MODIFICATION OF COOPERATIVE AGREEMENT

1. Modification No. M012

2. Effective Date

3. Purchase Request No. No PR

4. Cooperative Agreement No. DE-FC04-81AL16257

5. Issued By:
Department of Energy
Albuquerque Operations Office
Contracts & Industrial Relations Div.
P. O. Box 5400
Albuquerque, NM 87115

6. State:
State of Colorado
Radiation Control Division
Colorado Department of Public Health
4210 East 11th Avenue
Denver, CO 80220

7. Accounting and Appropriation Data:

N/A

8. (____) The above numbered Cooperative Agreement is modified to reflect the administrative changes set forth in Block 9.
(_X_) This agreement is entered into pursuant to authority of UMTRCA of 1978, Public Law 95-604. It modifies the above numbered Cooperative Agreement as set forth in Block 9.

9. Description of Modification:

See Continuation Pages.

Except as provided herein, all terms and conditions of the document referenced in Block 4., as heretofore changed, remain unchanged and in full force and effect.

10. (____) State is not required to sign this document.
(_X_) State is required to sign this document and return four copies to issuing office.

11. State of Colorado

By Lee Thielen
(Signature of person authorized to sign)

Assistant Director
Colorado Department of Health
Title

OCT 8 1986
Date Signed

12. United States of America

James G. Hoyal, Jr.
Chief, Programs and R&D Branch
Contracting Officer
Contracts & Industrial Relations Division

10/14/86
Date Signed

13. Nuclear Regulatory Commission

By Michael J Bell
(Signature)

Michael J. Bell, Deputy Director
Division of Waste Management
~~Office of Nuclear Material Safety and Safeguards~~
Title of Signer

1/28/87
Date Signed

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I. The purposes of this modification are to:

A. Amend Articles I, II and IV entitled, respectively, Definitions, Description of Remedial Action Program and Project Management to provide for initiation of millsite preliminary design prior to execution of a Remedial Action Plan;

B. Further redefine the planning, site characterization, and design process associated with remedial action at millsites; and

C. Incorporate and attach as Appendix F, Attachment O, to OMB Circular A-102 "Standards Governing State and Local Grantee Procurement."

II. DOE and the State acknowledge that implementation of the new process contemplated by this Modification cannot be effectuated in total at millsites for which the planning and design of remedial action has been initiated. Consequently, DOE and the State agree that the Cooperative Agreement shall be interpreted and administered such that:

A. The modification to Article I entitled, Definitions, described in Paragraph III below, and the modification to Article II entitled, Description of Remedial Action Program, described in Paragraph IV below, shall be limited in application to the Naturita, Slick Rock (North Continent), Slick Rock (Union Carbide), and Maybell millsites and all vicinity properties associated therewith.

B. The terms and conditions of Article I, Definitions, and Article II Description of Remedial Action Program, shall continue to apply in full force and effect, as those terms and conditions exist on the effective date of this Modification, to the Durango, Grand Junction, Gunnison, New Rifle, and Old Rifle millsites, except that with respect to such millsites:

1. DOE may initiate preliminary and final design effort prior to execution of a Remedial Action Plan after obtaining the consent of the State Site Representative and the Commission; and

2. The State shall have the right to concur with the final design for such millsites.

III. Article I, Definitions, Paragraphs O. and P., are hereby amended to read as follows:

"O. The term 'remedial action' means the preliminary design, final design, construction, exavation, renovation, restoration, decomissioning and decontamination activities of DOE, or such person as it designates, which: (1) are directly related to the stablilization and control of residual radioactive materials at a millsite, vicinity property or disposal site in a safe and environmentally sound

manner in accordance with the EPA Standards and consistent with applicable Federal and State law; (2) with respect to millsites, are generally conducted following issuance of the draft remedial action plan as provided in the article hereof entitled, Description of Remedial Action Program; and (3) with respect to vicinity properties, are conducted in the development and preparation of a Radiological and Engineering Assessment; PROVIDED, that remedial action shall not include any maintenance or monitoring performed at a disposal site after the State has transferred to the Government title to the residual radioactive materials and the disposal site in accordance with the article hereof entitled, Acquisition, Disposition and Use of Property.

P. The term 'Remedial Action Plan' or 'RAP' means the plan of remedial action to be executed by DOE and the State, with the concurrence of the Commission, which shall consist of: (i) a detailed description of the selected remedial action alternative and conceptual design; (ii) a general description of measures to be taken pursuant to the UMTRA Project Quality Assurance and Health and Safety Plans; (iii) a description of the remedial action responsibilities of project participants, including public participation and information activities; (iv) a detailed cost estimate based on the final design of remedial action; (v) a schedule of remedial action milestones and activities; (vi) a PSCR and DSCR as appropriate; (vii) a final design of remedial action; (viii) permitting requirements; and (ix) a general description of proposed post-remedial action surveillance and maintenance activities."

IV. Article II, Description of Remedial Action Program, Paragraphs B. through G., are deleted and replaced with the following:

"B. Except as otherwise provided in this Article, DOE, or such person as the Contracting Officer may designate, shall select and perform remedial actions at the millsite, vicinity properties and disposal sites in accordance with the EPA Standards and other applicable Federal and State law. As further described herein, it is contemplated that the State will fully participate in the selection and performance of such remedial action. Remedial action shall be: (1) carried out, to the greatest extent practicable, in accordance with the priorities established by DOE pursuant to Section 102 of the Act, and published at 44 F.R. 74891, 74892 (1979); (2) performed using technology that will assure compliance with the EPA Standards and will assure the safe and environmentally sound stabilization of residual radioactive materials consistent with existing applicable law; and (3) performed in accordance with the applicable provisions of the Act, including the provisions of Section 108(b) regarding the remilling of residual radioactive materials.

C. Except as specifically provided elsewhere in this Agreement, it is contemplated that the general sequence of cooperative activities by DOE and the State for remedial action in connection with each millsite under this Agreement will be as set forth below.

1. Comparative Analysis of Disposal Site Alternatives Report (CADSAR).

a. Site Characterization - DOE will perform site characterization activities at the millsite. In the event DOE and the State consider removal of the tailings to a separate disposal site, then DOE and the State shall evaluate and characterize alternate disposal sites pursuant to a procedure mutually agreeable to the State Site Representative and the Contracting Officer's Representative. DOE and the State agree that such procedure should be as efficient and cost-effective as possible. As deemed appropriate by DOE and the State, DOE shall prepare, as appendices to the Remedial Action Plan, a Processing Site Characterization Report (PSCR) and a Disposal Site Characterization Report (DSCR), which will contain a consolidation of all pertinent site characterization data.

b. CADSAR - After site characterization activities are complete, DOE shall prepare and submit to the State a CADSAR. The CADSAR shall include a technical evaluation of disposal sites regarding their suitability under the EPA Standards, a summary of the site characterization data collected, a description of the proposed conceptual designs for the options deemed most favorable by DOE and the State, rough order-of-magnitude cost estimates for the remedial action options, a brief discussion of potential key environmental and social concerns for each remedial action option, a detailed assessment of transportation options, and a ranking of DOE-State preferences of remedial action options. The State, in a timely fashion, shall review the CADSAR and submit review comments to DOE. DOE and the State shall use their best efforts to reconcile any remaining State concerns regarding the CADSAR.

c. Public Review - After finalization of the CADSAR, DOE and the State shall encourage public input, through reasonable means, into the DOE and the State conceptual plan for remedial action at the millsite.

d. NEPA Document and Remedial Action Plan - After development of a CADSAR, DOE will initiate the preparation of a NEPA document and a Remedial Action Plan, as described in the following paragraphs. Development of these documents will occur simultaneously.

2. NEPA.

a. Environmental Assessment - DOE, in cooperation with the State, shall prepare an Environmental Assessment (EA) for the millsite, or a combination of millsites, and associated vicinity properties. The EA shall be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA Regulations, and applicable DOE NEPA guidelines, and shall include an evaluation of the proposed remedial action and other remedial action options as agreed to by DOE and the State. It is contemplated by the parties that the options evaluated in the EA shall be selected from among those included in the CADSAR. The EA shall include a proposed remedial action conceptual design, a schedule for completion of remedial actions, a brief discussion of environmental, health and safety concerns, and a preliminary cost estimate. Before issuing the EA and proposed Finding of No Significant Impact (FONSI) which requires public comment, DOE will provide the State and Commission with a working copy of the EA for review and comment. Such copy shall be considered a part of the deliberative process. The State shall promptly review the working copy EA and submit any comments to DOE. DOE and the State shall use their best efforts to reconcile any such comments prior to finalization of the EA by DOE.

b. Environmental Impact Statement - In the event the preparation of an EIS is necessary to fulfill the requirements of NEPA, DOE, in cooperation with the State, shall prepare an EIS in draft form. The State shall promptly review the Draft EIS and submit any comments to DOE. DOE and the State shall use their best efforts to reconcile any such comments prior to its finalization by DOE.

3. Remedial Action Plan (RAP). DOE and the State shall develop a RAP for the millsite. DOE and State may execute one RAP for a combination of two or more millsites. The remedial action design included in the RAP will be developed in accordance with the following process:

a. Draft RAP - DOE shall prepare and submit to the State a draft RAP which presents a conceptual design and proposed design criteria for remedial actions. The State, within forty-five days of receipt, shall review the draft RAP and participate in a formal review meeting of DOE, State, and Commission representatives. DOE and the State shall use their best efforts to reconcile any issues raised as a result of this review. DOE and the State contemplate that after said formal review of the draft RAP, the State Site

Representative will provide to the Contracting Officer's Representative a written consent by the State to the initiation of preliminary design, the costs of which are shared under this Agreement. The State acknowledges that it must have funds committed under this Agreement prior to the initiation of preliminary design. The State also acknowledges that the Commission must also consent to initiation of preliminary design.

b. Preliminary Design - Upon receipt of a written consent from the State Site Representative, DOE shall initiate the preliminary design of remedial action for the millsite. DOE shall submit the preliminary design to the State for its review. The State, within thirty days of receipt, shall review the preliminary design and participate in a formal review meeting of DOE, State, and Commission representatives. DOE and the State shall use their best efforts to reconcile any issues raised as a result of this review.

c. Final RAP - After formal review of the preliminary design and consensus among DOE, the State, and the Commission regarding preliminary design issues, DOE shall prepare and submit to the State a final RAP which contains the final design of remedial actions. It is contemplated by DOE and the State that the NEPA document will be completed prior to final design of remedial action. The State and the Commission shall concur with the final RAP prior to initiation of construction, excavation, renovation, restoration, decommissioning and decontamination activities under this agreement. However, with written consent of the state and commission, DOE may proceed with any of the foregoing remedial action activities prior to concurrence with the final RAP. Either DOE or the State may at any time request in writing to the other that the RAP be modified, and both DOE and the State agree to negotiate in good faith concern- ing any requested modification. Any RAP modification shall be effectuated by a modification to this Agreement which shall require execution by both DOE and the State and concurrence by the Commission. The final RAP, and any modification thereto, shall be incorporated into Appendix B to this Agreement and thereby become a part of this Agreement.

4. Acquisition of Property. Remedial action shall not be implemented at the millsite until any necessary acquisition of the millsite or disposal site, or any interest therein, has been made pursuant to the article hereof entitled Acquisition, Disposition and Use of Property.

5. Construction and Site Work. Upon concurrence with the final RAP by the State and the Commission, and upon acquisition of property interests as necessary, DOE shall carry out the construction and other site activities as necessary to ensure

compliance with the Remedial Action Plan, EPA Standards, and other applicable Federal and State law. The construction schedule agreed upon by DOE and the State shall be as set forth in the final RAP. DOE and the State shall agree that remedial action has been completed. Then DOE, with the concurrence of the Commission, shall certify that the remedial actions at each millsite, vicinity property and disposal site are in accordance with the final RAP, the EPA Standards, and other requirements of Title I of the Act.

6. Federal Custody of Disposal Site.

   a. Transfer of Title - At such time as DOE and the State agree that remedial action has been completed, the State shall transfer to the U.S. Government title to the residual radioactive materials at the disposal site, and title to any lands and interests therein which have been acquired by the State under this Agreement for the disposal of residual radioactive materials.

   b. Custody - DOE, or such other Federal agency as the President may designate, shall assume custody of the disposal site which the State transfers to the U.S. Government under this Agreement. Any disposal site to which title is so transferred shall be maintained by DOE or such other Federal agency pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. DOE shall perform such maintenance and surveillance of the disposal site as deemed appropriate by DOE pending issuance of a license by the Commission for the long-term surveillance and maintenance of such site.

   c. License - Upon certification by DOE that remedial actions have been completed in accordance with the EPA Standards, the Commission shall issue a license to DOE or such other federal agency as the President may designate for the long-term surveillance and maintenance of the disposal site. The Commission may, pursuant to such license or by rule or order, require DOE or such other Federal agency to undertake surveillance, maintenance and emergency measures necessary to protect public health, safety, and the environment.

D. In addition to the sequence of activities contemplated in Paragraph C. above, DOE and the State also contemplate that remedial actions will be carried out in connection with vicinity properties associated with the millsite. The NEPA document prepared for the millsite will also contain an appropriate environmental analysis of

vicinity property remedial actions. DOE, in cooperation with the State, shall prepare a Radiological and Engineering Assessment (REA) for each vicinity property. The REA shall consist of a detailed radiological assessment of the vicinity property and an engineering plan for remedial action. The State shall review and concur with the REA and shall indicate its concurrence by execution of a Vicinity Property Remedial Action Agreement for such property, as contemplated by the article hereof entitled Acquisition, Disposition and Use of Property. Any modification to the remedial action proposed for such vicinity property shall be effectuated by an amendment to the Vicinity Property Remedial Action Agreement."

V. Article IV entitled, Project Management, the last sentence to Paragraph "B" is deleted without substitution.

VI. Article VI, Article XXXIII, Appendices, is amended to add Appendix F attached to Modification M012 and made a part of the Agreement:

"Appendix F - Attachment O to OMB Circular A-102 "Standards Governing State and Local Grantee Procurement."

U. S. Department of Energy
Agreement No. DE-FC04-81AL16257

APPENDIX F

ATTACHMENT O TO OMB CIRCULAR A-102

PROCUREMENT STANDARDS

1. Applicability

   a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders.

   b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by Federal law or executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to Section 10 of the basic circular or the provisions of this or other OMB circulars.

   c. Provisions of current subordinate requirements not conforming to this Attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. Grantee/Grantor Responsibility

   a. These standards do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims. Executive agencies shall not substitute thier judgement for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

   b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs conform to the standards set forth in this Attachment and applicable Federal law.

3. Grantee Procurement Improvement

   Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providing them with technical assistance training, publications, and other aid.

4. Procurement System Reviews

a. Executive agencies are encouraged to peform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such provisions of the Model Procurement Code for State and local government; and (2) whether the grantee's procurement system shoud be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval as provided by Section 6.

b. In conducting procurement system review, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a perid of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

5. Protest Procedures

a. Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

(1) No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(1) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(2) Violations of grantee's protest procedures or failure to review a complaint or protest.

6. Grantor Review of Proposed Contracts

Federal grantor preaward review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposal and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed $10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

7. Code of Conduct

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award of administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer or agent;

b. Any member of his immediate family;

c. His or her partner; or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

8. Procurement Procedures

The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of suppliers, equipment, construction and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, estalbishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1. through 5. above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and sevices from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. Selection Procedures

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this Attachment. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirements.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:

(a) Incorporate 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 may 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 should 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.

(b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

11. Method Procurement

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal avertising); (c) competitive negotiation; (d) noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal 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. Grantees shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(a) A complete, adequate and realistic specification or purchase description is available.

(b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(c) The procurement tends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(a) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(c) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(d) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle cost shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable copetition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitors are selected, subject to negotiation of fair and reasonable compensation.

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(3) The Federal grantor agency authorizes noncompetitive negotiation; or

(4) After solicitation of a number of sources, competition is determined inadequate.

e. Additional innovative procurement methods may be used by grantees with the approval of the grantor agency. A copy of such approval shall be sent to the OFPP.

12. Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action,

including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estiates included in negotiated prices are consistent with Federal cost principles.

13. Grantee Procurement Records

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

14. Contract Provision

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal law or the grantor agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees 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).

d. All contracts and subgrants for construction or repair shall incude a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee 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 grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all construction contracts in excess of $2,000 awarded by grantees and subgrantees shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be 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 grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the accpetance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107d 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 standard workday of eight 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 1-1/2 times the basic rate of pay for all hours worked in excess of eight 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 puchases of supplies or materials or articles ordinarily available on the open market or contracts for transportaion or transmission of intelligence.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involvng 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 contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller general of the United States, or any of their duly authorized

representatives, shall ave access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpsoe of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires 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 Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

j. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

15. Contract Administration

Grantees shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.