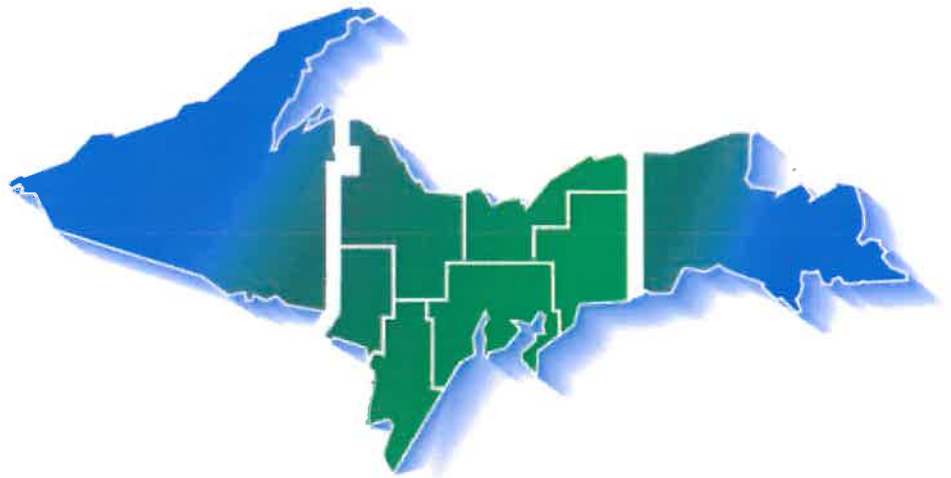


CUPPAD REGIONAL COMMISSION BYLAWS

FEBRUARY 24, 2012



Central Upper Peninsula Planning and Development Regional Commission

*Serving Alger, Delta, Dickinson,
Marquette, Menominee and Schoolcraft Counties*

PREAMBLE

Pursuant to Act 281 of the Michigan Public Acts of 1945, as amended, we the local governmental units and private sector groups of Alger, Delta, Dickinson, Marquette, Menominee, and Schoolcraft Counties, join together to create the Central Upper Peninsula Planning and Development Regional Commission (CUPPAD).

The Commission is a voluntary association of local units of government and private sector groups and not an intermediate layer of government. Through the local issues and regional problems which transcend political boundaries.

I. PURPOSE

The purpose of this Commission shall be cooperative analysis, planning and action for economic, social and physical development and conservation within the six-county region. The Commission may be the regional contact for all pertinent local, state, and federal agencies, grants, and programs. The Commission shall engage in any fund raising, promotion, research, and technical or advisory services necessary to accomplish its objectives or fulfill its responsibilities. The Commission may perform overall comprehensive planning for activities including, but not limited to, the following:

Overall Comprehensive Regional Planning
Plan Preparation
Management
Coordination
Evaluation
Supporting Services

Water & Wastewater
Solid Waste
Recreation & Open Space
Land Use

Health
Education
Social Services
Criminal Justice

Industrial Development
Manpower
Energy

Housing
Community Facilities
Transportation
Communication Systems

Planning Assistance
Management Assistance

II. MEMBERSHIP

SECTION 1: Membership on the Commission shall be open to all local general purpose governments and all major public and private interests within the Region including, but not limited to the following member groups.

PUBLIC SECTOR

County Boards of Commissioners
Township Boards
Village Boards
Local Governmental Planning Boards
Boards of Education
College Boards of Trustees
Local Governmental Authorities
Educational Institutions

PRIVATE SECTOR

Agriculture
Banking
Communication Media
Forestry
Industrial/Economic Development Organizations
Industry
Labor
Mining
Minority Groups
Public Interest Groups
Recreation
Tourism
Transportation
Underemployed, Unemployed
Utilities

SECTION 2: To become a member of the Commission, each member group or prospective member group shall: local units of government, must pay that year's local share contribution, to the CUPPAD Regional Commission, in an amount and at a time to be determined annually by the Commission.

SECTION 3: Representation on the Commission shall be limited to 37 representatives. Each county shall be entitled to six (6) representatives on the Commission. Each county board shall appoint one (1) representative of the county board, one (1) county planning commission representative and one (1) member-at-large from the private sector; each county township association shall appoint one (1) representative; each county is entitled to one (1) city representative appointed by the city, or through caucus where there is more than 1 city; each village is entitled to one (1) representative appointed by the village or through caucus of the villages where there is more than 1 village; in counties with no villages (Dickinson, Marquette, and Schoolcraft), the county board will be entitled to one (1) additional member-at-large). These appointments shall be made by January 31st of each year. The Secretary of the Commission shall present a list of the 37 appointments at the Commission February meeting and the Commission by resolution shall then confirm all appointments that do not violate a provision of these Bylaws. A tribal community shall appoint one representative. Any individual who is qualified to be a Commission representative, may be designated as an alternate at any regular or special meeting of the Commission, and shall have the rights and duties of the regular representative for that meeting.

CUPPAD REGIONAL COMMISSION MEMBERSHIP							
	APPOINTING ENTITIES						TOTAL
	COUNTY BOARDS			CITIES	VILLAGES	TOWNSHIPS*	
	Board Member	Planning Commission	Member-at-Large				
Alger	1	1	1	1	1	1	6
Delta	1	1	1	1*	1	1	6
Dickinson	1	1	2	1*		1	6
Marquette	1	1	2	1*		1	6
Menominee	1	1	1	1*	1*	1	6
Schoolcraft	1	1	2	1		1	6
	6	6	9	6	3	6	36

* Indicates more than one local unit of government is eligible.

The 37th member is an appointment from a tribal community.

SECTION 4: A Commission representative shall serve a term of two years commencing on March 1, except as provided in Article III, Sections 1 through 3.

SECTION 5: At least 51% of the Commission shall be elected public officials. At least 10% of the Commission shall represent the retired, underemployed, unemployed, and minority groups.

SECTION 6: Every Commission representative shall fairly represent and fully inform his or her board, council, committee, association, league, or community so that this voluntary association may successfully meet regional problems with a cooperative, comprehensive, regional response. Every representative shall work as required to assure that the Commission accomplishes its objectives and fulfills its responsibilities.

SECTION 7: If a representative resigns or otherwise becomes incapable of completing his or her term, the appointing entity shall appoint a new Commission representative at its next meeting to complete that term. The new representative must be qualified under these Bylaws to serve as a Commission representative.

III. OFFICERS AND EXECUTIVE COMMITTEE

SECTION 1: Election of Commission officers and of the Executive Committee shall be by the following, biannual, sequential process:

1. The Executive Committee at its January meeting shall appoint six members to a Nominating Committee which shall include equal county representation. The Nominating Committee shall generate a slate of Commission officers, following the guidelines in Article II, Section 5.
2. Each County's appointed members shall meet prior to February to determine which member from that County shall be appointed to the Executive Committee.
3. The representative of the tribal community to the CUPPAD Commission shall also serve as a member of the CUPPAD Executive Committee. Tribal representation shall rotate between the tribal jurisdictions every two years.
4. At the February Commission meeting, following the Commission's confirmation of the 37 elected representatives, the Nominating Committee shall present a slate of officers: a Chairperson, Vice-Chairperson, Secretary, and Treasurer, who must be Executive Committee representatives. The Commission shall then elect four officers from among the seven Executive Committee representatives. The three Executive Committee representatives not elected as officers shall be directors. The seventh member Executive Committee appointment shall be from each county in successive rotation so that each County shall have two representatives on the Executive Committee simultaneously for two years out of every twelve years contingent upon current paid membership. Regardless of tenure, the immediate past Chairperson shall be appointed as an ex-officio member of the Executive Committee to serve in an advisory capacity.

SECTION 2: The four Commission officers shall perform the duties prescribed by these Bylaws and by the current edition of Robert's Rules of Order.

- A. The Chairperson shall be the chief executive officer of the Commission and shall preside at all meetings of the Commission. The Chairperson shall appoint all special and advisory committees and be an ex-officio member of all committees. As a Commission representative, the Chairperson may vote upon all resolutions of the Commission. The Chairperson shall sign all commission contracts or other Commission authorized documents and shall countersign all checks, but the Chairperson may delegate these powers to sign or countersign to the Executive Director with the consent of the Executive Committee.
- B. If the Chairperson is unable to discharge his or her duties at any meeting, the Vice-Chairperson shall perform those duties for that meeting. If the Chairperson resigns or otherwise becomes incapable of fulfilling his or her duties, the Vice-Chairperson shall become Chairperson for the remainder of the unexpired term.

- C. The Secretary shall record and transmit all minutes of all Commission or Executive committee meetings in accordance with these Bylaws. The secretary shall be responsible for all correspondence and notices pertaining to meetings or any other business of the Commission or Executive Committee.**
- D. The treasurer shall have custody of all Commission funds, securities, or other valuable effects and shall deposit same in the name of the Commission in a Commission designated depository. The Treasurer shall keep accounting records of all Commission financial transactions, present a financial report at every regular Commission meeting, permit inspection of all financial records by any Commission representative at any reasonable time, disburse the funds and sign checks in accordance with the adopted budget or as otherwise authorized by the Commission, and arrange for an annual audit by a competent auditor of all Commission financial records within 30 days of the close of the fiscal year.**
- E. The Secretary and the Treasury may delegate any of their respective duties to the Executive Director with the consent of the Executive Committee.**
- F. At its' discretion, the Executive Committee may give authorization to another member of the Executive Committee residing within close proximity to the CUPPAD office to sign checks and handle other financial affairs as approved by the Executive Committee.**

SECTION 3: The Executive Committee shall be composed of the four officers, four directors, and the immediate past chairperson as ex officio member, and shall be chaired by the Commission Chairperson. Each Executive Committee representative shall regularly report to his/her appointing entity concerning all activities of the Executive Committee and Regional Commission. In addition to all other duties prescribed in these Bylaws, the Executive Committee shall:

- 1. Review and give Executive Committee approval to a Commission budget at or before its September meeting.**
- 2. Perform necessary Commission duties between Commission meetings in accordance with these Bylaws.**
- 3. Enter into contracts in the name of the Commission.**
- 4. Establish Commission and Commission staff travel policies.**
- 5. Set Commission and Executive Committee meetings in accordance with these Bylaws.**
- 6. Hire an Executive Director to be retained at their pleasure.**

7. Review and authorize staffing levels.
8. Establish Commission staff personnel policies.
9. Review and comment on all matters submitted to it under Circular A-95.
10. Establish surety bond for the Chairperson, Executive Director, Administrative Services Manager, Commission Treasurer, and any Executive Committee member designated by the Executive Committee to sign checks or otherwise handle Commission funds as required by law.
11. Perform any other functions delegated to it by resolution of the Commission.

SECTION 4: The four officers and four directors shall serve a term of one year commencing March 1. No officer may hold more than one office at one time.

SECTION 5: Executive Committee meetings should be held monthly at a time and place set by the Executive Committee, and all Executive Committee representatives shall receive five days written notice of a regular meeting. A meeting may be cancelled by the Chairperson if there is not important business to transact. Special meetings may be called by the Chairperson, and except in cases of emergency, shall be preceded by five days written notice. Five Executive Committee representatives shall constitute a quorum.

Agendas for any given meeting will include minutes of the previous meeting.

SECTION 6: If an Executive Committee member is absent for 2 consecutive meetings in a year without good cause, that member is automatically removed from the Committee and is replaced as stated in Article III, Section 7 of these Bylaws.

SECTION 7: If an Executive Committee representative, other than the Director chosen at the February meeting, resigns, is removed from office, or otherwise becomes incapable of completing the Executive Committee term, the affected county shall appoint a new Executive Committee representative at its next meeting to complete that term. If an officer resigns or otherwise becomes incapable of fulfilling the duties of office, the Chairperson shall appoint a new officer from among the directors to complete the unexpired term.

IV: COMMISSION MEETINGS

SECTION 1: Regular meetings of the Commission should be held Quarterly (February, April, July, October), at a time and place set by the Executive Committee. The Chairperson may cancel a meeting if there is not important business to transact. Written notice of regular

meetings shall specify by agenda business to be transacted and shall precede the meeting by at least five days.

SECTION 2: Special meetings of the Commission may be called by resolution of the Executive Committee. Written notice to all Commission representatives shall specify by agenda business to be transacted and shall precede the special meeting by at least five days.

SECTION 3: A majority of appointed representatives shall constitute a quorum.

SECTION 4: Agendas for Commission meetings will include the minutes of the previous meeting.

V: COMMITTEES

The Commission may authorize committees of Commission representatives to perform such duties as it may deem advisable. If the committee is to consist of Commission representatives exclusively, the Chairperson shall appoint the members of that Committee.

VI: FINANCE

SECTION 1: The Commission shall review the budget approved by the Executive Committee and shall adopt a budget for the Commission at its October meeting which shall take effect retroactively to October 1 of that year.

SECTION 2: The fiscal year of the Commission shall commence on October 1 and end the following September 30.

VII: PROCEDURE

SECTION 1: The rules contained in the current edition of Robert's Rules of Order shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these Bylaws or any special rules of order the Commission may adopt.

SECTION 2: As a voluntary association of local private and governmental groups serving the Region, the Commission shall be autonomous in establishing the policies and procedures it shall follow. Conflicts between the CUPPAD Regional Commission, federal agencies, state agencies, or any combination thereof, concerning policy, administration, organization, financial accounting, or personnel procedures will be resolved by the CUPPAD Regional Commission and/or the Executive Committee.

Conflict shall be fairly resolved, keeping in mind that the purpose of the CUPPAD Regional Commission, as well as the state and federal governments, is service to the people of this

Region in the most economic, efficient, and practical manner so that poverty and prejudice may be lessened and economic, social, and physical growth and conservation may be furthered.

VIII: AMENDMENT OF BYLAWS

These Bylaws may be amended at any meeting of the Commission by a two-thirds vote of members present, provided that the amendments have been submitted in writing to all Commission representatives at least fifteen days prior to the meeting at which they are considered.

ADOPTED JANUARY 28, 1977

AMENDED MARCH 31, 1978

AMENDED MARCH 29, 1985

AMENDED APRIL 26, 1991

AMENDED APRIL 26, 1996

AMENDED JANUARY 25, 2008

AMENDED FEBRUARY 24, 2012 by the CUPPAD Regional Commission to adopt by reference into the current Bylaws, the Property Control Policy (15 CFR 24.31 – 24.34) and the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments – Procurement (15 CFR Part 24.36) – See Attachment A.

Attachment A

PROPERTY CONTROL POLICY

CUPPAD 's real property , equipment, supplies and other property shall be acquired, disposed of, transferred and retained in accordance with 15 CFR Part 24.31 through Part 24.34

15 C.F.R. PART 24—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

24.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(1) The Federal awarding agency may require the placing of appropriate notices of record to advise that property has been acquired or improved with Federal financial assistance, and that use and disposition conditions apply to the property.

(2) [Reserved]

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by

applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

[53 FR 8048, Mar. 11, 1988, as amended at 53 FR 8049, Mar. 11, 1988]

§ 24.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §24.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §24.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 24.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 24.34 Other property.

(a) *Copyrights.* The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(1) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(2) Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support.

(b) *Intangible property.* Title to such property as loans, notes, and other debt instruments (whether considered tangible or intangible) acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively. Such property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests. When no longer needed for the originally authorized purpose, disposition of such property will be made as provided in §24.32(e).

[53 FR 8049, Mar. 11, 1988]

By Laws:

All procurement activities shall conform to 15 CFR Part 24.36 entitled UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS-Procurement.

No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or 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:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) 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 or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees 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 or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

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15 CFR 24.36 full

Title 15: Commerce and Foreign Trade

Subtitle A: Office of the Secretary of Commerce

PART 24: UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart C: Post-Award Requirements

: Changes, Property, and Subawards

24.36 - Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or 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:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) 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 or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees 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 or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid

purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only?

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding

agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

- (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
- (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of ? 24.36. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a ?brand name? product instead of allowing ?an equal? product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

- (i) 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; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed. (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). 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 the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in ? 24.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

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

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is

infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

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

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

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

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in

connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see ? 24.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded

without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ?brand name? product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(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 his 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 contract price. A ?performance bond? is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ?payment

bond? is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) 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. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 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). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making

audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) 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). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(13) 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 (Pub. L. 94-163, 89 Stat. 871).