level, as defined by the Secretary of Commerce is not less than the percentage derived in accordance with the following sentence. This percentage shall be derived so that the percentage of the total population of the United States residing in all such areas is equal to the percentage of the total population of the United States with incomes below such poverty level, plus five percent.

§ 124.3 Eligibility.

(a) *Eligible applicants.* A grant under section 1625 may only be made to a State or political subdivision of a State, including any city, town, county, borough, hospital district authority, or public or quasi-public corporation for a project described in paragraph (b) of this section for a medical facility owned, operated, or owned and operated by the State or political subdivision.

(b) *Eligible project.* A grant under section 1625 may be made only for a construction and/or modernization project designed to:

(1) Eliminate or prevent safety hazards which under Federal, State, and/or local fire, building or life safety codes or regulations, will, in the judgment of the Secretary result in one or more of the following:

(i) Loss of licensure for the facility.

(ii) Closing of all or a substantial part of the facility,

(iii) Loss of eligibility for reimbursement under title XVIII or title XIX of the Social Security Act; or

(2) Avoid noncompliance with State licensure or voluntary accreditation standards where noncompliance will, in the judgment of the Secretary, result in one or both of the following:

(i) Loss of licensure for the facility,

(ii) Loss of accreditation resulting in loss of eligibility for reimbursement under title XVIII or title XIX of the Social Security Act.

§ 124.4 Application.

An application for a grant under this subpart must be submitted directly to the Secretary at such time and in such form and manner as the Secretary may prescribe. The application must be executed by an individual authorized to act for the applicant and assume on behalf of the applicant the obligations imposed by the Act, this subpart, and the terms and conditions of the grant. The application must contain the following:

(a) A description of the site of the project.

(b) A full description, with all appropriate documentation, of:

(1) The imminent safety hazards, licensure and/or accreditation problems of the facility;

(2) The type and amount of assistance sought under this subpart;

(3) The construction of modernization project for which funds are sought, describing how it will remedy the problems described pursuant to paragraph (b)(1) of this section, with a complete schedule for the proposed construction or modernization; and

(4) How failure to remedy the problems described pursuant to paragraph (b) (1) of this section will affect the population served by the facility.

(c) In the case of a modernization project for continuation of existing health services, a finding by the State Agency of the continued need for such services. In the case of a construction or modernization project for new health services, a finding by the State Agency of the need for such services. The finding of need shall be based on the following criteria:

(1) In a State which has a program approved by the Secretary under section 1523(a)(4)(B) of the Act, a State certificate of need program, or a program under section 1122 of the Social Security Act, the State Agency shall use the criteria used in conducting reviews under such program. In a State which has more than one such program, the State Agency shall use the criteria of one of the programs and notify the Secretary of the program criteria used.

(2) In a State which does not have a program approved by the Secretary under section 1523(a)(4)(B) of the Act, a State certificate of need program or a program under section 1122 of the Social Security Act, the State Agency shall base its finding of need on the following criteria:

(i) Whether the proposed project is needed or projected as necessary to meet the needs in the community in

terms of health services required; *Provided*, That projects for highly specialized services (such as open-heart surgery, renal transplantation, or radiation therapy) which will draw from patient populations outside the community in which the project is situated will receive appropriate consideration;

(ii) Whether the proposed project can be adquately staffed and operated when completed;

(iii) Whether the proposed capital expenditure is economically feasible and can be accommodated in the patient charge structure of the health facility without unreasonable increases; and

(iv) Whether the project will foster cost containment or improved quality of care through improved effciency and productivity, including promotion of cost-effective factors such as ambulatory care, preventive health care services, home health care, and design and construction economies, or through increased competition between different health services delivery systems.

(d) [Reserved]

(e) An assurance that adequate financial support will be available for completion of the project, supported by a detailed project budget satisfactory to the Secretary which includes all existing and anticipated sources of funds for the project.

(f) An assurance that adequate financial support will be available for maintenance and operation of the project when completed, supported by budgets and detailed expenditure and revenue information satisfactory to the Secretary for both the facility and the applicant for the past three fiscal years and budget and projections of expenditures and revenue for the future three fiscal years. Where a certificate of need or a favorable finding under section 1122 of the Social Security Act is required in order for the project to operate and/or receive reimbursement from governmental programs for health services provided, assurance from the applicant satisfactory to the Secretary that the applicant will submit, consistent with the provisions of § 124.5(d), any such required certificates of need and/or section 1122 finding.

(g) An assurance that the applicant would not be able to complete the project without the grant applied for, supported by a description of all efforts to obtain funds needed to complete the project and the results of such efforts.

(h) An assurance that all times after the application is approved there will be made available in the facility or portion thereof to be constructed or modernized, a reasonable volume of services to persons unable to pay therefor. The applicant shall comply with the standards and procedures of 42 CFR 53.111, except as the Secretary may prescribe pursuant to section 1602(6) of the Act. The functions of the State Agency designated under section 604 of the Act under 42 CFR 53.111 will be performed by the Secretary, except to the extent they are otherwise assigned.

(i) An assurance that at all times after the application is approved the facility or portion thereof to be constructed or modernized will be made available to all persons residing or employed in the area served by the facility. The applicant shall comply with the standards and procedures of 42 CFR 53.113, except as the Secretary may prescribe pursuant to section 1602(6) of the Act. The functions of the State Agency designated under section 604 of the Act under 42 CFR 53.113 will be performed by the Secretary, except to the extent they are otherwise assigned.

(j) An assurance that title to the project site is or will be vested in one or more of the entities filing the application or in a public or other nonprofit entity which is to operate the facility on completion of the project, with such documentation as the Secretary may require.

(k) In the case of an application for construction or modernization of an outpatient medical facility, an assurance, supported by a written transfer agreement (or written documentation that such agreement will be obtained) with identified hospitals, that the services of a general hospital will be available to patients at such facility who are in need of hospital care.

(l) Evidence that: (1) The appropriate health systems agency has been given the opportunity to review the application in accordance with section 1513(e) of the Act and the requirements of the appendix to this subpart, with the result of any such review.

(2) The application has been reviewed in accordance with the applicable requirements of OMB Circular A–95.

(m) An analysis satisfactory to the Secretary and such other information and materials as the Secretary may require concerning the environmental impact of the proposed construction or modernization project.

(n) An assessment satisfactory to the Secretary of the project site in light of the considerations set forth in Executive Order 11296 (31 FR 10663, August 10, 1966) concerning the evaluation of flood hazards in locating Federally supported facilities.

(o) In the case of a project which involves the displacement of persons or businesses, an assurance that the applicant will comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*).

(p)(1) An assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a–276a–5, known as the Davis-Bacon Act); and

(2) An assurance that the following conditions and provisions will be included in all construction contracts:

(i) The provisions of ''DHHS Requirements for Federally Assisted Construction Contracts Regarding Labor Standards and Equal Employment Opportunity,'' Form DHHS 514 (rev. July 1976) (issued by the Office of Grants and Procurement Management, U.S. Department of Health and Human Services) pertaining to the Davis-Bacon Act, the Contract Work Hours Standards Act, and the Copeland Act (Anti-Kickback) regulations except in the case of contracts in the amount of $2,000 or less; and pertaining to Executive Order 11246, September 24, 1965 (30 FR 12319), relating to nondiscrimination in construction contract employment except in the case of contracts in the amount of $10,000 or less, and

(ii) Representatives of the Secretary will have access at all reasonable times to work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

(q) Such other information as the Secretary may require.

[42 FR 62270, Dec. 9, 1977, as amended at 49 FR 33021, Aug. 20, 1984]

§ 124.5 Grant evaluation and award.

(a)(1) Within the limits of funds available for such purpose, the Secretary may award grants under this subpart for project costs to applicants with approvable applications therefor which will, in his judgment, best promote the purposes of section 1625 of the Act, taking into consideration:

(i) The severity and seriousness of the safety hazard, licensure or accreditation problem or problems.

(ii) The relative need of the population to be served for the services to be provided, including the availability of alternatives for meeting the need.

(iii) The financial need of the applicant.

(iv) The extent to which the facility will serve persons below the poverty level, as determined by the Secretary of Commerce.

(v) The extent to which the project will foster cost containment or improve the quality of care through enhanced efficiency and productivity.

(2) Priority for funding shall be based on the extent to which services will be made available relative to the cost of the project.

(b) The amount of any grant under this subpart may not exceed 75 percent of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may, as determined by the Secretary, cover up to 100 percent of such costs.

(c) If an applicant has not entered into a legally enforceable fixed price contract for the project for which funds are awarded under this subpart within 180 days of the date of the grant award, the grant award will automatically become null and void.

(d) Where a grant has been awarded to an applicant under this subpart on