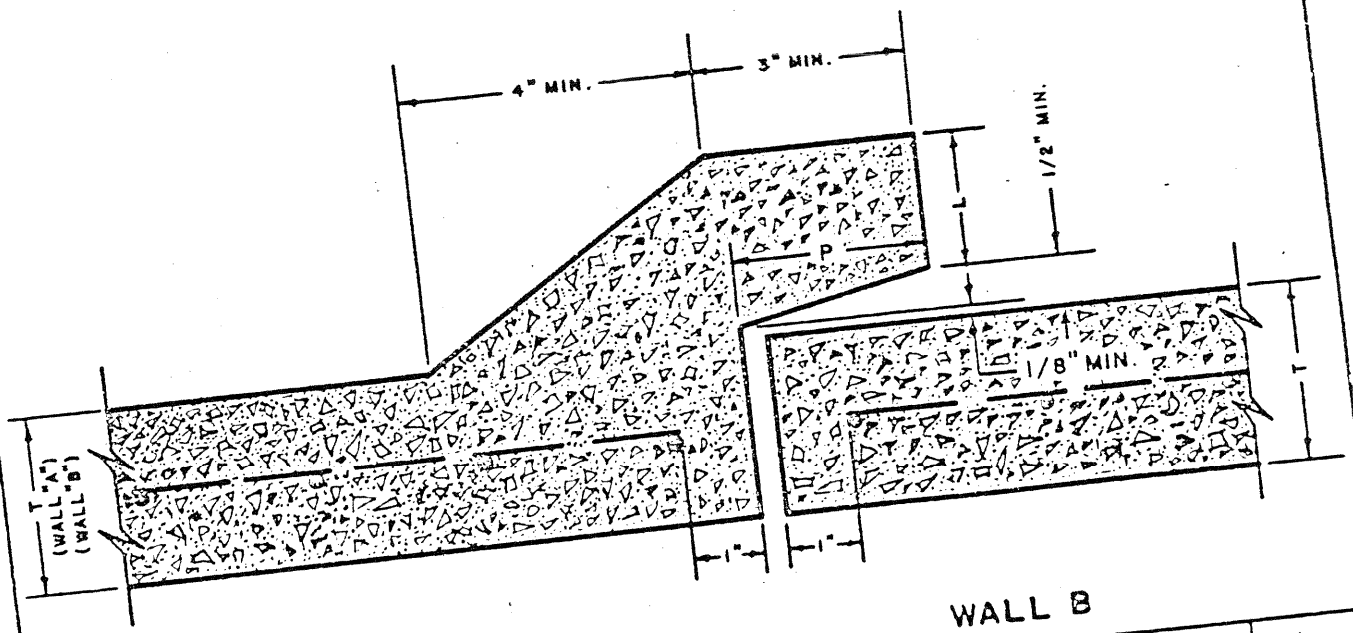


STANDARD COVER

FOR COVER DETAIL, SEE 202.8.0

STANDARD JOINT FOR REINFORCED CONCRETE PIPE
SIZES 12" THROUGH 24"





WALL A

D	T	B	S	P	L
NOM. DIA.	MINIMUM DIMENSIONS, INCHES				
12	1 3/4	19 1/8	15 3/4	2 1/2	1 5/16
15	1 7/8	22 9/16	19	2 1/2	1 11/32
18	2	26	22 1/4	2 3/4	1 1/2
21	2 1/4	29 7/8	25 3/4	2 3/4	1 11/16
24	2 1/2	33 3/4	29 1/4	3	1 7/8

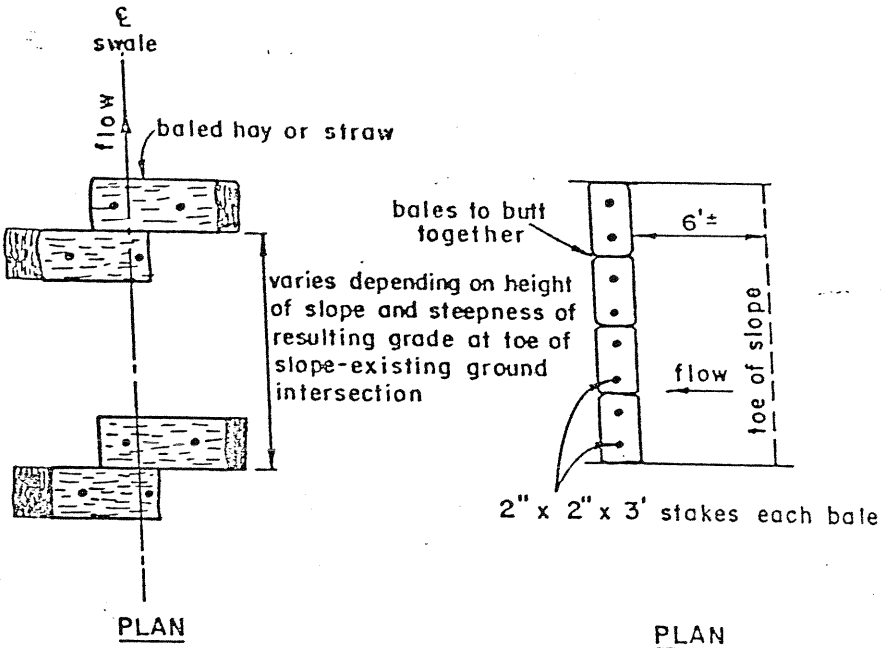
WALL B

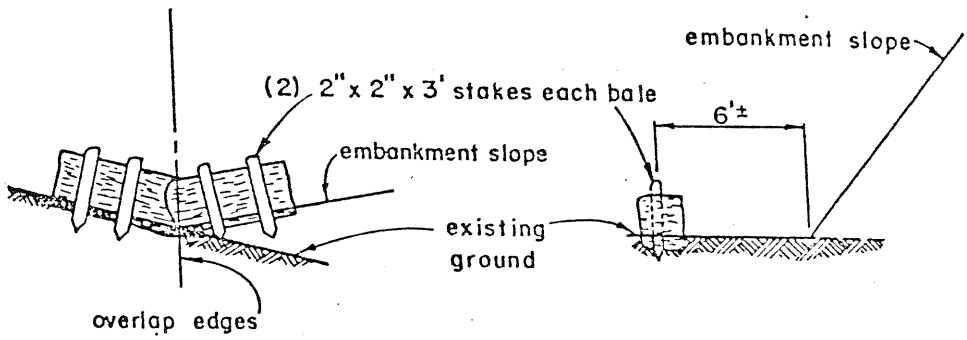
D	T	B	S	P	L
NOM. DIA.	MINIMUM DIMENSIONS, INCHES				
12	2	20	16 1/4	2 1/2	1 1/2
15	2 1/4	23 7/8	19 3/4	2 1/2	1 11/16
18	2 1/2	27 3/4	23 1/4	2 3/4	1 7/8
21	2 3/4	31 5/8	26 3/4	2 3/4	2 1/16
24	3	35 1/2	30 1/4	3	2 1/4

NOTE:
PIPE SHALL CONFORM TO THE REQUIREMENTS OF AASHTO DESIGNATION M170

MASS. D.P.W. — MARCH 19

206.11.0





Note :
To be used in locations where the existing ground slopes in toward the toe of the embankment.

Note :
To be used where existing ground slopes away from the toe of the embankment.

BALED HAY OR STRAW EROSION CHECKS