

## Environmental Protection Agency

## § 35.936-18

can be accomplished more economically by the use of the force account method, or (2) emergency circumstances dictate its use.

(c) Use of the force account method for step 3 construction shall generally be limited to minor portions of a project.

### § 35.936-15 Limitations on subagreement award.

No subagreement shall be awarded:

(a) To any person or organization which does not meet the responsibility standards in § 30.340-2 (a) through (d) and (g) of this subchapter;

(b) If any portion of the contract work not exempted by § 30.420-3(b) of this subchapter will be performed at a facility listed by the Director, EPA Office of Federal Activities, in violation of the antipollution requirements of the Clean Air Act and the Clean Water Act, as set forth in § 30.420-3 of this subchapter and 40 CFR part 15 (Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans); or

(c) To any person or organization which is ineligible under the conflict of interest requirements of § 30.420-4 of this subchapter.

### § 35.936-16 Code or standards of conduct.

(a) The grantee must maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in the conduct of project work, including procurement and expenditure of project funds. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. The grantee must avoid personal or organizational conflicts of interest or noncompetitive procurement practices which restrict or eliminate competition or otherwise restrain trade.

(b) To the extent permissible by State or local law or formal institutional requirements and procedures, the standards shall provide for penalties, sanctions, or other adequate disciplinary actions to be instituted for project-related violations of law or of

the code or standards of conduct by either the grantee officers, employees, or agents, or by contractors or their agents.

(c) The grantee must inform the project officer in writing of each serious allegation of a project-related violation and of each known or proven project-related violation of law or code or standards of conduct, by its officers, employees, contractors, or by their agents. The grantee must also inform the project officer of the prosecutive or disciplinary action the grantee takes, and must cooperate with Federal officials in any Federal prosecutive or disciplinary action. Under § 30.245 of this subchapter, the project officer must notify the Director, EPA Security and Inspection Division, of all notifications from the grantee.

(d) EPA shall cooperate with the grantee in its disciplinary or prosecutive actions taken for any apparent project-related violations of law or of the grantee's code or standards of conduct.

### § 35.936-17 Fraud and other unlawful or corrupt practices.

All procurements under grants are covered by the provisions of § 30.245 of this subchapter relating to fraud and other unlawful or corrupt practices.

### § 35.936-18 Negotiation of subagreements.

(a) Formal advertising, with adequate purchase descriptions, sealed bids, and public openings shall be the required method of procurement unless negotiation under paragraph (b) of this section is necessary to accomplish sound procurement.

(b) All negotiated procurement shall be conducted in a manner to provide to the maximum practicable extent open and free competition appropriate to the type of project work to be performed. The grantee is authorized to negotiate subagreements in accordance with the applicable procedures of this subchapter (see §§ 35.937 *et seq.* and 35.500 *et seq.*) if any of the following conditions exist:

(1) Public exigency will not permit the delay incident to formally advertised procurement (e.g., an emergency procurement).