

Title 15. Natural Resources and Economic Development

Chapter I. Arkansas Natural Resources Commission, Department of Agriculture

Subchapter B. Water

Part 28. Rules Governing Water and Wastewater Project Funding through the Arkansas Community and Economic Development Program

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"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."

"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)."

Subpart 1. General Provisions

15 CAR § 28-101. General administration.

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

(b)(1) The Arkansas Natural Resources Commission distributes federal funds under this program.

(2) The Arkansas Natural Resources Commission rates and selects applications for funding according to specific criteria designed to meet one (1) of the three (3) national objectives identified in the Preamble.

(3) Projects scoring the highest rating are funded until the available funds are obligated.

(4) The funds are intended to fill in after all other sources of funding have been exhausted.

(c) The Arkansas Economic Development Commission administers ACEDP grants for all other project categories.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-102. Definitions.

(a) The following definitions apply to this part.

(b) 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 this part.

(c) As used in this part:

(1) "ACEDP" or "Arkansas Community and Economic Development Program" means the state program through which federal Community Development Block Grant funds are distributed to local communities;

(2)(A) "Arkansas Water Plan" means the comprehensive statewide plan dealing with:

- (i) Water systems;
- (ii) Water supplies;
- (iii) Water rights allocation;
- (iv) Flood plain management;
- (v) Nonpoint source pollution abatement;
- (vi) Dam safety; and
- (vii) Wetlands mitigation banking.

(B) The goal of the Arkansas Water Plan, 15 CAR pt. 29, is for every individual in the state to have all of the water they need for any beneficial purpose;

(3) "Beneficiary" means 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;

(4) "Benefit" means the availability of water or wastewater service to a household, whether the household chooses to subscribe to the service or not;

(5) "Categorical ACEDP grants".

(A) ACEDP grants are classified by the Arkansas Economic Development Commission as either categorical grants or economic development grants.

(B) Categorical grants include water and wastewater system grants and 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-income and moderate-income families;

(6) "Community Development Block Grant program", formally known as Title I of the Housing and Community Development Act of 1974, as amended, means the Community Development Block Grant program run by the United States Department of Housing and Urban Development 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";

(7)(A) "Chief executive officer" means the grantee's elected or legally designated official with the primary responsibility for the conduct of governmental affairs.

(B) The county judge of a county and the mayor of an incorporated municipality are chief executive officers;

(8)(A) "Competitive negotiation" means 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.

(B) In competitive negotiation, contractors are required to submit cost proposals that show the elements (e.g., labor, materials) of their proposed costs or prices;

(9)(A) "Corrective action" means behavior that brings a noncompliant situation back into compliance.

(B) For example, corrective action for failing to document a certain activity would be to obtain the documentation, and corrective action for failing to post a notice would be to post the notice;

(10)(A) "Cost analysis" means 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.

(B) Cost analysis must be performed when sealed bids are received, in a noncompetitive negotiation, or when negotiating a modification (including change orders) to any type of contract;

(11) "Cost-plus contracts" means cost-reimbursement contracts that provide for a fee consisting of a fixed base amount (which may be zero (0)) plus an award amount, based upon a judgmental evaluation, designed to provide motivation for contract performance;

(12)(A) "Cost-reimbursement contracts" provide for payment of allowable incurred costs to the extent prescribed in the contract.

(B) 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;

(13)(A) "Customer" means a residential household using the water or wastewater utility.

(B) Commercial structures and public structures such as churches, schools, or community centers cannot be counted as customers;

(14) "Disbursements" means checks written to pay for goods or services associated with the project;

(15)(A) "Entitlement community" means urban counties populated by two hundred thousand (200,000) or more persons (excluding the population of entitled cities), metropolitan cities populated by fifty thousand (50,000) or more persons, or a principal city of a Metropolitan Statistical Area are entitlement communities and receive Community Development Block Grant funds directly from the United States Department of Housing and Urban Development instead of the state.

(B) The cities of Bentonville, Conway, Fayetteville, Fort 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;

(16) "Environmental clearance letter" means a written determination from the Arkansas Natural Resources Commission of apparent compliance with the environmental review requirements of 24 C.F.R. pt. 58;

(17) "Environmental review" means the process described in 24 C.F.R. pt. 58 that provides instructions and guidance to grantees to ensure compliance with the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.;

(18) "Fixed-price contracts" means contracts that provide for a firm price for goods or services or, in appropriate cases, an adjustable price with a fixed ceiling;

(19) "Grant agreement" means the contract between the Arkansas Natural Resources Commission and the grantee detailing the provisions and conditions of the ACEDP grant;

(20) "Hard costs" means actual material construction costs;

(21)(A) "Low-to-moderate income" or "LMI" means income less than or equal to the Section 8 low-income limit established by the United States Department of Housing and Urban Development.

(B) Note that Section 8 refers to "very low" and "low" incomes instead of "low" and "moderate" incomes.

(C) In the Community Development Block Grant program, "low" income equates to Section 8's "very low" income, and "moderate" income equates to Section 8's "low" income;

(22) "Median household income".

(A) 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.

(B) It is obtained by listing, in numerical order, all household incomes and selecting the income in the middle of the list;

(23) "Noncompetitive negotiation" means the process of awarding a procurement contract to a single source without comparing competitive bids;

(24) "Open grant" means 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;

(25)(A) "Price analysis" is essentially a price comparison without analyzing any of the separate cost elements.

(B) "Price analysis" is required in competitive negotiations to determine the reasonableness of the proposed contract;

(26) "Procurement" means the process of obtaining services, supplies, and equipment in conformance with applicable laws and rules;

(27)(A) "Program income" means 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).

(B) "Program income" is not anticipated in ACEDP water and wastewater projects;

(28) "Project" means 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;

(29)(A) "Project administrator" means an individual hired by the grantee to ensure that the project is conducted in accordance with all applicable federal, state, and agency requirements.

(B) "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;

(30) "Project close-out" means 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;

(31) "Reasonable access" means there are no significant geographic, economic, or social barriers created by government to limit access by citizens during normal working hours;

(32) "Records" means 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;

(33) "Residential" means a structure where one (1) or more persons live;

(34) "Seasonal residents" means persons who own a residence within the project area and reside there for at least one (1) day each year but less than one hundred eighty (180) days each year;

(35) "Simplified procurement" means goods or services are purchased by comparing a list of prices and choosing the least expensive provider;

(36) "Soft costs" means nonconstruction costs (engineering fees, abstracting service costs, surveys, administration fees);

(37) "Uninhabitable residences" means residential structures that are considered to be uninhabitable if they fail to meet any local or state construction or health code for residential structures; and

(38)(A) "WWAC" or "Water/Wastewater Advisory Committee" means the committee organized to streamline, consolidate, simplify, and improve the method by which communities access the state funding system for water and wastewater projects.

(B) It provides project development guidance and recommends project financing to communities through one (1) single preliminary application process.

Authority. Arkansas Code § 15-4-209.

Codification Notes. Title I of the Housing and Community Development Act of 1974 is codified at 42 U.S.C. § 5301 et seq.

Subpart 2. Eligibility

15 CAR § 28-201. Eligible projects.

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

(1) Projects satisfy one (1) of the following criteria:

(A) Fifty-one percent (51%) or more of the project beneficiaries must be low-to-moderate income persons; or

(B) 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;

(2) Projects eligible under subdivision (1)(A) of this section provide water service or wastewater system service to at least one (1) new customer, resulting in three hundred (300) or more total service customers, unless specifically exempted from this requirement by the Director of the Arkansas Natural Resources Commission;

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

(4) Projects are of such a scope that completed construction can be reasonably expected within three (3) years of signing the grant agreement; and

(5) Projects comply with the Arkansas Water Plan, 15 CAR pt. 29, if applicable.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-202. Open grant limitation.

(a) ACEDP grants are classified by the Arkansas Economic Development Commission 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-income and moderate-income families.

(b)(1) Incorporated municipality grantees may have only a single categorical ACEDP grant, for any purpose and from any agency, open at any given time.

(2) Grants classified as economic development grants are not included in this limitation.

(c)(1) County grantees may have a total of two (2) open categorical ACEDP grants, for any purpose and from any agency, issued to the county at any given time.

(2) Grants classified as economic development grants are not included in this limitation.

(d) The Arkansas Natural Resources Commission must close ACEDP grants within one (1) year following completed construction.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-203. 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.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-204. Eligible applications.

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

Authority. Arkansas Code § 15-4-209.

Subpart 3. Application and Selection

15 CAR § 28-301. Water/Wastewater Advisory Committee preapplication.

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

(b)(1) The WWAC meets monthly to review preapplications.

(2) Applicants must submit new projects to the WWAC no later than December 15 for review at the January WWAC meeting.

(3) Applicants must also submit LMI information with the WWAC preapplication packet.

(c)(1) Applicants must submit WWAC preapplications on forms supplied by the WWAC.

(2) The WWAC will review submissions monthly according to WWAC policies and schedules.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-302. Commission application.

(a) Applicants must submit new projects to the Arkansas Natural Resources 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 1.

(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 twelve (12) months of the submission date and are encouraged to submit the most up-to-date costs available.

(e)(1) 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.

(2) Any time the scope of the project changes, the data must be revised accordingly.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-303. Applications based on LMI.

(a) Applicants must demonstrate LMI beneficiary percentages of fifty-one percent (51%) or greater, based on:

(1) A survey of one hundred percent (100%) of the households affected by the project, current to within thirty-six (36) months;

(2) Data from the most recent federal decennial 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; and

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

(c)(1) Applicants who fail to document fifty-one percent (51%) or more of the beneficiaries are LMI at the close of the project will be disqualified from ACEDP funding.

(2) In such cases the Arkansas Natural Resources Commission will pursue remedies per 15 CAR § 28-501(a).

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-304. 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 Arkansas Natural Resources Commission may solicit an ACEDP application concurrent with a WWAC preapplication.

(b) The commission may solicit an ACEDP application for an imminent threat water project when a public water supply sample or at least one (1) private well water sample has been identified by an appropriately certified testing laboratory as failing to meet any primary drinking water standard of the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

(c) The commission may solicit an ACEDP application for an imminent threat wastewater project when the Division of Environmental Quality identifies a wastewater treatment system as insufficient or malfunctioning, or when the Department of Health 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.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-305. 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 twelve (12) months;
- (3) The noncost data submitted or used to prepare the application are current to within thirty-six (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.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-306. Commission review and selection criteria.

(a) Arkansas Natural Resources Commission staff will review applications in a timely manner, and corrections will be permitted up until the February 1 submission deadline.

(b) Commission staff will select eligible projects for ACEDP grants from eligible applicants, subject to funding availability, based on two (2) general criteria:

(1) Readiness to proceed.

(A) The commission will award seventy-five (75) points to applicants who provide a document, current to within twelve (12) months, from an approved funding source that indicates the approved funding source expects to extend funds to the project during the current calendar year.

(B) The commission will award fifty (50) points to applicants who provide a document, current to within twelve (12) months, from an approved funding source that 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.

(C) The commission will award twenty-five (25) points to applicants who provide a document, current to within twelve (12) months, from an approved funding source acknowledging receipt of the application and considering the project for funding; and

(2) High percentage of low-to-moderate-income beneficiaries.

(A)(i) Applicants will receive from thirteen (13) to twenty-five (25) points based upon the percentage of LMI beneficiaries.

(ii) The exact number of points is determined by multiplying the percentage of the project's beneficiaries who are LMI by twenty-five (25).

(B) For this calculation, the LMI will be expressed as a decimal with three (3) decimal places.

(C)(i) Fractional results of this calculation greater than or equal to 0.500 will be rounded up to the next higher whole number.

(ii) Fractional results of this calculation less than 0.500 will be dropped.

(c) The commission may award an ACEDP grant on a noncompetitive basis and without regard to the criteria cited in subdivision (b) of this section in order to address an imminent threat to the health or safety of a community.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-307. Ties.

If two (2) applications at the bottom of the funding list receive an equal rating and the commission only has funding for one (1) of the projects, the project with the highest percentage of LMI beneficiaries will be funded.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-308. ACEDP recipient requirements.

(a) Prior to the awarding of the grant, applicants selected by the Arkansas Natural Resources Commission to receive ACEDP moneys 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.

(b) Subsequent changes to the commission's ACEDP Policy Manual will not be binding upon ACEDP agreements entered into prior to a revision.

Authority. Arkansas Code § 15-4-209.

Subpart 4. Administrative Procedures

15 CAR § 28-401. Project administration.

(a) The Arkansas Natural Resources 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.

(b) The commission does not permit grantees to administer their own project, regardless of their level of expertise.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-402. Public participation.

(a)(1) Grantees must prepare and follow a written plan to encourage citizen participation in funded projects.

(2) A citizen participation plan should allow for the receipt of written grievances from citizens and provide timely responses to those grievances.

(3) 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.

(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)(1) A minimum of two (2) public hearings are required on a standard project.

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

(3) 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.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-403. 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 Subpart I of 24 C.F.R. pt. 570, and in a manner acceptable to the Arkansas Natural Resources Commission.

(b) A complete set of records must be maintained on the premises of the:

(1) Project administrator, if the project administrator is a planning and development district employee; or

(2) 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 (4) years after the commission has closed the project.

(d) Representatives of the United States Department of Housing and Urban Development, the United States Inspector General, the United States Government Accountability 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.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-404. Environmental review.

(a) Grant moneys may not be expended on activities other than eligible administrative costs, engineering design, or environmental review consistent with the requirements of 24 C.F.R. pt. 58.

(b) Upon completion of the environmental review, the grantee must request an environmental clearance letter from the Arkansas Natural Resources Commission and file a Request for Release of Funds form.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-405. General requirements for all procurements.

(a)(1) 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 the Arkansas Economic Development Commission are used when possible.

(2) Affirmative steps include:

(A) Before requesting or advertising for bids, grantees must advise the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission 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 that are potential sources;

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

(C) Grantees must establish delivery schedules, where the requirement permits, that encourage participation by small and minority businesses and women's business enterprises; and

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

(b)(1) Grantees are responsible for advising contractors of their equal opportunity responsibilities, particularly at the preconstruction conference, and for maintaining equal opportunity compliance documentation.

(2) Equal opportunity provisions must be included in all bid packages and construction contracts.

(3) Specific language and sample bid packages are available from the Arkansas Natural Resources Commission upon request.

(c)(1) Grantees may award only fixed-price or cost-reimbursement contracts using ACEDP grant funds.

(2) Cost-plus contracts are not acceptable.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-406. Specific procurement procedures.

(a) Grantees may use any of four (4) types of procurement, as appropriate for a given procurement situation:

(1)(A) Simplified procurement is an informal method of securing services or supplies by obtaining price quotes from an adequate number of qualified sources.

(B) For the purposes of this part, three (3) price quotes are adequate.

(C) Grantees may use simplified procurement whenever a good or service costs less than the simplified acquisition threshold fixed at 41 U.S.C. § 134;

(2)(A) 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.

(B) Grantees should use procurement by sealed bids for procuring construction as long as:

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

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

(iii) 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.

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

(i)(a) 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.

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

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

(d) The second publication of the advertisement must occur one (1) calendar week before the end of the thirty-day period.

(e) If the second publication is delayed for any reason, the public notice period must be extended to one (1) calendar week after the second publication;

(ii) Grantees must identify all factors to be used in evaluating submitted proposals, including the importance of price or cost, in the invitation for bids;

(iii) Grantees must publicly open all bids at the time and place specified in the advertisement;

(iv) Grantees must evaluate all submitted bids;

(v)(a) Grantees must, in writing, award the contract to the responsive bidder who best satisfies all of the selection factors.

(b) If all other factors are equally met, the lowest responsive bidder will be selected;

(vi) Grantees must also notify, in writing, all unsuccessful bidders;

and

(vii) Grantees may reject any or all bids if there is a sound documented reason;

(3)(A) Procurement through competitive negotiation is another formal method of securing services or supplies by publicly soliciting bids.

(B) 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.

(C) The requirements of subdivisions (a)(2)(C)(i) – (a)(2)(C)(iv), (a)(2)(C)(vi), and (a)(2)(C)(vii) of this section also apply to competitive negotiations.

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

(E) Grantees may only use this procurement method, where price is not the determining factor, in procurement of engineering professional services.

(F) Competitive negotiation cannot be used to purchase any other types of services or goods; or

(4)(A) Procurement through noncompetitive negotiation is solicitation of a proposal from only one (1) source, or the finding of inadequate competition after soliciting bids from a number of sources.

(B) Grantees may use noncompetitive negotiation only if the award of a contract by simplified procurement, sealed bids, or competitive negotiation is not possible and one (1) of the following circumstances applies:

(i) A published request for proposals results in only one (1) proposal;

(ii) The items or services required are available only from one (1) source;

(iii) Sole-sourcing of the contract has been approved by the Arkansas Natural Resources Commission; or

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

(b)(1) Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications.

(2) 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.

(3) 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).

(4) Grantees must always perform a cost analysis when procurement is made through noncompetitive 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.

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

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-407. Timing of costs.

(a) Grantees may not hire, purchase, or otherwise obligate payment for any nonconstruction 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 Arkansas Natural Resources 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, deobligate the funds, and subject the grantee to the provisions of 15 CAR § 28-501(a) if disbursements have been made.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-408. Requests for payment.

(a) The Arkansas Natural Resources 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)(1) An authorized person must sign each RFP submitted to the commission.

(2) Persons authorized to submit an RFP:

(A) Must be listed, with signatures, on the RFP Signature Form;

(B) Are prohibited from disbursing payments and must not be authorized to do so on the Bank Designation and Check Signature Form; and

(C) Must not have any financial interest in the project.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-409. Bank account and check writing procedures.

(a)(1) Grantees must provide a dedicated, FDIC-insured, non-interest-bearing checking account to receive ACEDP funds by electronic direct deposit.

(2) Grantees may not use an existing account held by the grantee for general use.

(3) Grantees must not deposit any funds other than ACEDP grant funds into this account.

(4) Grantees must use this account solely to receive and expend ACEDP grant funds.

(5) 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)(1) Unless the grantee's method of appropriating funds has been approved by the Arkansas Natural Resources Commission, a minimum of two (2) persons, whose signatures appear on the Bank Designation and Check Signature Form, must be authorized to sign and countersign disbursement checks.

(2) At least one (1) person authorized to sign checks on the ACEDP grant account must be:

(A) An employee of the grantee; and

(B) Bonded under the grantee's public employee blanket performance bond.

(3) 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.

(4) 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.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-410. Eligible expenditures.

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

(1) Construction costs.

(A) Grantees may submit invoices for construction activities specified in the grant agreement after the work has been performed.

(B) The project engineer must certify that each construction invoice is accurate as to the work that has been performed;

(2) Equipment.

(A) Grantees may submit invoices for equipment after installation of the equipment.

(B) 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.

(A) 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.

(B) Grantees may seek to increase design services and engineering fees only for additional services provided and subject to prior approval by the Arkansas Natural Resources 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, and 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.

(A) 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.

(B) 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:

(A) Check printing costs;

(B) Advertisement fees;

(C) Costs for files;

(D) Postage;

(E) Printing; and

(F) Other grant-related activities;

(9) **Audit administration.**

(A) 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.

(B) 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; and

(12) **Other costs.** Grantees may submit invoices for an unbudgeted cost only if the:

(A) Grantee provides written justification for the expense;

- (B) Commission agrees that the expense is eligible; and
- (C) Commission and the grantee amend the grant agreement.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-411. 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; and
- (2) **Operation and maintenance.** Grantees may not submit invoices for operation and maintenance costs.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-412. Acquisition.

(a) Grantees acquiring property associated with ACEDP projects must comply with all applicable federal and state laws, including, but not necessarily limited to:

- (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 et seq.;
- (2) Section 104(d) of the Housing and Community Development Act of 1974;
- (3) United States Department of Transportation regulations published in 49 C.F.R. pt. 24;
- (4) United States Department of Housing and Urban Development regulations published in 24 C.F.R. § 570.488; and
- (5) Arkansas Code § 18-15-101 et seq.

(b) Although this issue is not tracked by the Arkansas Natural Resources Commission, grantees are advised that Internal Revenue Service Form 1099 is required for acquisition payments of six hundred dollars (\$600) or greater.

Authority. Arkansas Code § 15-4-209.

Codification Notes. Section 104(d) of the Housing and Community Development Act of 1974 is codified at 42 U.S.C. § 5304(d).

15 CAR § 28-413. Program income.

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

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-414. 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 preconstruction phase, the construction phase, the post-construction phase, or up to four (4) years following the closure of the project.

(b) Grantees must provide citizens with reasonable public access to records regarding the project.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-415. Project closure.

(a) The Arkansas Natural Resources 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.

Authority. Arkansas Code § 15-4-209.

Subpart 5. Miscellaneous Provisions

15 CAR § 28-501. Enforcement provisions.

(a) Failure to comply.

(1) The Arkansas Natural Resources Commission may institute corrective action against a grantee who fails to comply with any of the terms agreed upon in the grant agreement.

(2) The commission, after unsuccessfully attempting to resolve compliance issues through a corrective action, may withhold, reduce, or deobligate a grantee's ACEDP grant moneys.

(3) The commission may take other action as appropriate to recapture ACEDP grant moneys expended in contravention to this part or the requirements of 24 C.F.R. pt. 570.

(4) The commission may not seek to recapture ACEDP funds legally expended on eligible activities.

(b) **Federal remedies.** Remedies available to the federal government against both the Arkansas Natural Resources Commission and the ACEDP grant recipient are detailed in 24 C.F.R. § 570.496.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-502. Modifications to a funded project.

(a) The Arkansas Natural Resources 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 that initially qualified the project for ACEDP funding; and

(2) At least one (1) 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 deobligate the excess ACEDP grant moneys and use the funds for other funded or eligible unfunded projects.

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-503. 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 15 CAR § 28-306(b)(1).

Authority. Arkansas Code § 15-4-209.

15 CAR § 28-504. Exceptions.

The Director of the Arkansas Natural Resources Commission may set aside any requirement of this part not expressly required by federal or state law.

Authority. Arkansas Code § 15-4-209.