**Section 871.301 General Conditions for all Subagreements**

a) Scope of Application

The following conditions shall apply to all subagreements entered into between the grantee and any other party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which the grant is awarded, including contracts and subcontracts for personal and professional services.

b) Local Preference

Local laws, ordinances, regulations or procedures which are designed or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be employed in evaluating bids or proposals for subagreements under a grant.

c) Competition

It is the policy of the Agency to encourage free and open competition appropriate to the type of project work to be performed.

d) Profits

Only fair and reasonable profits approved by the Agency may be earned by contractors in subagreements under Agency grants. Factors to be considered in determining a fair and reasonable profit shall include, but not be limited to, material acquisition, labor costs, associated management costs, contract risks, capital investments, degree of independent development, and cost control and record keeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor.

e) Travel

The grantee is responsible for ensuring that reimbursement for travel expenses accrued by contractors conducting grant eligible activities does not exceed the travel limits established by 80 Ill. Adm. Code 3000 (effective July 1, 1990), and rules promulgated thereunder. The Agency will not reimburse grantees for any contractors' travel expenses exceeding State travel limits for mileage, transportation, lodging, per diem, parking, tolls, and other eligible travel costs.

f) Grantee Responsibility

The grantee is responsible for the administration and successful accomplishment of the project for which the Agency grant is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements entered into under the grant. This includes, but is not limited to, issuance of invitations for bids or requests for proposals, selection and oversight of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. These functions may be performed for the grantee by an individual or firm retained by the grantee for that purpose. Such an agent acts for the grantee and is subject to all the provisions of the grant agreement, including the requirements contained in this Part, that apply to the grantee. Ultimate responsibility for the project will continue to remain with the grantee. Costs incurred by a unit of local government will be eligible for grant reimbursement only after the grant is executed.

g) Privity of contract

Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts), nor to any solicitation or request for proposals therefor.

h) General Requirements

Subagreements shall:

1) Be directly related to the accomplishment of the grantee's approved work program;

2) Be in the form of a bilaterally executed written agreement;

3) Be for monetary or in-kind consideration; and

4) Not be in the nature of a grant or gift.

i) Documentation

1) Procurement records and files for contracts shall include the following:

A) Basis for contractor selection; and

B) Basis for award cost or price.

2) Procurement documentation as described in subsection (i)(1) above shall be retained by the grantee or contractors of the grantee for the period of time required by Section 871.502.

j) In-kind Work

1) The grantee must secure prior written approval of the Agency for utilization of in-kind contributions for work on planning grants in excess of $10,000 for Phase I activities and $25,000 for Phase II activities unless otherwise stipulated in the Grant Agreement.

2) The Agency's approval of in-kind contributions shall be based on its determination that:

A) The grantee has trained manpower and supervisory personnel whose expertise and current responsibilities would enable them to accomplish the project work and to maintain records of such work in accordance with this Part; and

B) The use of in-kind contributions will effect savings in cost over those that would be incurred under technical/professional service contracting methods.

k) The Agency retains the right to review, approve or disapprove in accordance with this Part all subagreements to be entered into by the grantee prior to execution of all such agreements. The Agency shall not approve the awarding of any subagreements to any person or organization which does not:

1) Have adequate resources, or the ability to obtain such resources prior to project initiation, to satisfactorily complete the project, including financial, organizational, and technical qualifications;

2) Have experience, or the ability to obtain such experience prior to the project's initiation, in nonhazardous solid waste or municipal waste planning, data collection and interpretation, and report preparation; and have a proven record of meeting schedules and budgets;

3) Have staffing sufficient to comply with the proposed or required completion schedule for the project;

4) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts with federal or State government;

5) Have an adequate financial management system and audit procedure which complies with generally accepted accounting procedures and with American Institute of Certified Public Accountant's Professional Standards (666 Fifth Avenue, N.Y., N.Y. 10019, June 1, 1987). (This incorporation contains no later amendments or editions.);

6) Maintain a standard of procurement in accordance with this Part;

7) Maintain a property management system that provides adequate procedures for the acquisition, maintenance, safeguarding, and disposition of all property; or

8) Conform to the civil rights, equal employment opportunity, and labor law requirements of the State of Illinois.

l) Fraud and Other Unlawful or Corrupt Practices

1) The award and administration of grants by the State of Illinois, and of subagreements awarded by grantees under those grants, must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.

2) The grantee shall effectively pursue available State or local legal and administrative remedies and shall take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee shall advise the Agency immediately when any such allegation or evidence comes to its attention and shall periodically advise the Agency of the status and ultimate disposition of any such matter.

m) Negotiation of Subagreements

Negotiation of subagreements (i.e., award of subagreements by any method other than formal advertising) is authorized if it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Procurements may be negotiated by the grantee if:

1) Public exigency as evidenced by governmental declaration will not permit the delay in advertising (e.g., an emergency procurement);

2) The aggregate amount involved does not exceed $2,500;

3) The material or service to be procured is available from only one person or firm (and, if the procurement is expected to aggregate more than $10,000, the Agency has given prior approval in writing);

4) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution; or

5) No responsive bids at acceptable price levels have been received after formal advertising, and the Agency has given advance written approval of the negotiated contract. The Agency shall give such approval upon a showing by the grantee that no responsive bids were received.

n) Small Purchases

1) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed $10,000. The small purchase limitation of $10,000 applies to the aggregate total of an order, including all estimated overhead and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should properly be grouped together. Reasonable competition shall be obtained and shall be evidenced by submission of price quotations.

2) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like may be utilized in the interest of minimizing paperwork. Retention in the purchase files of these documents and of written quotations received, or references to written catalogs or printed price lists used, will suffice as the record supporting the price paid.

o) Agency Review of Subagreements

1) The Agency retains the right to review, approve, or disapprove in accordance with this Part all subagreements to be entered into by the grantee in furtherance of the administration of the grant prior to execution of that subagreement. The Agency shall approve a subagreement only if the grantee demonstrates that the subagreement is in conformance with subsection (k) above.

2) If, at any time during the project, the Agency determines that the grantee's subcontractors are not successfully accomplishing project activities in accordance with the grant award, the Agency may take one or more actions presented in Section 871.201 of this Part. If the determination is due to the failure of the grantee's subcontractors to successfully accomplish the project work, the Agency shall notify the grantee in a timely manner of the determination and its recommendations for resolving the project deficiencies.

p) Award of Subagreement

After review and approval by the Agency, the grantee may award the contract. The Agency shall notify the grantee in writing of disapproved subagreements. Unsuccessful candidates shall be notified promptly.

(Source: Amended at 19 Ill. Reg. 11821, effective August 3, 1995)