

according to the development, implementation and other performance measures set forth therein; or

(3) A District Organization has requested termination.

(c) Prior to terminating a District Organization under paragraph (b)(2) of this section, EDA will consult with the District Organization and consider all facts and circumstances regarding the District Organization's operations. EDA will not terminate a District's designation based on circumstances beyond the control of the District Organization (e.g., natural disaster, plant closure, overall economic downturn, sudden and severe economic dislocation, or other situation).

(d) EDA may further modify or terminate a Region's designation as a District according to the standards set forth in an FFO.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76131, Dec. 19, 2014]

#### § 304.4 Performance evaluations.

(a) EDA shall evaluate the management standards, financial accountability and program performance of each District Organization within three years after the initial Investment award and at least once every three years thereafter, so long as the District Organization continues to receive Investment Assistance. EDA's evaluation shall assess:

(1) The continuing Regional eligibility of the District, as set forth in § 304.1;

(2) The management of the District Organization, as set forth in § 304.2; and

(3) The implementation of the CEDS, including the District Organization's performance and contribution towards the retention and creation of employment, as set forth in § 303.7 of this chapter.

(b) For peer review, EDA shall ensure the participation of at least one other District Organization in the performance evaluation on a cost-reimbursement basis.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76131, Dec. 19, 2014]

## PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

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AUTHORITY: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

### Subpart A—General

#### § 305.1 Purpose and scope.

Public Works and Economic Development Investments (“*Public Works Investments*”) intend to help the nation's most distressed communities revitalize, expand, and upgrade their physical infrastructure (as defined in § 301.11 of this chapter) to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investments. The primary goal of these Investments is to create new or retain existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by chronic high unemployment, underemployment, low per capita income, outmigration, or a Special Need. These Investments also intend to assist communities in attracting private capital investment

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and new and better job opportunities and to promote the successful long-term economic recovery of a Region.

[79 FR 76131, Dec. 19, 2014]

### § 305.2 Award requirements.

(a) *Project scope.* Public Works Investments may fund the following activities:

(1) Acquisition or development of land and improvements for use in a public works, public service or other type of development facility; or

(2) Acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) *Requirements.* A Public Works Investment may be made if EDA determines that:

(1) The Project will, directly or indirectly:

(i) Improve the opportunities for the successful establishment or expansion of industrial or commercial plants or facilities in the Region where the Project is located;

(ii) Assist in the creation of additional long-term employment opportunities in the Region; or

(iii) Primarily benefit the long-term unemployed and members of low-income families in the Region;

(2) The Project will fulfill a pressing need of the Region, or a part of the Region, in which the Project is located; and

(3) The Region in which the Project is located has a CEDS and the Project is consistent with the CEDS.

(c) Not more than 15 percent of the annual appropriations made available to EDA to fund Public Works Investments may be made in any one State.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76131, Dec. 19, 2014]

### § 305.3 Application requirements.

(a) Each application for Public Works Investment Assistance must:

(1) Include evidence of eligibility, as provided in part 301 of this chapter;

(2) Include, or incorporate by reference, a CEDS (as provided in § 303.7 of this chapter);

(3) Demonstrate how the proposed Project meets the criteria of § 305.2; and

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(4) Demonstrate how the proposed Project meets the application evaluation criteria set forth in § 301.8 of this chapter.

(b) The Investment Rate for Public Works Investments will be determined in accordance with § 301.4 of this chapter.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4264, Jan. 27, 2010]

### § 305.4 Projects for design and engineering work.

In the case of Public Works Investment Assistance awarded solely for design and engineering work, the following additional application requirements and terms shall apply:

(a) EDA may determine that a separate Investment for design and engineering is warranted due to the technical complexity or environmental sensitivity of the construction Project;

(b) The purpose of the Investment may be limited to the development and production of all documents required for the construction of the proposed construction Project in a format and in sufficient quantity to permit advertisement and award of a construction contract soon after securing construction financing for the Project;

(c) EDA will not disburse any portion of the Investment Assistance until it receives and certifies compliance with the Investment award of all design and engineering contracts; and

(d) EDA's funding of the Project for design and engineering work does not in any way commit EDA to fund construction of the Project.

## Subpart B—Requirements for Approved Projects

### § 305.5 Project administration by District Organization.

(a) When a District Organization is not the Recipient or co-Recipient of Investment Assistance, the District Organization may administer the Project for the Recipient if EDA determines fulfillment of the following conditions:

(1) The Recipient has requested (either in the application or by separate written request) that the District Organization for the Region in which the Project is located administer the Project;

(2) The Recipient certifies and EDA finds that:

(i) Administration of the Project is beyond the capacity of the Recipient's current staff and would require hiring additional staff or contracting for such services;

(ii) No local organization or business exists that could administer the Project in a more efficient or cost-effective manner than the staff of the District Organization; and

(iii) The staff of the District Organization would administer the Project without sub-contracting the work; and

(3) The allowable costs for the administration of the Project by the District Organization's staff will not exceed the amount that would be allowable to the Recipient.

(b) EDA must approve the request either by approving the application in which the request is made or by separate specific written approval.

**§ 305.6 Allowable methods of procurement for construction services.**

(a) Recipients shall seek EDA's prior written approval to use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These alternate methods may include design/build, construction management at risk, and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:

(1) Justification for the proposed method for procurement of construction services, including a brief analysis of the appropriateness and benefits of using the method to successfully execute the Project and the Recipient's experience in using the method;

(2) The scope of work with cost estimates and schedules;

(3) A copy of the proposed construction contract;

(4) The name and qualifications of the selected design professional; and

(5) Procedures to be used to ensure full and open competition, including the selection criteria.

(b) For all procurement methods, the Recipient must comply with the procedures and standards set forth in 2 CFR part 200.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62866, Oct. 22, 2008; 79 FR 76131, Dec. 19, 2014; 82 FR 57054, Dec. 1, 2017]

**§ 305.7 Services performed by the Recipient's own forces.**

In certain circumstances, the Recipient may wish to consider having a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the Project performed by personnel who are employed by the Recipient either full-time or part-time. EDA may approve the use of such "in-house forces" if:

(a) The services are routinely performed by the Recipient for all construction Projects performed by the Recipient (for example, inspection or legal); or

(b) The Recipient has a special skill required for the construction of the Project (for example, construction of unique Indian structures); or

(c) The Recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the Project site or an overabundance of construction work in the Region; or

(d) The Recipient demonstrates substantial cost savings.

**§ 305.8 Recipient-furnished equipment and materials.**

The Recipient may wish to incorporate into the Project equipment or materials that it will secure through its own efforts, subject to the following requirements:

(a) EDA must approve any use of Recipient-furnished equipment and materials. EDA may require that major equipment items be subject to a lien in favor of EDA and also may require a statement from the Recipient regarding expected useful life and salvage value of such equipment;

(b) EDA may require the Recipient to establish that the expense claimed for

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such equipment or materials is competitive with current local market costs; and

(c) Acquisition of Recipient-furnished equipment or materials under this section also is subject to the requirements of 2 CFR part 200.

[71 FR 56675, Sept. 27, 2006, as amended at 79 FR 76132, Dec. 19, 2014; 82 FR 57054, Dec. 1, 2017]

### § 305.9 Project phasing and Investment disbursement.

(a) EDA may authorize in advance the award of construction contracts in phases, provided the Recipient submits a request that includes each of the following:

(1) Valid reasons justifying why the Project must be phased;

(2) Description of the specific elements to be completed in each phase;

(3) Detailed construction cost estimates for each phase;

(4) Time schedules for completing all phases of the Project;

(5) Certification that the Recipient can and will fund any overrun(s); and

(6) Certification that the Recipient is capable of paying incurred costs prior to the first disbursement of EDA funds.

(b) EDA will begin disbursement of funds after receipt of evidence sufficient to EDA of compliance with all Investment award conditions. EDA may approve the disbursement of funds prior to the tender of all construction contracts if the Recipient can demonstrate to EDA's satisfaction that a severe financial hardship will result without such approval.

### § 305.10 Bid underrun and overrun.

(a) *Underrun.* If at the construction contract bid opening, the lowest responsive bid is less than the total Project cost, the Recipient shall notify EDA immediately to determine relevant procedures.

(b) *Overrun.* (1) In the case of an overrun at the construction contract bid opening, the Recipient may:

(i) If provided for in the bid documents, take deductive alternatives to eliminate certain Project elements in case of insufficient funds in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), re-

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sults in a price within the budget for that item of work;

(ii) Reject all bids and re-advertise if there is a rational basis to expect that re-advertising will result in a lower bid; or

(iii) Augment the Matching Share by an amount sufficient to cover the excess cost. The Recipient must furnish a letter to EDA identifying the source of the additional funds and confirming that the Matching Share meets the requirements of § 301.5 of this chapter.

(2) If the Recipient demonstrates to EDA's satisfaction that the options listed in paragraph (b)(1) of this section are not feasible and the Project cannot be completed otherwise, the Recipient may submit a written request to EDA for additional funding in accordance with applicable EDA guidance. The award of additional Investment Assistance is at EDA's sole discretion and will be considered in accord with EDA's competitive process requirements. EDA's consideration of a request for additional Investment Assistance does not indicate approval.

[79 FR 76132, Dec. 19, 2014]

### § 305.11 Contract awards; early construction start.

EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the terms and conditions of the Investment award in order for the costs to be eligible for EDA reimbursement. Pending this determination, the Recipient may issue a notice permitting construction under the contract to commence. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA review and concurrence. The EDA regional office will advise the Recipient of the requirements necessary to obtain EDA's determination.

### § 305.12 Project sign.

The Recipient shall be responsible for the construction, erection and maintenance in good condition throughout the construction period of a sign or signs at a conspicuous place at the Project site indicating that the Federal government is participating in the Project. The EDA regional office will

provide mandatory specifications for the signage.

**§ 305.13 Contract change orders.**

(a) If it becomes necessary to alter the construction contracts post-execution, the Recipient and contractor shall agree to a formal contract change order.

(b) All contract change orders must receive EDA review for compliance with the terms and conditions of the Investment award, even if the Recipient is to pay for all additional costs resulting from the change or the change order reduces the contract price.

(c) Work on the Project may continue pending EDA review of the contract change order, but all such work will be at the Recipient's risk until EDA completes its review.

**§ 305.14 Occupancy prior to completion.**

Occupancy of any part of the Project prior to final acceptance is entirely at the Recipient's risk and must follow the requirements of local and State law.

**PART 306—TRAINING, RESEARCH AND TECHNICAL ASSISTANCE INVESTMENTS**

**Subpart A—Local and National Technical Assistance**

Sec.

306.1 Purpose and scope.

306.2 Award requirements.

306.3 Application requirements.

**Subpart B—University Center Economic Development Program**

306.4 Purpose and scope.

306.5 Award requirements.

306.6 Application requirements.

306.7 Performance evaluations of University Centers.

AUTHORITY: 42 U.S.C. 3147; 42 U.S.C. 3196; 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

**Subpart A—Local and National Technical Assistance**

**§ 306.1 Purpose and scope.**

(a) Local and National Technical Assistance Investments may be awarded to:

(1) Determine the causes of excessive unemployment, underemployment, low per capita income, outmigration or other problems throughout the nation;

(2) Formulate and implement economic development tools, models, and innovative techniques that will alleviate or prevent conditions of excessive unemployment or underemployment;

(3) Formulate and implement economic development programs to increase local, regional and national capacity;

(4) Evaluate the effectiveness and economic impact of programs, projects and techniques to alleviate economic distress and promote economic development;

(5) Conduct project planning and feasibility studies;

(6) Provide management and operational assistance;

(7) Establish business outreach centers;

(8) Disseminate information about effective programs, projects and techniques that alleviate conditions of economic distress and promote economic development;

(9) Assess, market and establish business clusters and associations; or

(10) Perform other activities determined by EDA to be appropriate under the Local and National Technical Assistance program.

(b) Investment Assistance may not be used to start or expand a private business.

(c) EDA may identify specific training, research or technical assistance Projects it will fund, which will be subject to competition. Ordinarily, these Projects are specified in an FFO, which will provide the specific requirements, timelines and the appropriate points of contact and addresses.

(d) In providing Local and National Technical Assistance under this subpart, EDA, in addition to making Investments, may: