**Section 369.640 Compliance with Procurement Requirements for Construction Contracts**

a) Loan Applicant Responsibility

The loan applicant shall be responsible for selecting the low, responsive and responsible bidder or other contractor in accordance with applicable requirements of State, federal and local laws and ordinances, as well as for the specific requirements of the loan agreement directly affecting procurement. The loan applicant shall also be responsible for the initial resolution of complaints based upon alleged violations. Any complaints made to the Agency concerning any alleged violation of law in the procurement of construction services or materials for a project involving construction work will be referred to the loan applicant for resolution. The loan applicant shall promptly determine each complaint on its merits, and shall allow the complainant and any other party who may be adversely affected to state in writing or at a conference the basis for its views concerning the proposed procurement. The loan applicant shall promptly furnish to the complainant and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering or legal opinion providing a justification for its determination.

b) Time Limitations

Complaints should be made as early as possible during the procurement process, preferably prior to the bid opening, to avoid disruption of the procurement process. The complaint shall be mailed (certified mail, return receipt requested), or otherwise delivered, no later than 5 working days after the complainant becomes aware of an alleged violation. If there is no agreement between the parties within 7 days following the loan applicant's response, unless all bids are rejected, the matter shall be resolved in accordance with subsection (c).

c) Remedies

All claims, counter-claims, disputes and other matters in question between the applicant and the contractor arising out of, or relating to, a subagreement or its breach shall be decided by arbitration if the parties agree, or in a court of competent jurisdiction within the State.

d) Deferral of Procurement Action

If the determination of a complaint by the loan applicant is adverse to the complainant, the loan applicant shall defer issuance of its solicitation or award or notice to proceed under the contract, as appropriate, for 7 days after mailing or delivery of the determination. If the determination (whether made by the loan applicant, the arbitrator or the court) is favorable to the complainant, the terms of the solicitation shall be revised or the contract shall be awarded, as appropriate, in accordance with the determination.