**Section 800.310 Procurement**

a) The recipient shall use its best efforts (as outlined in (b), (c), (d) and (e)) below to coordinate the construction and purchase of the itemized materials in the stated quantities at or below the estimated prices listed in the contract. In the event actual prices are less than or more than the estimates contained in the contract, the Department will authorize the recipient to internally adjust the line item budgets up or down to maximize purchasing power. An internal adjustment is one that affects the unit price of the elements of a line item. The Department will permit these adjustments when the request is verified via an engineering evaluation. Such adjustments are necessary to account for changes in unit prices (and therefore the line item total) which may vary by quantity and with the passage of time. These adjustments shall not increase the State's funding. Any upward internal adjustment of line item budgets over ten percent shall require an amendment to the contract. Authorization is required to assure that line item adjustments are not, in the case of lowering the unit price, resulting in the purchase of inferior or substandard materials. In the case of raising the unit costs, authorization is required to assure that line item adjustments are not resulting in the purchase of materials at costs greater than available elsewhere, or for materials that exceed project specifications. Downward adjustments of more than ten percent may occur with the Department's permission.

b) The recipient shall, to the extent of its ability and consistent with the other provisions of the contract, take all cash and trade discounts, tax exemptions or other credits in connection with goods and services purchased or used on any approved project or task. The recipient may procure goods and services from the recipient's stocks or under long-term continuing supply contracts.

c) 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 with these requirements:

1) that no fewer than three bidders will be solicited unless fewer than three bidders can be identified; and

2) that the lowest bid responding to the bid requirements is selected.

d) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall 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 essential characteristics and standards to which it must conform if it is to satisfy its intended use.

e) Awards shall be made only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. The ability to perform will be based on the record of past performance, and financial and technical resources.