

Arkansas Natural Resources Commission  
Rules Governing Water and Wastewater Project Funding through the  
Arkansas Community and Economic Development Program  
Title 23  
(2006)

<u>Subtitle</u>	<u>Page</u>
Preamble to Title 23.....	1
I. Introductory provisions	
2301.1 General administration.....	1
2301.2 Enabling and relevant authorities.....	2
2301.3 Definitions.....	2
II. Eligibility	
2302.1 Eligible projects .....	6
2302.2 Open grant limitation .....	6
2302.3 Eligible applicants.....	6
2302.4 Eligible applications.....	6
III. Application and Selection	
2303.1 Water/Wastewater Advisory Committee pre-application.....	7
2303.2 Commission application.....	7
2303.3 Applications based on LMI.....	7
2303.4 Imminent threat to health and safety.....	8
2303.5 Project resubmission .....	8
2303.6 Commission review and selection criteria .....	8
2303.7 Ties.....	9
2303.8 ACEDP recipient requirements.....	9
IV. Administrative Procedures	
2304.1 Project administration .....	9
2304.2 Public participation .....	9
2304.3 Project records .....	10
2304.4 Environmental review .....	10
2304.5 General requirements for all procurements.....	10
2304.6 Specific procurement procedures.....	11
2304.7 Timing of costs .....	13
2304.8 Requests for payment.....	13
2304.9 Bank account and check writing procedures .....	13
2304.10 Eligible expenditures .....	14
2304.11 Ineligible expenditures.....	15
2304.12 Acquisition.....	15

Title XXIII

2304.13 Program income .....15  
2304.14 Audits and inspections .....15  
2304.15 Project closure.....15

V. Enforcement Provisions

2305.1 Failure to comply .....15  
2305.2 Federal remedies .....16

IV. Miscellaneous Provisions

2306.1 Modifications to a funded project .....16  
2306.2 Approved funding sources .....16  
2306.3 Exceptions.....16

## Title XXIII

### Arkansas Natural Resources Commission Rules Governing Water and Wastewater Project Funding through the Arkansas Community and Economic Development Program (2006)

#### Preamble to Title 23

The Community Development Block Grant (CDBG) Program was established by Congress in the Housing and Community Development Act of 1974. That Act merged a group of programs into a “block” of flexible community development funds distributed each year to further three national objectives:

1. to benefit low to moderate income persons;
2. to aid in the prevention or elimination of slums or blight; and
3. to address community development needs having a particular urgency.

24 CFR Part 570 contains the federal regulations pertaining to all of the Community Development programs. Arkansas participates in the State Community Development Block Grant Program (24 CFR 570, Subpart I), and created the Arkansas Community and Economic Development Program (ACEDP) to administer the State CDBG Program. Water and Wastewater CDBG grants are made through the ACEDP.

ACEDP Water and Wastewater grants are competitive grants. Applications are rated according to specific criteria designed to ensure that one of the three national objectives of the Housing and Community Development Act are being met. The funds are intended to fill in after all other sources of funding have been exhausted.

ACEDP has been, and generally continues to be, administered by the Arkansas Department of Economic Development (ADED). A Memorandum of Agreement between the Arkansas Natural Resources Commission (the Commission) and ADED partners the two agencies and permits the Commission to take over the ACEDP Water and Wastewater project selection process. This authority covers only Water and Wastewater projects. ADED continues to administer all other ACEDP project types according to that Department’s own rules and policies.

#### Subtitle I. Introductory provisions

##### Section 2301.1 General administration.

A. The Arkansas Natural Resources Commission (the Commission) administers Arkansas Community and Economic Development Program (ACEDP) grants for water and wastewater projects.

B. The Commission distributes federal funds under this program. The Commission rates and selects applications for funding according to specific criteria designed to meet one of the three national objectives identified in the Preamble. Projects scoring the highest rating are

## Title XXIII

funded until the available funds are obligated. The funds are intended to fill in after all other sources of funding have been exhausted.

C. The Arkansas Department of Economic Development (ADED) administers ACEDP grants for all other project categories.

### Section 2301.2 Enabling and relevant authorities.

A. The Housing and Community Development Act of 1974, as amended, codified at 42 USC 5301 *et seq.*

B. Title 24 of the Code of Federal Regulations, Part 570, Subpart I.

C. Memorandum of Agreement between the Commission and ADED, executed June 10, 2004, in which the Commission agreed to administer ACEDP grants for qualifying water and wastewater projects.

D. Title I, Rules of Organization and General Operation of the Arkansas Natural Resources Commission (2005).

### Section 2301.3 Definitions.

The following definitions apply to all parts of these rules. If a word or term is not expressly defined in this section, then it is understood to have the common usage meaning to give the most reasonable application to these rules.

1. **ACEDP** – The Arkansas Community and Economic Development Program is the State program through which federal Community Development Block Grant (CDBG) funds are distributed to local communities.
2. **Beneficiary** – Any household benefiting from the water or wastewater project by connecting to the centralized water or wastewater system is considered to be a beneficiary of the project.
3. **Benefit** - Benefit is defined as the availability of water or wastewater service to a household, whether the household chooses to subscribe to the service or not.
4. **Categorical ACEDP grants** – ACEDP grants are classified by ADED as either categorical grants or economic development grants. Categorical grants include water and wastewater system grants, grants for childcare facilities, senior citizen centers, public health facilities, and multi-purpose community centers, while economic development grants are primarily focused on creating jobs for low and moderate-income families.
5. **CDBG program** – Formally known as "Title 1" of the Housing and Community Development Act of 1974, as amended, the Community Development Block Grant Program is run by the U.S. Department of Housing and Urban Development (HUD) with a primary objective of improving communities by providing "decent housing," a "suitable living environment," and "expanding economic opportunities," all "principally for persons of low and moderate income."
6. **Chief executive officer** – This term refers to the Grantee's elected or legally designated official with the primary responsibility for the conduct of governmental affairs. The

## Title XXIII

County Judge of a County and the Mayor of an incorporated municipality are Chief Executive Officers.

7. **Competitive negotiation** – Competitive negotiation is the process of awarding a procurement contract by comparing multiple bidders and selecting the proposal most beneficial to the community based on predetermined selection criteria. In competitive negotiation, contractors are required to submit cost proposals that show the elements (e.g., labor, materials) of their proposed costs or prices.
8. **Corrective action** – This term refers to behavior that brings a non-compliant situation back into compliance. For example, corrective action for failing to document a certain activity would be to obtain the documentation; corrective action for failing to post a notice would be to post the notice.
9. **Cost analysis** – Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price to determine if the element is allowable, directly related to the requirement, and ultimately, reasonable. Cost analysis must be performed when sealed bids are received or in a non-competitive negotiation, or when negotiating a modification (including change orders) to any type of contract.
10. **Cost-plus contracts** - Cost-plus contracts are cost-reimbursement contracts that provide for a fee consisting of a fixed base amount (which may be zero) plus an award amount, based upon a judgmental evaluation, designed to provide motivation for contract performance.
11. **Cost-reimbursement contracts** - Cost-reimbursement contracts provide for payment of allowable incurred costs to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and creating a ceiling that the contractor may not exceed without approval.
12. **Customer** – A customer is a residential household using the water or wastewater utility. Commercial structures and public structures such as churches, schools or community centers cannot be counted as customers.
13. **Disbursements** – Disbursements are checks written to pay for goods or services associated with the Project.
14. **Entitlement community** - Urban counties populated by 200,000 or more persons (excluding the population of entitled cities), metropolitan cities populated by 50,000 or more persons, or a principal city of a Metropolitan Statistical Area (MSA) are entitlement communities and receive CDBG funds directly from HUD instead of the State. The cities of Bentonville, Conway, Fayetteville, Ft. Smith, Hot Springs, Jacksonville, Jonesboro, Little Rock, North Little Rock, Pine Bluff, Rogers, Springdale, Texarkana and West Memphis are all entitlement communities and are ineligible for ACEDP funding.

## Title XXIII

15. **Environmental Clearance Letter** – The Environmental Clearance Letter is a written determination from the Arkansas Natural Resources Commission of apparent compliance with the environmental review requirements of 24 CFR Part 58.
16. **Environmental Review** – This process, described in 24 CFR Part 58, provides instructions and guidance to Grantees for ensuring compliance with the National Environmental Policy Act (NEPA).
17. **Fixed-price contracts** - Fixed-price contracts provide for a firm price for goods or services or, in appropriate cases, an adjustable price with a fixed ceiling.
18. **Grant agreement** – The grant agreement is the contract between the Arkansas Natural Resources Commission and the Grantee, detailing the provisions and conditions of the ACEDP grant.
19. **Hard Costs** – Hard costs are actual material construction costs.
20. **Low to moderate income (LMI)** - Low to moderate income means income less than or equal to the Section 8 low-income limit established by HUD. Note that Section 8 refers to “very low” and “low” incomes instead of “low” and “moderate” incomes. In the CDBG program, “low” income equates to Section 8’s “very low” income, and “moderate” income equates to Section 8’s “low” income.
21. **Median household income** - The median household income is considered by many statisticians to be a better indicator than the average household income, since it is not dramatically affected by unusually high or low values. It is obtained by listing, in numerical order, all household incomes and selecting the income in the middle of the list.
22. **Noncompetitive negotiation** - Noncompetitive negotiation is the process of awarding a procurement contract to a single source without comparing competitive bids.
23. **Open grant** – An ACEDP grant is considered to be open after the grant agreement document has been signed until a closure letter is issued by the Arkansas Natural Resources Commission.
24. **Price analysis** - Price analysis is essentially a price comparison without analyzing any of the separate cost elements. Price analysis is required in competitive negotiations to determine the reasonableness of the proposed contract.
25. **Procurement** – Procurement is the process of obtaining services, supplies, and equipment in conformance with applicable laws and regulations.
26. **Program income** – ACEDP program income is gross income directly generated as a result of the ACEDP grant (i.e., fees for services performed, money from the use, sale, or rental of equipment purchased with project funds, sale of project materials or supplies). Program income is not anticipated in ACEDP water and wastewater projects.

## Title XXIII

27. **Project** – This term refers to the construction plan identified by the applicant and may be the installation of, modification of or addition to a centralized water distribution system or wastewater collection system.
28. **Project administrator** – The Project administrator is an individual hired by the Grantee to ensure that the Project is conducted in accordance with all applicable Federal, State and agency requirements. Project administrators are required for ACEDP grants because the responsible party for the grant (the Chief Executive Officer of the Grantee) will likely not have expertise in all required areas.
29. **Project close-out** – Close-out is the process through which all applicable administrative activities and required work of the grant agreement are certified as complete, with no unmitigated findings of noncompliance.
30. **Reasonable access** - Reasonable access means there are no significant geographic, economic or social barriers created by government to limit access by citizens during normal working hours.
31. **Records** – Project records are data or information of any kind and in any form, created or received and accumulated in the application for, receipt of, administration of or use of ACEDP grants associated with a particular project.
32. **Residential** –Residential means a structure where one or more persons live.
33. **Seasonal residents** – Persons who own a residence within the project area and reside there for at least 1 day each year, but less than 180 days each year.
34. **Simplified procurement** – In simplified procurement, goods or services are purchased by comparing a list of prices and choosing the least expensive provider.
35. **Soft costs** – Soft costs are non-construction costs (engineering fees, abstracting service costs, surveys, administration fees).
36. **State Water Plan** - The Arkansas State Water Plan is a comprehensive state-wide plan dealing with water systems, water supplies, water rights allocation, flood plain management, non-point source pollution abatement, dam safety, and wetlands mitigation banking. The goal of the State Water Plan is for every individual in the State to have all of the water they need for any beneficial purpose.
37. **Uninhabitable residences** – Residential structures are considered to be “uninhabitable” if they fail to meet any local or state construction or health code for residential structures.
38. **WWAC** - The Water/Wastewater Advisory Committee was organized to streamline, consolidate, simplify and improve the method by which communities access the state funding system for water and wastewater projects. It provides project development

## Title XXIII

guidance and recommends project financing to communities through one single preliminary application process.

### Subtitle II. Eligibility

#### Section 2302.1 Eligible projects.

To be eligible for ACEDP grants through the Commission, grantees must demonstrate that:

A. Projects satisfy one of the following criteria:

1. 51% or more of the project beneficiaries must be low to moderate income (LMI) persons, or

2. The project must be recognized by the Commission as particularly urgent to address a serious and immediate threat to the health or welfare of the community.

B. Projects eligible under § 2302.1(A)(1) provide water service or wastewater system service to at least one new customer, resulting in 300 or more total service customers, unless specifically exempted from this requirement by the Executive Director of the Commission;

C. ACEDP grants will not be used to reduce annual water or wastewater rates below those resulting in annual bills of 1% of the beneficiary median household income, assuming an average of 4,000 gallons per month usage;

D. Projects are of such a scope that completed construction can be reasonably expected within three years of signing the grant agreement; and

E. Projects comply with the State Water Plan (if applicable).

#### Section 2302.2 Open grant limitation.

A. ACEDP grants are classified by ADED as either *categorical grants*, including grants to fund the construction of water and wastewater systems, childcare facilities, senior citizen centers, public health facilities, and multi-purpose community centers, general assistance purposes, or *economic development grants* for projects primarily focused on creating jobs for low and moderate-income families.

B. Incorporated municipality grantees may have only a single *categorical* ACEDP grant, for any purpose and from any agency, open at any given time. Grants classified as *economic development grants* are not included in this limitation.

C. County grantees may have a total of two open *categorical* ACEDP grants, for any purpose and from any agency, issued to the county at any given time. Grants classified as *economic development grants* are not included in this limitation.

D. The Commission must close ACEDP grants within one year following completed construction.

#### Section 2302.3 Eligible applicants.

Any general unit of local government within the state may be the recipient of ACEDP funding for an eligible project, provided that the applicant is not an entitlement community.

#### Section 2302.4 Eligible applications.

Any application submitted by an eligible applicant for an eligible project will be considered by the Commission, so long as the application complies with all other provisions of this Title.

Subtitle III. Application and selection

Section 2303.1 Water / Wastewater Advisory Committee pre-application.

A. Applicants seeking to qualify for an ACEDP grant on the basis that 51% or greater of the beneficiaries are LMI must obtain Water/Wastewater Advisory Committee (WWAC) approval of the project before applying to the Commission for the ACEDP grant.

B. The WWAC meets monthly to review pre-applications. Applicants must submit new projects to the WWAC no later than December 15th, for review at the January WWAC meeting. Applicants must also submit LMI information with the WWAC pre-application packet.

C. Applicants must submit WWAC pre-applications on forms supplied by the WWAC. The WWAC will review submissions monthly according to WWAC policies and schedules.

Section 2303.2 Commission application.

A. Applicants must submit new projects to the Commission on the form supplied by the Commission and must include all information and documentation required by the form.

B. Applicants must submit completed applications for ACEDP grants to the Commission no later than February 1st.

C. The Commission will not charge a fee for processing or considering any application for an ACEDP grant.

D. Applicants must ensure all estimated project costs are current to within 12 months of the submission date, and are encouraged to submit the most up-to-date costs available.

E. Applicants must ensure all other data submitted with the application, or used to generate figures submitted with the application, must be directly relevant to the project. Any time the scope of the project changes, the data must be revised accordingly.

Section 2303.3 Applications based on LMI.

A. Applicants must demonstrate LMI beneficiary percentages of 51% or greater, based on

1. a survey of 100% of the households affected by the project, current to within 36 months;

2. data from the most recent US Census; or

3. specific project clientele (including elderly persons, severely disabled adults, illiterate adults and migrant farm workers) classified as LMI regardless of income.

B. Applicants must adhere to the following guidelines when conducting LMI surveys:

1. Only residential households may be counted as beneficiaries.

2. If the property is rental, the renter counts as the beneficiary for LMI determination purposes.

3. Seasonal residents who receive service for any part of the year are counted as beneficiaries.

4. Vacant lots and uninhabitable residences do not count as beneficiaries.

5. Vacant, inhabitable residences count as Non-LMI beneficiaries.

6. Residents who do not respond in an income eligibility survey count as Non-LMI beneficiaries.

## Title XXIII

C. Applicants who fail to document 51 percent or more of the beneficiaries are LMI at the close of the project will be disqualified from ACEDP funding. In such cases the Commission will pursue remedies per Section 2305.1 of this Title.

### Section 2303.4 Imminent threat to health and safety.

A. In particularly urgent situations posing a serious and immediate threat to the health or safety of a community, the Commission may solicit an ACEDP application concurrent with a WWAC pre-application.

B. The Commission may solicit an ACEDP application for an imminent threat water project when a public water supply sample or at least one private well water sample has been identified by an appropriately certified testing laboratory as failing to meet any primary drinking water standard of the 1974 Safe Drinking Water Act, as amended.

C. The Commission may solicit an ACEDP application for an imminent threat wastewater project when the Arkansas Department of Environmental Quality identifies a wastewater treatment system as insufficient or malfunctioning, or when the Arkansas Department of Health and Human Services County Sanitarian reports a private septic system to be malfunctioning.

D. The Commission will neither solicit nor award non-LMI ACEDP grants in a manner inconsistent with federal aggregate grant percentage requirements.

### Section 2303.5 Project resubmission.

Applicants may resubmit unfunded projects for consideration, provided that:

1. The scope of the project has not changed since the previous application;
2. The cost estimate for the project is current to within 12 months;
3. The non-cost data submitted, or used to prepare the application, are current to within 36 months;
4. The project had been approved by the WWAC prior to the previous submission; and
5. A new State Clearinghouse Application Supplement Form (CH-2) and new Application for Federal Assistance Form (Standard Form 424) are submitted.

### Section 2303.6 Commission review and selection criteria.

A. Commission staff will review applications in a timely manner, and corrections will be permitted up until the February 1st submission deadline.

B. Commission staff will select eligible projects for ACEDP grants from eligible applicants, subject to funding availability, based on two general criteria:

1. Readiness to Proceed
  - a). The Commission will award 75 points to applicants who provide a document, current to within 12 months, from an approved funding source which indicates the approved funding source expects to extend funds to the project during the current calendar year.
  - b). The Commission will award 50 points to applicants who provide a document, current to within 12 months, from an approved funding source which indicates the approved funding source does not expect funds to be available for the project during the current calendar year, although funding may be available the following year.

## Title XXIII

- c). The Commission will award 25 points to applicants who provide a document, current to within 12 months, from an approved funding source acknowledging receipt of the application and considering the project for funding.
2. High Percentage of Low to Moderate Income Beneficiaries. Applicants will receive from 13 to 25 points based upon the % of LMI beneficiaries. The exact number of points is determined by multiplying the percentage of the project's beneficiaries who are LMI by 25.
  - a). For this calculation, the LMI will be expressed as a decimal with 3 decimal places.
  - b). Fractional results of this calculation greater than or equal to 0.500 will be rounded up to the next higher whole number. Fractional results of this calculation less than 0.500 will be dropped.
- C. The Commission may award an ACEDP grant on a non-competitive basis and without regard to the criteria cited in (B) above in order to address an imminent threat to the health or safety of a community.

### Section 2303.7 Ties.

If two applications at the bottom of the funding list receive an equal rating and the Commission only has funding for one of the projects, the project with the highest percentage of LMI beneficiaries will be funded.

### Section 2303.8 ACEDP recipient requirements.

Prior to the awarding of the grant, applicants selected by the Commission to receive ACEDP monies must accept and agree to abide by all federal and state requirements and by the policies contained in the Commission's ACEDP Policy Manual throughout the duration of the project. Subsequent changes to the Commission's ACEDP Policy Manual will not be binding upon ACEDP agreements entered into prior to a revision.

## Subtitle IV. Administrative procedures

### Section 2304.1 Project administration.

The Commission requires grantees to hire regional planning and development district personnel, or a private grants management firm with expertise in water or wastewater project management, to administer ACEDP projects. The Commission does not permit grantees to administer their own project, regardless of their level of expertise.

### Section 2304.2 Public participation.

A. Grantees must prepare and follow a written plan to encourage citizen participation in funded projects.

1. A citizen participation plan should allow for the receipt of written grievances from citizens and provide timely responses to those grievances.
2. The needs of non-English speaking residents should also be considered and an interpreter should be provided at public hearings where non-English speaking residents are expected to attend.

## Title XXIII

B. Citizens must be given reasonable and timely access to local meetings, information, and records related to the grantee's proposed and actual use of funds.

C. A minimum of two public hearings are required on a standard project.

1. One public hearing must be held during the initial planning phase of the project to discuss the need for the project with the citizens.

2. Another public hearing must be held at the end of the project to review what the project has done to address the needs of the community.

### Section 2304.3 Project records.

A. All records pertaining to the project application, receipt of the grant, administration and use of the ACEDP grant must be maintained in accordance with the recordkeeping requirements of 24 CFR Part 570, Subpart I and in a manner acceptable to the Commission.

B. A complete set of records must be maintained on the premises of

1. The project administrator, if the project administrator is a planning and development district employee, or

2. The chief executive officer for the grantee, if the project administrator is a private consulting firm.

C. All records must be maintained for a minimum of four years after the Commission has closed the project.

D. Representatives of HUD, the Inspector General, the General Accounting Office and the Commission must be allowed reasonable access to all project records for review and audit purposes.

E. Citizens must be allowed reasonable access to all project records.

### Section 2304.4 Environmental review.

A. Grant monies may not be expended on activities other than eligible administrative costs, engineering design, or environmental review consistent with the requirements of 24 CFR Part 58.

B. Upon completion of the environmental review, the grantee must request an environmental clearance letter from the Commission and file a Request for Release of Funds ("RRF") form.

### Section 2304.5 General requirements for all procurements.

A. Grantees procuring goods or services using ACEDP grant funds must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms listed as relevant vendors by ADED are used when possible. Affirmative steps include:

1. Before requesting or advertising for bids, grantees must advise the ADED Small and Minority Business Unit of the project, the bid date, and where to obtain bid specifications in order to allow that office to notify small and minority businesses and women's business enterprises which are potential sources;

2. Grantees must divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

## Title XXIII

3. Grantees must establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

4. Grantees must specifically require the prime contractor to take all of these same affirmative steps whenever letting a subcontract.

B. Grantees are responsible for advising contractors of their equal opportunity responsibilities, particularly at the pre-construction conference, and for maintaining equal opportunity compliance documentation. Equal opportunity provisions must be included in all bid packages and construction contracts. Specific language and sample bid packages are available from the Commission upon request.

C. Grantees may award only fixed-price or cost-reimbursement contracts using ACEDP grant funds. Cost-plus contracts are not acceptable.

### Section 2304.6 Specific procurement procedures.

A. Grantees may use any of four types of procurement, as appropriate for a given procurement situation:

1. Simplified procurement is an informal method of securing services or supplies by obtaining price quotes from an adequate number of qualified sources. For the purposes of this Title, three price quotes are adequate. Grantees may use simplified procurement whenever a good or service costs less than the simplified acquisition threshold fixed at 41 U.S.C. 403(11).

2. Procurement by sealed bids is a formal method of securing services or supplies by publicly soliciting bids and awarding the contract to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

a). Grantees should use procurement by sealed bids for procuring construction as long as:

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

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

(3). 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.

b). Grantees must comply with the following requirements whenever procuring goods or services by sealed bids:

(1). Grantees must solicit bids by advertising for a thirty-day period in the Arkansas Democrat-Gazette (or the Northwest edition of that paper, as appropriate for the project region);

(a). The advertisement must appear twice, at a minimum.

(b). The first publication of the advertisement begins the thirty-day period.

(c). The second publication of the advertisement must occur one calendar week before the end of the thirty-day period.

(d). If the second publication is delayed for any reason, the public notice period must be extended to one calendar week after the second publication.

## Title XXIII

- (2). Grantees must identify all factors to be used in evaluating submitted proposals, including the importance of price or cost, in the invitation for bids;
- (3). Grantees must publicly open all bids at the time and place specified in the advertisement;
- (4). Grantees must evaluate all submitted bids;
- (5). Grantees must, in writing, award the contract to the responsive bidder who best satisfies all of the selection factors. If all other factors are equally met, the lowest responsive bidder will be selected;
- (6). Grantees must also notify, in writing, all unsuccessful bidders; and
- (7). Grantees may reject any or all bids if there is a sound documented reason.

3. Procurement through competitive negotiation is another formal method of securing services or supplies by publicly soliciting bids. Grantees may use competitive negotiation for qualifications-based procurement of engineering professional services where the contract is awarded to the most qualified competitors, subject to negotiation of fair and reasonable compensation.

a). The requirements of b)(1) - b)(4), b)(6), and b)(7) above also apply to competitive negotiations.

b). Grantees may award contracts to the submitted proposal most advantageous to the Grantee, considering only the factors specified in the published advertisement.

c). Grantees may only use this procurement method, where price is not the determining factor, in procurement of engineering professional services. Competitive negotiation cannot be used to purchase any other types of services or goods.

4. Procurement through non-competitive negotiation is solicitation of a proposal from only one source, or the finding of inadequate competition after soliciting bids from a number of sources. Grantees may use non-competitive negotiation only if the award of a contract by simplified procurement, sealed bids or competitive negotiation is not possible and one of the following circumstances applies:

a). A published request for proposals results in only one proposal;

b). The items or services required are available only from one source;

c). Sole-sourcing of the contract has been approved by the Commission; or

d). A public emergency will not permit a delay beyond the time needed to employ the competitive negotiation method.

B. Grantees 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.

1. Grantees must perform a cost analysis when procurement is made through sealed bids and the bidder is required to submit the elements of the estimated cost (a common requirement for professional, consulting, and architectural engineering services contracts).

2. Grantees must always perform a cost analysis when procurement is made through non-competitive negotiations, 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.

## Title XXIII

3. Grantees must perform a price analysis in all other instances to determine the reasonableness of the proposed contract price.

### Section 2304.7 Timing of costs.

A. Grantees may not hire, purchase, or otherwise obligate payment for any non-construction materials or professional services (soft costs) related to the project with an expectation of reimbursement from this program until receipt of the grant award notification letter from the state.

B. Grantees may not purchase materials or begin construction (hard costs) until the Commission issues an environmental clearance letter for the project.

C. If a grantee purchases materials or begins construction before the Commission issues an environmental clearance letter for the project, the Commission will terminate the grant, de-obligate the funds and subject the grantee to the provisions of Section 2305.1 of this Title if disbursements have been made.

### Section 2304.8 Requests for payment.

A. The Commission will accept a request for payment (RFP) only after issuing an environmental clearance letter for the project.

B. Grantees must submit an RFP on a form provided by the Commission.

C. Grantees must submit copies of invoices for all items claimed on the RFP.

D. An authorized person must sign each RFP submitted to the Commission.

1. Persons authorized to submit an RFP must be listed, with signatures, on the RFP Signature Form.

2. Persons authorized to submit an RFP are prohibited from disbursing payments and must not be authorized to do so on the Bank Designation and Check Signature Form.

3. Persons authorized to submit an RFP must not have any financial interest in the project.

### Section 2304.9 Bank account and check writing procedures.

A. Grantees must provide a dedicated, FDIC-insured, non-interest bearing checking account to receive ACEDP funds by electronic direct deposit.

1. Grantees may not use an existing account held by the grantee for general use.

2. Grantees must not deposit any funds other than ACEDP Grant funds into this account. Grantees must use this account solely to receive and expend ACEDP grant funds.

3. Grantees must ensure the checking account features numbered checks that are preprinted with the project name as well as the ACEDP grant control ID number and require a countersignature for issuance.

B. Unless the grantee's method of appropriating funds has been approved by the Commission, a minimum of two persons, whose signatures appear on the Bank Designation and Check Signature Form, must be authorized to sign and countersign disbursement checks.

1. At least one person authorized to sign checks on the ACEDP grant account must be an employee of the grantee and must be bonded under the grantee's public employee blanket performance bond.

## Title XXIII

2. Persons authorized to sign checks on the ACEDP grant account are prohibited from signing any RFP and must not be authorized to do so on the Request for Payment Signature Form.

3. Persons authorized to sign checks on the ACEDP grant account must not have any financial interest in the project.

C. Grantees may only issue disbursement checks for eligible expenditures.

### Section 2304.10 Eligible expenditures.

The following items are eligible for repayment with ACEDP grant funds:

**1. Construction Costs.** Grantees may submit invoices for construction activities specified in the grant agreement after the work has been performed. The project engineer must certify that each construction invoice is accurate as to the work that has been performed.

**2. Equipment.** Grantees may submit invoices for equipment after installation of the equipment. Grantees may also request partial payments for uninstalled equipment as long as the amount requested is for the material cost of the equipment and not for any labor that is to be performed.

**3. Design Services and Engineering Fees.** Grantees may submit invoices for design services and engineering fees on a *pro rata* basis, according to fee payment schedules established in the individual professional services contracts. Grantees may seek to increase design services and engineering fees only for additional services provided and subject to prior approval by the Commission.

**4. Acquisition.** Grantees may submit invoices for activities related to acquisition (such as appraisals, surveys, legal condemnation costs, abstractor fees, filing/recording fees, and associated postage and publication costs).

**5. Permits, Fees, Testing.** Grantees may submit invoices for the cost of any permit, regulatory fee or laboratory testing required by the project.

**6. Hook-up Fees.** The Commission will determine the eligibility of hook-up fees on a project-by-project basis, according to the scope of work defined in the grant agreement.

**7. Contract Administration.** Grantees may submit invoices for contract administration services on a *pro rata* basis, according to fee payment schedules established in the individual contract for administrative services. Grantees cannot increase contract administration fees.

**8. General Administration.** Grantees may submit invoices for general administration fees for reasonable expenditures directly attributable to grant expenses such as check printing costs, advertisement fees, costs for files, postage, printing and other grant-related activities.

**9. Audit Administration.** Grantees may submit invoices for the *pro rata* share of audit costs attributable to an audit of ACEDP funds if the Commission has approved conducting the audit. Grantees are not limited by a maximum individual audit cost, but the total amount of audit expenditures cannot exceed the amount specified in the audit line item of the grant agreement.

**10. Force Account Work.** Grantees may submit invoices for force account labor, materials and supply costs only if these items are specified in the grant agreement.

**11. Connection Fees.** Grantees may submit invoices for costs incurred modifying existing utility systems as needed to serve the project after the grantee enters into a signed agreement with the entity charging the connection fee and construction has begun.

**12. Other Costs.** Grantees may submit invoices for an unbudgeted cost only if:

- a). the grantee provides written justification for the expense;
- b). the Commission agrees that the expense is eligible; and

## Title XXIII

c). the Commission and the grantee amend the grant agreement.

### Section 2304.11 Ineligible expenditures.

The following items are not eligible for repayment with ACEDP grant funds:

1. **Legal Fees.** Except for condemnation filing, which is covered as an acquisition fee, Grantees may not submit invoices for legal fees.
2. **Operation and Maintenance.** Grantees may not submit invoices for operation and maintenance costs.

### Section 2304.12 Acquisition.

A. Grantees acquiring property associated with ACEDP projects must comply with all applicable federal and state laws, including but not necessarily limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970; Section 104(d) of the Housing and Community Development Act of 1974; DOT regulations published in 49 CFR 24; HUD regulations published in 24 CFR 570.488; and A.C.A. 18-15-101 *et seq.*

B. Although this issue is not tracked by the Commission, Grantees are advised that IRS Form 1099 is required for acquisition payments of \$600 or greater.

### Section 2304.13 Program income.

The Commission does not expect water and wastewater projects to produce any program income.

### Section 2304.14 Audits and inspections.

A. Grantees are subject to federal or state audits and inspections at any time in the grant application process, the planning/design phase, the pre-construction phase, the construction phase, the post-construction phase, or up to four years following the closure of the project.

B. Grantees must provide citizens with reasonable public access to records regarding the project.

### Section 2304.15 Project closure.

A. The Commission will close ACEDP projects after determining that all administrative and construction activities required under the grant agreement have been satisfactorily completed and that outstanding compliance issues, if any, have been resolved.

B. Projects are not closed until the Commission issues a closure letter.

## Subtitle V. Enforcement provisions

### Section 2305.1 Failure to comply.

A. The Commission may institute corrective action against a Grantee who fails to comply with any of the terms agreed upon in the grant agreement.

B. The Commission, after unsuccessfully attempting to resolve compliance issues through a corrective action, may withhold, reduce, or de-obligate grantee's ACEDP grant monies.

C. The Commission may take other action as appropriate to recapture ACEDP grant monies expended in contravention to this Title or the requirements of 24 CFR Part 570.

## Title XXIII

D. The Commission may not seek to recapture ACEDP funds legally expended on eligible activities.

### Section 2305.2 Federal remedies.

Remedies available to the federal government against both the Commission and the ACEDP grant recipient are detailed in 24 CFR 570, subpart I, §570.496.

## Subtitle IV. Miscellaneous provisions

### Section 2306.1 Modifications to a funded project.

A. The Commission must approve proposed changes before any project may be modified.

B. The Commission will not consider any request to modify a project unless the grantee provides revised LMI beneficiary and utility rate figures with the request.

C. The Commission may approve project modifications if:

1. the modification does not result in a failure to meet any of the federal LMI benefit standards or state selection criteria which initially qualified the project for ACEDP funding; and

2. at least one public meeting has been held to discuss the need for the modification and to solicit public comment.

D. If an approved modification results in a reduction of the total project costs and excess funding, the Commission will de-obligate the excess ACEDP grant monies and use the funds for other funded or eligible unfunded projects.

### Section 2306.2 Approved funding sources.

The United States Department of Agriculture - Rural Development is an approved funding source for the purposes of the ACEDP project selection criteria found in Section 2303.6 (B)(1).

### Section 2306.3 Exceptions.

The Executive Director of the Commission may set aside any requirement of this Title not expressly required by federal or state law.