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BY THE COMPTROLLER GENERAL

Report To The Chair, Task Force On State And Local Government, Committee On The Budget, House Of Representatives

OF THE UNITED STATES

Spending Grant Funds More Efficiently Could Save Millions

State and local governments generally have and follow sound procedures when spending Federal grant dollars. Procurement procedures among nonprofit grant recipients are generally less sophisticated and not as strictly adhered to.

GAO identified a number of areas in which procurement improvements are needed to make sure maximum open and free competition is obtained. Such competition by State, local, and nonprofit grant recipients could result in substantial savings and more effective use of Federal grant dollars.

Refinement of Federal grant procurement guidelines contributes to better grant procurement practices.

PSAD-80-58
JUNE 30, 1980

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-198692

The Honorable Elizabeth Holtzman
Chair, Task Force on State and Local Government
Committee on the Budget
House of Representatives

HSE00807

Dear Madam Chair:

In your October 23, 1979, request, you asked that we review the use of Federal grant dollars by State and local governments for procurement purposes. The review identified a number of areas where procurement improvements could result in more effective use of Federal grant dollars. This report contains recommendations to the Director, Office of Management and Budget, to encourage adopting appropriate improvements through his liaison with State and local governments.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 5 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

As requested, we did not obtain formal agency comments.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT
TO THE CHAIR, TASK FORCE ON
STATE AND LOCAL GOVERNMENT
COMMITTEE ON THE BUDGET
HOUSE OF REPRESENTATIVES

SPENDING GRANT FUNDS MORE EFFICIENTLY COULD SAVE MILLIONS

D I G E S T

In fiscal year 1979, the Federal Government spent over $95 billion funding grant programs in areas such as health and welfare, education, transportation, and environmental protection. About $82 billion went to State and local governments and accounted for about 25 percent of their total expenditures. A substantial portion of these grant funds were used to purchase goods and services.

GAO evaluated the effectiveness of over 600 grant procurement transactions by State and local governments and nonprofit community organizations. GAO found State and local governments generally have, and many are following, sound procurement procedures. Procurement procedures among nonprofit organizations were generally less sophisticated and not as strictly adhered to.

GAO did identify, however, a number of areas where procurement improvements by State, local, and nonprofit organizations could result in substantial savings and more effective use of Federal grant dollars, such as

--adhering to competitive bidding requirements (see p. 6),

--requiring public notification of procurements (see p. 8),

--obtaining and recording informal price quotes on small purchases (see p. 8),

--using brand name purchase descriptions properly (see p. 10),

--insuring only the minimum quantity and quality of items are purchased (see p. 13),

--adopting safeguards and controls to protect against favoritism and collusion (see ch. 3), and

--eliminating local purchase preferences which increase costs by unduly restricting competition. (See p. 15.)

Additional Federal grant dollars could be saved if State and local recipients took greater advantage of

--centralized purchasing (see p. 26),

--commercial warehousing and distribution systems (see p. 29), and

--Federal excess and surplus property. (See p. 31.)

Attachment O to Office of Management and Budget (OMB) Circulars A-102 and A-110 establishes standards and guidelines for procuring supplies, equipment, construction, and services for Federal grant programs. The basic thrust of attachment O is to place maximum reliance on the grant recipients to manage their own procurements. Some fine tuning of attachment O could contribute to better procurement practices. For instance, attachment O to Circular A-102 limits grantor agencies from reviewing competitively negotiated contracts and change orders prior to award, regardless of the amount. Such agency reviews can prevent procurement abuses and result in substantial savings. Attachment O limits Federal agencies from providing greater oversight of "high risk" grant recipients. Poor procurement practices and procedures by such recipients are adding substantially to grant program costs. (See ch. 4.) For example, GAO found grant recipients

--unduly restricting competition to personal preference items through improper use of brand name purchase descriptions,

--splitting purchases to avoid competitive bidding requirements, and

--making unnecessary and excessive purchases.

RECOMMENDATIONS

The Director of OMB, through his liaison with State and local governments, should make the findings and observations of this report available to them and encourage adopting appropriate improvements.

To reduce procurement abuses among high risk grant recipients, the Director also should develop a guideline for grantor agencies to use in defining and dealing with such recipients.

To encourage and insure more effective Federal grant procurements, the Director should amend attachment O to Circulars A-102 and A-110 to:

--Permit discretionary grantor agency review of negotiated purchases over $100,000, change orders over $10,000, and purchases over $10,000 where no price competition is expected.

--Require, to the extent feasible, the listing of multiple acceptable brand names when a brand name purchase description is used.

--Require a written record of informal telephone quotes.

--Encourage the use of Federal excess and surplus property.

--Discourage the use of State and local purchase preferences particularly when such preferences increase cost by unduly restricting competition.

To expedite the issuance of the report, GAO was requested not to obtain formal agency comments.

Contents

ABBREVIATIONS

A&E	architectural & engineering
CSA	Community Services Administration
EPA	Environmental Protection Agency
FPR	Federal Procurement Regulations
GAO	General Accounting Office
GSA	General Services Administration
LEAA	Law Enforcement Assistance Administration
OMB	Office of Management and Budget
USDA	United States Department of Agriculture

CHAPTER 1

FEDERAL GRANT PROCUREMENT IN PERSPECTIVE

In fiscal year 1979 the Federal Government spent over $95 billion funding approximately 600 grant programs in areas such as health and welfare, education, transportation, and environmental protection. About $82 billion went to State and local governments and accounted for 25 percent of their total expenditures. Currently, 3,000 counties and nearly 90,000 local jurisdictions are receiving Federal grant dollars. In addition, hospitals, universities, and nonprofit organizations are also major grant recipients. Usually a portion of these grants involve procuring goods and services, which amounts to an estimated $20 billion annually.

The Office of Management and Budget (OMB) has issued management Circulars A-102 and A-110 to provide uniform standards and requirements for establishing consistency among the Federal agencies administering grants. OMB Circular A-102 applies to grants for State and local governments, while A-110 applies to institutions of higher education, hospitals, and nonprofit organizations.

GRANTEE PROCUREMENT STANDARDS

Attachment O to the OMB Circulars A-102 (see app. I) and A-110 establishes standards and guidelines for procuring supplies, equipment, construction, and services for Federal grant programs. 1/ The basic thrust of attachment O is to place maximum reliance on the grant recipients to manage their own procurements. Grantor agencies are prohibited from imposing any additional procurement requirements or subordinate regulations on the grant recipients, unless specifically required by Federal law, Executive order, or authorized by OMB. State and local grant recipients are to use their own procurement procedures and abide by applicable State and local procurement laws and regulations provided they conform to attachment O provisions.

1/Attachment O to Circular A-102 was revised effective, Oct. 1, 1979, and now differs from the attachment to A-110. Unless otherwise indicated references to attachment O refer to attachment O to Circular A-102.

Attachment O to A-102 encourages grantor agencies to perform reviews of grantee procurement systems if a continuing relationship is anticipated or a substantial amount of Federal assistance is involved. The attachment recognizes the provisions of the American Bar Association's Model Procurement Code as acceptable criteria in evaluating grantee procurement systems. The code is a suggested set of statutory articles to serve as a model or guide for State and local government procurement systems. The code provides (1) statutory principles and policy guidance for managing and controlling procurements, (2) legal remedies for disputes, (3) socioeconomic policies, and (4) ethical standards for public officials and contractors.

THE GRANTS UNIVERSE--A MIXED BAG

The grants universe is large and diverse, consisting of over 50 Federal agencies administering some 600 Federal grant programs that vary in size, complexity, and purpose. They range from multibillion dollar programs for purchasing water treatment facilities and urban mass transit systems to programs for purchasing ovens and refrigerators for child care centers. Grants also vary considerably in the extent of grantee spending discretion, the amount of Federal involvement, and the method of allocating the funds.

As the type, size, and purpose of grant programs vary, so do the procurement capabilities, experience, and motivations of the thousands of grant recipients. Grantee procurement capabilities range from the experienced professional State purchasing offices operating under established procurement laws, regulations, and procedures to individual school principals with little or no professional purchasing experience or knowledge of applicable procurement laws, regulations, and procedures.

The large number and variety of Federal grant programs demonstrates the need for establishing uniform procurement standards as set forth in attachment O; however, the differences in the size and complexity of grant programs along with wide variations in grantee procurement capabilities make it difficult and in some cases impractical to apply the same standards to all Federal grant programs and recipients.

REVIEW PURPOSE AND SCOPE

Recent efforts to cut the Federal budget involve sizable reductions in Federal grant dollars to State and local governments as well as other grant recipients. Since Federal grants make up a substantial portion of State and

local dollars such cuts will have a major impact on State and local programs. To minimize the impact of grant funding losses, Federal, State, and local officials will need to insure grant funds are spent in the most efficient manner possible to obtain maximum benefit and use of grant funds.

This review of Federal grantee procurements was performed at the request of Congresswoman Elizabeth Holtzman, Chair of the Task Force on State and Local Government, House Budget Committee. She requested that we report on the use of Federal grant money by State and local governments for procurement purposes and to include an analysis of the effectiveness of Federal and State guidelines and the nature of the procurement policies. She specifically urged us to look closely at the extent of real competitive bidding and opportunities for collusion.

A number of the problems and weaknesses addressed in this report have been recognized by the National Association of State Purchasing Officials, and other professional public purchasing organizations. Efforts are continually underway by these organizations to improve State and local procurement practices and procedures. For example, the Council of State Governments annually publishes suggested State legislation, and the 1979-80 edition of The American County Platform contains a resolution urging the Nation's counties to study their purchasing systems in light of Model Procurement Code provisions. Currently four States have adopted their own versions of the code, and it is in various stages of adoption in several other States.

In performing this review, we conducted onsite evaluations and analyses of State and local grant procurement laws, regulations, policies, and procedures in New York, Maryland, Virginia, Ohio, Illinois, and Texas. Local government reviews included 4 major cities (New York, Chicago, Dallas, and Cincinnati), 3 smaller municipalities, 4 counties, 17 school districts, 5 regional transportation authorities, and several nonprofit community organizations. We examined a variety of grant program purchases, including the Department of Transportation's Urban Mass Transportation Improvement grant, the Environmental Protection Agency's (EPA's) Wastewater Treatment Construction grant, the Department of Agriculture's (USDA's) grants for food preparation equipment, and the Department of Education's grants for library equipment. In all, we examined over 600 procurement transactions at the various grant recipient levels.

Although the review entailed extensive audit coverage, the magnitude and diversity of the grant procurement universe

makes it impossible to statistically project our findings and observations as being representative of the grant universe. However, this report does identify procurement practices, weaknesses, and opportunities within the confines of our audit coverage which could have widespread applicability.

CHAPTER 2

FEDERAL GRANT PROCUREMENT LAWS, REGULATIONS, PRACTICES, AND PROCEDURES--AREAS FOR IMPROVEMENT

In reviewing State and local procurement laws and regulations, we found that competitive sealed bids were normally required for all but small purchases and, in most cases, State and local laws required a greater use of formal competitive bidding than attachment O does. However, we did identify a number of areas where attachment O and some State and local laws, regulations, and procedures lack adequate provisions to insure competition is maximized and the opportunities for favoritism and collusion are minimized.

In reviewing grantee procurement practices, we found some grantees are unduly limiting or restricting competition. Since competition usually results in lower prices, failure to maximize competition could be adding substantially to grant procurement costs. Also, some grantee purchases are unnecessary or excessive. Such purchases could also be adding substantially to Federal grant program costs.

The weaknesses found were not common to all Federal grantee procurement operations reviewed. In general, the State and local procurement operations reviewed had and followed sound procurement practices and procedures. However, the weaknesses do indicate areas where improvements could be made to insure the most efficient use of Federal grant dollars.

Attachment O relies on State and local governments to manage their own Federal grant procurements according to applicable State and local procurement laws and regulations. The extent these laws and regulations provide maximum open and free competition and protect against fraud and collusion is critical if effective and efficient procurements are to result from the $82 billion in grants going to State and local governments. Accordingly, this chapter's primary focus is on identifying and examining opportunities to improve State and local government procurements.

The following sections address competitive bidding requirements and grantee procurement laws, regulations, practices, and procedures that limit or prevent obtaining maximum open and free competition. Specific procurement weaknesses and abuses identified include

--competitive bidding requirements being ignored or circumvented,

--lack of public notice requirements,

--small purchase procedures lacking requirements for competition or written record of competition,

--unnecessary and improper use of brand name designations,

--unnecessary or excessive purchases,

--equipment purchases not accounted for, and

--State and local purchase preferences.

COMPETITIVE SEALED BIDDING--ALTHOUGH REQUIRED SOMETIMES AVOIDED

Most State and local procurement laws and regulations require competitive sealed bidding starting at dollar levels lower than required by attachment O. However, some State, local, and nonprofit grant recipients are splitting purchases to circumvent these requirements. Splitting purchases to avoid competitive bidding requirements increases the opportunity for favoritism and adds to procurement costs.

Our review of nonprofit community organizations found that purchases are not always made competitively.

Competitive sealed bidding requirements

Competitive sealed bidding, including public notice and opening, is viewed as the preferred method for obtaining maximum open and free competition. Forty-four States have laws requiring competitive sealed bidding for purchases over established dollar thresholds. In the six States where competitive sealed bidding is not required by law, it is the customary practice. Thresholds for requiring competitive sealed bids range upwards from $300 in one State to $10,000 in two States with the most common thresholds being $2,500 and $5,000. Attachment O and the Federal Procurement Regulations (FPR), in comparison, authorize the use of informal price quotes for purchases under $10,000.

Many States have procurement statutes establishing competitive bidding requirements for city, county, and other local jurisdictions. A Council of State Governments survey

of State and local purchasing found 60 percent of the cities and 80 percent of the counties surveyed were subject to State statutes regarding competitive bidding requirements. Generally, these statutes also require competitive sealed bids beginning at thresholds below $10,000.

Purchase splitting

We found that some grantees split purchases to avoid competitive sealed bidding requirements. For example, a city school board within a 3-week period purchased over 400 gallons of paint noncompetitively from a local store. On one occasion, 12 separate purchase orders were issued on the same day for 180 gallons. State law applicable to public school purchases requires competitive bids for purchases over $2,500. Since the purchases combined exceeded the $2,500 threshold, competitive requirements were circumvented. The noncompetitive price paid by the school board was about twice the competitive price per gallon the State paid a month earlier for the same type paint. Had the school obtained the same competitive price, it would have saved over $2,100. Also, school board officials estimate that it costs an average of $30 to process each purchase order.

New York State Office of Comptroller's audits of development centers for the mentally retarded found purchases were frequently, if not routinely, split into multiple transactions with the same vendor to avoid State competitive bidding requirements. They noted that the potential advantage of vendor competition (lower prices) was lost.

Competitive bids not obtained

In reviewing nonprofit community organizations we found a number of noncompetitive purchases. Since noncompetitive purchases may result in higher prices, the failure to obtain competition could be adding substantially to grant program costs. For example, USDA's Office of Inspector General reviewed 14 grant payments for food service equipment to child care centers and found 5 out of 6 purchases over $10,000 were not competitively bid.

A Community Services Administration (CSA) Regional Property Administrator stated that a large percentage of private nonprofit community action agencies have no competitive bidding expertise and that procurement is their weakest system.

COMPETITIVE SEALED BIDDING MAY LACK PUBLIC NOTICE REQUIREMENTS

Attachment O's formal advertising procedures require bid invitations to be publicly advertised. However, many State and local governments do not require "formal advertising," or public notice. A 1975 Council of State Governments survey found that 14 States do not require any public notice of competitive purchases. A list of acceptable vendors is maintained for various products and services and only those vendors are solicited. Since they do not publicly advertise such purchases, those exceeding $10,000 are not being made according to attachment O requirements.

SMALL PURCHASE PROCEDURES NEED TIGHTENING

A number of State and local laws do not require competition for purchases that may range up to $3,000. The lack of such competition may result in higher prices and increase the opportunity for favoritism, fraud, and collusion. Where informal competitive price quotes are required, some State and local laws do not require any written record to verify whether telephone quotes were actually obtained or what they were.

Attachment O authorizes State and local governments to use their own small purchase procedures for grant purchases as long as the small purchase limits are under $10,000 and price quotations are obtained from an adequate number of qualified sources. Small purchase procedures are those relatively simple and informal procurement methods that are sound for small purchases not warranting formal sealed bidding procedures. However, a number of State and local laws do not require competitive quotes below certain dollar thresholds. Some of these thresholds permit purchases involving thousands of dollars to be made without competition. For example, the New York State finance law applicable to State purchasing requirements, authorizes the State Office of General Services to purchase material, equipment, and supplies up to $2,500 without obtaining any type of price competition. Also, the State's General Municipal Law applying to cities, counties, school districts, and other political subdivisions does not require competitive quotes or pricing for purchases below $3,000.

Although many State purchasing offices and local governments have their own established procurement procedures which may require a greater level of competition than required by law, a statutory guideline stressing the need for competition

at all levels of procurement insures a procurement standard based on competition.

Since most State and local purchases are relatively small, the large number of noncompetitive purchases could be unnecessarily adding to State and local government procurement costs. For example, Illinois State law applicable to public school purchases does not require competitive bids or quotes for purchases under $2,500. As a result, a number of purchases over $1,000 were made without the benefit of competition. For example, a city board of education purchased brand name equipment from various vendors without obtaining competitive bids. Several of these purchases are shown below.

Item purchased	Cost
Embossing machine	$1,397
Press with attachments	647
Projection console	1,032
Telescope	1,145

The lack of competitive bidding requirements not only result in higher prices, it also enhances the opportunity for favoritism, fraud, and collusion. The absence of a competitive basis for making vendor selection creates an environment where vendor selection for purchases valued at several thousands of dollars is at the sole discretion of the purchasing official.

Informal telephone quotes not verifiable

One of the most effective tools for combating abuses of competitive procedures is the documented public record. However, attachment O, unlike the FPR, does not require a written record of informal telephone quotes. A number of State and local governments also lack any requirements for recording informal telephone quotes. Accordingly, in our review of State and local small purchase procedures, we often could not determine whether (1) quotes were actually obtained, (2) an adequate number of sources were solicited, (3) purchasing officials favored particular vendors or products, or (4) the lowest quoted price was actually taken.

UNNECESSARY AND IMPROPER USE OF BRAND NAME PURCHASE DESCRIPTIONS

The inclusion of a brand name product as part of a purchase description for competitive bids tends to limit competition and increase prices. According to attachment O, brand name purchase descriptions may be used only when it is impractical or uneconomical to make a clear accurate description of the product.

In our review of grantee use of brand name purchase descriptions we found:

--Many State and local laws do not limit or restrict the use of brand name designations.

--Attachment O and many State and local laws do not require or encourage more than one brand name be cited.

--A number of grantees use brand name descriptions in a manner that restricts or limits competition to a favorite and often a more expensive brand.

Unlimited use of brand name purchase descriptions

Many grant recipients routinely cite a brand name in nearly all purchase descriptions. Such designations, even though "or equal" may be included, tends to limit competition. Although attachment O places restrictions on the use of brand name designations, State and local procurement laws and regulations often do not contain any such limitations or restrictions. The unnecessary use of brand name designations when a simple product description is adequate can result in limited competition and higher prices. A 1972 State of New York Office of Comptroller audit report found that such designations resulted in higher prices and recommended eliminating single brand name references where possible.

We believe many grantees are unnecessarily citing a brand name as part of their purchase description, as evidenced by the almost exclusive use of such designations by some grantees, while other grantees infrequently cite a brand name.

Brand name designations do have a legitimate use, generally in low value purchases or where standardization is essential. However, the unlimited use of such purchase descriptions can result in competition being unduly limited to personal preference brands.

Multiple brand names should be cited

Attachment O and most State and local laws and regulations applying to brand name purchase descriptions do not require or encourage the designation of multiple acceptable brands. Attachment O, for example, states that a brand name may be used. Accordingly, only one brand name was cited in about 96 percent of the brand name purchases compared. Also, in 77 percent of the cases where brand name solicitations were used the award was made for the brand name product. The FPR, in contrast, requires Federal agencies to list all known acceptable brand name products where feasible.

We believe that citing multiple acceptable brand names protects against favoritism and personal preference purchases, increases competition, and saves money.

Improper use of brand name purchase descriptions unduly restrict competition

When a brand name must be used in a purchase description, attachment O requires the brand name be followed by or equal and a statement of the brand's specific features or necessary characteristics which must be met. These requirements help insure all qualified products are able to compete and reduce the opportunity for favoritism and personal preference purchases. Although attachment O requirements apply to purchases greater than $10,000, we believe State and local application of such requirements to all competitively bid brand name purchases is sound advice.

As stated earlier, many grant recipients use brand name designations almost exclusively. Because the brand designated is most often the brand purchased, even though not always the lowest in price, we believe that brand name designations in many cases are used as a convenient tool for using agencies to obtain personal preference items. One city purchasing official stated that he had little choice but to purchase whatever brand the user designated. Also, many counties buy certain brands that may be more expensive even though alternative brands with the necessary qualities are available.

To meet competitive bidding requirements and at the same time insure the preferred brand name product is purchased, we found some grantees

--do not include or equal statements or do not include a description of the necessary characteristics an alternative brand must meet,

--tailor or restrict the specification to the brand designated, and

--reject lower alternative bids without justification.

Brand name only purchases

To help insure brand name purchase descriptions do not limit or restrict competition from acceptable alternative brands, attachment O requires brand name designations include an or equal statement and a description of the specific features an alternative brand must have. Several grantees did not include one or both of these requirements in their brand name purchases. For example, at one city board of education we examined 11 purchases where brand name descriptions were used. In all 11 cases there was no or equal statement included with the description and only the brand name product was bid and awarded.

Tailored or restricted descriptions

The use of restrictive specifications, whether intentional or unintentional, are a well-known problem in State and local purchasing. Restrictive specifications limit competition and facilitate favoritism. We found restrictive or tailored brand name purchase descriptions resulting from vendors consulting and assisting using agencies in preparing specifications. For example, a manufacturer's representative selling institutional furniture to Virginia State mental hospitals was able to rig bids after consulting with hospital officials in designing specifications that would exclude all but his brand of furniture. The representative was later indicted for rigging bids and submitting false claims totaling over $104,000.

Some agency officials simply use the vendors catalog description as the specification. Such descriptions usually include product features or characteristics unique to that product. For example, in a procurement of television broadcast equipment, a city technical college awarded a contract to the RCA Corporation for $1,473,829 even though another bid was $273,929 lower. The college rejected the lower bid because it did not meet the specifications. The lower bidder charged that the specifications were unduly restrictive since more than 90 percent of the specifications were taken verbatim from an RCA technical document. We upheld the lower bidder's complaint stating that only RCA could completely meet the specifications and that the specifications were unduly restrictive and beyond the grantee's minimum needs. The

college expects to receive $326,980 in grants from the Department of Commerce for the purchase. In another purchase, although a brand name was not stated, the specification for a city automobile purchase required a 225-cubic inch engine and a Torqueflite transmission. Only the Chrysler Corporation makes that exact size engine, and Torqueflite is a Chrysler trade name. Accordingly, only the local Dodge dealer bid even though the local Ford and Chevrolet dealers were sent solicitations.

Low bid rejections

Some grantees appeared to be unjustifiably rejecting low bids for alternative brands. Several grantees were rejecting what appeared to be a high percentage of alternative brand bids even though lower in price. We sampled these bids to test the basis for rejection and found that some grantees did not maintain written documentation justifying the rejection. For those that did, we question whether some of the rejections were for valid reasons.

For example, one city college purchased 12 calculators using a brand name or equal purchase description. We found that five lower or equal bids were rejected even though one was the exact same machine with a different brand name. The justification for rejection was that the calculator did not have a "quiet dot matrix printer with automatic punctuation." When questioned about the basis for the bid rejections, the college official said that they had purchased 5 of the brand named calculators previously and wanted 12 more of the same brand for the sake of compatibility. To get the desired brand, the college simply took the first specification which they believed the other bidders could not comply with and used it as the basis for rejecting lower competing bids.

In another calculator purchase, a grantee rejected the lowest bid of $170 per calculator and three other low bids to purchase a calculator for $359.05. The justification for paying over double the low bid was that the desired calculator was heavy and bulky, making it difficult to steal. Unjustifiably rejecting lower bids because they are not the brand designated unduly restricts competition and results in higher prices.

UNNECESSARY AND OVERLY EXPENSIVE PURCHASES

The availability of "free" Federal grant dollars provides a natural incentive for grantees to obtain as much as possible

and to spend every cent. This condition, without proper safeguards, can result in excessive or frivolous purchases.

In reviewing nonprofit community organizations, we found that some of these agencies that were set up to serve the poor were making luxurious or status purchases. Such items include a Chrysler New Yorker automobile, a $3,275 conference table, executive chairs costing over $500 each, and $50 brief cases. We found one example where an executive director approved a purchase order for approximately $100 to take the secretaries out for a luncheon during secretary's week.

Similar weaknesses have been uncovered at other types of nonprofit community groups. For example, nonprofit child care centers applying for USDA grant money to purchase food service equipment--ovens, refrigerators, and so forth--must justify the amount of equipment needed based on the number of children it expects to feed. In one case, a child care center in New York City estimated that it needed equipment to feed 10,000 children a day and was subsequently given $157,701 by the USDA to make equipment purchases. A USDA investigation initiated by Congresswoman Holtzman later found that only 1,500 children were being fed and the equipment purchased was being grossly underutilized to the extent that approximately $50,000 worth of equipment was never installed. This and other irregularities resulted in the center being closed down and the equipment donated to New York City.

In addition to nonprofit community organizations, a State purchasing official stated that many counties buy more expensive items than needed even though other less expensive brands or models having all the necessary qualities are available. For example, one State purchasing office offers five types of 16mm projectors, with the most expensive type costing $492. Several of the State's counties, however, purchased 16mm projectors costing between $700-$1,000 each.

Unnecessary and excessive purchases are a waste of Federal grant dollars. Such purchases could be adding substantial amounts to Federal grant program costs.

UNACCOUNTED FOR EQUIPMENT PURCHASES AT NONPROFIT COMMUNITY ORGANIZATIONS

In reviewing purchase requests, purchases, and inventories of nonprofit community organizations, we found they were often unable to document that purchases were actually made or received. An official of the USDA's Food and Nutrition

Service said that payments are sometimes inadvertently made without any proof of purchase even though a copy of the invoice is supposedly required before reimbursement. One center, for example, was paid $3,033 without having any invoices to support whether the purchases were actually made.

At a number of community action agencies visited during this and other reviews we found examples where equipment purchased could not be accounted for. Some of these examples follow:

--A community action agency in Seattle, Washington, submitted an inventory listing to CSA and certified it to be correct. However, the listing included $3,000 in assets the purchasing officer knew were missing. Also, we were unable to locate over $11,000 in assets purchased with Model Cities funds.

--A property audit of community action programs in Meadville, Pennsylvania, could not locate 76 items valued at $11,624 or tools valued at $3,000.

--In a spot check at a community action agency in Delaware, the property records were in such a shambles that we could not verify the inventory of equipment.

The lack of controls over equipment procurements increases the opportunity for fraud and embezzlement and may result in substantial equipment losses.

STATE AND LOCAL PURCHASE PREFERENCES LIMIT COMPETITION AND INCREASE COSTS

Many State and local governments have laws or policies that require giving preference to local or in-State products or bidders. Even where it is not provided by law, preference to local bidders is given by many local governments as a matter of practice. Although such practices restrict competition and increase procurement cost, their use when Federal grant funds are involved is not specifically prohibited by attachment O.

A number of States have in-State preferences in which a certain amount, generally around 5 percent of the bid, is either added to out-of-State bids or subtracted from in-State bids. Such preferences can add substantially to Federal grant procurement costs. For example, in a purchase of refrigerators using Federal grant dollars, Puerto Rican officials applied a 10-percent differential to bids received from vendors not

located on the island. The contract was awarded to an island vendor even though an off-island bid was about $20,000 lower.

Local purchase preferences may be in the form of a percentage differential applied to outside bids or an informal policy to only solicit bids from local vendors. Local purchase officials said that they are pressured to purchase from local vendors even though prices may be higher. For example, we found a number of local governments paying hundreds of dollars more to purchase police cars from local dealers rather than purchase jointly through the State. In another case involving a large Federal grant, a city manipulated the bid evaluation criteria after the bids were received to award the contract to a local contractor. Grantor agency officials said that before attachment O they were often able to help the grantee resist local political pressures to buy locally. However, attachment O provisions limit grantor oversight of grantee contracts. (See ch. 4.)

Attachment O, although not specifically prohibiting or discouraging State and local purchase preferences, does require all procurement transactions be made in a manner that provides maximum open and free competition.

Restricting competition through local purchase preferences adds to Federal grant program costs and prevents the most effective and efficient use of Federal grant dollars.

CHAPTER 3

SAFEGUARDS NEEDED AGAINST FAVORITISM, FRAUD, AND COLLUSION

Opportunities for favoritism, fraud, and collusion in Federal grant procurements are substantial. Although the extent to which these conditions exist is not known, many State and local governments, as well as private grant recipients, do not have adequate statutory and regulatory controls to prevent or discourage such practices. Increased efforts to detect collusive bidding could result in substantial savings.

OPPORTUNITIES FOR FAVORITISM

Grant purchasing officials and the product user are often able to control and influence the brand and model of product purchased and from whom it is purchased. Although such control and influence is often necessary, proper checks and controls are needed to protect against vendor favoritism, bribes, and kickbacks.

Areas where purchasing and using officials determine or at least influence who gets the award include

--determining which firms are solicited for competitive bids or which firms are not solicited,

--determining which firms get noncompetitive contracts when small purchase procedures are used,

--determining which brand name is used in the solicitation and how the product is described (specification), and

--determining which bids are responsive.

In a 1979 Council of State Governments survey, 32 out of 50 State purchasing officials stated that purchases by using agencies were the most vulnerable to fraud. The survey cites the lack of restrictions and prohibitions on agency personnel regarding fraternization with and favoritism toward suppliers and products as the basis for their belief. The survey further states that objectivity in specification writing is a well-known problem. Several States reported concerns of fraud relating to noncompetitive small purchases.

GRANTEE PROCUREMENT SAFEGUARDS AND CONTROLS MAY NOT BE ADEQUATE

Many State and local governments lack adequate safeguards against favoritism and other practices that unduly restrict competition.

We identified a number of procurement safeguards that are not present in various numbers of State and local government procurement operations. They include

--centralized purchasing with control responsibility,

--independent review and audit, and

--bid protest procedures.

Centralized purchasing

In addition to procurement economies, centralized purchasing can also be a safeguard against improper actions by the user and the supplier. Centralized purchasing takes purchasing authority away from the user who might be inclined to purchase on the basis of personal preference and may not be aware of or concerned with public contracting laws and principles. A centralized purchasing office is normally responsible for reviewing user requirements and specifications to insure they are justifiable and nonrestrictive.

According to the Council of State Governments, every State except Mississippi and over 90 percent of the cities and counties with populations over 250,000 have centralized purchasing offices. For all cities and counties centralized purchasing is 64 and 40 percent, respectively. However, a number of the centralized offices we visited appeared to function more as a service organization in which they merely purchased whatever was requested by the user without any review or control function. The user agency often develops the brand name purchase description, sometimes in consultation with the brand name vendor, and submits the request to the purchasing office. The purchasing official carries out the request with little or no review to determine whether a brand name designation is needed or whether the product description is restrictive. One county purchasing official said that he had little choice but to buy whatever the user requested.

We believe that to be effective a central purchasing office must have the authority to review and question the propriety of user agency requests.

Independent review and audit

Independent review or audit of State and local government purchasing programs and procedures can be an essential tool to ensure applicable laws, regulations, and procedures are being followed. It can also be effective in controlling and deterring procurement abuses. For example, the New York State Department of Audit and Control has a preaward audit function to determine whether proposed State contracts are unreasonable or fraudulent. The audit department reviews large purchases before award to determine if specifications are restrictive and competition will be obtained. The department also conducts audits of State agency purchasing practices and procedures.

A 1979 Council of State Governments survey found that 20 States do not have a legal or regulatory requirement that the purchasing program be reviewed for compliance with applicable procurement laws and regulations. Only 26 States have a State or legislative audit to ensure contracts are awarded properly. Approximately 60 percent of the cities and counties surveyed did not conduct performance or management audits of the purchasing departments.

Bid protest procedures

Procurement practices and procedures that restrict competition, particularly the use of restrictive specifications, are often more readily apparent to vendors competing for Government business than to the purchasing official using specifications provided by a using agency. Accordingly, procedures for vendors to protest suspected restrictive practices to an independent party can be a valuable check and control tool. However, the Council of State Government reports that over 50 percent of the cities and counties lack any written policy regarding vendor protest procedures.

UNDETECTED COLLUSIVE BIDDING

Collusion on the part of two or more vendors in preparing bids could be adding millions of dollars annually to Federal grant procurement costs. However, some local governments do not require vendor certification of noncollusiveness. Although the extent collusive bidding occurs is not known, a survey of 307 State antitrust cases found that rigged bids were the second most frequent antitrust violation. Bidding violations occurred in 57 cases or 19 percent of the total.

Local governments are generally more vulnerable to collusive bidding practices, particularly when local purchase preferences are employed. For example, in 1979, nine providers of school transportation services for Chicago area handicapped children were charged with submitting collusive rigged bids and designating sole or low bidders for various routes. Seven of the defendants agreed to stop fixing bid prices and other noncompetitive practices, and all were required to pay $45,000 in damages.

Although the FPR require vendor certification of noncollusiveness, a Council of State Governments survey found that approximately 50 percent of the cities and counties did not have any written certification requirements.

INCREASED EFFORTS TO DETECT COLLUSIVE BIDDING COULD SAVE MILLIONS

Increased efforts to detect bid rigging and price fixing could save millions of dollars each year. The National Association of Attorneys General reported that 32 States and Puerto Rico initiated about 1,700 antitrust investigations, including bid rigging and price fixing between June 1978 and June 1979, and recovered an estimated $10 million between January 1978 and June 1979.

It is difficult to detect anticompetitive conspiracies. Usually when bid rigging schemes are uncovered it is the result of an informant, discovery of incriminating documents, or through bid monitoring. Bid monitoring, which is a systematic review of bid data, offers the greatest potential for increased surveillance and detection of anticompetitive pricing and bidding conspiracies.

A survey by the Alaska State Attorney General's Office found that a number of States believe antitrust investigations in the bid rigging field would be fruitful and a potential gold mine. Many States, however, do not have any type of bid monitoring system to detect anticompetitive practices. The States that do have or are establishing bid monitoring systems stress the importance of the purchasing agents who some feel may lack the motivation, expertise, or knowledge necessary to recognize potential antitrust violations. The Attorney General's Office of one State said that some purchasing officials resist bid monitoring because they believe an antitrust investigation reflects badly on their performance and would also create additional work.

ANTITRUST ENFORCEMENT GRANTS

The Department of Justice Antitrust Division is currently sponsoring a grant program to enhance the inhouse antitrust enforcement capability of State attorneys general. In most cases, the money is initially provided to hire and train State-employed attorneys and support staff for antitrust enforcement. The grants range from $12,000 to $385,000 per State. Such grants have more than doubled the number of State antitrust enforcement personnel and have created antitrust offices in 25 States not previously involved in antitrust enforcement.

CHAPTER 4

GREATER OVERSIGHT OF HIGH RISK GRANT RECIPIENTS NEEDED

OMB Circulars A-102 and A-110 limit Federal grantor agencies in their control over high risk grant recipients. Grantor agency officials feel that greater flexibility is needed for dealing with grant recipients who have limited managerial and procurement capabilities. Currently, there are no guidelines for doing so.

ATTACHMENT O LIMITS OVERSIGHT

Attachment O places maximum reliance on the grant recipients to manage their own procurements and prohibits grantor agencies from imposing additional requirements unless required by law, Executive order, or approved by OMB's Office of Federal Procurement Policy. For example, attachment O to Circular A-110 prohibits grantor agencies from requiring preaward review of grantee purchases except for noncompetitive purchases over $5,000. Also, attachment O to Circular A-102 prohibits preaward review requirements except for noncompetitive purchases over $10,000, brand name purchases over $10,000, or when a grantee's procurement procedures fail to comply with attachment O requirements. These restrictions limit grantor agencies from obtaining a greater degree of oversight often needed for grantees with: (1) poor stability and a history of poor procurement practices, material violations of grant terms, and large cost disallowances, (2) no established procurement procedures or professional procurement operation, especially those receiving grants requiring large complex purchases, (3) limited resources and inexperience with Federal grant programs and procurement practices, and (4) serious deficiencies in program or business management procedures.

GRANTOR AGENCIES FEEL GREATER OVERSIGHT NEEDED

Grantor agency officials of EPA, Department of Transportation, and CSA all feel greater flexibility is needed to provide closer overview of high risk recipients. They feel without such oversight, the door is open to poor, improper, and costly procurements. Also, CSA property management officials feel the circulars do not provide adequate oversight of property management.

CSA Regional Property Administrators, in recognizing the mismanagement of many community action agencies, stated that procurement and property management functions are areas

most subject to misappropriation and embezzlement of funds and oversight restrictions of attachment O will further deteriorate needed control. Attachment O to A-110 was published in 1976 and was put into effect in January 1977; however, it was not implemented by CSA until April 1980. CSA Regional Property Administrators, citing numerous examples of community action agencies purchasing luxury and status equipment, stated that the loss of administrative review in the areas of property management and procurement would "sound the death toll for Community Action and CSA."

EPA officials pointed out that in their multibillion dollar grant program for procuring and constructing wastewater treatment facilities, 76 percent of the active grant projects are going to grantees with populations less than 25,000 and 63 percent to populations of less than 10,000. These projects, more than 9,000 of them, had a total value of more than $7 billion or 30 percent of the total funds. As a result, a small sanitary district can negotiate and award multimillion dollar contracts without being reviewed by EPA which is experienced in such purchases and procedures and is responsible for the program. Before attachment O restrictions, EPA required review of negotiated purchases over $100,000, including contract changes over $100,000. They feel this level of review controls and prevents poor grantee procurements and saves millions of dollars each year.

For example, EPA officials cited a study in which 1 of their regions selected 13 of the largest architectural-engineering (A&E) contracts and scheduled out the reductions resulting from their preaward review. The reductions amounted to $5 million or 27 percent. According to EPA officials, these reductions would not have occurred without the preaward review that is now limited by attachment O. EPA is currently studying other regions to determine the full and actual extent of preaward review savings. The officials stated that preaward review is particularly needed in negotiated procurements.

An EPA official further stated that clarification is needed of attachment O's provision restricting preaward reviews to purchases over $10,000 made "without competition." Since competition by A&E firms is often based on factors other than price, such as experience, EPA officials questioned whether such competition is exempt from review even though there is no price competition. OMB officials stated that price competition is needed for exemption from preaward review.

Attachment O provision limiting grantor agencies from placing additional requirements on grant recipients will result in eliminating some provisions that EPA required grantees to include in their contracts, such as price reductions for defective cost and pricing data, control over progress payments, responsibility of engineer, and penalties against gratuities. This attachment O provision also limits EPA's review of competitively negotiated contracts over $100,000. Such reviews include evaluating contractor qualifications and determining fair and reasonable profits. EPA officials expressed concern that implementing attachment O may not provide adequate oversight of high risk recipients.

According to CSA officials, Circulars A-110 and A-102 do not provide adequate oversight of property management. Our audits have found community action agencies often cannot account for equipment purchased. The OMB Circulars A-110 and A-102's definition of nonexpendable property as property having a useful life of greater than 1 year and an acquisition cost of $300 or more appears too high for some grant recipients. Since the circulars do not require property records or inventory of equipment costing less than $300, it is easy to embezzle relatively high value, high personal appeal items, such as calculators. The property officer for CSA agreed that the $300 definition of nonexpendable property when applied to community action agencies is too high. CSA regulations, although superceded by the OMB circulars, required recording and inventorying equipment over $50.

CRITERIA AND GUIDELINES NEEDED FOR DEALING WITH HIGH RISK RECIPIENTS

Currently, there are no criteria for grantor agencies to use in defining high risk grant recipients nor are there guidelines for providing additional oversight and control over such recipients. Such criteria and guidelines are needed because Circular A-102 limits grantor agency preaward reviews of grantee purchases and prohibits grantor agencies from imposing requirements on grantees except under the following conditions:

--The grantee has a history of poor performance.

--The grantee is not financially stable.

--The grantee's management (procurement) system does not meet standards prescribed in the circular.

--When required by law or Executive order.

--Approval is obtained from OMB.

Grantor agency officials stated that criteria are needed to define those recipients for which additional reviews and controls are needed. Grantees with those particular characteristics should automatically be exempt from attachment O provisions limiting grantor agency review and control.

CHAPTER 5

OPPORTUNITIES TO REDUCE PROCUREMENT COSTS

Grant procurement cost could be substantially reduced by (1) taking greater advantage of opportunities to centralize purchases, (2) making greater use of commercial distribution systems, and (3) making greater use of Federal excess and surplus property.

SAVINGS POSSIBLE THROUGH CENTRALIZED PURCHASES

OMB's attachment O to Circular A-102 encourages grantees to enter into State and local intergovernmental agreements for procurement of common use goods and services. Attachment O further states that consideration should be given to consolidating purchases to obtain more economical prices.

We found that many opportunities exist to consolidate purchases between grantees and subgrantees. Many local governments do not regularly participate in joint purchasing arrangements with surrounding jurisdictions nor do many take full advantage of centralized State purchasing offices. The failure to take advantage of opportunities to consolidate purchases has resulted in duplication of effort, less competition, and higher prices. According to State purchasing officials, local government politics is the primary cause of this failure and grantor agencies need to take a stronger role if savings through consolidation and centralized purchasing are to be realized.

Forty-five States permit local governments to purchase off centralized State contracts. In New York, for example, the General Municipal law allows municipalities to make purchases of materials, supplies, and equipment (except printed material) through the New York State Office of General Services. Therefore, State contracts are made available to local governments, including counties, cities, towns, villages, and school districts.

A 1979 review of local government use of State contracts by the New York Legislative Commission on Expenditure Review found that local governments normally paid a higher price by purchasing on their own rather than off a State contract. The commission compared prices paid by local governments buying on their own with prices they would have paid under the State contract for 160 commodities. The local governments paid a higher price for 61 percent of the items. The table on page 27 shows a comparison of State contract prices with those paid by local governments.

Survey of Local Governments Purchasing Sample Commodities

Commodity	Used State Contract: Yes	Used State Contract: No	Did Not Buy or Not Applicable	Prices Paid by Units Not Using State Contract: Higher	Prices Paid by Units Not Using State Contract: Lower or Equal	State Contract Price	Range of Prices Paid by Those Not Using State Contract: Highest	Range of Prices Paid by Those Not Using State Contract: Lowest
Office Supplies								
Index Cards--White (price per thousand)								
3" x 5"	5	16	0	10	6	$ 1.60	$ 4.42	$ 1.35
Ruled and/or unruled								
5" x 8"	5	10	6	5	5	4.25	13.09	2.40
Pencils--General Writing (price per gross)								
Type IV	4	17	0	10	7	5.28	15.21	3.87
Transparent Cellophane Tape (price per roll)								
1/2" x 1,296"	5	11	5	10	1	0.20	1.58	--
3/4" x 1,296"	8	9	4	9	--	0.25	1.52	--
Scratch Pads--White (price per gross)								
3" x 5"	1	14	6	10	4	4.86-4.96	21.00	4.62
Xerographic Paper (price per 1,000 sheets)								
Letter	5	14	2	7	7	3.19-3.30	4.16	2.85
Legal	1	12	8	6	6	4.07-4.20	5.04	3.39
Light Bulbs								
Incandescent								
60 Watt (.120)						$0.144	$ 0.28	$ 0.28
120 or 130 voltage (.130)	7	8	6	5	3	0.196	0.26	0.16
100 Watt (.120)						0.144	0.18	0.18
(.130)	7	10	4	6	4	0.173	0.45	0.45
Fluorescent								
F40CW	9	9	3	4	5	0.455	1.28	1.28
Office Furniture								
Desk, Island Base, Square Top, Single or Double Pedestal	10	3	8	2	1			
40" x 30"						178.60		
55" x 30"						219.02		
60" x 30"						223.25	334.18	
60" x 36"						250.98		195.00
Chair, Metal	8	5	8	3	2			
Sidearm						72.01-93.60	93.60	42.47
Armless						58.08-61.71		32.21
Secretarial Posture						74.16-78.80	112.00	58.98-69.00
Chair, Folding, Steel	3	5	13	5	--	4.98	8.95	8.00
Paper Towels and Toilet Tissue								
Paper Towels								
Recycled, Singlefold Unbleached, 250 in package, 15 packages in case								
9 3/4" x 10 3/4"	1	3	17	3	0	$ 7.02	$ 8.88	
Toilet Tissue								
2,500 sheets per roll, 32 rolls per case Minimum order:								
25 cases	3	1	17	1	0	17.20	20.16	
Automotive Products								
Antifreeze	8	13		2	11			
Per gallon						2.35	2.65	2.16
Per drum						129.25	132.00	123.70
Total	90	160	107	98	62			

Source: LCER Survey of Terms and Conditions for Sample Commodities.

According to New York jurisdictions that purchase off State contracts, the most important advantage was the lower prices obtained. However, they cited local business pressure as a major factor limiting the use of State contracts. Local governments also cited the lack of information regarding products available as a reason for not using State contracts. Fifty-five percent of the local governments surveyed stated that they were not aware of all of the commodities available through State contracts.

The nature and extent of joint and centralized purchasing in Illinois, Virginia, Maryland, and Texas were similar to New York. In Illinois, 633 governmental units purchasing through the State have saved $4.7 million on $31.1 million in purchases through September 1979. However, this is only the tip of the iceberg when considering that many local jurisdictions make little or no effort at joint or centralized purchasing.

In Virginia, pressure from local vendors and the lack of information regarding commodities available through the State have limited the use of State contracts. We found a number of areas where purchases could easily have been consolidated and substantial savings obtained. For example, the Virginia State Department of Education receives grant funds for audio visual and other instructional equipment. Although each of the 141 school districts sends the department a list of its instructional equipment needs, the department subgrants the money to the districts for individual procurement. State purchasing officials stated that they already have existing contracts for many of these items and school and library equipment are good items for consolidation. We compared the prices paid by the school districts with those of the State for such commonly purchased items as television sets and 16mm projectors and found the school districts could have purchased similar items for less through existing State contracts. In addition to substantial price savings, the school districts would have saved on the reduced administrative costs involved in making the purchase.

In Texas, State law does not permit cities to purchase off State contracts. State purchasing officials stated that on September 1, 1978, the law permitting counties and municipalities to purchase through the State purchasing office was changed to exclude cities. State purchasing officials felt that small business pressured the legislature into excluding cities from State contracts.

We believe substantial savings are possible through increased local government joint purchases and greater use of

centralized State contracts. State and local governments should take greater advantage of such opportunities for savings.

SAVINGS THROUGH GREATER USE OF COMMERCIAL DISTRIBUTION SYSTEMS

The added cost and burden of operating and maintaining a warehousing and distribution system can be eliminated through indefinite quantity, indefinite delivery contracting. Under such a procedure, a competitively bid contract is awarded in which the vendor agrees to sell and deliver his product at the bid price for the term of the contract, usually 1 year. As the individual users needs arise, they order off the contract.

We compared two consolidated school purchasing systems of similar size in which one used its own warehousing and distribution system while the other used indefinite quantity, indefinite delivery contracts. In the comparison, we found that both schools were paying similar prices even though one was also incurring the high cost of warehousing and distribution. The details of our comparison are presented below.

Cincinnati public schools

The Cincinnati Public School System includes 98 schools with an enrollment of over 67,500 pupils. The system maintains a central warehouse which stocks approximately 2,700 items of expendable supplies, including basic classroom, office, custodial, and recreational supplies. The vast majority of the warehouse items have a unit cost of under $5. Although the system is designed to provide a 3-week leadtime for requisitions, delays in the data processing operation have extended the leadtime to 6 to 8 weeks. The current warehouse building was purchased in 1976 for $240,000, and over $360,000 in contracts have been issued to adapt the facility for warehouse purposes. The facility employs 22 people, including 6 truck drivers and 4 warehouse personnel who work only on the textbook storage operation.

During the 1978-79 school year, the warehouse filled requisitions for 112,266 line items. A cost study by the city public school system's treasurers office determined that the average warehouse and delivery cost of this service was $2.90 per line item. The total annual operating cost of the warehouse system is over $325,000.

A different approach

The Hamilton County Office of Education, located just outside of Cincinnati, administers a procurement system for the county school districts. Membership in the system is voluntary and currently represents 196 schools with an enrollment of over 80,000 students.

At the start of each school year, each school forecasts its supply needs for the coming year. These forecasts are consolidated, and a single list containing brief item specifications and total forecasted quantities is compiled. Competitive bids are then obtained for these items.

A final list showing item description, selected vendor, and the unit price for that item is distributed to the member schools for use throughout the year. Each school purchases directly from the vendor as their needs arise. The vendor delivers the order to the school and bills the school at the unit price bid. Office of Education officials said that this system invariably results in lower prices.

The County Office of Education, Director of Administrative Services estimates he spends about 20 percent of his time, and his secretary 10 percent, managing the system. The only other system cost is data processing which for the last year (1977) totaled $4,600.

Member schools pay an annual fee to cover the administrative cost of the system. The fee, ranging from $100 to $800, is based on the number of students in the district and the type of district. The county collected $7,000 in fees from the 27 districts in 1979. The Cincinnati warehousing system has an annual operating cost of $325,000.

Comparison of systems

We identified a sample of 10 general supply items that apparently were identical. Comparing unit prices showed purchases by the county were substantially lower in five cases and in four cases the prices were nearly the same. In only one case were the city of Cincinnati prices significantly lower. The price differences ranged from 15 percent to 113 percent per item. The total cost of all 10 items was $14.78 for the city and $11.46 under the county system. Therefore, for these particular items the county prices were 29 percent lower.

This comparison does not consider the indirect cost of the purchases. It should be noted, however, that under the warehouse system the administrative cost of processing the order would have been $2.90 for each item. The total administrative cost of this 10-item order would have been $29, almost twice the total cost of the items.

The principal difference between the two systems is (1) the use of vendor distribution by the county and (2) maintenance of a separate storage and distribution system by the city. Although the county administrative costs are not as completely accounted for as the city system, they are undoubtedly much lower than the city's costs. Under the city's system, the administrative costs for last year were $325,000, which represents over 50 percent of the $643,000 in total sales value.

Comparing Hamilton County and the city of Cincinnati consolidated purchasing systems indicates that maintaining a separate warehouse and delivery system can offset much if not all of the savings resulting from consolidated purchasing, particularly if the warehouse items are of low-dollar value. Consolidating purchasing power under a group pricing arrangement that uses vendor delivery directly to the user, however, can obtain similar savings with only a fraction of the administrative cost.

Officials of State and local purchasing operations who warehouse and distribute their supplies should evaluate these costs and determine if indefinite quantity, indefinite delivery contracting would result in a more economical purchasing operation.

GREATER GRANTEE USE OF FEDERAL EXCESS AND SURPLUS PROPERTY COULD SAVE MILLIONS

Significant savings could be realized through greater grantee use of Federal excess and surplus property. Federal grant recipients are spending millions of dollars annually procuring various types of equipment and supplies even though those same items are often available, at a fraction of the cost, through the General Services Administration's (GSA's) Federal Excess and Surplus Property programs.

We found some grantor agencies do not encourage eligible grantees to use available Federal excess or surplus property. We believe that increased grantee participation would result in

--an enhancement of capabilities necessary to reach a program's objective,

--additional funds for other worthwhile projects, and

--a reduction in the overall grant budgets.

Federal excess property

Each year the Federal Government declares billions of dollars worth of property as excess. Federal property becomes excess when the holding agency has no further need for its use. This property is made available to other Federal agencies at no charge and to most Federal project grantees at 25 percent of the original cost. In fiscal year 1979, $3.2 billion was declared excess; however, few grantees took advantage of this source of supply even though GSA, as the manager of the excess property program, periodically circulates lists of available excess property among 11 geographical regions and has 44 property utilization officers to assist in matching excess with needs. The few grantees that do actively participate in the program realize significant savings.

For example, the Department of Justice's Law Enforcement Assistance Administration (LEAA) encourages their grantees to obtain Federal excess property with Federal funds whenever possible. Office furniture, calculators, and typewriters are among the most frequent items being obtained through excess. Between October 1978 and July 1979 LEAA grantees obtained approximately $420,000 (original acquisition cost) worth of Federal excess property for only $105,000, realizing savings of $315,000.

Many of the grantees surveyed were either unaware of their eligibility for property under the GSA Federal Excess Property program or never knew the program existed. Generally, they agreed that the use of Federal excess property had great potential for savings and would certainly welcome it if items met their needs.

Federal surplus property

GSA declares any excess property not claimed within 60 days as surplus and makes it available to the States for donation to State and local agencies and other eligible Federal grant recipients. Over $443 million was transferred to the States in fiscal year 1979 and over $387 million was subsequently donated by the States to public agencies and nonprofit organizations during the same period. We found many grantees were unaware of the availability and their eligibility to obtain surplus items while many others were simply not attempting to fill their equipment

requirements through low cost surplus property. However, those grantees that did take the time to screen and obtain surplus property realized significant savings. For example, the Southeastern Pennsylvania Transportation Authority, a Department of Transportation, Urban Mass Transportation Administration grantee has been able to save at least $180,000 since participating in the GSA surplus program. Since January 1978 the grantee has obtained a wide variety of surplus items originally costing approximately $215,000 for a total cost of $34,000, including rehabilitation when necessary. The following table illustrates the types of items and savings obtained.

No.	Item	Cost of item when originally purchased	Grantee cost	Rehabilitation cost (if applicable)	Savings
8	File cabinets	$ 640	$ 30	-	$ 610
1	6,000 lb. forklift	6,650	150	$5,100	a/1,400
32	Pieces 3/4 x 11" x 12' steel plates	6,000	750	-	5,250
1	Machine lathe	13,575	250	-	13,325
1	Oscilloscope	1,567	100	-	1,467
	Total	$28,432	$1,280	$5,100	$22,052

a/Grantee estimates if item was bought new, savings would have been over $12,000.

We found that in New York, Federal surplus property is made available to State agencies, municipalities, nonprofit organizations, day care centers, libraries, and museums. In fiscal year 1979, they realized significant savings by participating in this program. The following table illustrates savings obtained.

Type of agency	Acquisition cost	Cost to agency
State government units	$ 670,288	$ 47,973
Local governments - county, city, and towns	6,774,962	224,157
Nonprofit organization:		
Tax exempt educational	1,115,669	62,583
Tax exempt health	1,735,633	18,095
Total	$10,296,552	$352,808

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

Most State and local governments have and follow sound procurement procedures; however, some weaknesses and abuses exist.

Although many State and local procurement laws and regulations require competitive bidding, competition is often not obtained or is unduly limited or restricted. Attachment O and some State and local laws, regulations, practices, and procedures lack adequate provisions to insure competition is maximized and the opportunities for procurement favoritism and collusion are minimized. Failure to maximize competition could be adding millions of dollars to grant procurement costs. Unnecessary and excessive grantee purchases are also adding substantially to grant program costs.

The full extent of favoritism, fraud, and collusion in Federal grant procurements are not known; however, the opportunities for such practices are substantial. Some grantees lack adequate safeguards and controls needed to protect against such procurement abuses. Increased efforts to detect and control procurement favoritism, fraud, and collusion could save millions of dollars.

OMB management Circular A-102 limits grantor agency control over grants recipients. There are no guidelines for dealing with recipients who have limited managerial and procurement capabilities. The lack of oversight over grant procurements could be adding substantially to procurement costs. Grant costs could be reduced if grantees took greater advantage of opportunities for savings. Such opportunities include (1) joint and centralized purchasing, (2) indefinite quantity, indefinite delivery contracting, and (3) use of Federal excess and surplus property.

Improvements in Federal, State, and local procurement laws, regulations, grantee practices, and procedures could save millions of Federal grant dollars annually.

RECOMMENDATIONS TO OMB

To assist in improving State and local procurement laws, regulations, practices, and procedures, the Director of OMB through his liaison with State and local governments and organizations representing those governments should make the findings and observations of this report available to State and local governments and encourage adopting

appropriate improvements. The Director should further encourage State and particularly local governments to review their procurement operation in light of suggested procurement statutory principles and policy guidance established in the American Bar Association's Model Procurement Code.

To reduce procurement abuses among such grant recipients, the Director of OMB should develop a guideline for grantor agencies to use in defining and dealing with high risk recipients.

To encourage and insure more effective Federal grant procurements, the Director of OMB should amend attachment O to Circulars A-102 and A-110 to:

--Permit discretionary grantor agency review of negotiated purchases over $100,000, change orders over $10,000, and purchases over $10,000 where no price competition is expected.

--Require, to the extent feasible, the listing of multiple acceptable brand names when a brand name purchase is used.

--Require a written record of informal telephone quotes.

--Encourage the use of Federal excess and surplus property.

--Discourage the use of State and local purchase preferences, particularly when such preferences increase cost by unduly limiting or restricting competition.

Our findings, conclusions, and recommendations were discussed with responsible officials of OMB, EPA, and Urban Mass Transportation Administration who generally agreed.

APPENDIX I

OFFICE OF MANAGEMENT AND BUDGET

[Circular No. A-102, Revised; Transmittal Memorandum No. 1]

Standards Governing State and Local Grantee Procurement, Attachment O of OMB Circular A-102

August 1, 1979.

To heads of Executive Departments and Establishments

1. *Purpose:* This Memorandum transmits an amendment (revised Attachment O) to Office of Management and Budget (OMB) Circular A-102.

2. *Background:* This notice, pursuant to the authority of Pub. L. 93-400, the Office of Federal Procurement Policy Act and the Intergovernmental Cooperation Act, amends Attachment O to OMB Circular A-102 issued September 12, 1977, **Federal Register**, Vol. 42, No. 176, page 45828. The proposed revision was circulated to State and local interest groups in accordance with Circular A-85 procedures and Executive Order 12044 and to affected Federal agencies and contractor organizations. The proposed revision was published in the **Federal Register** December 6, 1978, Vol. 43, No. 235, page 57201, and a public hearing was held January 16, 1979. No regulatory analysis is required in accordance with Executive Order 12044. The amendment (1) reaffirms the maximum reliance on State and local government grantees management of their own procurement; (2) directs grantor agencies to rescind nonconforming provisions of current agency subordinate regulations and limits the issuance of additional requirements; (3) creates a grantee certification program to reduce the grantee agencies' burdensome pre-award review of individual procurements; (4) adds provisions to reduce the possibility of fraud and waste; and (5) expands coverage addressing small, minority, women and labor surplus contracting. The amendment, it is anticipated, will reduce administrative cost, paperwork and other such factors which contributed to inefficiency, waste and delay in implementing assistance programs.

3. *Action:* Remove the old Attachment O from the Circular and insert the new Attachment. Grantor agencies shall begin immediately to amend nonconforming subordinate regulations.

4. *Summary of Changes:* Section 1. Prohibits grantor agencies from adding additional requirements or subordinate regulations. This attachment strikes a balance between agencies' stewardship role and the policy of placing the maximum reliance on grantees to conduct their own affairs. To avoid confusion, areas not covered by this prohibition are enumerated.

Section 2. Spells out the responsibilities that properly belong to the grantor or the grantee. To avoid burdensome detailed reviews of grantees' discretionary actions the substitution of grantors' judgment is prohibited, unless it is primarily a Federal question.

Section 3. Grantor agencies are encouraged to provide technical assistance to grantees rather than require submission for review.

Section 4. Proposes that grantor agencies conduct grantee procurement system reviews and that when a grantee procurement system meets the standards of this attachment it may be certified by the grantor agencies, thus reducing individual pre-award contract reviews by that agency or other agencies making grants. Both grantees and grantors expressed their concern about keeping the quality of the certification reviews constant. A paragraph was added to make reviews adhere to OFPP standards.

Section 5. Limits grantor agencies' authority to review protests. This is properly the responsibility of the grantee.

Section 6. Limits grantor pre-award review of grantee procurements to non-competitive and brand name procurements, and procurements by grantees who do not meet Attachment O standards.

Section 7. Expands the code of conduct from merely prohibiting the acceptance of gifts and gratuities to prohibiting the participation in the award of contracts to firms in which the employee has some financial interest.

Section 9. Expands the section requiring affirmative steps to ensure minority and small business participation in contracting under Federal grant programs, and encourages the placement of contracts in labor surplus areas and with women business enterprises.

Section 11. Explains when it is appropriate to use one of the following four methodsa of procurement, small purchase, competitive sealed bids, competitive negotiations, and noncompetitive negotiations, and recognizes price competition need not be used for A/E contracts.

Section 12. Prohibits the use of a percentage of construction cost method of contracting, requires either a cost or price analysis of all procurement, and states costs will be allowed if consistent with Federal cost principles.

Section 14G. Expands contract provision on inventions to cover copyrights and rights in data.

Section 14J. Adds provision requiring compliance with State Energy Conservation Plans.

5. *Effective Date:* This revision is effective October 1, 1979. Grantees may comply with this amendment immediately where they do not conflict with grantor agency regulations. Grantor agencies may implement this amendment immediately or allow grantee agencies to implement.

6. *For Further Information Contact:* Mr. Jack Nadol, Assistant for Intergovernmental Affairs, Office of Federal Procurement Policy, Telephone 202-395-6166.

James T. McIntyre, Jr.,
Director.

Procurement Standards

1. *Applicability.*

a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction, and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.

b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by Executive agencies unless specifically required by Federal law or Executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to section 10 of the basic circular or the provisions of this or other OMB circulars.

c. Provisions of current subordinate requirements not conforming to this attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. *Grantee/Grantor Responsibility*

a. These standards do not relieve the grantee of any contractual responsibilities under its contracts, the grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a grant. These include but are not

limited to: source evaluation, protests, disputes, and claims. Executive agencies shall not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs conform to the standards set forth in this attachment and applicable Federal law.

3. *Grantee Procurement Improvement.*

Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providing them with technical assistance, training, publications, and other aid.

4. *Procurement System Reviews.*

a. Executive agencies are encouraged to perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such as provisions of the model procurement code for State and local government and (2) whether the grantee's procurement system should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval, as provided by Section 6.

b. In conducting procurement system reviews, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a period of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

5. *Protest Procedures.*

Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

a. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(i) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(ii) Violations of grantee's protest procedures or failure to review a complaint or protest.

6. *Grantor Review of Proposed Contracts.*

Federal grantor pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposals and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed $10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

7. *Code of Conduct.*

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer or agent;

b. Any member of his immediate family;

c. His or her partner; or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extend permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

8. *Procurement Procedures.*

The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. *Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.*

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. *Selection Procedures.*

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this attachment. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business, (2) noncompetitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:

(a) incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(b) clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

11. *Method of Procurement.*

Procurement under grants shall be made by one of the following methods, as described herein: a) small purchase procedures; b) competitive sealed bids (formal advertising); c) competitive negotiation; d) noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $10,000. Grantees shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

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

(b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(a) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(c) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(d) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the Grantee indicates that such discounts are generally taken.

(e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Poposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will be most adavantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilize competitive negotiation procedures for procurement of Architectural/Engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

d. Noncompetitive negotiation is procurement through soliciation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive soliciation;

(3) The Federal grantor agency authorizes noncompetitive negotation: or

(4) After solicitation of a number of sources, competition is determined inadequate.

e. Additional innovative procurement methods may be used by Grantees with the approval of the Grantor Agency. A copy of such approval shall be sent to OFPP.

12. *Contract Pricing.*

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

13. *Grantee Procurement Records.*

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

14. *Contract Provisions.*

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal Law or the Grantor Agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for *construction* or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all *construction* contracts in excess of $2,000 awarded by grantees and subgrantees shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for *construction* contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchases procedures) awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United

APPENDIX I

States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the U.S.E.P.A. Assistant Administrator for Enforcement (EN–329).

j. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94–163).

Grantor Agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

15. *Contract Administration.*

Grantees shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

[FR Doc. 79–25203 Filed 8–14–79; 8:45 am]
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