

**§ 305.19**

**§ 305.19 Contract change orders.**

After construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor.

(a) All contract change orders must be concurred in by EDA even if the recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced.

(b) The work on the project may continue pending EDA review and concurrence in the change order but the recipient should be aware that all such work will be at the recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received.

(c) EDA will not approve financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the approved project budget.

(d) When a change order is for a project funded with one-year funds, EDA approval of such change order must be based on a finding by EDA that the work called for in the change order is within the project scope and is required for satisfactory operation or functioning of the project.

[64 FR 69876, Dec. 14, 1999, as amended at 65 FR 71025, Nov. 28, 2000]

**§ 305.20 Project development time schedule.**

The recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office.

[64 FR 69876, Dec. 14, 1999]

**§ 305.21 Controlling budget.**

The tabulation of estimated project costs contained in the EDA grant award is the controlling budget for the project.

(a) Budget line item revisions, including the addition of a new line item,

which do not involve a change of scope may be approved by EDA if no new EDA funds are involved; another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and unless the line item that is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed.

(b) The recipient shall notify EDA of any proposed transfer of funds from one budget line item to another. The recipient's attention is called to the fact that the addition of a new line item to the approved budget may involve an impermissible change of scope and, therefore, may result in such costs being excluded from EDA's participation. Accordingly, the recipient is advised to discuss the need to add a new line item to the approved budget with EDA regional office staff before any costs are incurred under such new line item.

[64 FR 69877, Dec. 14, 1999]

**§ 305.22 Services performed by the recipient's own forces.**

The recipient may wish to have a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the project performed by personnel who are employed by the recipient either full or part time (in-house). Due to the difficulty in monitoring in-house construction and the limited EDA staff available to perform the monitoring, in-house construction is discouraged.

(a) If EDA approves the use of the recipient's in-house forces to construct all or part of the EDA assisted project and the in-house forces are to be augmented by personnel hired specifically for the EDA assisted project, the hourly wages to be paid to such personnel shall be the same as the hourly wages paid to full time personnel of the recipient doing the same or similar work. If the nature of the work is not similar and/or there is not an established wage scale, the prevailing state or county hourly wage for public employees shall be obtained from the appropriate state or county agency and used for the

newly established position. However, non-profit recipients must pay all personnel employed for the construction of the EDA assisted project the prevailing hourly wages for the area as established by the U.S. Department of Labor.

(b) The use of in-house forces for construction may be approved by EDA if:

(1) The recipient has a special skill required for the construction of the project, *e.g.*, construction of unique Indian structures, or

(2) The recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the project area, or

(3) Substantial cost savings can be demonstrated.

[64 FR 69877, Dec. 14, 1999]

#### § 305.23 Public Works projects for design and engineering work.

In general, EDA prefers to award a Public Works grant that includes all of the costs required for the successful completion of a project, including the design and engineering work.

(a) When the purpose of the Public Works project is to accomplish only the design and engineering work for a proposed future construction project, EDA may award a grant for the design and engineering work with the understanding that EDA cannot make a commitment against a future fiscal year appropriation to fund the proposed construction project.

(b) The purpose of the EDA assisted project for design and engineering work is to produce all of the documents required for the construction of the proposed future project in a format and in sufficient quantity to permit a construction contract to be advertised and awarded soon after the project's construction financing has been arranged. The EDA document, *Requirements for Approved Construction Projects*, should be used to ensure that the proposed construction project meets all applicable Federal requirements.

(c) Design and engineering projects will not generally be considered unless the nature of the proposed project to be considered is complex or environ-

mentally sensitive and EDA makes a determination that it is in the best interest of the Government to award a separate grant for design and engineering.

(d) EDA requires the design/engineering contract to be submitted to and approved by EDA before any EDA grant funds can be disbursed.

[64 FR 69877, Dec. 14, 1999]

#### § 305.24 Disbursements of funds for grants.

(a) Disbursements of funds for construction grants are generally made on a reimbursable basis on request of the recipient for reimbursement. Disbursements may be made only:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) On the basis of the work accomplished and the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds not yet expended is on deposit;

(5) After a determination by EDA that all applicable terms and conditions of the grant have been met; and

(6) After meeting such other requirements as EDA may establish in accordance with other Federal laws, rules and regulations.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

(c) Advances of funds are allowable when disbursement on a reimbursable basis would impose an undue burden, as determined by EDA, upon the recipient.

[64 FR 5358, Feb. 3, 1999. Redesignated and amended at 64 FR 69875, 69877, Dec. 14, 1999]