**Section 871.302 Contracts for Personal and Professional Services – Professional Consultant Agreements**

a) Scope of Application

The provisions of subsections (a) through (i) of this Section apply to all subagreements of grantees for consulting services. When $10,000 or less of services (e.g., for consultant or consultant subcontract services) is required, the provisions of Section 871.301 (n) of this Part (Small Purchases) shall apply.

b) Type of Contract (Subagreement)

1) General

Cost reimbursement or fixed price contracts may be negotiated for consulting services. A fixed price contract is generally used only when the scope and extent of work to be performed are clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate.

2) Cost reimbursement contracts

Each cost reimbursement contract must clearly establish a cost ceiling that may not be exceeded without formally amending the contract and a fixed dollar profit which may not be increased except in case of a contract amendment that increases the scope of the work.

3) Fixed price contracts

An acceptable fixed price contract is one that establishes a guaranteed maximum price which may not be increased except to the extent that a contract amendment increases the scope of work.

4) Contracts prohibited

The cost-plus-percentage-of-cost type of contract is prohibited.

5) Compensation procedures

If, under either a cost reimbursement or fixed price contract, the grantee desires to utilize a multiplier type of compensation, all of the following must apply:

A) The multiplier and the portions of the multiplier allocable to overhead and allocable to profit have been specifically negotiated;

B) The portion of the multiplier allocable to overhead includes only allowable items of cost under the cost principles contained in Section 871.601 of this Part; and

C) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract.

c) Evaluation and Qualifications

1) The grantee shall review and uniformly evaluate the qualifications of candidate firms.

2) Qualifications shall be evaluated by an objective process such as by the appointment of a board or committee, which, to the extent practicable, should include persons with technical skills.

3) Criteria that shall be considered in the evaluation of candidates for submission of proposals include, but are not limited to:

A) Specialized experience and technical competence of the candidate or firm and its personnel (including a joint venture, association or professional subcontract) in connection with the type of services required and the complexity of the project;

B) Past record of performance on contracts with the grantee, other government agencies or public bodies, and private industry, including such factors as control of costs, quality of work, and ability to meet schedules;

C) Capacity of the candidate to perform the work (including any specialized services) within the time limitations, taking into consideration the current and planned workload of the firm; and

D) Avoidance of personal and organizational conflicts of interest prohibited under State and local law.

d) Solicitation and Evaluation of Proposals

1) Requests for professional services proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals must inform offerors of the evaluation criteria, including all those in subsection (c)(3) of this Section, and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized).

2) All proposals submitted in response to the request for professional services proposals must be uniformly evaluated. Evaluation criteria shall include, at a minimum, all criteria stated in subsection (c)(3) of this Section. The grantee shall also evaluate the candidate's proposed method to accomplish the work required, including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and designs.

3) Proposals shall be evaluated by an objective process such as the appointment of a board or committee that, to the extent practicable, includes persons with technical skills. Oral (including telephone) or written interviews shall be conducted with top rated proposers, and information derived therefrom shall be treated as confidential, except as required to be disclosed pursuant to State or local law or to the Agency pursuant to subsection (f) below.

4) At no point during the entire procurement process shall information be conveyed to any candidate that would specify bid deficiencies and corrective actions, indicate the contents of competing bids, or otherwise provide an unfair competitive advantage.

e) Negotiation

1) Grantees are responsible for negotiation of their contracts for consulting services. Contract procurement including negotiation may be performed by the grantee directly or by another non-state governmental body, person or firm retained for the purpose.

2) Negotiation shall be conducted in accordance with State or local procedures. If such procedures conflict with this Part, State procedures shall have precedence over this Part. This Part shall have precedence over local procedures.

3) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proposed contract. The grantee and the candidate shall discuss, at a minimum:

A) The scope and extent or work;

B) Identification of the personnel and facilities to accomplish the work within the required time, including, where needed, employment of additional personnel, subcontracting, joint ventures, etc.;

C) Availability of the required technical services in accordance with regulations and criteria established for the project; and

D) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations set forth in subsections (f) and (g) below, and payment provisions.

f) Cost and Price Considerations

1) General

It is the policy of the Agency that the cost or price of all subagreements and amendments thereto must be considered. For each subagreement, grantees shall use the procedures described in subsection (f)(2) below or equivalent process.

2) Cost Review

A) A review of proposed subagreement costs shall be made by the grantee.

B) At a minimum, proposed subagreement costs shall be presented on forms prescribed and provided by the Agency and shall be supported by a certification executed by the selected contractor that proposed costs reflect complete, current and accurate cost and pricing data applicable to the date of anticipated subagreement award.

C) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price contracts and a maximum total dollar amount of profit shall be set forth separately in the cost summary for cost reimbursement contracts.

D) More detailed cost data than that required by the summary format may be required by the grantee or the Agency to substantiate the reasonableness of proposed subagreement costs. Such detailed documentation is required by the Agency only when the selected contractor is unable to certify that the cost and pricing data used are complete, current and accurate or when evidence of fraud or misconduct has arisen. The Agency may, on a selected basis, perform a pre-award cost analysis on any subagreement. Circumstances under which such an analysis would be conducted include amendments to subagreements or evidence of cost inflation to meet costs. A provisional overhead rate will be agreed upon prior to contract award.

E) The contractor's actual costs, direct and indirect, allowable for State participation shall be determined in accordance with the terms and conditions of the subagreement and this Part.

F) The contractor shall have an accounting system that accounts for costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable project costs among projects. The contractor must propose and account for costs in a manner consistent with normal accounting procedures.

G) Subagreements awarded on the basis of review of a cost element summary and a certification of complete, current and accurate cost, and pricing data shall be subject to downward renegotiation or recoupment of funds where the Agency determines that such certification was not based on complete, current and accurate cost and pricing data or not based on costs allowable under the appropriate Agency cost principles at the time of award.

g) Profit

The objective of negotiations shall be the determination of a fair and reasonable profit as described in Section 871.301(d) of this Part. For the purpose of subagreements under State grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. Profit on a subagreement and each amendment to a subagreement under a grant should be sufficient to attract contractors who possess talents and skills necessary to accomplish project objectives, and to stimulate efficient and expeditious completion of the project. Where cost review is performed, the estimate of profit shall be reviewed by the grantee and the Agency as will all other elements of price.

h) Required Subagreement Provisions

1) Content of subagreement

A) Each subagreement must define, at a minimum:

i) The scope and extent of project work;

ii) The time for performance and completion of the contract work, including where appropriate, dates for completion of significant project tasks;

iii) Personnel and facilities necessary to accomplish the work within the required time; and

iv) The extent of subcontracting and contractor agreements, including all costs to be incurred under each subagreement.

B) If any of these elements cannot be defined for later tasks or steps at the time of contract execution, the subsequent tasks or steps shall be included in the contract at a time specified in the contract.

2) Required subagreement provisions

Each consulting services contract must include the provisions set forth in Appendix A of this Part, and shall state that Appendix A provisions will supersede all others.

i) Subcontracts Under Subagreements for Consulting Services

1) The award or execution of subcontracts under a prime contract for consulting services awarded to a contractor by a grantee, and the procurement and negotiation procedures used by the contractor in awarding such subcontracts, are required to comply with all provisions, selection procedures, policies and principles set forth in Section 871.301 and Section 871.302 of this Part.

2) The award or execution of subcontracts in excess of $10,000 under a prime contract for consulting services and the procurement procedures used by the contractor in awarding such subcontracts must comply with the following:

A) Section 871.301(b) of this Part (Local Preference);

B) Section 871.302(f) of this Part (Cost and Price Considerations); and

C) Section 871.302(g) of this Part (Profit).

(Source: Amended at 19 Ill. Reg. 11871, effective August 3, 1995)