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"APPROVAL AND AWARD OF GRANT" DOCUMENT TO BE ISSUED BY ECONOMIC DEVELOPMENT ADMINISTRATION UNDER "ROUND II" OF LOCAL PUBLIC WORKS PROGRAM SATISFIES REQUIREMENTS OF 31 U.S.C. 200(A)(5)(II) FOR RECORDING APPROPRIATION OBLIGATION. SUCH DOCUMENT REFLECTS ADMINISTRATION'S ACCEPTANCE OF GRANT APPLICATION; SPECIFIES PROJECT APPROVAL AND AMOUNT OF FUNDING; AND IMPOSES DEADLINE FOR GRANTEE'S AFFIRMATION.

LOCAL PUBLIC WORKS PROGRAM-- GRAN OBLIGATIONS:

THE ACTING SECRETARY OF COMMERCE HAS REQUESTED OUR OPINION AS TO THE TIME AT WHICH APPROPRIATION OBLIGATIONS MAY BE RECORDED IN EXTENDING GRANT ASSISTANCE UNDER THE LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTIMENT ACT OF 1976, PUB. L. NO. 94-369 (JULY 22, 1976), TITLE I, 90 STAT. 999, 42 U.S.C.A. 6701 ET SEQ., AS AMENDED BY PUB. L. NO. 95-28 (MAY 13, 1977), TITLE I, 91 STAT. 116.

AT THE PRESENT TIME, APPLICATIONS ARE BEING PROCESSED UNDER "ROUND II" OF THE LOCAL PUBLIC WORKS GRANT PROGRAM. SECTION 109 OF PUB. L. NO. 95-28, SUPRA, 91 STAT. 119, AUTHORIZED THE APPROPRIATION OF $4 BILLION FOR THE ROUND II PROGRAM. THIS $4 BILLION WAS APPROPRIATED BY PUB. L. NO. 95-29 (MAY 13, 1977), 91 STAT. 122, 123. THE APPROPRIATION REMAINS AVAILABLE FOR OBLIGATION ONLY THROUGH SEPTEMBER 30, 1977. SEE PUB. L. NO. 95-29, SEC. 201, 91 STAT. 125; 31 U.S.C. 718(1970).

THE ACTING SECRETARY'S SUBMISSION DESCRIBES THE MECHANICS OF THE GRANT PROGRAM AS FOLLOWS:

"GRANTS MADE BY THE ECONOMIC DEVELOPMENT ADMINISTRATION (EDA) UNDER THE ACT ARE APPROVED ONLY IN RESPONSE TO SPECIFIC APPLICATIONS FROM ELIGIBLE APPLICANTS. SUCH APPLICATIONS DEFINE A PARTICULAR PROJECT PROPOSED TO BE UNDERTAKEN AND PROVIDE INFORMATION AND ASSURANCES EVIDENCING THE COMPLIANCE OF THE PROJECT WITH THE REQUIREMENTS OF LAW AND REGULATIONS. UPON APPROVAL OF THE APPLICATION BY THE ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT, THE AGENCY HAS SENT TO THE APPLICANT A WRITTEN 'OFFER OF GRANT' TO PROVIDE FINANCIAL ASSISTANCE FOR A SUBJECT PROJECT. SUCH 'OFFER OF GRANT' PROVIDES THAT THE OFFER, ITS ACCEPTANCE, AND THE SPECIAL CONDITIONS AND STANDARD TERMS AND CONDITIONS ATTACHED TO THE OFFER SHALL CONSTITUTE THE GRANT AGREEMENT. IT SHOULD BE NOTED THAT AT THE TIME OF SUCH 'GRANT OFFER' THE SPECIFIC PURPOSES, THE AMOUNT OF FUNDING, AND ALL TERMS AND CONDITIONS FOR UTILIZING THE FUNDS ARE SETTLED AND THAT THE 'OFFER OF GRANT' IS IN NO SENSE AN INVITATION FOR COUNTEROFFERS OR FUTURE NEGOTIATION."

WHILE THE "OFFER OF GRANT" DOCUMENT IS NOW DESIGNED TO REPRESENT AN ACTION

EQUIVALENT TO A GRANT "AWARD" OR "COMMITMENT," THE ECONOMIC DEVELOPMENT ADMINISTRATION PROPOSES TO REVISE THIS DOCUMENT:

"TO AVOID ANY MISUNDERSTANDING AS TO ITS INTENT AND TO MAKE CLEAR IN COMMUNICATING ITS NOTICE OF GRANT APPROVAL TO AN APPLICANT THAT IT IS THE INTENTION OF THE EDA TO THEREBY BE COMMITTING AND OBLIGATING THEMSELVES TO THE MAKING OF A GRANT * * * . "

THE REVISED DOCUMENT, ENTITLED "APPROVAL AND AWARD OF GRANT," RECITES THAT THE ADMINISTRATION "HEREBY APPROVES AND AWARDS A GRANT NOT TO EXCEED" A SPECIFIED AMOUNT TO THE GRANTEE "TO PROVIDE FINANCIAL ASSISTANCE FOR" A SPECIFIED PROJECT. THE REVISED DOCUMENT FURTHER STATES:

"THIS APPROVAL AND AWARD OF GRANT, SUBJECT TO THE SPECIAL CONDITIONS, AND THE STANDARD TERMS AND CONDITIONS SHALL CONSTITUTE AN OBLIGATION TO MAKE SUCH GRANT. SUCH OBLIGATION MAY BE TERMINATED WITHOUT FURTHER CAUSE, HOWEVER, IF THE GRANTEE SHALL FAIL TO AFFIRM ITS TIMELY UTILIZATION OF THE GRANT BY SIGNING AND RETURNING TO THE ECONOMIC DEVELOPMENT ADMINISTRATION WITHIN 30 DAYS ITS AFFIRMATION OF INTENT AS SET FORTH BELOW."

THE OBLIGATION OF APPROPRIATIONS FOR PURPOSES OF FEDERAL GRANTS IS GOVERNED BY 31 U.S.C. 200(A)(5)(1970), WHICH PROVIDES:

"(A) * * * NO AMOUNT SHALL BE RECORDED AS AN OBLIGATION OF THE GOVERNMENT OF THE UNITED STATES UNLESS IT IS SUPPORTED BY DOCUMENTARY EVIDENCE OF--

"(5) A GRANT OR SUBSIDY PAYABLE (I) FROM APPROPRIATIONS MADE FOR PAYMENT OF OR CONTRIBUTIONS TOWARD, SUMS REQUIRED TO BE PAID IN SPECIFIC AMOUNTS FIXED BY LAW OR IN ACCORD WITH FORMULAE PRESCRIBED BY LAW, OR (II) PURSUANT TO AGREEMENT AUTHORIZED BY, OR PLANS APPROVED IN ACCORD WITH AND AUTHORIZED BY, LAW * * * . "

IT IS OUR OPINION THAT THE REVISED "APPROVAL AND AWARD OF GRANT" DOCUMENT DISCUSSED ABOVE SATISFIES THE REQUIREMENTS OF 31 U.S.C. 200(A)(5)(II), AND MAY BE USED AS THE BASIS FOR RECORDING GRANT OBLIGATIONS UNDER THE LOCAL PUBLIC WORKS PROGRAM. THIS DOCUMENT REFLECTS THE ADMINISTRATION'S ACCEPTANCE OF A GRANT APPLICATION; SPECIFIES THE PROJECT APPROVED AND THE AMOUNT OF FUNDING; AND IMPOSES A DEADLINE FOR AFFIRMATION BY THE GRANTEE. CF., 50 COMP.GEN. 857, 860 62(1971); B-127518, MAY 10, 1956; COMPARE B-164990, SEPTEMBER 6, 1968.