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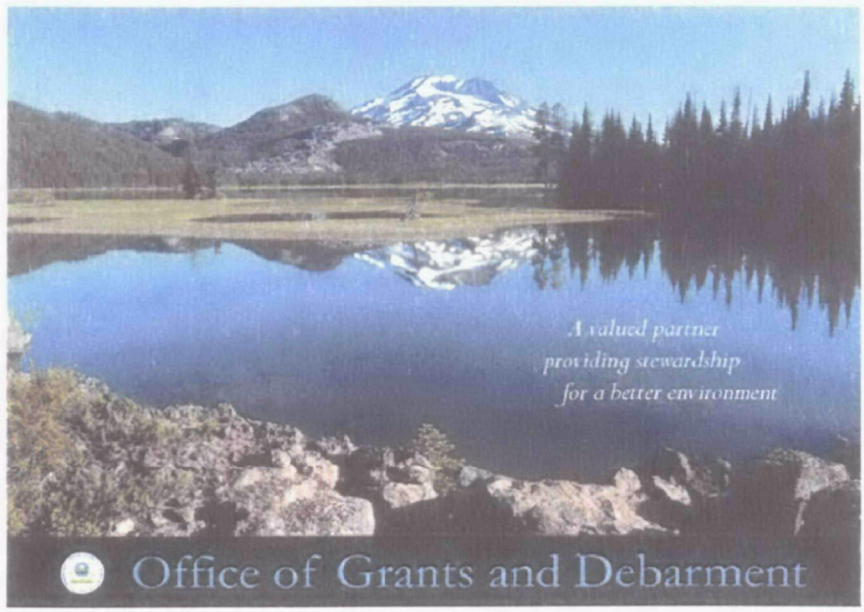

Managing Your Financial Assistance Agreements Project Officer's Manual

Sixth Edition

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Chapter Summaries

The chapters in this text are organized first to provide you with an understanding of the issues, then to walk you through the award of assistance agreements, and finally to describe post-award requirements. The specific content of each chapter is summarized as follows:

Chapter 2: Planning Considerations

This chapter discusses issues associated with the planning phase of assistance agreements. Acquisition vs. assistance is covered in this chapter, as well as selecting the appropriate type of assistance agreement. The chapter covers other issues including the preference for competition, the avoidance of personal services or conflicts of interest, and other miscellaneous issues ranging from using government property to reporting waste, fraud, and mismanagement. You will want to understand the issues before you start the process of developing an assistance agreement so you can decide which issues apply to your project and how they should be addressed. Sometimes a particular issue triggers the need for additional approvals that must be secured early in the process.

Chapter 3: Pre-Application Phase

This chapter discusses developing solicitations for assistance agreements. It gives an overview of the competitive process and discusses the use of partial applications. Guidance on advertising the requirement, communicating with potential applicants, and amending the solicitation is included. You will find checklists to help you locate the elements you need for your solicitation and a sample solicitation; i.e., *Request for Application* (RFA) as well.

Chapter 4: Review/Selection Applications Phase

This chapter addresses the review of applications for assistance. Reviews of applications for assistance include administrative reviews, relevancy reviews, and in some programs, technical reviews by qualified, independent peer reviewers. The chapter focuses on your responsibilities in the review process from the planning stage through documenting the review. The checklists and sample documents will help you with the process.

Chapter 5: Funding Package and Award Phase

This chapter continues the process of awarding assistance agreements by describing the procedures for selecting the best application and negotiating,

as appropriate, with the selected applicant(s). You will find both the details of agency's requirements for an application and a sample application. Because POs must review and evaluate proposals, you need to know what the agency requires. You will learn how to prepare the documentation needed to support an award recommendation. Examples of the various types of award documents and checklists are included to help you understand your responsibilities and ensure the package you submit is complete.

Chapter 6: Post Award Management/Monitoring Phase

This chapter explains how to manage your extramural agreement. You learn how to monitor your agreement from both a technical and financial perspective, how to process changes to the agreement, and how to deal with less than satisfactory performance. You also learn about the various types of reviews and audits that might occur, and what your responsibilities are in relation to them. Additionally, this chapter explains what constitutes official agency records and why you need to maintain complete, accurate files. You will learn how to establish a file for the various types of agreements and how long to maintain the files. Included are sample file plans for assistance agreements.

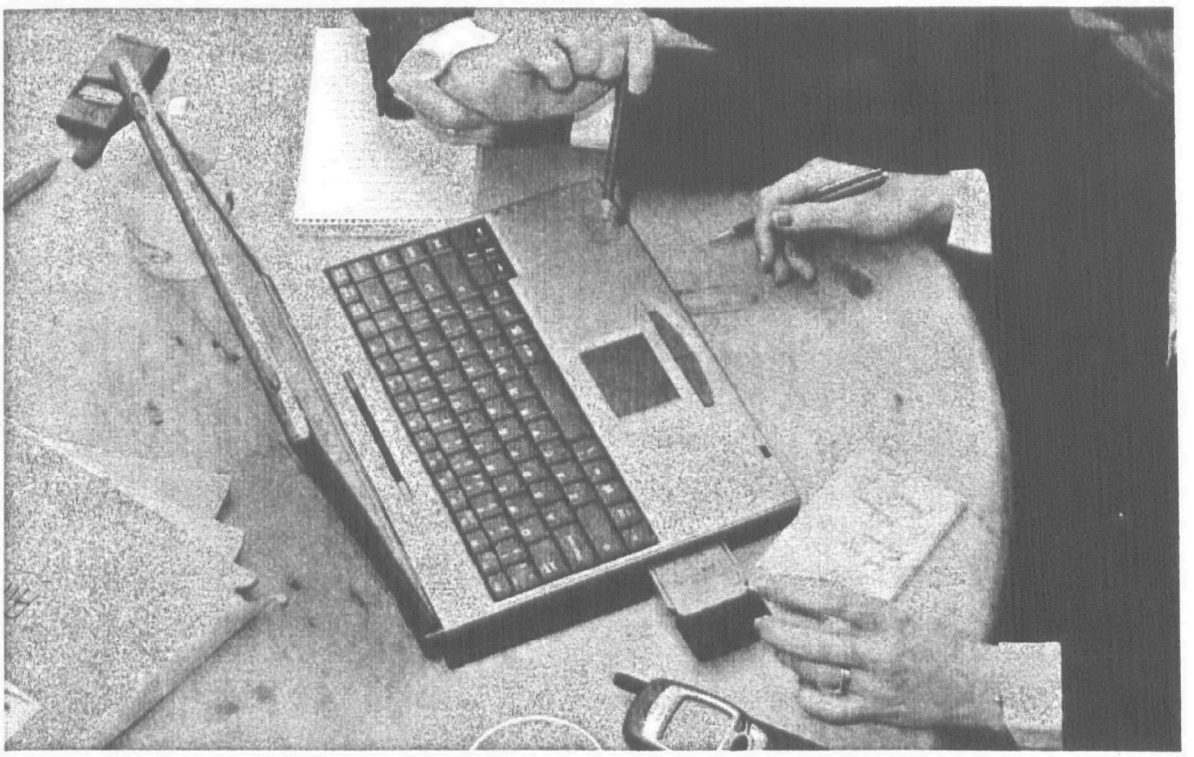
Chapter 7: Close-out Phase

This chapter explains how to close out your agreement once the recipient has met the requirements. The examples of closeout letters and memos will help you with this final phase.

Chapter 8: IGMS

This chapter, when completed, will be the IGMS manual that is used to train PO's how to use the system. IGMS has been deployed in all Regional offices and is currently being deployed at Headquarters. PO's will need a specific 4th day of training on the system before they may begin entering data in the Integrated Grants Management System. This may currently be obtained by contacting your GMO.

CHAPTER 1
INTRODUCTION



Chapter 1 Introduction

Managing Your Financial Assistance Agreements
Project Officer's Manual
Sixth Edition, January 2006

CHAPTER 1:
Introduction

OBJECTIVES

1. Understand why the Project Officers class was established.
2. Identify ongoing certification requirements.
3. Understand the inclusion of grants management in your performance standards.
4. Know what subjects will be covered in this text and what areas will not be covered.
5. Describe the different relationships between the key players in the assistance arena.

A large part of EPA's mission is accomplished by awarding extramural funds to other organizations to conduct environmental programs and or special projects. Approximately $4.5 Billion a year is provided through assistance agreements. The Project Officer (PO) plays a key role in assuring the proper expenditure of these funds.

EPA (and other Federal agencies) award funds through one of two methods -- "acquisition" or "assistance." The basic difference between acquisition and assistance is the relationship between the parties. If an activity is funded to meet an internal EPA need, e. g., prepare a specific report to Congress or purchase furnishings for EPA staff, then an acquisition (contractual) relationship exists and EPA's direct procurement requirements (e. g., the Federal Acquisition Regulations) apply. If the activity is funded to primarily benefit someone other than the Federal government, e. g., build a wastewater treatment plant, then an assistance relationship exists and EPA's rules which apply to assistance programs apply. The latter is the subject of this course.

In 1995, the Deputy Administrator for the Office of Administration and Resources Management issued a directive that all Project Officers (PO) for assistance and interagency agreements must be trained in awarding and managing those agreements. Our focus is on the roles and responsibilities of the PO. When you complete this class you will have:

- An overview of the issues and regulations related to the various types of agreements;

- Instructions on how to develop and manage assistance agreements;

- Examples of the types of documents you will develop using the Integrated Grants Management System (IGMS).

To serve as a Project Officer on an assistance agreement, you must complete the training course using this manual or an approved Office of Grants and Debarment (OGD) substitute manual, presented by an OGD approved trainer. This course identifies the Core Competencies for EPA Project Officers managing assistance agreements. Completion of this course serves as the only basis for Project Officer certification. At completion of this course your name and training information will be input into the "National Project Officer Database."

To maintain your certification, you must take a refresher course within three years after you complete the basic course, and every three years thereafter. You will be notified by email 60 days before your certification expires. There is an online option for the refresher requirement. Refresher classroom training is offered on a very limited basis. If you let your current certification expire you will be required to retake the basic class.

This manual gives you general guidance when the rules are subject to interpretation (*which they often are*). Your own office may have different procedures, templates for documents, etc., than those presented in this text. The information in this manual will help you differentiate between policy and recommended practices so you will know where you have some latitude. This manual provides guidance relative to all types of assistance agreements and is designed to follow the life of an assistance agreement from the planning stage through closeout and audit if appropriate. In addition, key policy documents are incorporated into the text for your convenience. Links to the regulations that apply to assistance agreements and the corresponding OMB cost principles are included for easy access.

EPA must ensure the resources allocated to the agency are spent according to policies, guidelines, etc., and achieve maximum value. Each assistance agreement has its own set of rules. You will find that some rules are universal (*e.g., ethics*) while others are unique to the type of agreement. When in doubt, refer to this manual for a quick reference or ask the person in your office who is assigned to assist PO's.

Assistance Agreement Information is now available on the intranet. The site includes "Guidance for Preparing an Assistance Funding Package," this Project Officer's Manual and Training Schedule, Grants Policy Issuances (GPIs), Fact Sheets, Closeout Policies and other pertinent information. This manual will be updated from time to time as the regulations, policies, guidelines and recommended practices change. The updates will be made to the text on the intranet and will be reviewed in the refresher course you take every three years.

http://intranet.epa.gov/ogd/

Performance Standards for Assistance Project Officer

In November 2003, the Deputy Administrator for the Office of Administration and Resources Management issued a directive for all Senior Resource Officials (SROs) to initiate a review of current performance standards and position descriptions for all non-SES employees involved in grants management to ensure that the complexity and extent of their grants management duties are accurately reflected. This request includes the management of both grants and cooperative agreements.

➤Once you are a PO you must establish performance standards specific to the type of agreement you will be assigned to manage. Some latitude in establishing performance standards exists. Your office may have templates for standards.

The next section is a brief summary of the players in the assistance arena that you will need to be aware of as you move thru the "cradle to grave" process of grants management.

Assistance Team

Project Officer

The Project Officer (PO) is the EPA official who provides technical and programmatic oversight and who is designated in the assistance agreement as EPA's program contact with the recipient. The PO is responsible for ensuring assistance agreements meet scientific, technical, and programmatic requirements. Proper stewardship of Federal funds depends on the efforts of the PO to determine the appropriateness and technical merit of proposals, as well as monitoring and overseeing projects. The PO must also work with recipients to identify "Environmental Outcomes" in the work plans of the assistance agreements they manage. The PO is critical to the successful completion of work performed under an assistance agreement. Many decisions and recommendations, including some administrative decisions, can be made only by persons with programmatic expertise. Input from the PO is required in providing oversight and certifying the quality and acceptability of a recipient's programmatic performance.

Many people are involved in awarding and managing assistance agreements. As the PO, you have a very large role, but you are not alone. Other personnel will help you fulfill your responsibilities. EPA encourages a team approach from the planning stages through the closeout of the agreement.

Recommending Official

The Recommending Official is usually a Division Director, Branch Chief or Team Leader in the program office who will recommend funding for an award. The Recommending Official reviews new awards and some post-award packages for concurrence before submitting them to the Approval Official. Recommending Officials are generally managers in the chain-of-command between the PO and Approval Official. For example, if the delegated Approval Official is the Division Director, then the Recommending Official would likely be a Branch Chief. If the Approval Official is the SRO, then the Recommending Official would likely be the Lab, Center or Office Director.

Approval Official

The Approval Official is an EPA official delegated the authority to approve or reject an application and to approve the technical and programmatic terms and conditions on proposed assistance projects. The Approval Official (*sometimes referred to as the Decision Official*) is the program individual with the responsibility and authority to decide whether to fund or reject an assistance or interagency agreement for technical or programmatic reasons. Approval Officials approve certain agency documents and ensure that all technical, legal, and administrative matters are correct from a programmatic point of view. Based on the dollar amount and length of the agreement, different program officials are delegated authority to approve funding packages.

Senior Resource Official (SRO)

The SRO is a Senior Executive Service manager who reports directly to the Assistant, Associate, or Regional Administrator. SROs are typically the Deputy Assistant Administrators and the Assistant Regional Administrators. The SRO is accountable for that Office's ethical, effective resource management, including acquisition, assistance, and programmatic financial management. The Senior Resource Official (*SRO*) oversees and guides the resource management activities within their respective organization. SROs are EPA's primary points of accountability. They maintain fiscal resource management practices (*EPA Order 1130.2A "Senior Resources Officials and Resource Management Committee"*). EPA Order 1130.2A dictates levels of SRO approval. However, many programs and Regions have lowered that level so check with your Program for their level of SRO concurrence.

Quality Assurance Manager

The Quality Assurance Manager *(QAM)* foster the highest quality research by or on behalf of the agency. QAMs are located in each office as well as in some divisions. QAMs assist you in setting the QA requirements for assistance agreements and in ensuring the requirements are met. The QAM reviews proposed assistance applications to decide if the requirements of EPA Order 5360.1A2 (*Policy and Program Requirements for the Mandatory Agency-wide Quality System*) apply and if so, how they can be implemented.

Funds Certifying Official

The Funds Certifying Official (FCO) is located in each Program office. The FCO certifies the availability of funds to be used on the agreement by considering the correct purpose, time and amount.

Grants Competition Advocate (GCA)

The Grants Competition Advocate is an official located in the Office of Grants and Debarment responsible for overseeing the implementation of the Policy for Competition in Assistance Agreements, EPA Order 5700.5.

Grants Specialist

The Grants Specialist within the Grants Management Office (GMO) serves as EPA's administrative contact with the assistance recipient. Grants Specialists (GS) provide administrative guidance and direction. They will review and approve the administrative portion of the assistance application and prepare the assistance agreement and any formal amendments. Additionally, they monitor the agreement for compliance with administrative conditions and help the PO resolve performance problems. Lastly, they close out the agreement after all the terms and conditions are fulfilled.

Award Official

The Award Official is the EPA official with the delegated authority to sign assistance agreements and to take other actions authorized by EPA regulations and by EPA Orders. At Headquarters the Award Official is the person that the Grants Administration Division (GAD) assigns to control the spending of funds under assistance agreements. This official signs the agreement ensuring that all technical, legal, and administrative evaluations are made and that the proposed

agreement meets all requirements for award. In the regions the Award Official could be located either in the Grants Management Office or the Program. As a PO you will have the responsibility of learning your office's business practices. The Award Official must be assured from both the programmatic and management perspectives of the appropriateness of decisions concerning applications and awards. The Award Official relies on the advice, guidance, and recommendations of both the program office (primarily through the PO) and the GMO.

Grants Management Office (GMO)

The GMO is responsible for full "cradle to grave" management of financial assistance agreements and interagency agreements.

Office of General Counsel (OGC)

OGC provides legal opinions, legal counsel and assists in the formulation of policies and programs. OGC specifically supports Program offices by helping to interpret statutes and regulations (such as the Clean Air Act) and to provide advice on such issues as "acquisition vs. assistance."

Working together **as partners**, EPA's program and management officials approve, award, and manage assistance agreements.

SUMMARY

At the beginning of the chapter, we identified several objectives you would accomplish after reading the chapter. The objectives are listed below, each followed by a brief summary of the key points the chapter covered.

1. Understand why the Project Officers class was established. In 1995, the Deputy Administrator for the Office of Administration and Resources Management issued a directive that all Project Officers for assistance and interagency agreements must be trained in awarding and managing those agreements. This was after continued ongoing scrutiny by the OIG, GAO and the Congress of the United States. The oversight by these groups continues today.

2. Identify ongoing certification requirements. To serve as a Project Officer on an assistance agreement, you must complete the training course using this manual, presented by an Office of Grants and Debarment (OGD) approved trainer. To maintain your certification, you must take a refresher course within three years after you complete the basic course, and every three years thereafter.

3. Understand the inclusion of grants management in your performance standards. As directed by the November 2003 memo, once you are a PO you must establish performance standards specific to the type of agreement you will be assigned to manage.

4. Know what subjects will be covered in this text and what areas will not be covered. This manual provides guidance relative to all types of assistance agreements and is designed to follow the life of an assistance agreement from the planning stage thru closeout and audit if appropriate. This course **will not provide** specific PO programmatic and technical requirements. That is a responsibility of the National Program Manager (NPM) for each program.

5. Describe the different relationships between the key players in the assistance arena. Working together <u>as partners</u>, EPA's program and management officials approve, award, and manage assistance agreements. The program office is responsible for ensuring assistance agreements meet scientific, technical, and programmatic requirements; the GMO is responsible for the cradle to grave administration of EPA assistance agreements and interagency agreements.

QUESTIONS

1. Distinguish between the Approval Official and the Award Official.

2. Distinguish between the SRO and the Approval Official. Why might SRO's approval thresholds be different?

3. Compare and contrast the Project Officer's and Grant Specialist's responsibilities.

4. Describe why the PO is critical to the successful completion of work performed under an assistance agreement.

5. Who does the Award Official rely on for advice, guidance, and recommendations?

CHAPTER 2
PLANNING
CONSIDERATIONS

Chapter 2
Planning Considerations

Managing Your Financial Assistance Agreements
Project Officer's Manual
Sixth Edition, January 2006

CHAPTER 2:
PLANNING CONSIDERATIONS

OBJECTIVES

1. Understand the principle of acquisition vs. assistance, grant vs. cooperative agreement as derived from the Federal Grant and Cooperative Agreement Act of 1977.

2. Understand the importance of beginning to build your assistance file now and the importance of documentation.

3. Know how the Competition Order applies to project officers and be able to identify the differences in managing solicited and unsolicited applications.

4. Describe the relationship between the Catalog of Federal Domestic Assistance and the Competition Order.

5. Understand the difference between a Performance Partnership Grant (PPG), a discretionary grant and a non-discretionary grant.

6. Identify ethics concerns and conflicts of interest.

7. Understand how the "Best Practices Guide for Conferences" will help when funding an assistance agreement with a conference included in the scope of work.

8. Identify and define the hierarchy of the different governing rules/laws involved with grants.

9. Identify and differentiate between statutory authority and delegation of authority.

10. Identify needs for environmental review/environmental impact statements.

11. Become aware of the rules involving Lobbying and Litigation by grantees.

12. Understand the difference between a survey, study and investigation and a research assistance agreement including Federal Demonstration Partnership (FDP) agreements through NCER.

The information in this chapter will guide you in the process of selecting the appropriate funding instrument. The chapter explains procedures governing specific issues in assistance. Additionally, this chapter describes the sources of requirements affecting assistance programs -- Federal statutes, Delegations of Authority, Executive Orders, OMB Circulars, Federal regulations, EPA Orders, and policies -- and which requirements take precedence over the others.

Several issues regarding assistance management cut across the different types of agreements used. For example, similar conflict of interest issues may arise in the management of a contract, grant, cooperative agreement, or interagency agreement. Consult with your offices Deputy Ethics Official (*DEO*) on a case-by-case basis regarding your specific issues and concerns.

EPA assistance programs are governed by requirements which apply to all Federal agencies and requirements which are specific to EPA programs. Even though the Grants Management Office (GMO) has the overall responsibility for ensuring that the administrative requirements are met, the Program offices and laboratories are responsible for implementing many of these requirements. Therefore, POs must understand what the requirements are and should be familiar with the source of these requirements.

Complying with the Federal Grants and Cooperative Agreement Act (FGCAA)

In 1977 Congress passed the FGCAA to establish government-wide standards for agencies to use in selecting the most appropriate funding instrument—a procurement contract, a grant, or a cooperative agreement. This act stipulates that an assistance agreement (*either a grant or a cooperative agreement*) is appropriate for use whenever:

"The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal government..."

The key elements of this provision are discussed below:

The principal purpose . . .

If your office needs goods or services for the direct use of EPA, then you would acquire those goods or services by means of a contract or possibly an Interagency Agreement (IAG). If you wish to support or stimulate another entity's project for the good of the public, use of an assistance agreement might be appropriate. **EPA Order 5700.1, Policy for Distinguishing Between Assistance and Acquisition** (http://epawww.epa.gov/impolicy/ads/orders.htm) provides guidance on how to identify the principal purpose. The Order notes that any funds spent on an extramural agreement can be said to further the Agency's goals or mission, but not all expenditures are for the direct use of the Agency. How do you decide?

A strong indicator of principal purpose is the extent to which EPA feels it needs to control the planning and conduct of the work because our use is "immediate," "uninterrupted;" or "specific." **Direct use or benefit is implied if EPA**:

- Provides the specifications for the work (*control)*
- Needs the results by a specific date (*immediate*)
- Needs the results for a specific EPA use (*specific*)
- Will use the results to produce an EPA product (*e.g., guideline, regulation*) in the near future with little or no further processing by EPA.

First, review **EPA Order 5700.1 "Policy for Distinguishing Between Assistance and Acquisition"** before selecting a funding instrument. It provides more information on this issue and includes examples where assistance is justified.

http://intranet.epa.gov/OGD/policy/7.0-GPI-GPI-94-04.htm

Second, ensure your solicitation includes a requirement that the applicant discuss how their proposed project will benefit the applicant's mission and how the benefits will flow from the applicant to the public. The evidence might include scientific journal publications making the information available to other researchers, direct use of the results by state/local agencies or other researchers in programs of use to the public. A demonstration of public benefits in the proposal will help convince the Approval Official that the principal purpose is to support and stimulate despite incidental benefits to EPA.

"Transfer . . . of something of value . . ."

Transferring something of value is a prerequisite for an assistance agreement. Without the transfer, the agreement between the Agency and the

other entity probably would be described as either a Memorandum of Understanding (**MOU**) or a policy agreement.

The "thing of value" in most cases is money, but, depending on the program guidance, may include property or services. If it is more efficient for EPA rather than the recipient to purchase equipment or services, EPA may do so and provide the equipment or services to the recipient. This purchase is called an "in-kind contribution." See Chapter 4 for a more in-depth discussion.

Exercise
Acquisition vs Assistance

Read the following narrative and address the question of acquisition vs. assistance. Describe why or why not this project can be awarded as assistance.

Recipient: Coordinating Research Council, Inc – Non-profit Organization
Title: "Validation of the US EPA MOBILE6 Highway Vehicle Emissions Model"

Project Budget - $50,000
Statement of Work - Abstract

To conduct an assessment of the new EPA MOBILE6 highway vehicle emissions model. MOBILE6 is a software tool for predicting HC, CO, and NOx emissions from passenger cars, trucks, and motorcycles under various conditions. The model takes into account the calendar year in question, the fuel type used, local vehicle activity parameters, and inspection and maintenance programs that may be in place. MOBILE6 is used for state implementation plans, conformity with air quality requirements, National Environmental Policy Act (NEPA) assessments, identifying trends in vehicle emissions, and other applications.

MOBLIE6 will replace the current MOBILE5 model following approval of the current draft version. The existing draft version of MOBILE6 model has been released to states and local governments for review.

MOBILE6 contains new and improved data, such as in-use deterioration of new technologies and updated understanding of vehicle emission

performance. MOBILE6 takes into account new regulations promulgated since 1992 and includes additional user options over its predecessor.

There has been a thorough stakeholder and peer review of the draft MOBILE6 model. Early pilot testing of the model was conducted within EPA

national and regional offices, at the US Department of Transportation, by EPA contractors, and in limited state runs.

The objective of the Validation of the US EPA MOBILE6 Emission Factor Model study is to conduct a limited top-down assessment of the MOBILE6 model by comparing model output data against literature values of composite highway vehicle emission concentrations. To meet the study objectives, the literature emissions data selected for model validation must have been collected in a controlled manner such that the vehicle sources are well-characterized and can be attributed to a test fleet that can also be reasonable duplicated using MOBILE6.

Need: How does SH work help carry out mission?

Justification for Assistance:

"Real World" data generated under this study will be compared to the output of scenarios generated under EPA's new MOBILE6 model. The results of this investigation, the degree of similarity between data and model output, will be of benefit to those in the general public who use air quality models. In particular, public interest groups, local, state, and regional air quality planners and other public and academic air pollution investigators will have third-party confirmation of the quality of EPA's MOBILE6 model and validation of the results of their use of EPA's model.

Assistance in the form of a grant is proposed to support this project because extensive planning has already preceded EPA involvement and most of CRC's members involved in the planning of this project have long histories of completing successful projects in the areas of vehicle emission determinations. EPA will provide its in-house expertise, when called upon, receive progress reports and will be a recipient of the validation results when they become available.

Deciding Between Grants and Cooperative Agreements

After deciding that you may provide assistance, you must decide whether to use a grant or a cooperative agreement. The **FGCAA** clarifies the distinction between the two. If the recipient is responsible for performance with little Agency involvement, a grant is appropriate. If the recipient is responsible for performance with substantial Agency involvement, a cooperative agreement is appropriate. However, whether a cooperative agreement or a grant is used, EPA **must**:

1. Approve the scope of work/ research narrative before recommending awarding the agreement.
2. Perform a technical budget cost review.
3. Address deficiencies in ongoing performance.
4. Review progress/outputs during and after completion of the work.

5. Ensure the recipient's compliance with all applicable statutes, regulations, policies, and all terms and conditions in the agreement through monitoring.
6. If substantial involvement results in increased costs to the recipient, these costs must be included in the budget.

Requirements for Justifications

To ensure that proposed assistance agreements comply with the FGCAA, program offices must provide a justification for assistance as required under Question #6 of the Integrated Grants Management System (IGMS) Electronic Funding Recommendation Document.

Specifically, justifications must address the criteria identified in Section 6 of EPA Order 5700.1. These criteria include the principal purpose of the relationship, direct benefit or use, support or stimulation, and the legislative authority to enter into an assistance relationship. Merely stating that there is no direct use by, or benefit to, EPA from the activities funded by the assistance agreement, quoting EPA Order 5700.1, or noting that the project has been reviewed under the criteria contained in EPA Order 5700.1, do not provide adequate justification for an award of financial assistance. Similarly, because all of EPA's assistance programs are intended to benefit the public, a statement that a project will benefit the public is insufficient by itself to justify an assistance relationship. Grants and cooperative agreements may be used only to assist a non-Federal recipient in carrying out its own project for a purpose that EPA has statutory authority to support. The justification must describe how the specific activities the recipient will conduct with EPA financial assistance further the recipient's own efforts to protect the environment rather than assist EPA in implementing its Federal responsibilities.

In addition, justifications must clearly address the basis for using a grant or a cooperative agreement. Cooperative agreements are appropriate when EPA anticipates "substantial involvement" of Agency personnel to assist the recipient in carrying out its project. Please note that cooperative agreements provide financial assistance to the recipient under the same "principal public purpose" legal standard as grants and may not be used to obtain goods or services for the "mutual benefit" of the Agency and the recipient. As indicated in the instructions in the IGMS Electronic Funding Recommendation, for cooperative agreements, project officers must identify EPA's responsibilities for the project (e.g. tasks and activities) in the Programmatic Terms and Conditions Section of the Funding Recommendation. Section 7 of EPA Order 5700.1 provides examples of EPA substantial involvement with the recipient.

EXAMPLES OF ACCEPTABLE JUSTIFICATIONS

CATEGORY OF ASSISTANCE	LEVEL OF EPA INVOLVEMENT	TYPE OF AGREEMENT	ACCEPTABLE JUSTIFICATION
Continuing Environmental Program	Substantial	Cooperative Agreement	This instrument is an assistance agreement because it will provide support to the State of Kentucky to assist them in attaining and maintaining National Ambient Air Quality Standards, address air toxics, and support the State's air quality compliance, enforcement, and permitting efforts. This a cooperative agreement because the activities will require substantial federal involvement in the form of programmatic oversight, and review and comment of all agreement activities and products.
Continuing Environmental Program Grant	Substantial	Cooperative Agreement	In accordance with EPA Order 5700.1, funds should be awarded as an assistance agreement to provide resources for the State's Water Quality Management Planning program. Funds will be for the direct benefit of the State agency and accomplish a public purpose authorized by statute. The assistance agreement should be a cooperative agreement since the Agency will have significant involvement with the recipient by reviewing the phases of the work.

CATEGORY OF ASSISTANCE	LEVEL OF EPA INVOLVEMENT	TYPE OF AGREEMENT	ACCEPTABLE JUSTIFICATION
State Revolving Fund	Limited	Grant	This instrument is an assistance agreement because it will benefit the State of Ohio in their efforts to address wastewater treatment needs. The funds will be used to issue low cost loans to Ohio communities to enable them to construct wastewater treatment facilities. The assistance agreement should be a grant since there will be no substantial involvement by EPA.
Discretionary Project	Substantial	Project Cooperative Agreement	This instrument is an assistance agreement because it provides financial assistance to the State of Pennsylvania to expand, collect and analyze data, and maintain and operate the State's PM 2.5 Monitoring Network and to examine the health effect of PM2.5 fine particles. This a cooperative agreement because the activities will require substantial federal involvement in the form of programmatic oversight, and review and comment on all agreement activities and products

CATEGORY OF ASSISTANCE	LEVEL OF EPA INVOLVEMENT	TYPE OF AGREEMENT	ACCEPTABLE JUSTIFICATION
Discretionary Project	Limited	Project Grant	This action is offered as an assistance agreement to enhance the effectiveness of State enforcement and compliance assurance programs by funding State outreach activities to the regulated community. The instrument is a grant because this office does not anticipate substantial involvement with the recipient.
Research Project	Substantial	Cooperative Agreement	The primary purpose of this project is to support the accomplishment of a public purpose in the subject area rather than to acquire property or services for the EPA. Specifically, this project will advance the overall scientific knowledge in the area of green building design focusing on passive cooling in hot and humid climates. The primary audience for the research results is industry, State, Tribal and local governments, non-governmental organizations, community groups and the academic community. The statement of work indicates joint collaboration with EPA and meets the criteria for "substantial involvement". Therefore, a cooperative agreement is appropriate.

CATEGORY OF ASSISTANCE	LEVEL OF EPA INVOLVEMENT	TYPE OF AGREEMENT	ACCEPTABLE JUSTIFICATION
Research Project	Limited	Research Grant	The primary purpose of this project it to support the accomplishment of a public purpose to promote research in the subject area rather than to acquire property or services for the EPA. Specifically, the principal purpose of the research is to improve the general understanding of the circumstances under which economic and other incentives are appropriate tools to achieve environmental quality. The primary audience for the research results is industry, State, Tribal and local governments, non-governmental organizations, community groups and the academic community. EPA will not be substantially involved in this project. Therefore, a grant has been chosen as the appropriate type of assistance.
Study/Investigation	Limited	Project Grant	This grant provides financial assistance to the recipient to conduct a study for a public purpose. The study will examine the impact of water pollution on the Delaware River Basin and make recommendations to the State on actions it can take to address this pollution. There is no direct benefit to EPA. The assistance agreement should be a grant since there will be no substantial involvement by EPA.

CATEGORY OF ASSISTANCE	LEVEL OF EPA INVOLVEMENT	TYPE OF AGREEMENT	ACCEPTABLE JUSTIFICATION
Training	Substantial	Cooperative Agreement	This cooperative agreement will provide financial assistance to the University of ____ to enable it to design and deliver training courses for State and local officials, and members of non-governmental organizations on the heath effects of air pollution. This project furthers the University's educational mission and directly benefits the non-Federal participants in the training courses. EPA will be substantially involved by providing technical assistance in developing the curriculum for the training and Agency personnel may participate in the training as instructors at the University's request. However, the University will select training participants and make the final decisions on curriculum content and instructors. Cooperative agreement funds will not be used to train Federal personnel.
Conference or Workshop	Substantial	Cooperative Agreement	This is an assistance agreement because the conference is designed to meet the needs of a non-Federal audience and the recipient controls the planning for that portion of the agenda that will be funded under the agreement. This is a cooperative agreement because EPA will be substantially involved as a co-sponsor of the conference.

CATEGORY OF ASSISTANCE	LEVEL OF EPA INVOLVEMENT	TYPE OF AGREEMENT	ACCEPTABLE JUSTIFICATION
Co-regulator or Co-implementer	Substantial	Cooperative Agreement	This is an assistance agreement because it will support [name of recipient], an organization comprised of Tribal environmental officials, in facilitating Tribal representation in the development and implementation of policies, guidance and programs for joint EPA and Tribal efforts to assess and cleanup open dumps on Tribal lands. It will also assist Tribal environmental officials in obtaining information and tools the Tribes need to carry out their responsibilities in connection with solving the open dump problem in Indian Country. This is a cooperative agreement because EPA will be substantially involved with the recipient in establishing a dialogue with Tribal officials.

"Authorized by Federal statute..."

The **FGCAA does not** establish the authority for an Agency to enter into an assistance agreement. The authority is found in the Agency's appropriation legislation or in the statutes. EPA must have specific statutory authority to award grants.

EPA has several statutory authorities that allow the Agency to enter into assistance agreements. . The chart below summarizes some of the statutes that authorize EPA to support assistance and lists the eligible applicants. Consult your program for assistance in identifying the appropriate statute.

Grants normally funded under

Implementation - Appropriations

Statutes	Research	Demos	Training	Fellowships	Surveys, Studies, Investigations
Clean Air Act, as Amended, Section 103 (*No profit makers*)	Yes	Yes	Yes	Yes	Yes
Clean Water Act, as Amended, Section 104 (*No profit makers*)	Yes	Yes	Yes	Yes	Yes
Safe Drinking Water Act, as Amended, Section 1442 (*No profit makers*)	Yes	Yes	Yes	Yes	Yes
Toxic Substances Control Act, Section 10 (*Profit makers OK*)	Yes	~~No~~ Yes	~~No~~ Yes	Yes	Yes
Solid Waste Disposal Act, as Amended, Section 8001 (*No profit makers*)	Yes	Yes	Yes	Yes	Yes
Federal Insecticide, Fungicide, and Rodenticide Act, as Amended, Section 20 (*Profit makers OK*)	Yes	Yes	Yes	Yes	Yes
CERCLA (Superfund) Section 311 (*Profit makers OK*)	Yes	Site Limited	Limited	Limited	No

The legislation authorizing the Agency to enter into an assistance agreement stipulates the type of entity that may receive the agreement. For example, in **Section 103(b)(3)** of the **Clean Air Act**, the Administrator is authorized to *"make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, . . ."*. Profit-making organizations are excluded.

Exercise

It is critical to the grants process that Project Officers understand their statutory authority. The below exercise will help you develop the skills to apply statutory authority to grant work-plans.

Statutory Authority

CAA Section 103 authorizes EPA to "conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution." (While not specifically contained in the statute, OGC has determined this authority also allows for projects involving education/training and outreach activities.

Review the following examples of proposed projects to determine if they are consistent with CAA 103 authority.

Case Study 1:

Background: These projects address carbon monoxide, a pollutant in which the Fairbanks North Star Borough (FNSB), has been declared a non-attainment area. Beginning in 1985, the FNSB has utilized the Inspection and Maintenance (I/M) program as the primary CO control strategy. Although levels of CO have been significantly reduced and no violations of the NAAQS have been recorded since November 1999, Fairbanks remains susceptible to further violations due to severe meteorological conditions. Therefore, additional CO control measures are required to ensure future compliance with NAAQS.

Project Elements:

- **Oxygen Sensor Replacement Program**: The FNSB will design and implement a program designed to replace aged O2 sensors on model year 1983 through 1993 light duty vehicles. Parameters utilized to determine target vehicles are based on a study conducted by a research organization during the 2002, 2003 winter time period. O2 sensors will be replaced by I/M certified technicians following an I/M test once the necessary criteria has been met. Authorization for the replacement will occur at the FNSB I/M Administrative Office once computer verification has been performed on the requested vehicle. All I/M test data is transferred to a Vehicle Information Data system once the test is performed. This will allow for immediate verification and tracking of the replacement sensor. Motorists will receive this replacement free of charge.

- **Woodstove Burning Prohibition Program**: The FNSB will design and implement a program designed to eliminate CO contributions within the non-attainment area from woodstove usage in homes that have other primary means of heating. During air quality alerts, days in which the concentrations of CO are forecast to exceed the 9 pm standard, all woodstove use within the non-attainment area would be banned in homes that utilize wood as a secondary source of heat. Funding would be required to establish and maintain a public relations campaign designed to educate the public regarding specifics of this program.

- **Free Bus Service**: The FNSB will implement a program designed to encourage public transportation use. Free bus service during the winter months increases the utilization of public transportation service. This has a direct benefit to our air quality by reducing the number of automobiles driven within the non-attainment area during periods when air quality may be poor.

Case Study 2:

ANCHORAGE AIR QUALITY PROJECTS

$600,000 to maintain and improve computer hardware and software required for the Inspection and Maintenance (I/M) program vehicle tracking system. Maintenance of this system is critical to the assessment and administration of the program over the next four years when Anchorage is most vulnerable to violations of the CO standard.

$500,000 for a study of indoor exposures to CO and volatile organic compounds (VOCs). Previous studies have suggested that attached garages are a significant source of personal exposure to CO and toxic VOCs. This study will help identify ways to reduce exposures through architectural and mechanical modification to houses.

$400,000 for sweepers, dust palliative application equipment and supplies for reducing dust emissions along major roadways in the Municipality of Anchorage.

$200,000 for modifications to the Anchorage air quality monitoring network and the development of a new web-based, real time air quality reporting system. Additional monitoring equipment will be purchased to supplement the existing Municipality of Anchorage monitoring network. System will provide real-time information on levels of carbon monoxide (CO), coarse (PM-10) and fine (PM-2.5) particulate in various representative neighborhoods in Anchorage, Chugiak-Eagle River and Girdwood. Information provided would also provide useful information in developing appropriate public health advisories during volcanic ash fall, windblown glacial dust, and wild fire smoke intrusion events.

$100,000 for ambient monitoring of diesel particulate in areas where citizen complaints have been lodged. We are planning to do some baseline monitoring of PM-2.5 in one area where multiple complaints about diesel have lodged in past winters using another source of funding. If this monitoring indicates a problem, we would like to follow-up with more diesel-specific monitoring (e.g. using polyurethane foam samplers) during the winter of 2005-2005. We believe that these complaints occur under the same winter stagnation conditions that have been associated with our persistent CO problem in Anchorage.

Enhanced Enforcement of PM-10 BMPs and Local Codes

The MOA DHHS anticipates that the municipality will initiate round-the-clock enforcement during periods when violations of the code are likely to occur outside of the normal workday. Funding will cover these costs for the three-year project period

Case Study 3:

ADOPT-A-SCHOOL BUS PROGRAM

EPA is willing to provide grant funds to states/localities interested in participating in the development of an adopt-a-school bus program. The goal for this program is to find a grant recipient to serve as the fundraiser and administrator of an adopt-a-school-bus program designed to retrofit or convert school buses in targeted school districts to more energy-efficient and less polluting alternative fuel sources. Activities will include:

- Develop a Public Service Ad for television
- Development of sponsorship materials, including request for funding support
- Conduct a media event which focuses on the delivery of the first "Green" bus
- Contacting potential donor companies to solicit financial contributions to the program
- Establish a Steering Committee that will develop a strategic plan for pilot and ultimate long-term attainment
- Work with outside groups to provide environmental science curriculum for secondary students in participating schools

Case Study 4:

COMMUNITY-BASED SHARE-A-RIDE PILOT PROGRAM

It is not economically feasible for buses to service outlying areas so residents use their own vehicles to commute into the downtown area. This two-year pilot program will attempt to establish a self-administering local "share-a-ride" carpool program. This program will create a marketing plan and media advertising to build public awareness of the program; travelers/commuters would contact the local newspaper to place classified ads. The recipient will collaborate with the newspaper to provide a new "Share-a-Ride" classification and create a classified ad template. Ads would run for a defined period. Both riders and drivers would be encouraged to run ads. Recipient plans to target approximately 500 connections in the first year. These participants would make the contacts and arrangements between riders and those with vehicles. Additional incentives for larger employers and users of the program, such as a preferred parking in the non-attainment area, will be explored.

Region 2 Unit

GRANTS AND CONTRACTS > CROSS REFERENCE GUIDE FOR FEDERAL ASSISTANCE PROGRAMS

Printer Friendly Page For...

CROSS REFERENCE GUIDE FOR FEDERAL ASSISTANCE PROGRAMS

CFDA Number	Program Title	Statutory Authority
66.001	Air Pollution Control Program Support	Clean Air Act, Section 105
66.009	Air Information Center	Clean Air Act, Section 103 (b)
66.032	State Indoor Radon Grants (SIRG)	Indoor Radon Abatement Act, Section 306; Toxic Substances Control Act, Sections 10(a) as amended by Public Law 106-74
66.033	Ozone Transport	Clean Air Act, Sections 106 and 111
66.034	Surveys, Studies, Investigations, Demonstrations and Special Purpose Activities relating to the Clean Air Act	Clean Air Act, Section 103
66.035	Community Action for a Renewed Environment (CARE) Program	Clean Air Act, Section 103(b)(3); Clean Water Act, Section 104(b)(3); Solid Waste Disposal Act, Section 8001, Toxics Substances Control Act, Section 10 as amended by Public Law 106-74; Federal Insecticide, Fungicide, and Rodenticide Act, Sections 18 and 20; Safe Drinking Water Act, Sections 1442(a) and (c)(A); Marine Protection, Research, and Sanctuaries Act, Section 203
66.110	Healthy Communities Grant Program	Clean Air Act, Section 103(b)(3); Clean Water Act, Section 104(b)(3);Solid Waste Disposal Act, Section 8001;Toxic Substances Control Act, Section 10(a) as amended by Public Law 106-74;Safe Drinking Water Act, Section 1442(a)(b); Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a); National Environmental Education Act, Section 6; Pollution Prevention Act of 1990, Section 6605;
66.305	Compliance Assistance-Support for Services to the Regulated Community and Other Assistance Providers	Clean Water Act, Section 104; Clean Air Act, Section 103; Solid Waste Disposal Act, Section 8001(a)
66.306	Environmental Justice Collaborative Problem-Solving Grants	Clean Water Act, Section 104(b)(3); Safe Drinking Water Act, Section 1442(b)(3); Solid Waste Disposal Act, Section 8001(a); Clean Air Act, Section 103(b)(3); Toxic Substances Control Act, Section 10(a) as amended by Public Law 106-74; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a); Marine Protection, Research, and Sanctuaries Act, Section 203
66.418	Construction Grants for Wastewater Treatment Works	Clean Water Act, Sections 101(e), 109(b), 201-205, 207, 208(d), 210-212, 215-219, 304(d)(3), 313, 319,

		320, 501,502, 511, and 516(b); Public Laws 97-117 and 95-217; Water Quality Act of 1987, Public Law 100-4; Public Law 96-483; and Public Law 101-144
66.419	Water Pollution Control - State and Interstate Program Support (106 Grants)	Clean Water Act, Section 106
66.424	Surveys, Studies, Investigations, Demonstrations and Special Purpose-Section 1442 of the Safe Drinking Water Act	Safe Drinking Water Act, Section 1442
66.432	State Public Water System Supervision	Safe Drinking Water Act, Sections 1443(a) and 1451
66.433	State Underground Water Source Protection	Safe Drinking Water Act, Section 1443(b)
66.435	Clean Lakes Program	
66.436	Surveys, Studies, and Investigation Grants and Cooperative Agreements-Section 104(b)(3) of the Clean Water Act	Clean Water Act, Section 104(b)(3)
66.437	Long Island Sound Program	Clean Water Act, Section 119(d)
66.439	Targeted Watershed Initiative	Consoildated Appropriations, Public Law 108-447
66.454	Water Quality Management Planning	Clean Water Act, Sections 205(j) and 604(b); Water Quality Act
66.456	National Estuary Program	Clean Water Act, Section 320(g)
66.458	Capitalization Grants For Clean Water State Revolving Funds (State Revolving Fund)	Clean Water Act, Sections 205(m), 601-607; Public Law 95-217; Public Law 100-4
66.460	Nonpoint Source Implementation Grants (319 Program)	Clean Water Act, 319(h)
66.461	Regional Wetland Program Development Grants	Clean Water Act, Section 104(b)(3)
66.462	National Wetland Program Development Grants	Clean Water Act, Section 104(b)(3); Public Law 92-500; 33 USC 1254(b)(3)
66.463	Water Quality Cooperative Agreements	Clean Water Act, Section 104(b)(3)
66.464	Near Coastal Waters	
66.465	Wellhead Protection Demonstration Projects	
66.466	Chesapeake Bay Program	Clean Water Act, Section 117
66.467	Wastewater Operator Training Grant Program (Technical Assistance) (Wastewater O&M Onsite Technical Assistance Grants)	Federal Water Pollution Control Act, Section 104(g)(1)
66.468	Capitalization Grants for Drinking Water State Revolving Fund (Drinking Water State Revolving Fund)	Safe Drinking Water Act, Section 130
66.469	Great Lakes Program	Clean Water Act, Sections 104 and 118
66.470	Hardship Grants Program for Rural Communities	
66.471	State Grants To Reimburse Operators of Small Water Systems For Training and Certification Costs	Safe Drinking Water Act, Section 1419(d)

66.472	Beach Monitoring and Notification Program Development Grants	Clean Water Act, Section 406, as amended, Beaches Environmental Assessment and Coastal Health Act of 2000, Public Law 106-284
66.473	Direct Implementation Tribal Cooperative Agreements	EPA Appropriations Act 2002, Public Law 107-73
66.474	Water Protection Coordination Grants to the States	Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, Public Law 107-117; Safe Drinking Water Act, Section 1442(c)(3)(C); Consolidated Appropriations Resolution 2004, Public Law 108-199
66.475	Gulf of Mexico Program	Clean Water Act, Section 104(b)(3)
66.476	Vulnerability Assessments and Related Security Improvements at Large Drinking Water Utilities	Safe Drinking Water Act, Sections 1442(a) and (c), Public Law 107-117
66.477	Vulnerability Assessments and Related Security Improvements at Large Privately-Owned Community Drinking Water Utilities	Safe Drinking Water Act, Sections 1433(a), (b) and (e), as amended by Public Law 107-188
66.478	Water Security Training and Technical Assistance Grant Program	Safe Drinking Water Act, Section 1433, as amended by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188); Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (P.L. 107-117)
66.479	State/Tribal Environmental Outcome Wetland Demonstration Program	Clean Water Act, Section 104(b)(3)
66.480	Assessment and Watershed Protection Program Grants	Clean Water Act, Section 104(b)(3)
66.481	Lake Champlain Basin Program	Clean Water Act, Section 120

66.500	Environmental Protection - Consolidated Research	Clean Air Act, Sections 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 311; Marine Protection, Research, and Sanctuaries Act, Section 203; National Environmental Policy Act, Section 102 (2)(F)
66.508	Senior Environmental Employment Program (SEE)	Environmental Programs Assistance Act of 1984 (42 U.S.C. 4368a)
66.509	Science To Achieve Results (STAR) Program	Clean Air Act, Sections 103 and 104; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 311; Marine Protection, Research , and Sanctuaries Act, Section 203
66.510	Surveys, Studies, Investigations and Special Purpose Grants within the Office of Research and Development	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Marine Protection, Research , and Sanctuaries Act, Section 203
66.511	Office of Research and Development Consolidated Research	Clean Air Act, Sections 103 and 104; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 311; Marine Protection, Research , and Sanctuaries Act, Section 203
66.512	Regional Environmental Monitoring Assessment Program	Clean Water Act, Section 104; Safe Drinking Water Act, Section 1444
66.513	Greater Opportunities: Fellowship Program	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Toxic Substances Control Act, Section 10; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act, Section 311
66.514	Science To Achieve Results (STAR)	Clean Air Act, Section 103; Clean Water Act, Section

	Fellowship Program	104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Toxic Substances Control Act, Section 10; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act, Section 311
66.515	Greater Opportunities: Research Program	Clean Air Act, Sections 103 and 104; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Resource Conservation and Recovery Act of 1976; Safe Drinking Water Act, Section 1442; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act, Section 311; Marine Protection, Research, and Sanctuaries Act, Section 203
66.516	P3 Award: National Student Design Competition for Sustainability	Clean Air Act, Sections 103 and 104; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act, Section 311
66.518	State Senior Environmental Employment Program	Environmental Programs Assistance Act of 1984, Public Law 98-313; 42 USC 4368a
66.600	Environmental Protection Consolidated Grants - Program Support (Consolidated Program Support Grants)	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20 as amended by Public Law 106-74; Safe Drinking Water Act, Section 1442
66.604	Environmental Justice Small Grant Program	Clean Water Act, Section 104(b)(3); Safe Drinking Water Act, Section 1442(b)(3); Solid Waste Disposal Act, Section 8001(a); Clean Air Act, Section 103(b)(3); Toxic Substances Control Act, Section 10(a) as amended by Public Law 106-74; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 311(c) ; Marine Protection, Research, and Sanctuaries Act, Section 203
66.605	Performance Partnership Grants (PPGs)	Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134; 110 Stat. 1321, 1321-299 (1996)) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998 (Public Law 105-65; 111 Stat. 1344, 1373 (1997))
66.606	Surveys, Studies, Investigations and Special Purpose Grants	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Marine Protection,

		Research, and Sanctuaries Act, Section 203; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 311; National Environmental Policy Act, Section 102 (2)(F); Indian Environmental Assistance Program Act
66.607	Training and Fellowships for the Environmental Protection Agency (Training and Fellowship Grants)	Clean Water Act, Section 104(b)(3); Safe Drinking Water Act, Section 1442 (c); Solid Waste Disposal Act, Section 8001; Clean Air Act, Section 103;Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Sections 311(a) and (d) [Superfund Amendments and Reauthorization Act (SARA) of 1986]; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20
66.608	Environmental Information Exchange Network Grant Program	Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies for FY 2003, Public Law 108-7; FY 2004, Public Law 108-199; and FY 2005 Public Law 108-447
66.609	Protection of Children and the Aging as a Fundamental Goal of Public Health and Environmental Protection	Clean Air Act, Section 103(b)(3); Clean Water Act, Section 104(b)(3); Safe Drinking Water Act, Section 1442(b); Toxic Substances Control Act, Section 10(a) as amended by Public Law 106-74; Solid Waste Disposal Act, Section 8001(c)(1); Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Sections 311(a),(b) and (c)
66.610	Surveys, Studies, Investigations and Special Purpose Grants within the Office of the Administrator	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Sections 104(k)(6) and 311; Marine Protection, Research , and Sanctuaries Act, Section 203; National Environmental Policy Act, Section 102(2)(F)
66.611	Environmental Policy and Innovation Grants	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Sections 104(k)(6) and 311
66.651	Sustainable Development Challenge Grants	Clean Air Act, Section 103; Clean Water Act, Section

CFDA deleted		104; Safe Drinking Water Act, Section 1442; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Solid Waste Disposal Act, Section 8001; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Marine Protection, Research , and Sanctuaries Act, Section 203; National Environmental Education Act, Section 6; Pollution Prevention Act of 1990, Section 6605; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Sections 104 and 311
66.700	Consolidated Pesticide Enforcement Cooperative Agreements	Federal Insecticide, Fungicide, and Rodenticide Act, Section 23(a) as amended by Public Law 105-276
66.701	Toxic Substances Compliance Monitoring Cooperative Agreements	Toxic Substances Control Act, Sections 28(a) and 404(g)
66.702	Asbestos Hazard Abatement (Schools) Assistance and Asbestos Abatement State	
66.706	State Asbestos Enhancement Program Grants	
66.707	TSCA Title IV State Lead Grants - Certification of Lead-Based Paint Professionals (State Lead Certification Grants)	Toxic Substances Control Act, Section 404(g)
66.708	Pollution Prevention Grants Program (PPIS)	Pollution Prevention Act of 1990, Section 6605
66.709	Capacity Building Grants and Cooperative Agreements for States and Tribes	Clean Water Act, Section 104(b)(3); Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a); Clean Air Act, Section 103(b)(3); Solid Waste Disposal Act, Section 8001(c)(1); Safe Drinking Water Act, Section 1442(b); Toxic Substances Control Act, Section 10(a) as amended by Public Law 106-74; Marine Protection, Research and Sanctuaries Act, Section 203 Comprehensive Environmental Response, Compensation and Liability Act, Sections 311(a), (b) and (c); National Environmental Policy Act, Section 102(2)(f); Indian Environmental General Assistance Program Act of 1992 (42 U.S.C. 4368b)
66.710 ** CFDA deleted**	Environmental Justice Community/University Partnership Grants Program	Clean Water Act, Section 104(b)(3); Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a); Clean Air Act, Section 103(b)(3); Solid Waste Disposal Act, Section 8001(a); Safe Drinking Water Act, Section 1442(b)(3); Toxic Substances Control Act, Section 10(a) as amended by Public Law 106-74; Marine Protection, Research and Sanctuaries Act, Section 203 Comprehensive Environmental Response, Compensation and Liability Act, Sections 111(c)(10)
66.711 ** CFDA deleted**	Environmental Justice Through Pollution Prevention Grants	Clean Water Act, Section 104(b)(3); Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Clean Air Act, Section 103(b) and (g); Solid Waste Disposal Act, Section 8001(a); Safe Drinking Water Act, Section 1442(b)(3)(c); Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; E.O. 12898 Federal Act Address Environmental Justice
66.713	State and Tribal Grants for Environmental	Clean Water Act, Section 104(b)(3); Federal

CFDA deleted	Justice	Insecticide, Fungicide, and Rodenticide Act, Section 20(a); Clean Air Act, Section 103(b)(3); Solid Waste Disposal Act, Section 8001(a); Safe Drinking Water Act, Section 1442(c)(3); Toxic Substances Control Act, Section 10(a) as amended by Public Law 106-74; Marine Protection, Research and Sanctuaries Act, Section 203 Comprehensive Environmental Response, Compensation and Liability Act, Sections 311(c); Appropriations Act of 1990 (Public Law 101-144)
66.714	Pesticide Environmental Stewardship-Regional Grants (PESP Regional Grants)	Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a)
66.715	Childhood Blood-Lead Screening and Lead Awareness (Educational) Outreach for Indian Tribes (Tribal Lead Grants)	Toxic Substances Control Act, Section 10(a) as amended by Public Law 106-74
66.716	Surveys, Studies, Investigations, Demonstrations, and Educational Outreach	Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20
66.717	Source Reduction Assistance	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Federal Insecticide, Fungicide, and Rodenticide act, Section 20
66.801	Hazardous Waste Management State Program Support	Solid Waste Disposal Act, Sections 3011(a) and (c); Public Law 94-580; 42 USC 6901 et seq.
66.802	Superfund State Site - Specific Cooperative Agreement (Superfund)	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 104 [Superfund Amendments and Reauthorization Act (SARA) of 1986]
66.804	State and Tribal Underground Storage Tanks Program (UST Program)	Solid Waste Disposal Act, Sections 2007(f)(2); Section 204 of the Demonstration Cities and Metropolitan Development Act; Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 1999, Public Law 105-276
66.805	Leaking Underground Storage Tank Trust Fund Program	Solid Waste Disposal Act, Section 9003(h); Section 204 of the Demonstration Cities and Metropolitan Development Act; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999, Public Law 105-276
66.806	Superfund Technical Assistance Grants for Community Groups at National Priority List Sites	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 117(e) [Superfund Amendments and Reauthorization Act (SARA) of 1986]
66.807	Demonstration	
66.808	Solid Waste Management Assistance	Solid Waste Disposal Act, Section 8001; Public Law 94-580, 42 USC 6901 et seq.
66.809	Superfund State and Indian Tribe Core Program Cooperative Agreements	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 104 [Superfund Amendments and Reauthorization Act (SARA) of 1986]

66.810	Chemical Emergency Preparedness and Prevention (CEPP) Technical Assistance Grants Program (CAA 112 and SARA Title III State Grants Program)	Clean Air Act, Sections 103(b)(3) and 112(l)(4); Toxic Substances Control Act, Sections 10(a) and 28(a) and (d), Public Law 106-74
66.811 **CFDA deleted**	Brownfield Pilots Cooperative Agreements	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 104
66.812	Hazardous Waste Management Grant Program for Tribes	Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act, Public Law 105-276
66.813	Alternative or Innovative Treatment Technology Research, Demonstration Training, and Hazardous Substance Research Grants	Comprehensive Environmental Response, Compensation, and Liability Act, Sections 311 (b) and (c)
66.814	Brownfield Training, Research, and Technical Assistance Grants and Cooperative Agreements	Comprehensive Environmental Response, Compensation, and Liability Act, Sections 101(39) and 104(k)(6)
66.815	Brownfield Job Training Cooperative Agreements	Comprehensive Environmental Response, Compensation, and Liability Act, Sections 101(39) and 104(k)(6)
66.816	Headquarter and Regional Underground Storage Tanks Program	Solid Waste Disposal Act, Section 8001; Section 204 of the Demonstration Cities and Metropolitan Development Act
66.817	State and Tribal Response Program Grants	Comprehensive Environmental Response, Compensation, and Liability Act, Section 128(a)
66.818	Brownfields Assessment and Cooperative Agreements	Comprehensive Environmental Response, Compensation, and Liability Act, Sections 101(39) and 104(k)
66.925	State/EPA Data Management Financial Assistance Program	
66.926	Indian Environmental General Assistance Program (General Assistance Program (GAP) for Tribes)	Indian Environmental General Assistance Program Act of 1992, Section 11 (42 U.S.C. 4368b)
66.930	U.S. Mexico Border Grants Program	
66.931	International Financial Assistance Projects	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442(b); Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; Marine Protection, Research , and Sanctuaries Act, Section 203; National Environmental Policy Act, Section 102
66.940	Environmental Policy and State Innovation Grants	Clean Air Act, Section 103; Clean Water Act, Section 104; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442(b); Federal Insecticide, Fungicide, and Rodenticide Act, Section

		20; Toxic Substances Control Act, Section 10 as amended by Public Law 106-74; and Sections 104(k)(6) and 311 of the Comprehensive Environmental, Response, Compensation and Liability Act.
66.950	Environmental Education and Training Program (EETP; Training Program)	National Environmental Education Act, Section 5
66.951	Environmental Education Grants (EEG)	National Environmental Education Act, Section 6

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Conferences

Conferences (*including workshops, symposia, etc.*) bring together various groups to share information, educate the public, work with state and local government partners, train employees, and learn from non-governmental stakeholders. The Agency may decide to help non-Federal entities hold conferences to carry out environmentally related work. As a PO you must be sure to use the right instrument.

Various types of extramural agreements can be used to support a conference. The numerous issues related to conference support are discussed in the **"Best Practices Guide for Conferences,"** located on the EPA Intranet at http://intranet.epa.gov/oamintra/policy/conguide.pdf .

The Guide notes that the first question to answer is "**Whose conference is it?**"

- **Ours,** an EPA conference or one that EPA sponsors with other Federal agencies
- **Theirs,** one held by a non-Federal sponsor that EPA supports with financial assistance
- **Jointly sponsored,** benefiting both the Agency and a non-Federal agency

Once you answer this question, you can decide on which type of extramural agreement to use. As a general rule, an assistance agreement may not be used to support a conference or other services if the principal purpose is to provide advice, recommendations, or other information for EPA's direct use in developing or changing guidance or regulations. For example, an office or laboratory cannot award an assistance agreement to a trade association or consulting firm to arrange and conduct a conference of EPA officials and members of the regulated community if the principal purpose is to enable EPA to obtain the views of the regulated community on a proposed new policy or changes in an existing one. If the office or laboratory needs help in putting on such a conference, it should use a contract to acquire the services.

Refer to the Guide for detailed guidance on these and other issues associated with sponsoring a conference.

Logo Usage

"Best Practices Guide for Conferences" also addresses the common question of logo usage. Chapter three, page 3-4 D states, "Use of the Agency's logo in connection with promotion or sale of non-government produced goods or services is forbidden, (see EPA Order 1015.2A.)

Promotional material for conferences conducted under grants and cooperative agreements may acknowledge that the conference receives financial support from the Agency under an assistance agreement, but cannot use the logo on a conference brochure in a manner that implies that the conference is being conducted by EPA. These conferences should be described as the recipient's event, not EPA's." EPA Order 1015.2A explains when and how the EPA logo can be used. Project Officers should consult with their Office of General Counsel / Office of Regional Counsel, if needed.

Using Congressionally Earmarked Funds

An earmark is a portion of an appropriation that is to be spent on a particular project. It is often referred to as a "line item" with respect to EPA's appropriation Acts or related reports. Agency policy provides that EPA will generally honor directions to make assistance awards for earmarks if it has the statutory authority to award the financial assistance. It is important to note that Earmarks in committee reports do not, in and of themselves, provide the Agency with the statutory authority to award the assistance agreement. Awards made as a result of earmarks are subject to the applicable assistance regulations, OMB cost principles and Agency policies. They must be managed as any other assistance agreement. Agency policy states that EPA "will generally act in accordance with the views expressed in Conference Reports, Appropriation Committees Reports and other documents that reflect legislative history." (RMD, Administrative Control of Appropriated Funds - July 1, 1997) However, earmarks contained only in a Committee's report are not legally binding and do not provide the statutory authority required for award of a financial assistance agreement unless they are incorporated expressly or by reference in the Appropriations Acts. An example is EPA's State and Tribal Assistance Grants (STAG) Appropriation. In FY2000, the Appropriations Act contained the following language, "...$263,500,000 for making grants for the construction of wastewater and water treatment facilities and groundwater protection infrastructure in accordance with the terms and conditions specified for such grants in the report accompanying this Act (H.R. 2684)." Reference to the Committee Report incorporates the earmarks in that report into statute and is thus the Approval Authority for the financial assistance award.

If the Appropriations Act does not provide the statutory authority for the award, EPA must have the authority to make the award in one of its organic statutes. For example, the Committee report states " $500,000 for the development of a water quality monitoring plan for X River Basin." This activity is eligible under the Clean Water Act §104(b)(3). Therefore, EPA has the authority to provide financial assistance for this line item. However, for a line item that reads, "$500,000 to a County for implementation of Best

Management Practices (BMPs) in the X Watershed," EPA does not have the authority to award this financial assistance, since it does not have the authority to provide direct funding to a County to implement BMPs.

If a program office believes it does not have the statutory authority to make an award, it should consult with Counsel. If it is determined that the Agency lacks the authority to award the financial assistance, the Office of the Chief Financial Officer (OCFO) should be contacted, so Congress can be notified.

Building your Assistance File and the Importance of Documentation

The **technical, administrative, and financial files** for each assistance agreement constitute the **Agency's official files.** These are held by the PO, GMD, and the Financial Management Office (FMO) respectively. **As a PO, you are responsible for establishing and maintaining the technical files.** Your file must be complete even though the GMO is responsible for certain elements. The Official EPA Project File List in the Appendix will assist in building your file.

Additional information on EPA's National Records Management Program can be found at http://www.epa.gov/nrmp/. You will find guidance on records management including:

- What is a record
- What every staffer should know
- Policy Schedules

What is a record?

The Agency uses two definitions for records: one defined in the Federal Records Act (FRA) and incorporated into 44 U.S.C. 3301 and one defined in the Freedom of Information Act (*FOIA*). For day-to-day records management, use the FRA definition; for responding to a FOIA request, use the FOIA definition.

The FRA has an intentionally broad definition to ensure that the Federal government has an adequate record of its activities to protect its legal and financial interests and to protect the people directly affected by the activities.

It defines as a record

> *"all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristic, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, and decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them."*

Generally speaking, documentary materials are records when they meet both the following criteria (*Note: While the majority of the documents in the Agency meet the first criterion, many will not meet the second*):

a. They are made or received under Federal law or in connection with the transaction of **Agency** business.

b. They are appropriate for preservation as evidence of **Agency** activities because of the value of the information they contain.

These criteria should be applied to:

- Working files
- Drafts
- Electronic mail messages
- Data and spreadsheet
- Paper documents
- Data from test equipment files
- Computer output
- Results of the computer modeling
- Other "non traditional" records
- Internet and intranet postings

In addressing the second criterion, remember that **Official Agency records include both outputs** (*e.g., memoranda, reports, publications, permits, etc.*) and all of the documentation that supports the decision trail.

You as the PO need to remember that proper documentation is essential. A complete and accurate official grant file will help in:

- Providing an audit trail that documents decisions
- Monitoring the technical and financial progress of the assistance or interagency agreement
- Responding to inquiries from within and outside the Agency concerning the assistance or interagency agreement
- Complying with Federal and Agency record keeping requirements

Competition Order 5700.5A1

The **FGCAA** encourages competition in assistance programs to identify and fund the best possible projects based on merit and cost effectiveness. On September 30, 2002 EPA issued Competition Order 5700.5. This Order establishes EPA's policy for competition in the award of EPA assistance agreements. The Order was revised and reissued on January 1, 2005. EPA policy is that the competitive process be fair and open and that no applicant receives an unfair competitive advantage. Chapters 3 and 4 cover competition in greater detail.

Unsolicited Applications

Unsolicited applications may be received by the agency, and these are exempt from the requirements of EPA Order 5700.5A1, Assistance Competition. However, in order for an application to qualify it must be an unsolicited proposal that is unique or innovative and does not resemble the substance of a pending or contemplated competitive solicitation. An unsolicited proposal is a written application for assistance agreement funding that is not prompted by either an official Agency Request for Applications or Initial Proposal or an explicit or implicit request by an EPA employee that the applicant submit the proposal. The unique or innovative ideas contained in the proposal must come from the applicant rather than EPA. The proposal must include sufficient detail to permit an evaluation regarding the offer's technical merit or program value, accomplishment of a public purpose, and to decide on the merits for funding. No EPA employee may take action to directly or indirectly encourage the submission of unsolicited proposals in order to avoid competition. If a program believes they have an unsolicited proposal that would qualify for non-competition, **the PO should discuss the proposal with the Competition Advocate.**

Catalog of Federal Domestic Assistance (CFDA)

The CFDA is a government-wide compendium of Federal programs, projects, services and activities that provide assistance or benefits to the American public. Each year, EPA Program Offices work with the headquarters grants policy office to update existing CFDA descriptions and provide descriptions for new programs. All competitive solicitations from the EPA will need to reference the appropriate CFDA number.

http://intranet.epa.gov/OGD/cross_reference_guide.htm

Non-Discretionary Grants, Discretionary Grants, and Performance Partnership Grants (PPGs)

Non-Discretionary grants are assistance awards the EPA is mandated to award in compliance with either by Congress or Federal Statute. Discretionary grants are the assistance agreements that EPA awards based on each Program Offices' and Regional Offices' freedom of choice - funds that are not mandated.

PPGs were authorized by Congress in 1996 to allow State and Tribal recipients to combine funds from at least two of seventeen environmental Program grants into a single award, workplan and budget. The regulations governing PPGs can be found at 40 CFR 35, Subparts A and B, (http://www.epa.gov/epahome/cfr40.htm). The primary purpose of a PPG is to permit EPA's partners greater flexibility in addressing their environmental priorities.

A work plan for the PPG is negotiated between the applicant and Regional office, and will cover each program included in the PPG. This work plan will address program requirements prescribed by the National Program Manager. If an applicant proposes a work plan significantly different from national guidance the Regional Administrator must consult with the National Program Manager before approving it.

A PPG differs from a traditional categorical program grant in that applicants and Regional Offices may:

- Negotiate work plans that target Federal and State funds where the States need them in order to address their highest priority environmental and public health problems, while fostering joint EPA/State planning and priority-setting.

- Integrate environmental programs in a common sense way by allowing use of funds for multimedia initiatives, such as children's health protection programs, multimedia inspections, compliance assistance programs, and ecosystem management– all activities that were difficult to fund under EPA's traditional categorical environmental program grants.

- Achieve cost and administrative savings by reducing the amount of grant paperwork and simplifying accounting requirements. Recipients need not account for expenditures in accordance with their original funding sources.

- Strengthen the Federal and State ability to respond to environmental problems.

This flexibility and ability to leverage funds provide a distinct advantage for recipients. While the general process for negotiating and awarding a PPG is similar nationally, Regional organization and processes may differ. Please contact your Regional GMO for specific procedures.

It is important to remember that PPGs are still grants and are therefore subject to all EPA's grant policies and requirements, including Post-Award management.

Conflicts of Interest

Public service is a public trust. Federal employees must avoid circumstances that may result in a conflict of interest or the appearance of a conflict of interest, or any prejudices or biases. To ensure that every citizen can have complete confidence in the integrity of the Federal government, employees must comply with the principles of ethical service in the regulation entitled **"Standards of Ethical Conduct for Employees of the Executive Branch"** published on August 7, 1992, by the Office of Government Ethics (*5 CFR 2635*).

(http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/*reference/rfsoc_99.pdf*)

EPA's supplementing (*40 CFR Part 3*) regulations state that EPA employees may not take actions which would create the appearance of:

- Using a public office for private gain
- Giving preferential treatment to any organization or person
- Losing independence or impartiality of action

The EPA has Deputy Ethics Officials (DEO) who are able to help you with ethics and conflict of interest questions. Each Regional Office has two persons designated as DEO - the Regional Counsel and either the Regional Administrator or the Deputy Regional Administrator.

In Headquarters, the DEO's are generally the Office Directors and Deputy Assistant Administrators. In the EPA Laboratories, the DEO's are the Lab or Division Directors. Disciplinary action for violating governmental ethics rules will not be taken against an employee who has engaged in conduct based on advice of an EPA ethics official, provided that employee has made full disclosure of all relevant circumstances.

Hierarchy of Laws Governing Assistant Agreements

As a Project Officer knowing both the hierarchy of and the different governing laws and regulations that apply to assistant agreements are important. Hierarchy means, if there is a conflict between two or more documents, those documents that have the full force and effect of law take precedence over those that do not. The hierarchy is as follows:

- Statutes
- Executive Orders
- Federal Regulations
- OMB Circulars (Implemented through the regulations)
- EPA Orders & Policies
- EPA Guidance

Federal Statutes form the legal basis for all EPA assistance programs and may establish administrative requirements for specific programs. Without a legal statute EPA would not have the authority to award funds. Each Project Officer is responsible for knowing the statutes which apply to their assistance programs. For example if you were part of the Indoor Air Division you would need to be familiar with Clean Air Act, Section 103 (b)(3) which is your discretionary grant making authority.

Executive Orders are requirements issued and signed by the President of the United States. They pertain to the business of Federal agencies and hold the full force and effect of law. In other words, EPA and our recipients must

follow the requirements in an Executive Order. Some examples of Executive Orders are:

1. Socio-Economics Activities: Executive Orders 11625 "National Minority Business Enterprise Program", 12138 "National Women's Business Enterprise Policy", and 12432 "Minority Business Enterprise Development"

2. Executive Order 13101: Greening the Government through Waste Prevention, Recycling, and Federal Acquisition

RECYCLING TERM AND CONDITION

ALL RECIPIENTS:

In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

STATE AND LOCAL INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND NON-PROFIT ORGANIZATIONS:

Pursuant to 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

EPA's **Code of Federal Regulations** is 40 CFR. Our regulations are derived through **OMB Circulars**. OMB Circulars are binding to Federal agencies but do not hold the full force and effect of law on the recipient. In other words, the OMB circulars are made enforceable on the recipient because there are referenced in our Code of Federal Regulations.

OMB has three types of circulars that apply to assistance awards: administrative, cost, and audit. Administrative circulars provide the requirements for managing pre-award, award, and post-award phase. Cost Principles establish the requirements for determining whether assistance agreement costs are allowable or unallowable. The Single Audit circular provides policy guidance to Federal agencies for establishing uniform requirements for audits.

Below is a table which indicates the correct EPA 40 CFR reference with the corresponding implemented OMB circular/regulation.

EPA Regulation	40 CFR Part 30	40 CFR Part 30	40 CFR Part 31 & 35
OMB - Administrative Circular	2 CFR Part 215 (A-110)	2 CFR Part 215 (A-110)	A-102
OMB – Cost Principles	2 CFR Part 215 and 220	2 CFR Part 230	2 CFR Part 225
OMB Audit	A-133	A-133	A-133

EPA Orders and Policies are agency requirements issued by EPA Headquarters. Regions may also issue regional policies and guidance consistent with Headquarters policies and guidance issued by EPA's National Program Managers (NPM). Regions may also issue guidance to implement EPA Orders, policies or guidance. Some examples of major EPA orders are:

1. Acquisition vs. Assistance – EPA Order 5700.1

2. Grants Competition Order – EPA Order 5700.5A1

3. Compliance, Review and Monitoring – EPA Order 5700.6A1

An example of an EPA Policy is: Disadvantaged Business Enterprises – implements statutory, executive order, and regulatory requirements for the DBE program

Finally, **EPA** issues **guidance** in correlation with EPA Orders and Policies. For example, EPA Order 5700.7 on Environmental Results has several corresponding guidance documents explaining how to implement the Order.

Statutory Authority verses Delegation of Authority

An Agency must have specific statutory authority for funding various programs. Statutory authorities to approve assistance agreements are assigned to EPA's Administrator and implemented through delegation to the Regional Administrators, National Program Managers or their delegates. Delegation of authority is the official directive to senior Headquarters and Regional management officials to exercise authority for the Administrator. The Agency's Delegation Manual identifies each delegation of authority by a specific number. EPA's Organization and Management Consulting Services records all delegations of authority, except emergency/letter delegations, in the Delegation Manual and distributes them to Regional and Headquarters offices. A copy of the Delegation Manual can be found at:

http://intranet.epa.gov/rmpolicy/direct.htm

Confidential Business Information

Program offices should inform potential applicants (in the guidance or other information they send out about the program), that, if an applicant wants to claim some information as Confidential Business Information (CBI), they must mark the information as CBI or similar claim of confidentially in the application. The Office of General Counsel/ Office of Regional Counsel then decides whether a CBI claim is valid.

If the recipient claims information is CBI, EPA cannot release that information under the Freedom of Information Act. If EPA does not ask the applicant to identify CBI in its application, and there is a FOIA request, the EPA will have to go back to the recipient and ask them to identify any CBI.

POs must make sure any information they furnish the public is consistent with program objectives and guidance, as well as releasable under the Freedom of Information Act (FOIA). If you have any questions whether or not information is releasable under FOIA, contact the Office of General Counsel/ Office of Regional Counsel, or your local FOIA Officer.

Lobbying and Litigation/ Eligible Non-Profits

A number of statutes and OMB Circulars prohibit recipients from using assistance funds for lobbying or for suing the United States. These authorities include:

- The Lobbying Disclosure Act of 1995, which prohibits awards to 501(c)(4) organizations that engage in lobbying;

- 31 U.S.C. 1352 (known as the Byrd Amendment), which prohibits recipients from using appropriated funds to lobby with regard to the award or amendment of a grant or cooperative agreement;

- OMB Circulars A-21 and A-122, which prohibit non-profit and educational organizations from using Federal grant funds to engage in various forms of lobbying activities, including grassroots lobbying and electioneering.

- EPA's Appropriations Acts, which require a certification by the chief executive officer of any entity receiving funds. The certification states, that no grant funds "...have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law."

- OMB Circulars A-87, A-21 and A-122, which prohibit Federal grant recipients from using grant funds for litigation against the United States.

- EPA includes special conditions in all of its assistance agreements to enforce these restrictions. In addition, during administrative on-site reviews of grantees, EPA conducts transaction testing of grantee expenditures to identify any unallowable lobbying or litigation costs.

- Project Officers should notify their respective Award Official immediately if they believe that a recipient has used, or may have used, assistance funds for prohibited lobbying/litigation activities.

The 3 most common non-profit IRS codes...

Section of 1986 Code	Description of Organization	General Nature of Activities
501 (c) (3)	Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster Certain National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organization NGO	Activities of nature implied by description of class of organization
501 (c) (6)	Business Leagues, Chambers of Commerce, Real Estate Boards, etc. Grass. Trade	Improvement of business conditions of one or more lines of business
501 (c) (4)	Civil Leagues, Social Welfare, Organizations, and Local	Promotion of community welfare; Charitable,

lobby

Survey Right

	Associations of Employees	educational or recreational

★ **The Lobbying Disclosure Act of 1995 provides that organizations described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engage in lobbying activities are not eligible to receive Federal grants, cooperative agreements or loans.**

Environmental Review / Environmental Impact Statements

The National Environmental Policy Act (NEPA) requires Federal agencies to prepare a detailed Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment. EISs are not required if an agency : 1) issues a Finding of No Significant Impact (FNSI) that is based on an environmental assessment; or 2) concludes that a project falls within categories of actions that have been determined not to have significant impacts (categorical exclusions).

Many EPA grant programs are not subject to the EIS requirement because of statutory exemptions. However, as outlined in EPA's NEPA regulations at 40 C.F.R. Part 6, EPA does conduct an environmental review of environmental research assistance agreements. As part of this review, the ORD project officer completes **EPA Form 5300-23** to assist higher level officials, usually the authorized decision official, in determining the appropriateness of a categorical exclusion/ FNSI or the need for an EIS. The recipient's principal investigator may help the project officer in obtaining documentation for the review. EPA also conducts environmental reviews of Congressional earmark grants for wastewater treatment infrastructure to determine whether an EIS is necessary. Project officers should address questions regarding the applicability of NEPA and related environmental laws, such as the Endangered Species Act or the National Historic Preservation Act, to the Office of General Counsel/Regional Counsel.

http://intranet.epa.gov/OGD/policy/4.0-Funding-FP16.htm

Research/Development and Federal Demonstration Partnership (FDP) Awards

"Research" is defined as a systematic study directed toward fuller technical knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other

research and development activities and where such activities are not included in the instruction function. (40 CFR Part 30.2 (dd))

The Federal Demonstration Partnership (FDP) is an association of Federal agencies, academic research institutions with administrative, faculty and technical representation, and research policy organizations that work to streamline the administration of Federally sponsored research. FDP's are awarded through the Office of Research and Development's National Center for Environmental Research (NCER) only. If the assistance recipient has grants from other programs, the FDP terms and conditions do not apply to the other programs' assistance agreements, only the NCER assistance.

SUMMARY

At the beginning of the chapter, we identified several objectives you would accomplish after reading the chapter. The objectives are listed below, each followed by a brief summary of the key points the chapter covered.

1. Understand the principle of acquisition vs. assistance and grant vs. cooperative agreement as derived from the Federal Grant and Cooperative Agreement Act of 1977. The FGCAA provides the basic definitions for acquisition and assistance. Remember that acquisition is appropriate when the principal purpose is to provide services to the government. Assistance is appropriate when the principal purpose of the project is to provide state and local governments and other recipients the ability to accomplish works for public purpose.

2. Understand the importance of beginning to build your assistance file now and the importance of documentation. Documentation is key to a complete official file! The Project Officer has the responsibility to maintain an assistance file on every award which includes: working files, drafts, electronic mail messages, data and spreadsheets, paper documents, data from test equipment files, computer output, results of computer modeling, other "non traditional" records, internet and intranet postings.

3. Know how the Competition Order applies to project officers and be able to identify the difference between solicited and unsolicited applications. The Order establishes EPA's policy for competition in the award of EPA assistance agreements. EPA policy is that the competitive process be fair and open and that no applicant receive an unfair competitive advantage. The order does provide the ability for recipients to submit unsolicited applications. However, if you as a Project Office receive an unsolicited application you must first make sure that it does not currently fit under an ongoing competition.

4. Describe the relationship between the Catalog of Federal Domestic Assistance and the Competition Order. The CFDA is a government-wide compendium of Federal programs, projects, services and activities that provide assistance or benefits to the American public. All competitive solicitations from the EPA will need to have a CFDA number.

5. Be able to identify the difference between a Performance Partnership Grant (PPG), a discretionary grant and a non-discretionary grant. Non-Discretionary grants are assistance awards that the EPA is mandated to comply with either by Congress or Federal Statute. Discretionary grants those awards that EPA awards based on each Program and Regional Offices' freedom of choice. PPG's are awards that allow states and tribes to combine funds from at least two of seventeen environmental program grants into a single award, work plan and budget.

6. Identify ethics concerns and conflicts of interest. Federal employees must avoid circumstances that may result in a conflict of interest or the appearance of a conflict of interest, or any prejudices or biases. If you have ethics or possible conflict of interest concerns contact your Deputy Ethics Official.

7. Understand how the "Best Guide for Conferences" will help when funding an assistance agreement with a conference included in the scope of work. The Agency may decide to help non-Federal entities hold conferences to carry out environmentally related work. If this occurs one of the first steps will be to decide whose conference it is – theirs, ours, or joint. As a general rule, an assistance agreement may not be used to support a conference or other service if the principal purpose is to provide advice, recommendations, or other information for EPA's direct use in developing or changing guidance or regulations. Refer to the Guide for detailed guidance on these and other issues associated with sponsoring a conference.

8. Identify and know the hierarchy of the different laws and regulations governing assistance awards. The hierarchy is: Federal Statutes, Executive Orders, Federal Regulations, OMB Circulars/Regulations (implemented through Federal Regulations), EPA Orders and Polices, and EPA Guidance.

9. Identify and differentiate between statutory authority and delegation of authority. *Statutory authority* is EPA's legal basis for funding various programs. Statutory authorities to approve assistance agreements are assigned to EPA's Administrator and implemented through delegation to the Regional Administrators, National Program Managers or

their delegates. *Delegation of authority* is the official directive to senior Headquarters and Regional management officials to exercise authority for the Administrator.

10. Become aware of the rules involving Lobbying and Litigation by grantees. A number of statutes and OMB Circulars prohibit recipients from using grant funds for lobbying or for suing the United States. Project Officers should notify their respective Award Official immediately if they believe that a recipient has used, or may have used, assistance funds for prohibited lobbying/litigation activities.

11. Understand the difference between a survey, study and investigation and a research assistance agreement including Federal Demonstration Partnership (FDP) agreements through NCER. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. FDPs are awarded out of NCER and allow academic research institutions with administrative, faculty and technical representation, and research policy organizations the ability to streamline the administration of federally sponsored research.

12. Identify needs for environmental review/environmental impact statements. To ensure compliance with NEPA, each extramural research project supported under an assistance or interagency agreement must be reviewed using **EPA Form 5300-23.** This form and supporting documentation will institute the environmental assessment (EA) and finding of no significant impact (FNSI).

QUESTIONS

1. What is the definition of assistance, and where is it found?
2. Are electronic mail messages considered part of the official file?
3. What is the Catalog of Federal Domestic Assistance
4. Can a non-profit entity participate in Performance Partnership Grants?
5. Who should you contact if you have a question about conflicts of interest?
6. Are recipients allowed to use the EPA logo on their conference material?
7. Does every award need to have a statutory authority?
8. If you are funding a survey under a cooperative agreement would information collection requirements apply?
9. When do you need an environmental review/environmental impact statement?
10. Are recipients permitted to lobby Congress with Federal funding?

11. Are all programs able to participate in the Federal Demonstration Partnership program?
12. Why is it important to know the hierarchy?
13. Why should a Project Officer know which parts of the regulations apply to their recipient?

HIERARCHY OF REQUIREMENTS PART 31 EXERCISE

40 CFR Part 31, establishes the requirements for awarding and managing all grants and cooperative agreements with State, Local and Indian Tribal Governments. In this exercise you will look through your copy of Part 31 to find the answers to the following questions, referencing the section(s) where the answer is located.

☞ Example: What section of Part 31 list the requirements a recipient's financial management system must have in place? Answer: 31.20(b)(1-7)

1. Who is responsible for approving the following revisions to a recipient's budget and program plan?
   - Change in key personnel
   - Additional funding
   - Change in the scope or the objective of the project

2. How long is a recipient required to retain all records pertinent to an award?

3. Who holds the title to equipment acquired by a recipient with Federal funds?

4. Part 31 lists revisions to the budget and program plans recipients are allowed to make without prior federal approval. Where in Part 31 is this found and what are the three examples listed?

5. How often is a recipient required to submit progress reports?

6. What section in Part 31 explains the payment methods available to the recipient?

7. Can a recipient copyright a work product developed at government expense (intangible property)?

8. What procurement records must a recipient maintain at a minimum?

9. What section of Part 31 lists the five conditions under which EPA can review a recipient's procurement process?

10. What section of Part 31 covers what's required after the completion of an award?

HIERARCHY OF REQUIREMENTS PART 30 EXERCISE

40 CFR Part 30, **revised February 15, 1996**, establishes the requirements for awarding and managing all grants and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations. In this exercise you will look through your copy of Part 30 to find the answers to the following questions, referencing the section(s) where the answer is located.

☞ Example: What section of Part 30 list the requirements a recipient's financial management system must have in place? Answer: 30.21(b)(1-7)

1. Who is responsible for approving the following revisions to a recipient's budget and program plan?
   - Change in key personnel
   - Additional funding
   - Change in the scope or the objective of the project

2. How long is a recipient required to retain all records pertinent to an award?

3. Who holds the title to equipment acquired by a recipient with Federal funds?

4. Part 30 lists revisions to the budget and program plans recipients are allowed to make without prior federal approval. Where in Part 30 is this found and what are the three examples listed?

5. How often is a recipient required to submit progress reports?

6. What section in Part 30 explains the payment methods available to the recipient?

7. Can a recipient copyright a work product developed at government expense (intangible property)?

8. What procurement records must a recipient maintain at a minimum? p 34 30 44 p31

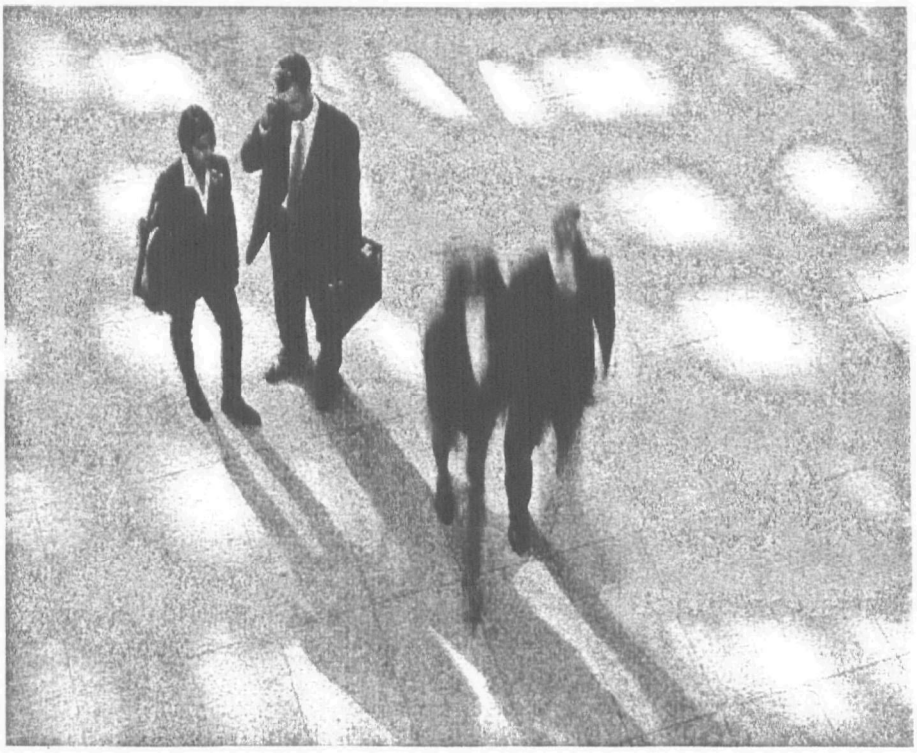
9. What section of Part 30 lists the five conditions under which EPA can review a recipient's procurement process? 30 46 (e)

10. What section of Part 30 covers what's required after the completion of an award?

OPTIONAL EXERCISE #1

The recipient indicates that they are having a conference. They plan on advertising for the conference on their web site, with a mailings, and flyers. They send you a draft copy of the flyer for your information and you see that the recipient is using the EPA logo. Is this allowable? If so are there limits to EPA logo usage and what are they? If unallowable how would you the PO handle the situation?

CHAPTER 3
PRE-APPLICATION



Chapter 3
Pre-Application

Managing Your Financial Assistance Agreements
Project Officer's Manual
Sixth Edition, January 2006

CHAPTER 3:
PRE-APPLICATION

OBJECTIVES

1. Develop a basic understanding of the competition process and where to go to get help in interpreting EPA Order 5700.5A1 on Assistance Agreement Competition.
2. Understand the different types of pre-application assistance that can be provided to applicants in both competitive and non-competitive/unsolicited situations.
3. Understand the basic components of a competitive announcement.

This section provides general guidance for preparing and developing announcements and conducting competitions. Questions about EPA Order 5700.5A1 on Assistance Competition should be referred to your Junior Resource Official (JRO), Office of General Counsel/Office of Regional Counsel (OGC/ORGC) attorneys or the Competition Advocate located in the Office of Assistance agreement and Debarment.

http://intranet.epa.gov/ogd/compet/order.htm

SUMMARY OF EPA ASSISTANT AGREEMENT COMPETITION PROCESS

EPA Order 5700.5A1, Policy for Competition in Assistance Agreements, which became effective on January 15, 2005, establishes EPA policy for competition in the award of EPA assistance agreements subject to the policy. The competition process is conducted in compliance with the requirements of the Order and implementing guidance. The Order replaces the original competition policy which went into effect on October 4, 2002. A summary of the assistance agreement competition process is set forth below.

1. Competition planning: Program offices are encouraged to begin the assistance agreement competition process by establishing a competition schedule for the announcement, competition, and award of assistance agreement. During the planning process, program offices should also determine the method of competition that will be used (simplified or open), develop the evaluation criteria against which proposals will be evaluated, and address other issues that may affect the competition (e.g., eligibility).

2. Preparation of the announcement: All competitive announcements must be prepared, structured, and organized in accordance with the OMB required format for competitive announcements. This ensures government-wide consistency on the

format and content of announcements for funding opportunities. The OMB format can be accessed through the Assistance agreement Competition Intranet site.

http://intranet.epa.gov/ogd/compet/

3. Posting of the announcement: Competitive announcements are typically posted on publicly available agency program office websites. In some cases, if required, they are published in the Federal Register.

4. Synopsis of announcement on grants.gov: A synopsis of the competitive announcement is posted on grants.gov as required by OMB. Grants.gov is the website designated by OMB for the posting of synopses of competitive funding opportunities. The purpose of the synopsis is to provide potential applicants with sufficient information to enable them to decide whether they are interested in viewing the full announcement and competing for the funding opportunity. All Federal agencies are required to post synopses of announcements at fedassistance agreement.gov. The synopsis is posted with URL links through which the full announcement can be obtained.

5. Submission of applications/proposals: Applicants submit applications/proposals to EPA in accordance with the terms, conditions, and requirements set forth in the announcement. As of October 1, 2005 all announcements must have available the option for electronic submission of applications to EPA.

6. Evaluation of applications/proposals. Applications/proposals are reviewed and evaluated in accordance with the terms, conditions, criteria, and ranking factors set forth in the announcement. Program offices are responsible for conducting the evaluations. The evaluation process must be designed to result in a fair and objective review of the applications/proposals in accordance with the stated criteria in the announcement.

7. Ranking/Recommendation Lists: The evaluation process generally results in the development of a ranking/recommended list of the applicants by the program offices.

8. Selection: Generally, an approval official from the program office reviews the ranking/recommended list and determines which applicants to recommend for award. The recommendation is made in the funding recommendation sent to the award official.

9. Award: The award official reviews the funding recommendation, resolves any issues affecting the award, and then issues an award agreement to the applicant.

10. Disputes: Unsuccessful applicants may question an award decision by filing a dispute with a Grants Competition Dispute Decision Official. Disputes are resolved in accordance with Appendix A of the Order.

11. Amendments: EPA's assistance agreement competition policy sets forth the requirements governing the competition of amendments to grant awards.

The Announcement

The purpose of the announcement is to communicate EPA's interests and priorities to potential applicants. The PO develops and administers an announcement by:

- Advertising the opportunity to apply for assistance
- Preparing the announcement
- Amending announcements

➲ Some program offices have support staffs who are involved with the announcement process, so in this chapter use of the term "PO" applies to the Project Officer or support staff.

The announcement process typically consists of seven steps.

1. Plan What Is To Be Accomplished

Planning consists of deciding:

- If funds are available
- What type of extramural vehicle should be used
- If requirement is subject to the Competition Policy

Your office may require an Announcement Plan describing the key elements of the process, including such things as how to:

- Obtain approval
- Advertise
- Conduct reviews

Consult the appropriate officials in your office early in the process to see if an Announcement Plan is required or recommended.

See Chapter 2 for details on selecting the appropriate extramural vehicle.

2. Decide on the Key Elements to Address

Below is a summary of OMB's Standard Format for Agency Announcements of Funding Opportunities. This is the required format for all competitive announcements. All competitive assistance announcements must be structured and organized in conformance with the OMB required format. This includes announcements or notices of competitive opportunities that are published in the FEDERAL REGISTER. Please consult the OMB Federal register notice for more detailed information.

Office of Federal Financial Management: Policy Directive on Financial Assistance Program Announcements; Standard Data Elements and Government-Wide Guidance for Electronically Posting Synopses at Assistance agreement.gov FIND; Notices (June 23, 2003) (193k)

OVERVIEW INFORMATION

A. Required Overview Content

1. Federal Agency Name(s), including name of funding sponsor
2. Funding Opportunity Title
3. Announcement Type (e.g., initial announcement or modification of a previous announcement)
4. Funding Opportunity Number
5. Catalog of Federal Domestic Assistance (CFDA) Number(s)
6. Dates (include all dates that applicants will need to know)

B. Optional, Additional Overview Content

1. Present optional info in a sequential order that parallels the full text format
2. Examples of optional info include
   a. Concise description of funding opportunity
   b. Total amount to be awarded
   c. Anticipated amounts and/or number of individual awards
   d. Types of instruments that may be awarded
   e. Who is eligible to apply?
   f. Whether cost sharing is required
   g. Any limitations of the number of applications that each applicant may submit
   h. Where one can get application materials

C. Method of Presentation

1. Executive summary (must appear before the full text)
2. Cover and/or inside cover

3. Federal Register format (must display the required overview information in a single location preceding the full text of the announcement)

FULL TEXT OF ANNOUNCEMENT

I. Funding Opportunity Description – Required

(Full programmatic description of the funding opportunity; also indicate if the grant relates to geospatial information or activities)

II. Award Information – Required

A. Must indicate type of instrument to be awarded. Grant or Cooperative Agreement

B. Must include estimate total amount of funding expected to be awarded under the announcement

C. Must include a statement either here or in section III that EPA reserves the right to reject all applications/proposals and make no awards

III. Eligibility Information

A. Eligible Applicants – Required

B. Cost Sharing or Matching – Required

C. Other Eligibility Criteria – Required, if applicable

D. Include all threshold eligibility criteria and the consequences of not meeting them

IV. Application and Submission Information

A. Address to Request Application Package – Required

B. Content and Form of Application Submission – Required

C. Submission Dates and Times – Required

D. Intergovernmental Review – Required, if applicable

E. Funding Restrictions – Required

F. Other Submission Requirements – Required

G. Information on how late proposals will be handled

V. Application Review Information

A. Evaluation criteria – Required; include any criteria required by law, regulation, or policy (e.g. environmental results, pre-award, programmatic capacity)

B. Weights of criteria if they vary in importance

C. If there are specific sub-factors under a criterion say so and give weights to them

D. Other selection factors (e.g. programmatic considerations)

E. Describe Review and Selection Process

F. Anticipated Announcement and Award Dates – Optional

VI. **Award Administration Information**
   A. Award Notices – Required
   B. Administrative and National Policy Requirements – Required
   C. Reporting – Required
   D. Disputes procedures

VII. **Agency Contact(s)**

VIII. **Other Information – Optional**
   (Any additional information that will assist a potential applicant)

Additionally, under Section 9 of the Pre-award Order, competitive announcements issued on or after March 31, 2005 under which non-profit applicants may compete must:

1. Include a programmatic capability ranking factor(s) in Section V of the announcement for evaluating applicants (non-profits and other than non-profit applicants). Section 7 of the Order describes the elements of programmatic capability to be evaluated under the announcement and Section 9.b addresses how the programmatic capability ranking factor should be used in RFIPs and RFAs.
2. Require applicants to submit information relating to their programmatic capability-see 9b and 9c of the Order.
3. Include a statement in Section IV that in evaluating an applicant for programmatic capability purposes, EPA will consider information provided by the applicant in the application/proposal and may consider information from other sources including agency files.
4. Include a statement in Section VI that non-profit applicants that are recommended for funding will be subject to pre-award administrative capability reviews consistent with paragraphs 8.b, 8.c, and 9.d of EPA Order 5700.8.

Please ensure that the following language is included in section IV or VIII of competitive announcements.

In accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate confidentiality claims in accordance with 40 CFR Part 2. Applicants must clearly mark applications/proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c) (2) prior to disclosure.

Some questions have been raised regarding the disputes language that must be included in Section VI of announcements. This is the language we recommended with a link to the procedures.

" Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in 70 FR (Federal Register) 3629, 3630 (January 26, 2005) which can be found at http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-1371.htm. Copies of these procedures may also be requested by contacting.....at..."

The question is who should be identified as the contact point if someone wants to request a copy of the procedures. The Competition Advocates suggestion would be that the same person who is identified as the contact point for questions related to the announcement in Section VII be the person identified above to request a copy of the procedures from.

3. Outline the Evaluation Process

The process of evaluating proposals consists of several reviews: review of threshold eligibility factors, review of ranking factors and review of any other stated criteria. These reviews are discussed in Chapter 4. When your office requires a review plan, it should be developed simultaneously with the announcement because the announcement will include a description of the review process, including the criteria that will be used to evaluate the applications.

4. Write the Announcement

A well-written announcement clarifies what will be funded and what is expected from the applicant. The PO, with support from technical and administrative staff, generally writes it. The competition website has a template of the standard format.

http://intranet.epa.gov/ogd/compet/guidance.htm

5. Obtain Approvals

Your office may have specific approval requirements that you must obtain prior to issuing an announcement. For example, ORD "Policy and Procedures Manual" requires that their Extramural Management Specialists review the elements included in a RFA.

Policy on the Review and Announcement of Discretionary Grants

On April 5, 2005, the Administrator issued a new policy on the review and announcement of discretionary grants. The policy establishes a certification process for certain discretionary grant programs and a new system for announcing grant awards.

Certification Process for Discretionary Grant Programs

Attachment 2 of the Order is a list of grant programs subject to the certification process. OGD will update this list as necessary to reflect new programs published in the Catalog of Federal Domestic Assistance. Excluded from the list are State programs awarded on the basis of an allocation formula prescribed by statute, regulation or legally-binding program guidance, related Tribal programs, and a number of other programs that did not implicate the areas of concern described in the policy. The Policy does not exclude Congressionally-directed programs (e.g., the Great Lakes program), since the Agency retains considerable discretion under these programs to decide who will receive grants and/or to negotiate and approve grant workplans.

For the grant programs covered by the new policy, certifications will be required for two categories of actions. The first category is all non-competitive awards and out-of-scope monetary increase amendments based on funding recommendations/packages submitted to a Grants Management Office on or after April 30, 2005, except for awards/amendments for specific Congressional earmark projects to identified recipients (e.g., an earmarked grant to a particular community for construction of a wastewater treatment plant). The second category is all competitive funding announcements issued on or after April 30, 2005. Attachments 3 and 4 contain certification procedures and sample certifications for these actions.

The policy presumes that ordinarily the Assistant Administrator or Regional Administrator will provide the necessary certifications. While they may delegate this responsibility to the Deputy Assistant Administrator or Deputy Regional Administrator level, they will be accountable for the certifications submitted by the office.

If you have any questions on the implementation of the certification requirements, please contact the Competition Advocate.

http://intranet.epa.gov/ogd/interm/cfdaguidance.htm

Attachments to the Policy

- Attachment 1: Review and Announcement of Discretionary Grants (pdf 69kb)
- Attachment 2: Discretionary Grant Programs Subject to Internal Review (pdf 9kb)
- Attachment 3: Non-Competitive Certifications Final
- Attachment 4: Competitive Announcement Certifications Final
- Attachment 5: Grant Activity Report Format Final (two formats)
    - WordPerfect
    - Acrobat (Form Fillable) (pdf 18kb)

In addition, the competition order requires that certain announcements be reviewed by the Grants Competition Advocate and OGC/ORC before issuance.

6. Advertise the RFA

Various ways to advertise the RFA are discussed in Section 7 of this chapter.

Synopses of EPA competitive grant announcements are posted at:

www.grants.gov

Generally, announcements must stay open for at least 45 days from the date they are made available unless there is a compelling reason that justifies a shorter period which requires the approval of the Grants Competition Advocate. Announcements are usually posted on Agency websites or in the FEDERAL REGISTER. The grants synopsis contains a link to the full announcement. The PO decides on the most effective additional ways to reach potential applicants interested in and capable of submitting proposals.

http://intranet.epa.gov/ogd/compet/

7. Prepare for Screening and Log-In of Proposals

This screening and log-in step is part of the administrative review discussed in Chapter 4. The PO establishes the process before issuing the announcement to avoid confusion when the applications arrive.

APPLICATIONS

When developing an announcement, the PO decides whether to issue a request for initial proposals (RFIP) or a request for full applications (RFA). However, it is

mandatory that the RFIP or RFA be synopsized and posted on grants.gov. These are described in Section V of the competition order.

While EPA has no policy on when to use a RFIP or RFA, your local office or division may.

The following guidelines may help in the decision:

RFIPs are useful in situations when you:

- ➤ Want to screen projects for relevant project/research objectives
- ➤ Want to reduce paperwork
- ➤ Anticipate a large response to a announcement
- ➤ Want to let applicants assemble the application quickly and for little money

But, RFIPs may not be useful because they:

- ➤ Can add time to the competition process
- ➤ May not show reviewers which applications have the most merit
- ➤ May have to go through the same review process as full applications. You might need two reviews for the same announcement.
- ➤ May add to the cost for both the selected applicants and EPA since the applicant goes through the writing process twice and EPA goes through the review process twice.

ANNOUNCING THE RFA

To reach the widest possible audience, the program can publicize the announcement by using one or more of the following in addition to posting the announcement on the program office website or in the FEDERAL REGISTER (if required) and synopsizing the announcement on fedassistance agreement.gov:

➤Publishing in scientific and research journals*

➤Sending the announcement to organizations that might be interested. Direct it to the attention of the principal investigator or specific department.

*Since the FR, scientific journals, and some Internet sites require payment, you must get prior approval for a Purchase Order or Bankcard Purchase. Otherwise you may have to process an unauthorized procurement request or pay for the advertising yourself.

To ensure fairness, you should establish an issue date and wait until that date before issuing the RFA to anyone.

COMMUNICATING WITH POTENTIAL APPLICANTS PREAPPLICATION ASSISTANCE

EPA officials must deal with all potential applicants on an equal basis.

Pre-application assistance avoids delays caused by submission of incomplete or ineligible applications; helps determine eligibility early in the competitive process; helps determine how well the project fits program guidance and objectives; discourages inappropriate proposals; and helps prevent the need to rework inappropriately or incorrectly prepared applications.

If provided, program and regional offices must make the opportunity for pre-application assistance available on an equal basis to all potential applicants. Information and assistance may not be provided to a particular applicant or interested person, unless the opportunity to obtain such information and assistance is available to all parties. All potential applicants must be informed of the opportunity for pre-application assistance in the announcement, and program offices must describe how the assistance will be provided. When informing applicants of the availability of pre-application assistance, program and regional offices must ensure that applicants understand that they are responsible for the content of their applications and that receiving information and assistance from EPA does not guarantee funding.

Program and regional offices may use a variety of techniques to provide pre-application assistance. Assistance may be made available through questions and answers posted on web sites, open meetings, conference calls, electronic mail groups, and/or in response to written or telephonic requests made by individual applicants. Programs and regions must also consider the need to ensure that applicants from remote areas have an opportunity to obtain pre-application assistance without traveling to Headquarters or a regional or satellite EPA facility. If program or regional offices cannot provide all applicants with a reasonable opportunity to obtain pre-application assistance, then pre-application assistance is not appropriate.

Program and regional offices may provide pre-application assistance to help potential applicants determine whether the applicant itself or the applicant's proposed project is eligible for funding early in the competitive process. Agency personnel may advise applicants as to whether an applicant or proposed activity is eligible for funding on the basis of criteria in the announcement and may respond to requests for clarification of the announcement.

Agency employees may not provide advice or assistance that will give particular applicants a competitive advantage. For example, **Agency employees must not:**

1) Prepare an application for an individual or organization;
2) share ideas gleaned from one application with another applicant;
3) review and comment on draft applications; or
4) provide additional information on or clarification of the Agency's approach to evaluating and ranking applications that is not available to all applicants in the announcement.

The project officer and/or the assistance agreement management officer may assist applicants by answering their questions on eligibility requirements for the proposed project or the process itself. They may also assist prospective applicants with administrative issues, such as identifying the information that must be submitted in an acceptable application, for example, the required certifications, budget justifications and cost allowability under OMB Circulars. If you tell one you must tell all so post your answers to questions on your predetermined media.

Recommendations for communicating with potential applicants include:

➤Identify the Agency contact person in the announcement. Ask that all questions be sent to him/her in writing by a certain date.

➤ PO's must be alert to potential conflicts of interest between their technical/scientific involvement and any activities associated with the competition, review or decision-making processes related to the application.

AMENDING THE ANNOUNCEMENT

Sometimes announcements must be amended after being issued (*e.g., a change in priorities or funding, a clarification in response to a question raised by an applicant*). When issuing amendments, the following guidelines are helpful:

➤Amendments must be made available to all potential applicants in the same manner as the announcement was publicized.

➤An amendment will be required for an extension of the application due date.

➤Issue amendments in writing – publishing the amendments through the same media used to publicize the announcement.

➤If the announcement is amended, the synopsis on grants.gov must also be amended.

➤Cite the title and any identifying number that may exist that identifies the announcement. Send significant amendments at least 30 days before the due date of the application. (*You may have to extend the closing date.*).

➤In some cases, the timing and nature of an amendment may determine who it should be sent to.

GUIDANCE ON UNSOLICITED PROPOSALS

An unsolicited proposal is a written application for assistance agreement funding that is not prompted by either an official Agency announcement or an explicit or implicit request by an EPA employee that the applicant submit the proposal. The unique or innovative ideas contained in the proposal must be the applicant's not EPA's. The proposal must include sufficient detail to permit an evaluation of the technical merit, program value or accomplishment of a public purpose and to decide on the merits of funding the proposed effort. If the Agency requests additional information or clarification from the applicant after receiving an unsolicited proposal, it does not make the proposal solicited.

Agency personnel attending conferences, meetings, and similar events may provide general information regarding EPA's mission, programs and initiatives to organizations that may have an interest in applying for EPA assistance agreements. Agency personnel may also respond to questions regarding overall EPA funding priorities at such events or in other settings (e.g., in response to telephone calls or E-Mails). However, Agency personnel should not encourage or authorize the potential applicant to perform any work in anticipation of receiving an assistance agreement.

The fact that an individual who has received general information from an EPA employee subsequently submits a proposal based on that information does not, in and of itself, make the proposal solicited. If the circumstances indicate that the applicant rather than EPA initiated the proposal, then it may still qualify as unsolicited.

The unsolicited proposal exception also requires that the proposal be unique or innovative and not resemble the substance of any pending or contemplated

competitive announcement. An unsolicited proposal generally cannot be used to justify the ongoing non-competitive funding of a project. For example, if the project period for an assistance agreement is about to expire and the recipient submits an unsolicited proposal requesting that EPA continue to fund either the same or a similar project, the "unique or innovative" test cannot be met.

Effective and fair implementation of the competition policy depends on the professional integrity of EPA personnel.

BOILER-PLATE ANNOUNCEMENT PROVISIONS

As stated in Section 8.d of the Assistance Agreement Competition Policy, Program Office's are responsible for ensuring that announcements are prepared in the required OMB format and in compliance with all applicable Agency policies including the Assistance Agreement Competition Policy, Environmental Results Policy, and Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards. The purpose of the attached checklist is to assist Program Office's in ensuring that competitive assistance agreement announcements contain certain provisions required by these EPA policies. This is not a checklist of all of the items or provisions required to be included in competitive announcements; it is just a checklist of certain items required under the policies identified above. For further assistance and information on preparing announcements, and determining what information must be included in the announcement, please consult the competition policy and competition intranet page (http://intranet.epa.gov/ogd/compet/) or call Bruce Binder (202-564-4935) or Lenee Morina (202-564-5304).

Program Office's should refer to the checklist when developing announcements to ensure that certain required information is included in the announcement before it is sent to Janice Lee of the Grants Competition Advocate's office for posting on grants.gov. This will facilitate the process of timely posting the announcement on fedgrants.gov and minimize the need to possibly have to modify the announcement. When Janice receives an announcement for posting she will verify whether the information on Attachment A is included in the announcement. Announcements that do not contain such information will be returned to the Program Office and will not be posted on fedgrants.gov until they are modified appropriately; this delays and disrupts the competitive process because the Program Office must prepare and issue a modified announcement and then send it back to Janice Lee for posting.

ANNOUNCEMENT CHECKLIST FOR SELECTED PROVISIONS

Section I, Funding Opportunity Description

1. Section I of the announcement must describe the linkage between the work intended to be accomplished under the agreement and EPA's Strategic Plan/GPRA Architecture (See Section 6.a of EPA Order 5700.7).

2. Section I of the announcement must contain a concise discussion of expected outputs and outcomes (See Section 6.a of EPA Order 5700.7).

Section IV, Application and Submission Information

1. Section IV must require applicants to submit a plan for tracking and measuring their progress toward achieving the expected environmental outputs/outcomes identified in Section I of the announcement.

2. Section IV (or VIII) must include the following provision regarding Confidential Business Information.

In accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate confidentiality claims in accordance with 40 CFR Part 2. Applicants must clearly mark applications/proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c) (2) prior to disclosure.

3. If the competition is open to non-profit applicants, then see "a" and "b" below.

a. Section IV must include a provision requiring applicants to submit information in their proposal/application relating to their programmatic capability to perform the project (See Sections 9.b and 9.c of EPA Order 5700.8).

b. Section IV must also include a provision stating that in evaluating applicants for programmatic capability purposes, EPA will consider information provided by the applicant in their application/proposal as well as information from other sources including agency files (See Section 9.c of EPA Order 5700.8)

Section V, Application Review Information

1. Section V must include ranking criteria for evaluating the applicant's plan for tracking and measuring its progress toward achieving the expected outputs/outcomes

identified in Section I of the announcement (See Section 6.b of EPA Order 5700.7).

2. For competitions under which non-profit organizations can compete for awards, Section V must include ranking criteria for evaluating applicants on their ability to demonstrate their programmatic capability to successfully carry out the proposed project (See Sections 7.b and 9.a of EPA Order 5700.8.

Section VI, Award Administration Information

1. Section VI must include the following Dispute Resolution provision.

Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in 70 FR (Federal Register) 3629, 3630 (January 26, 2005) which can be found at http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-1371.htm. Copies of these procedures may also be requested by contacting....at....

Note: The point of contact for requesting copies of the dispute procedures should be the same person identified as a "contact" in Section VII of the announcement.

2. If the competition may result in an award to a non-profit organization, Section VI must state that nonprofit applicants that are recommended for funding will be subject to pre-award administrative capability reviews consistent with Sections 8.b, 8.c, and 9.d of EPA Order 5700.8.

EPA Order 5700.8, "EPA Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards". This Order went into effect March 31, 2005. The Order responds to Congressional, GAO and OIG concerns that: 1) EPA is awarding grants to non-profit organizations that lack administrative and/or programmatic capability; and 2) EPA is not taking corrective action against non-profit organizations that fail to comply with the terms and conditions of their grant agreements. The Order includes the following major provisions.

1. Programmatic Pre-Award Reviews for Non-Competitive Awards: Program Offices must assess the programmatic capability of the non-profit applicant, taking into account pertinent information from the Grantee Compliance Database and the grant application, and provide an assurance in the funding recommendation/funding package that the applicant possesses, or will possess, the necessary programmatic capability.

2. Administrative Pre-Award Reviews for new Non-Competitive Awards where the federal share exceeds $200,000: Non-profit applicants must complete an administrative capability questionnaire which Grants Management Offices (GMOs) will review. Applicants found to have the necessary administrative capability will be certified for four years. During that period, no additional 'questionnaire' reviews are necessary unless there is adverse performance information in the Grantee Compliance Database.

3. Administrative Pre-Award Reviews for other Funding Actions: GMOs must review the Grantee Compliance Database for capability information.

4. Competitive Grants: All competitive grant announcements under which non-profit organizations can compete must contain a programmatic capability ranking factor(s). Non-profit applicants and other applicants that compete will be evaluated under this factor. Non-profit applicants selected for funding will be subject to a review for administrative capability similar to that for non-competitive awards.

5. Where GMOs identify administrative capability weaknesses, non-profit awards generally cannot be made until the applicant has taken satisfactory corrective action. In exigent circumstances, EPA can make the award with special conditions prohibiting the applicant from drawing down grant funds pending corrective action.

6. Post-Award Non-Compliance: Award officials must take available remedies under grant regulations when non-profit recipients are in material non-compliance with grant terms and conditions. GMOs and Program Offices must also notify the OIG and the Suspension and Debarment Division if they have concerns over the integrity of a non-profit applicant or recipient.

7. The Order applies to Congressional earmarks, but requires advance consultation with the Office of Congressional and Intergovernmental Relations and the Office of the Chief Financial Officer.

http://intranet.epa.gov/ogd/policy/10-Order-Topics.htm

Cost Match/Share/Participation as a Threshold Eligibility Criteria or Ranking Criteria In Competitive Announcements

Program Offices have asked whether they could impose a cost match/share/participation as threshold eligibility criteria in a competitive announcement in cases where a cost match/share/participation was not required by statute or regulation. Alternatively, some offices want to include ranking criteria in Section V of announcements to evaluate applicants on cost-type considerations.

Below is some general guidance for using cost match/share/participation as a threshold eligibility factor **(when it is not required by statute/regulation),** and for developing a cost-type ranking criteria.

1. Non-statutory/regulatory Cost Match/Share/Participation

Program Office's must state in Section III of the announcement whether there is a required cost sharing, matching or cost participation without which an application/proposal would be ineligible for award; if cost sharing/matching/participation is not required, Section III of the announcement must say so. Cost sharing, matching, or participation as an eligibility criterion includes requirements based on statute, regulation, or policy. The Office of General Counsel has stated that a Program Office could as a matter of policy impose a cost match/share/participation as a threshold eligibility factor in Section III of announcements even in the absence of a specific statutory/regulatory cost match/share/participation requirement.

The Catalog of Federal Domestic Assistance (CFDA) program description that applies to the competition must indicate whether there is a required statutory/regulatory cost share/match/participation requirement that will be stated in Section III of the announcement. Similarly, the CFDA description must provide notice of any policy based cost share/match/participation requirements. Accordingly, Program Offices that want to retain the ability to impose a policy based cost share/match/participation as a threshold eligibility requirement in an announcement (in the absence of a statutory/regulatory cost share/match/participation requirement) must ensure that the CFDA that applies to that announcement provides notice in the appropriate section that the office may include a policy based cost share/match/participation requirement in certain competitive announcements–if the CFDA does not include such notice then the office cannot impose a policy based cost share/match/participation requirement in the announcement. Moreover, as required by Section 14.b of the Assistance Agreement Competition Policy, the Program Office must obtain the Grants Competition Advocate's approval for including the policy based cost share/match/participation requirement in the CFDA because it amounts to a competition eligibility limitation.[1]

2. Cost leveraging as a Section V ranking criteria

[1] Also, any required cost match/share/participation must be reflected in the grant budget and work plan.

If an applicant's proposed voluntary cost sharing/matching/participation will be considered during the review process (as opposed to being an eligibility criterion in Section III of the announcement), the announcement must specifically address how it will be evaluated. If cost sharing/matching/participation will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that voluntary cost sharing/matching/participation is encouraged are not useful and are not recommended. It is also important that the announcement be clear about any restrictions on the types of cost that are acceptable as voluntary cost sharing/matching/participation.

Below is a model Section V ranking criteria clause which can be used, or tailored as appropriate, if an office wants to consider cost leveraging factors during the evaluation process:

Leveraging. XXX points. Under this criteria, applicants will be evaluated based on the extent they demonstrate (i) how they will coordinate the use of EPA funding with other Federal and/or non Federal sources of funds to leverage additional resources to carry out the proposed project(s) and/or (ii) that EPA funding will compliment activities relevant to the proposed project(s) carried out by the applicant with other sources of funds or resources. Applicants may use their own funds or other resources for a voluntary match or cost share if the standards at 40 CFR 30.23 or 40 CFR 31.24, as applicable, are met. Only eligible and allowable costs may be used for matches or cost shares. Other Federal grants may not be used as matches or cost shares without specific statutory authority (e.g. HUD's Community Development Block Grants)

Any form of proposed leveraging that is evaluated under a section V ranking criteria must be included in the application/proposal and the application/proposal must describe how the applicant will obtain the leveraged resources and what role EPA funding will play in the overall project.

AFFIRMATIVE ACTION CONSIDERATIONS IN GRANTS COMPETITION

Summary: Use of a racial preference in a grant competition involves significant litigation risk and defense would be costly in terms of resources and publicity. If you think a grants competition may involve a racial preference, call the Civil Rights Law Office (CRLO), OGC.

Detail: CRLO works with EPA program offices and GAD to help make the Agency's grant competitions legally compliant, in ways that achieve program goals as much as possible.

• The Agency generally should not make selections on the basis of race. Except in certain very limited circumstances, this is considered to be unconstitutional.

• The Agency also should not limit grant eligibility on the basis of race, although a grant solicitation may express an interest in minority applicants. Some examples of race-neutral eligibility criteria are:

– Limited federal assistance
– Economic disadvantage
– Geography
– Lack of exposure to environmental science/environmental information – Undeveloped environmental science infrastructure at educational institutions
– Educational background
– Experience

Note: Consider using Table B-15 of the National Science Foundation report, "Federal Science and Engineering Support to Universities, Colleges, and Nonprofit Institutions," to establish economic eligibility criteria for educational institutions and students. It sets forth the federal science and engineering funding that colleges and universities receive for research and development. It gives agencies a reference for setting a dollar cut-off – generally $15M – that will "capture" potential applicant schools and students that receive limited funding.

http://www.nsf.gov/sbe/srs/nsf03326/pdf/fssb15.pdf.

• The Agency may do some "targeted" dissemination of information about assistance in order to promote application by minorities, so long as non-minorities are well- represented in the applicant pool.

• The legal guidelines on use of race apply to both minority-serving institutions and HBCUs, according to current DOJ guidance. MSIs are identified by their minority enrollment. HBCUs are identified, in part, by their mission of educating African-American students.

• The Agency may show preference to federally recognized tribes and their members. Tribes are considered "political" rather than racial entities.

SUMMARY

At the beginning of this chapter, we identified several objectives you would accomplish by reading the chapter. The objectives are listed below, each followed by a brief summary of the key points the chapter covered.

1. Develop a basic understanding of the competitive process and where to go to get help in interpreting EPA Order 5700.5A1 on Assistance Agreement Competition. The competition process generally consists of a number of steps. These include planning, deciding on the key elements that need to be addressed in the program's announcement, outlining the evaluation process, writing the announcement, obtaining approvals, advertising the announcement and preparing for logging in and screening proposals. Questions about EPA Order 5700.5A1 on Assistance Agreement Competition should be referred to your JRO or the Competition Advocate located in the Office of Assistance agreement and Debarment.

2. Understand what type of pre-application assistance can be provided to potential applicants. Program and regional offices must make the opportunity for pre-application assistance available on an equal basis to all potential applicants of a competitive announcement. Information and assistance may not be provided to a particular applicant or interested person, unless the same opportunity to obtain such information and assistance is available to all parties.

3. Understand the basic components of an announcement. All competitive assistance announcements must be structured and organized in conformance with the OMB required format. This includes announcements or notices of competitive opportunities that are published in the FEDERAL REGISTER.

QUESTIONS

1. What is the purpose of an announcement?

2. Where would you find the required format for a competitive announcement?

3. What is the purpose of a well-written announcement?

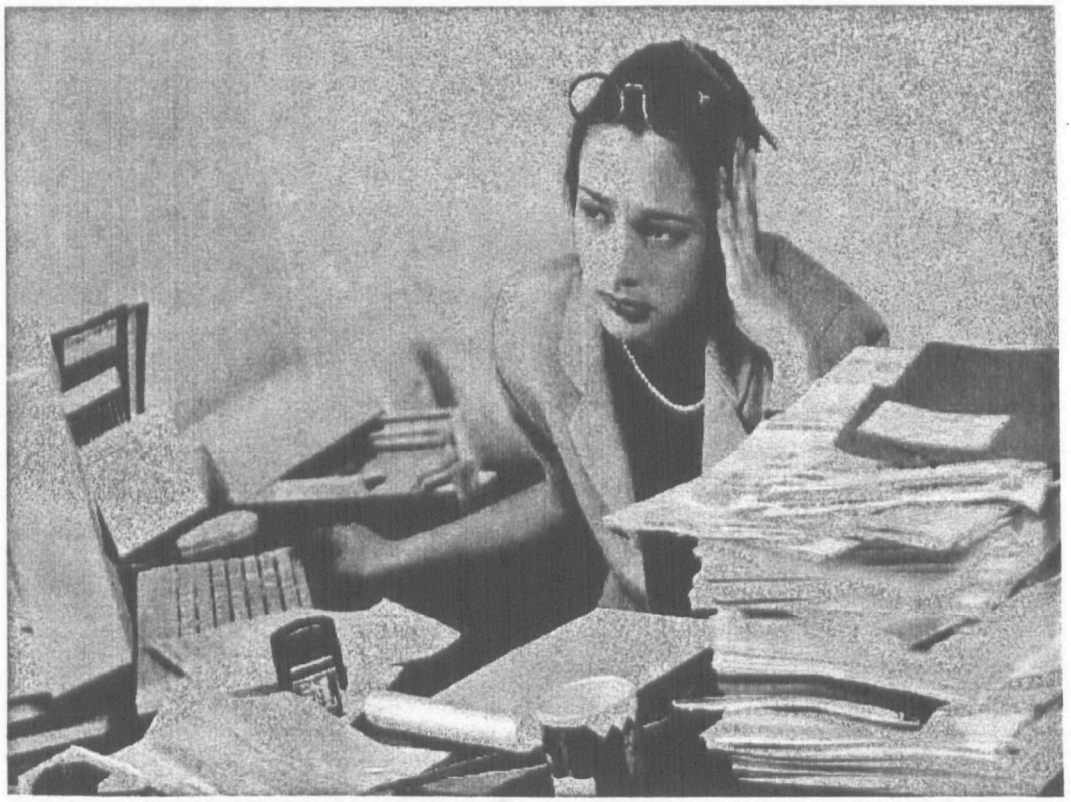
4. Where must the announcement be posted?

5. Can an EPA employee assist an applicant in preparing a response to a RFA?

6. If no weights are attached to the evaluation criteria, how do you determine how much each one is worth?

7. What is the difference between "threshold" eligibility criteria and evaluation criteria?

CHAPTER 4
REVIEW/SELECTION



Chapter 4
Review & Selection Application Phase

Managing Your Financial Assistance Agreements
Project Officer's Manual
Sixth Edition, January 2006

CHAPTER 4:
Review/Selection and Application Phase

OBJECTIVES:
At the end of this chapter you will be able to:
1. Understand what types of reviews are required.
2. Describe the selection for award process.
3. Understand how the selection for award dispute process works.
4. Identify the contents of an application package.
5. Understand the importance of negotiating a complete work-plan.
6. Be aware of Information Collection Requirements (ICR), Quality Assurance (QA) requirements and Confidential Business Information claims under assistance agreements.
7. Conduct a cost review of an application budget.
8. Define in-kind assistance and cost share.

Administrative Review

Programs must perform an administrative review to ensure that the applicant submitted all information requested in the RFA and is eligible to receive the assistance. Typically, this review begins when the office responsible for the RFA receives the applications and begins organizing them by:

- Listing who submitted the applications (organization/*institution, PI/PM, address, phone and fax number*)
- Assigning a control number
- Assure applicant complied with eligibility requirements
- Noting the date of receipt of the application and number of copies
- Tracking who in EPA or on the peer review panel receives copies
- Confirming the fulfillment of the administrative requirements such as profit/non-profit status of the applicant, maximum page limits, and other mandatory administrative requirements or criteria
- Identifying which subject area of the RFA is relevant (if the RFA has more than one programmatic/research area of interest). Note: POs for research may perform a non-judgmental administrative review but not a relevancy review.

40 CFR Part 40 Research Relevancy Review

40 CFR Part 40 requires a relevancy review. It is performed by EPA technical experts (other than the PO).

If used, the review plan includes a description of who will conduct the relevancy review and the criteria to be used. The decision to eliminate applications due to a lack of relevancy should be documented in some fashion and approved at a level above the PO.

CAUTION: Institutions that have not worked with EPA in the past may have good research ideas and capabilities, but not be skillful in demonstrating their relevance to EPA. Unless the application is obviously technically deficient and has no chance of award, the relevancy review should assume that the application would pass a technical review. Then, consider whether we should reject the application because:

- The project wouldn't advance the objectives stated in the RFA (*literally not relevant*)
- It essentially duplicates research already done or in progress elsewhere (*literally relevant, but not new*)
- It does not demonstrate a public purpose of support or stimulation (*literally relevant, but failing to meet the principal purpose test*).

Any applicant eliminated during the relevancy screening should be notified in writing.

40 CFR Part 40 Peer Review

Finally, 40 CFR Part 40 requires that research projects undergo a peer review, also known as a technical merit review. This review is performed by "at least one reviewer within EPA and at least two reviewers outside EPA." (*Radiation agreements must be reviewed by a National Advisory Council.*) Your office may have additional restrictions on who can perform these reviews. You should check with them to determine the policy.

Peer review criteria usually include at least three broad areas:

- Qualifications and commitment of key personnel
- Merit of proposed research, i.e., creativity, contribution to scientific knowledge, etc.
- Adequacy of facilities and equipment.

Peer reviewers may also comment on relevancy and appropriateness of the budget.

Formal peer reviews are not needed for:

- Agreements found "not relevant"
- Agreements not involving direct research such as those that merely support a conference
- Training and fellowship regulations that include criteria for evaluating training projects and fellowships (*40 CFR Parts 45 and 46*).

Despite these exemptions from formal review, as addressed in GPI 90-03, your GMO requires at least one internal technical review on any application for an assistance agreement. This review will be addressed in the funding recommendation.

Review Timeframe

EPA's general goal is to complete its application review and evaluation **within 90 days after the agency receives the application**, unless there is a statutory or program requirement to review the application sooner. Applicants for Environmental Program grants , under 40 CFR 35, Subparts A and B should request assistance well before the 60 day application due date to allow sufficient time for a thorough review.

Roles for the Reviewers in a Competitive Process

Please contact your office to determine if your office has specific programmatic procedures that you need to follow

Project Officers

POs have three responsibilities in reviews:

- Plan, document, and facilitate the review process
- Prepare the written review plan, if one is used
- Propose a list of possible reviewers to the Recommending or Approval Official.

Note: ORD/NCER uses Science Review Administrators (SRAs) to conduct peer reviews. Each Office may specify its own approach.

Approval Official

The Approval Official has two responsibilities in reviews:

- Provide oversight of the review process
- Make the final selection for the award, based on the results of the review and other determining criteria.

Reviewers

Reviewers (*internal and external*) have at least four responsibilities in reviews:

- Advise the PO of any real or perceived conflicts of interest
- Comply with EPA's confidentiality requirements
- Provide substantive comments on the strengths and weaknesses of each application in the specified format by the due date.
- Document their evaluation of proposals and applications.

Volume of Applications

If practical, a single panel should review all applications, and all members of the panel review all applications. But you may need to take a different approach if you have many applications, or if they are lengthy, or cover subjects too diverse to permit a single panel approach. In addition, in the announcement you may limit the number of pages of text, tables, and attachments; or you may require applicants to focus their applications on one of several project areas, convening a separate panel for each area. The number of applications affects the time needed for the reviewers to conduct their review[s].

Finding Technical Reviewers

Draw your list of potential technical/peer reviewers from a broad base. Seek reviewers from a variety of technical perspectives, organizations (*e.g., industrial, academic, public interest*). They should represent a balanced range of technically legitimate points of view.

For *internal reviewers*, develop a list of names using recommendations from any of the following, dependent upon your office's established review policies:

Branch, Division, and/or Lab, Center or Office management, the Science Advisory Board, relevant program staff, or regional staff.

For external reviewers develop a list of names using recommendations from any of the following: other Agency scientists or engineers, contacts recommended by your management, NCER (*for information on Agency or Governmental peer reviewer data bases*), Federal, state, or local agencies, the National Research Council, technical or business associations, environmental groups, public interest groups, parties affected by the proposed areas of research or institutions of higher education.

Conflict of Interest (COI)

Technical/Peer reviewers must be impartial, independent, and free from actual or perceived conflict of interest. Reviewers who have worked in the field or are known to have a professional bias or some historical connection to the applicant institution are not necessarily disqualified as reviewers, so long as the facts are known and both the reviewers and the Approval Official are comfortable that they will be impartial and not influenced by their connection to the applicant.

Technical/Peer reviewers are often chosen before applications come in, so they may not know they have a COI until they receive the applications for review. Programs must ask reviewers to sign a form that covers both COI and confidentiality. The form should include a promise to disclose COIs that are discovered later in the review. It works on the honor system. Since COIs may be a matter of degree or perception (*such as the presence of a past collaborative relationship*), the Approval Official may, on occasion, use a reviewer with a disclosed COI, provided the facts and rationale are documented. However, such occasions are uncommon.

Instructions for Reviewers

Give specific instructions to the reviewers, describing the details of their process and the required timing, format, and content of their reviews. There are no requirements of what to include, but we suggest the following.

Technical/Peer Review Report

You should provide a basic format for the reviewers to use to report their findings that track your selection criteria.

The quality of the technical/peer report is critical to the success of the review, both to give EPA what it needs to make award decisions and to maintain public confidence in the integrity of our process. Ask the reviewers to:

- Use complete sentences and clear, compelling reasoning.
- Sufficiently document their review and scoring decisions.
- Avoid nebulous statements like "very good response" or "they lack the proper facilities to perform the task".
- Describe strengths and weaknesses, indicating pages or sections where notable strengths and weaknesses are found.
- Note that their comments will be included in the review package and may be provided or used to debrief unsuccessful applicants or to improve successful applications.

If applicable, tell the reviewers that the panel chair or some other person will summarize the findings of the individual reviewers to organize their independent findings. Using a common format will aid that process.

Pay for Peer Reviewers

Whether or not to pay reviewers is a difficult question. Some believe that paid reviewers deliver a higher quality product and report on schedule. This is especially the case as we make more and more demands on the external community to do peer reviews for us.

Others believe that peer reviewers consider it an honor to be asked to do a peer review, that they have a professional obligation to contribute their reviews *gratis*, and that working without payment increases the independence of the reviewers from Agency influence. But it is hard to manage the quality and timing of *gratis* reviewers. In addition, unpaid work may constitute "volunteer" services, which create a liability to pay unless the worker has signed a written agreement waiving all rights to payment.

The cost of an external review is variable. Reviewers expect to be reimbursed for out-of-pocket expenses, especially travel expenses. For their time, however, many reviewers are willing to accept a modest professional service fee that is below their normal pay rate. Few firm rules exist on what is customary, but you can get an idea of what to pay by discussing your plans with co-workers who have experience in reviews. Or you may work with the Contracts Office to establish a fair rate. Be sure you have a commitment for funding from management before you make any arrangements.

Engaging Peer Reviewers

EPA Managed

Have unpaid reviewers sign an agreement to waive payment. The agreement confirms their obligation and states that they are serving without pay.

Have paid reviewers sign a **"Professional Service Contract"** (*not to be confused with "Personal Service Contracts"*), using simplified acquisition procedures. Consult your servicing Contracts Management Division for particulars, but you should allow about 30 days to award a contract for less than $2,500. For any contract that exceeds $2,500, including all travel and other direct costs, you will need to compete the contract or justify a non-competitive procurement. In either case, allow an extra 15 to 30 days.

Be sure to have the contract or waiver of compensation agreement signed before you send any applications to external reviewers for review. Otherwise you may be making an unauthorized commitment, with significant liability for yourself and EPA.

Some reviewers donate their time, but want to be reimbursed for travel expenses. You cannot write a purchase order solely to pay travel, but you can write one for the complete review, and allow the reviewer to propose a price that will cover only the travel part of the cost. Reviewers who wish to recover only their travel expenses may be brought in on invitational travel orders; however, this requires the use of EPA travel funds, which are often limited. Consult your management and budget staff about using this alternative.

Equal Review

When practical, have reviewers review each application in full. If a panel is to be convened, each reviewer will still review and report on all applications, but the panel chair may assign one or two reviewers to lead the discussions on each application. Some RFAs may draw hundreds of applications. When it is not possible to have each application reviewed by all of the panel members, the alternative approach and reasons should be documented and approved by the Approval Official.

Timing

The time allowed for the review will vary depending on the size of the panel, whether or not there is to be a meeting, and the number and the complexity

of the applications. It is helpful to remind reviewers of their due date mid-way through the review.

Selection for Award

This section deals with the selection of applications for award.

When to Select

In most cases, Recommending Officials will be able to recommend an award based upon the results of the administrative and technical reviews. No technical discussions should be held with applicants prior to completion of the reviews. Each proposal must receive equal consideration based upon the information submitted within the deadline established in the RFA.

If it is necessary to hold discussions after the reviews but prior to making a selection recommendation, you should consult with the Recommending Official to determine how to proceed. To ensure the fairness of the process, each applicant with a potential for award should be allowed to address salient issues raised during the review process.

When circumstances warrant, the Recommending Official may wish to seek concurrence of the Approval Official on the proposed decision prior to proceeding with negotiations.

How to Select

Relevancy, coupled with the results of the technical review, will usually provide the basis for funding recommendations. Final funding decisions are delegated to the Approval Official. In most cases, the proposal(s) with the highest technical merit will be selected for further processing and consideration by the Agency. However, the decision is at the discretion of the Approval Official who is at liberty to consider other factors as long as they are disclosed in the RFIP/RFA; e.g., the desire to expand the pool of recipients who have recently received awards from the organization or to ensure geographic equity among projects selected.

You, the PO do not have the delegated authority to tell any applicant that they have been selected for award. DON'T DO IT!

Application Selection Disputes

This guidance supplements 40 CFR 30.63 and 40 CFR Part 31, Subpart F. Disputes should be resolved at the lowest level possible.

EPA establishes assistance agreement competition-related dispute resolution procedures as follows:

1. The authority citation for the assistance agreement competition-related disputes resolution procedures in this document is the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301(3).

2. The disputes resolution procedures that will apply to EPA assistance agreement competition-related disputes and disagreements will be referenced or included in competitive announcements and are as follows:

Dispute Resolution Procedures

a. Whenever practicable, disputes and disagreements relating to assistance agreement competition-related decisions and actions must be resolved at the lowest level possible.

b. The procedures and time frames specified below are designed to provide for an efficient, effective, and meaningful dispute resolution process. EPA Program Offices may use ``substantially the same'' dispute procedures as those specified herein if they are approved by the EPA Grants Competition Advocate (GCA) and provide applicants with a meaningful dispute resolution process. A meaningful dispute resolution process is one that affords unsuccessful applicants the opportunity for an effective remedy if they succeed on their dispute.

c. Notification: (1) The Program Office conducting the competition must provide applicants with timely written or e-mail notification that they were (i) determined to be ineligible for award consideration as a result of the threshold eligibility review of their application/ proposal (e.g., the application/proposal failed to meet the threshold eligibility criteria in the announcement), or (ii) not selected for award based on their ranking/scoring after an evaluation of their application/ proposal against the ranking and selection factors in section V of the announcement.

(2) Notification of ineligibility must be provided by the Program Office to the applicant within fifteen calendar days of the decision finding that the applicant was not eligible for award consideration because of a failure to meet the threshold eligibility criteria in the announcement; notification to applicants that they were not selected for award based on the ranking/scoring of their proposal/application must be provided by the Program Office to the applicant within fifteen calendar days of the final selections for award.

(3) The notification letter or e-mail must indicate, as appropriate, that the applicant and/or its application/proposal was not eligible for award consideration based on the threshold eligibility review, or not selected for award based on the ranking/scoring of its application/proposal, and generally explain the reasons why. It must also advise the applicant that it may request a fuller debriefing (and notify the applicant that it must make its debriefing request within fifteen calendar days of receiving the notification letter or e-mail) of the basis for the ineligibility determination or selection decision. Debriefings, however, are not required when an applicant's proposal/ application is rejected solely because it failed to meet a submission deadline date specified in section IV of the announcement (e.g., it was received, postmarked, etc., after the deadline established in the announcement making it a late proposal/application).

d. Debriefings: (1) Debriefings may be done orally (e.g., face to face, telephonically) or in writing at the discretion of the Program Office, although oral debriefings are strongly preferred because they provide a better opportunity to resolve questions and issues in an expedited manner. For oral debriefings, the Program Office will conduct the debriefing of the unsuccessful applicant at a mutually agreeable time and place as soon as practicable after receiving the debriefing request; for written debriefings, the Program Office will provide the unsuccessful applicant with a written debriefing as soon as practicable after receiving the debriefing request. All debriefings, but particularly those for applicants that were deemed ineligible for award consideration for failure to meet the threshold eligibility factors in the announcement, must be conducted in a timely manner so that the applicant has the opportunity to obtain a meaningful remedy if they successfully challenge the ineligibility determination.

(2) Upon receiving a debriefing request from an unsuccessful applicant, the Program Office must promptly notify the Director, Office of Grants and Debarment, or regional award official, as appropriate, so that a Grants Competition Dispute Decision Official (GCDDO) can be designated.

(3) The oral or written debriefing will be limited to explaining why the applicant was found ineligible for award consideration or why it was not selected for award and must not disclose any information protected from disclosure by applicable law or regulation (e.g., the Freedom of Information Act, Privacy Act), including trade secrets, privileged or confidential commercial, financial or other information exempt from disclosure under the Freedom of Information Act, or the

identity of review panel members or other reviewers. The Program Office should consult with Office of General Counsel/Office of Regional Counsel (OGC/ORC) attorneys before any oral debriefing and allow them to review any written debriefing response before it is sent. Further, any questions relating to what type of information may be disclosed at a debriefing must be directed to OGC/ORC attorneys or the Grants Competition Advocate.

(4) The debriefing explanation will, as appropriate:

(A) Identify the threshold eligibility criteria that the applicant failed to meet and specify the basis for the Agency's determination that the proposal/application or applicant was not eligible for award consideration because of failure to meet the threshold eligibility criteria.

(B) Provide the applicant with the numerical (e.g., points) or other basis for scoring/ranking its proposal/application under the evaluation criteria used in the competition.

(C) Provide the applicant with information on the strengths and weaknesses of its proposal/application in terms of the specific evaluation criteria used in the competition.

(D) Provide responses to relevant questions regarding whether the evaluation and selection procedures contained in the announcement were followed and why the applicant was not selected for award. However, the debriefing must not include point by point comparisons of the applicant's proposal/application to other proposals/applications.

(E) Identify the GCDDO.

e. Filing of a Dispute: (1) After receiving a debriefing, an unsuccessful applicant or their representative may file a written dispute with the appropriate GCDDO. When there was an oral debriefing, the written dispute must be received by the GCDDO within fifteen calendar days of the debriefing date; when there was a written debriefing, the written dispute must be received by the GCDDO within fifteen calendar days of when the applicant received the written debriefing letter. The written dispute must include a detailed statement of the legal and/or factual basis for the dispute, the remedy that the applicant is seeking, information on how to communicate with the applicant or its representative (e.g., phone and fax numbers, e-mail address), and any documentation relevant to the dispute. Disputes

may only be filed with the GCDDO after a debriefing; disputes filed before, or in the absence of, a debriefing will be dismissed. Furthermore, the GCDDO is only required to consider disputes on the following grounds:

(A) Where an applicant challenges the EPA determination that it and/or its proposed project is ineligible for funding based on the applicable statute, regulation, or announcement requirements; or

(B) Where the applicant challenges the decision that it is not eligible for award consideration because EPA determined that its proposal/application did not meet the threshold eligibility requirements contained in the announcement.

(2) Unsuccessful applicants whose proposal/application was rejected solely because it was received late, or who were not selected for award based on the ranking/scoring of its proposal/application after a full evaluation by EPA based on the ranking and selection criteria in section V of the announcement (e.g., challenges to the Agency's technical evaluation or ranking/scoring of the applicant based on the ranking and selection factors in section V of the announcement), are not entitled to file disputes with the GCDDO. Such disputes will be dismissed by the GCDDO except as may be provided for in paragraph (3) below. In addition, the GCDDO may dismiss any dispute that is clearly untimely filed, raises issues that the GCDDO will not consider, or that fails to set forth a detailed statement of the legal and/or factual basis for the dispute.

(3) The GCDDO, for good cause shown and where there are compelling reasons, or where he/she determines that a dispute raises significant issues of widespread interest to the assistance agreement community, may consider an untimely filed dispute or any other dispute filed by an unsuccessful applicant. The GCDDO will invoke this discretion sparingly.

f. If a dispute is filed, the GCDDO must consult with the Program Office, OGC/ORC, and the GCA, and then determine whether it is in the Agency's best interest to delay the award process pending resolution of the dispute, particularly for disputes involving threshold eligibility issues.

g. Unsuccessful applicants must be provided with reasonable access to Agency records relevant to the dispute in a manner consistent with the standards contained in the Freedom of Information Act. EPA will not disclose materials exempt from disclosure under the Freedom of

Information Act.

h. Upon receiving a dispute, the GCDDO will establish a process and schedule for resolving the dispute and communicate this to the applicant and affected Program Office. At his or her discretion, the GCDDO may (i) request additional information from the applicant or Program Office and/or (ii) meet by phone or in person with the unsuccessful applicant and/or Program Office.

i. After reviewing all of the information relevant to the dispute, the GCDDO, after consultation with the GCA, and with the concurrence of the OGC/ORC, will timely issue a final written decision regarding the dispute. The GCDDO's decision will constitute final agency action and is not subject to further review within the Agency.

The Application Package

The Application Consists Of:

The SF 424, "Application for Federal Assistance",

Detailed budget,

A Narrative/Work plan, and

Certification attachments.

The application package may also contain program specific requirements, such as the Intended Use Plan for the State Revolving Fund program, or the Community Relations plan, Health and Safety Plan, and Enforcement Letter for the Superfund program.

The following is a description of the contents of a basic application package and the PO's responsibilities in reviewing the package.

The application (SF 424) consists of four parts -- the Face sheet, Budget information, Assurances, and a Program Narrative/Workplan.

Even if an application has been through a preapplication evaluation, the GMO and PO may still have to work with the applicant to revise the application further before it is approvable.

GMOs, in partnership with the PO, are responsible for reviewing and analyzing the application to ensure all information is complete and correct. This includes ensuring all costs are allowable and that assistance is the appropriate funding mechanism. GMOs also ensure the application meets statutory, regulatory, and legal requirements. This is usally done when the PO sends the package to the GMO for funding.

The SF 424 application is used for all EPA programs. except for the Fellowship programs (which use EPA Form 5770- 2 a form specifically developed for Fellowships).

The applicant is responsible for filling out and providing all required forms to the EPA. Project Officers must not complete applications for applicants.

The Face sheet of the SF424 includes:

General administrative information about the applicant, e.g., type of entity, location of the project, **name of the applicant's contact person**, Congressional district, DUN's number and summary information about the proposed project, e.g., budget, length of budget and project periods.

The GMO will review the Face sheet to ensure that all items are properly completed.

SF 424-A Identifies Total Project Costs:

Section A- Budget Summary
Section B - Budget by Object Class Category
Section C - Non- Federal Resources
Section D - Forecasted Cash Needs
Section E - Budget Estimates of Federal Funds Needed
for Balance of Project
Section F - Other Budget Information

The budget is the financial expression of the project or program and includes both the Federal and non-Federal share. Sections A, B, C, and D call for budget estimates for the entire project, except for projects funded on an annual or other incremental basis. In the latter case, Section E provides the budget information for subsequent budget periods. The form itself provides detailed instructions for completing the form. The applicant is responsible for preparing the budget.

Standard Form 424-B

The purpose of the assurances in the SF 424-B is to emphasize the Federal laws and requirements applicable to all Federally assisted projects, i.e., "crosscutting" requirements.

The applicant **must** sign this page as well as the Face sheet. Usually, the same person signs both places, but **whoever signs must have the authority to bind the organization to the terms of the assistance agreement.**

By signing the Assurance page, the applicant is indicating they will comply with each of these requirements. Some of the major requirements the applicant is agreeing to are:

- They will complete the project within the time specified in the agreement.
- They will comply with all applicable Federal laws, regulations, and policies.
- They have the financial, managerial, and legal authority to complete the project.
- The person signing the form is authorized by their governing body to sign the application as the official representative of the applicant.

Certifications

The applicant must include the following certifications in their application package;

The Anti-lobbying requirements in 40 CFR Part 34, require that applicants certify that no appropriated funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with any Federal award **in excess of $100,000.** 40 CFR Part 34 requires applicants and recipients to submit the **Standard Form LLL. "Disclosure of Lobbying Activities,"** if they used non- Federal funds to "lobby" in relation to certain Federal contracting and financial transactions. This form is not required if the entity did not "lobby"

for the assistance agreement. The Lobbying Disclosure Act of 1995 provides that organizations described in Section **501(c) (4)** of the Internal Revenue Code of 1986 **which engage in lobbying activities** are not eligible to receive Federal grants, cooperative agreements, or loans.

The Preaward Compliance Review Report (EPA Form 4700-4) enables EPA to determine whether applicants are developing projects, programs and activities on a nondiscriminatory basis as required by statutes.

The Procurement System Certification Form (EPA Form 5700- 48) indicates whether or not the applicant will follow its own procurement system (provided systems) comply with EPA requirements). **The form does not apply to State governments except under the Superfund program [see 40 CFR 35.6550(a)].** Local governments and Indian Tribal governments may use the form to self-certify under the self- certification provision in 40 CFR Part 31. **Part 30 recipients are no longer required to submit the form with their application but must comply with the procurement standards under 40 CFR 30.41 through 30.48.**

PROJECT NARRATIVE/WORK-PLAN

The approved project narrative/work-plan is the basis for making an award and **is used by the PO to manage and evaluate performance under the agreement.**
The purpose of the project narrative is to outline all activities to be performed by the recipient. It is especially critical for the PO to spend time negotiating with the recipient on this portion of the application package.

A narrative/work-plan must **justify proposed financial, facility, equipment, and resource needs as requested in the application and provide technical and other information required by program-specific regulations/requirements.** The narrative/work-plan also **must describe the need for the project/program; its objectives; the method to accomplish the objectives; the geographical location of the project; and the "public" benefits or results** expected to be obtained from the assistance, e.g., why the activity should be funded with an assistance relationship and not a contact.

The PO performs a technical review of the narrative/work plan. If the PO does not have the technical expertise to perform the review, the PO must obtain assistance from other EPA staff with expertise. The PO needs to ensure that the activities in the work-plan are eligible under the program statute(s), guidance, and regulations, and the work is allocable to the project.

A narrative/work-plan is *generally* composed of the elements below (narratives may vary by grant type):

1. The **introduction** explains who the entity is.
2. The **needs statement** identifies the problem to be addressed.
3. The **objectives** explain how the project will resolve the problems identified in the needs statement and establishes measurable benchmarks for success.
4. The **activities** are the specific tasks that the applicant will undertake in order to accomplish the objectives.
5. The **methodology** explains how the activities will be undertaken.
6. The **schedule/milestones** establishes the timetable for accomplishing the objectives and sets milestones for implementing project activities.
7. The **staff and personnel description** explains the qualifications of each key staff position required to complete the project and identifies the individuals selected to fill those staffing requirements.
8. **Other resources** include the equipment, supplies, facilities, and training required to complete the project.
9. The **organizational capabilities** establish the applicant's ability to carry out the project and explain how the project will be managed.
10. The **evaluation plan** sets out procedures which will be used to measure how well the project meets its objectives.
11. The **dissemination plan** lays out how the project results will be distributed.

Tips for Negotiating Work-plans

Generally, in conducting negotiations, PO's: Must assure their negotiating posture reflects the official EPA position. It may be necessary to establish that position through discussions with appropriate office management.

- Should have a plan.
- Know the role EPA personnel will have in reviewing work plans.
- Establish firm deadlines for negotiating work plans and stick to them.
- Must assure applicants revise work plans to delete any unallowable and unnecessary costs.

- Should attempt to bring about work plans that better reflect shared EPA and applicant interests.
- Must assure work plans include well defined commitments (environmental outcomes) that foster accountability.
- Must assure work plans reflect all activities to be conducted with assistance funds.
- Must ensure that the activities in the work plan are consistent with the statutory authority for the assistance agreement and EPA Order 5700.1, Policy for Distinguishing between Assistance and Acquisition.

In conducting negotiations with applicants selected under competitive processes, PO's must ensure that negotiations do not result in material changes to the proposal that was submitted and evaluated. PO's may not negotiate with applicants selected under competitive processes to bring about significant changes such as those that:

- Result in technical leveling by bringing good points of other applicant's proposals into selected proposals.
- Change the way a project will be conducted.
- Change the nature of the project or proposed outcomes of projects.

PO's may negotiate with applicants selected under competitive processes to bring about less significant changes (not affecting how the applicant was evaluated) that:

- Refine proposed methods and testing protocols.
- Eliminate unnecessary tasks.
- Clarify proposed outcomes and outputs.

Environmental Outcomes

Identifying Environmental Outcomes in assistance agreements support effective implementation of Government Performance and Results Act (GPRA). In addition, consideration of environmental outcomes in the workplan development process is critical to ensuring that assistance agreements contribute to EPA's mission of protecting human health and the environment. As noted in the Office of Inspector General's final audit report entitled "Surveys, Studies Investigations and Special Purpose Grants," (Report Number 2002-P-00OG5, March 21, 2002),: **" In the planning phase**

of assistance agreements, it is important to anticipate the expected outcomes so that activities are planned to achieve behavioral changes that lead to desired programmatic or environmental results." In short, EPA assistance agreements should focus not only on outputs (i.e., the activities performed by an assistant agreement during a funding period) but also on outcomes (i.e., the consequences of a recipient's activities).

The work plan for each State and Tribal Environmental Program(40 CFR 35, Subparts A and B) must also specify:

The work plan components to be funded:

- The work plan components to be funded under the grant,
- The estimated work years and funding amounts for each work plan component,
- The work plan commitments for each work plan component and a time frame for accomplishment;
- A performance evaluation process and reporting schedule; and
- The roles and responsibilities of the recipient and EPA in carrying out the work plan commitment.

For research awards, the work plan should contain biographical sketches of the Key Person/s. A summary of specific objectives, expected outcomes and deliverables and a discussion of the budget and how it relates to the objectives, outcomes and deliverables in the work plan.

EPA Order 5700.7, "Environmental Results under EPA Assistance Agreements", is now in effect. The Order establishes Agency policy/procedures for making assistance agreements more outcome-oriented and aligned with EPA's Strategic Plan. The Order itself, an Appendix providing guidance to project officers, training slides presented at the National Grants Management Training Conference in Jacksonville, and information on the Logic Model, can be found on the Office of Grants and Debarment (OGD) web site at

http://intranet.epa.gov/ogd/policy/10.0-Results-Topics.htm

OGD will also be working with Headquarters and Regional Offices on strategies for providing additional training to project officers.

In addition, we would like to clarify the implementation of two provisions in Section 8 of the Order dealing with the content of funding recommendations/decision memoranda. These provisions include a description of the linkage to the Agency's Strategic Plan (Section 8.a.), and an

assurance that outputs/outcomes have been negotiated (Section 8.b.). Program offices must address both Section 8.a. and Section 8.b. in non-competitive funding recommendations/decision memoranda submitted to the Grants Management Offices (GMOs) after January 1, 2005, and in competitive funding recommendations/decision memoranda submitted to the GMOs that result from competitive funding announcements issued after January 1, 2005. For these funding recommendations, we enhanced the electronic funding recommendation in the Integrated Grants Management System (IGMS) to require (1) an assurance that the program office has reviewed the assistance agreement work plan and that the work plan contains well-defined outputs, and, to the maximum extent practicable, well-defined outcomes; (2) an identification of EPA Strategic Plan goal(s), objective(s) and, where available, sub-objective(s), that the agreement supports; and (3) a description of how the agreement fits within those goal(s), objective(s) and sub-objective(s).

Scope of the Environmental Results Order

☐ ☺ affects the entire grant process ☐

Competitive Award Announcement
Decision Memorandum
Work Plan Negotiation
Performance Reporting
Post-Award Phase

Competitive Award Announcement

Section 1 of Announcement

Describe the linkage between the work intended to be accomplished under the assistance agreement and EPA's Strategic Plan/GPRA Architecture Include a concise discussion of any expected outputs and outcomes.

Section 5 of Announcement

Include a ranking factor for evaluating the applicant's **plan** for tracking and measuring its progress toward achieving expected outputs and outcomes identified in Section 1.

Include a ranking factor that evaluates the applicant's **past performance** in reporting on outputs and outcomes. **Criteria:** Focus on an applicant's past

performance in filing timely progress and final technical reports that adequately document the achievement of expected outputs and outcomes or satisfactory explain why expected outputs and outcomes were not achieved.

Example Competitive Announcement

Linkage to EPA Strategic Plan This project supports progress towards EPA Strategic Plan Goal 4 (Healthy Communities and Ecosystems), Objective 4.2 (Communities), and Sub-objective 4.2.3 (Assess and Cleanup Brownfields). Specifically, recipients of this grant will further goals of the Brownfields Job Training Program by training and placing residents, from communities impacted by brownfields, in careers in the environmental field. This in turn promotes the facilitation and cleanup of brownfield sites contaminated with hazardous substances, pollutants, contaminants, or petroleum, while simultaneously ensuring economic benefits derived from brownfields redevelopment activities remain with affected residents in those communities. EPA, in negotiating an assistance agreement work plan after an award under this competition, will ensure that the work plan contains well-defined outputs, and, to the maximum extent practicable, well-defined outcomes.

Outcome Through this project EPA anticipates increasing the capacity of governmental entities and nonprofit organizations to 1) help residents take advantage of jobs created by the assessment and cleanup of brownfields; 2) provide training that leads to sustainable employment in the environmental field; 3) improve community involvement and stimulate the development of constructive partnerships; 4) foster self sufficiency, in communities impacted by brownfields, with the skills needed to conduct assessment and remediation of brownfields sites; and 5) enable residents to participate in the promotion of environmental health and occupational safety, both on the job and in their communities.

Outputs The anticipated output for this project is recruitment, training, and placement of individuals from brownfields impacted communities in environmental careers. EPA anticipates a minimum of at least 200 persons completing training by the end of Fiscal Year 2006 with a minimum job placement rate of at least 65%. Other outputs include: class room style training, practical training and curricula modules, appropriate certification in environmental technology related subjects, including OSHA, HAZWOPER, lead and asbestos abatement, and specialized knowledge of brownfields problems and solutions.

Funding Recommendations Must

Include description of how the project fits within the Agency's Strategic Plan/GPRA Architecture. Specifically, description must identify all applicable EPA strategic goal(s), objective(s), and where available, subobjective(s), consistent with the appropriate Program Results Code(s). Include an assurance that the Program Office has reviewed the work plan, and that it

contains well-defined outputs and, to the maximum extent practicable, well defined outcomes.

Example

EPA Strategic Plan Linkage and Anticipated Outcomes/Outputs.
a. ***Linkage to EPA Strategic Plan.*** This project supports progress towards EPA Strategic Plan Goal 1 (Clean Air and Global Climate Change), Objective 1.6 (Enhance Science and Research), Sub-Objective 1.6.2 (Conduct Air Pollution Research, Technology Development and Assessment). This project supports EPA efforts to develop advanced clean and fuel-efficient technology for a wide range of societal benefits including reducing our national dependence on imported oil, conserving capital for domestic economy and reducing carbon dioxide and greenhouse gas emissions.

Outcomes Through this project, EPA anticipates increasing fuel efficiently and reducing emissions in its hybrid vehicles to continue improving and demonstrating advanced hydraulic hybrid vehicle technology to meet Clean Air Act (CAA) emission standards and climate program goals.
Outputs The anticipated output for this project is refinement of existing, and identification of new hydraulic hybrid components and systems needed to achieve ultra clean and efficient hybrid vehicles.

Work Plan Negotiations

Project Officers must ensure the work plan includes well-defined outputs and to the extent practicable well defined outcomes. Before approving a work plan, Project Officers must ensure they can link the work plan to EPA's Strategic Plan/GPRA Architecture.

Performance Reporting

Project Officer must review interim & final reports to: Determine if recipient achieved the work plans agreed upon outputs and outcomes. If outputs and outcomes are not yet fully achieved, assure progress toward achieving agreed upon outputs and outcomes is adequately addressed in reports. If applicable, assure included in the reports is a satisfactory explanation of why expected outcomes or outputs were not achieved.

** Project officer must document reviews in the official project file **

Terms and Conditions

The assistance agreements must include the applicable term and condition on recipient performance reporting specified in Appendix B of the Order, or a

program specific term and condition approved by the Director of the Office of Grants and Debarment. Exception include State and Tribal assistance agreements under 40 C.F.R. Part 35, Subparts A and B.

**Responsibility of Award Officials to include in assistant agreements.

Terms and Conditions

Recipients subject to 40 C.F.R. Part 30 Performance Reports
In accordance with 40 C.F.R. § 30.51 (d), the recipient agrees to include in performance reports submitted under this agreement brief information on each of the following areas: 1) a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the assistance agreement work plan; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 30.51 (f), the recipient agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. Recipients subject to 40 C.F.R. Part 31 (other than recipients of State or Tribal Program grants under 40 C.F.R. Parts 35 Subparts A or B) Performance Reports. In accordance with 40 C.F.R. §31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs. In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

Post Award Phase

Advanced Monitoring: Must include an assessment of the recipient's progress in achieving agreed-upon outputs and outcomes. Results of assessment must be recorded in the Grants Compliance Database.

Reporting: Project officer must report on "significant results information from completed assistance agreements". Process of how to report TBD by the National Managers. Until process is established, Project officer must retain at a minimum, paper copies of final performance reports from completed assistance agreements.

Performance

During the negotiations, PO's should explain how progress and performance will be evaluated. Evaluation plans should include reporting requirements and schedules, describe the contents expected in the reports and define consequences of inadequate performance. In most cases, the PO will be EPA's lead negotiator. The PO also may often need to negotiate internally to establish the program's official position in dealing with the applicant.

- Evaluation Plan. Introduce your plan for evaluating progress and performance EARLY in your negotiating process. Define consequences of inadequate and/or nonperformance. Include reporting plans and schedules and describe the contents expected in the reports. **Most importantly, start the process early**; provide guidance timely; if necessary, convene a meeting with the applicant early in the process to answer questions.
- Terms and Conditions: As part of your work plan review and development of the evaluation plan the PO should consider what terms and conditions should be added to ensure the recipient is progressing satisfactorily or where the PO needs to oversee progress.

Other Things To Consider When Reviewing A Work plan

Printing:

An assistance agreement awarded for the principal purpose of obtaining printing for EPA is prohibited.

Assistance agreements can be awarded for:

- The support of non-governmental publications
- The publication of findings by recipients
- The printing by recipients to meet the administrative printing requirements in the terms and conditions of their grants

Assistance recipients own the publications developed under grants and cooperative agreements. Recipients may copyright their publications, sell them, or otherwise make them available for a fee. However, even if the recipient copyrights a publication, the recipient must permit EPA to use the material for government purposes without charge.

- The recipient's document should contain a disclaimer if EPA is going to be credited for providing funding/support of a recipient document or work product/effort.

- If an EPA program decides to use EPA funds to print materials developed by recipients for government purposes as an "EPA Document", the program office must contact EPA's Printing Officer and follow the procedures the Agency uses to obtain printing or duplication services.

Human Subjects

All research supported or performed by EPA using human subjects must comply with both:

40 CFR 26, Protection of Human Subjects (the Common Rule), and

EPA Order 1000.17A, Policy and Procedures on Protection of Human Subjects in EPA Conducted for Supported Research (the Order)

When do the Common Rule and the Order apply?

If the project involves humans, including just asking them questions, categorize the project as follows:
(1) Does it involve **Human Subjects**? See Common Rule 26.102(f). If not, the Order and Common Rule do not apply. **Note:** The definition includes only asking questions even if no medical-type data taking is done. If human subjects are involved ask:

(2) Is the project **Research**? See Common Rule 26.102(d). If not, the Common Rule and the Order do not apply. If the project is research, ask:

(3) Is the research **Exempt**? See Common Rule 26.101(b). If the research is exempt, this finding must be made in writing by EPA's Human Subjects Research Review Official (HSRRO).

(4) Finally, if the project(s) (i) does involve **Human Subjects**, (ii) is **Research,** and (iii) is not **Exempt**, then it must be approved in writing by the HSRRO as being in compliance with the Common Rule and the Order.

To secure HSRRO approval to conduct non-exempt human subject research, institutions must submit the following items for review and approval.

Documentation that the institution conducting the research has an approved program to review and monitor human subject research. [The documentation demonstrates that the institution has **Multiple Project Assurance** (*MPA*) on file with the **HHS Office of Protection from Research Risks** (*OPRR*) which is currently approved for Federal-wide use by the Secretary/HHS. Submitting **OMB Optional Form 310, Protection of Human Subjects, Assurance Identification/ Certification/Declaration will also fulfill this requirement.**]

If an institution does not have an applicable **MPA**, it must negotiate an EPA assurance as described in **40 CFR 26.103**:

Written certification from the **Institutional Review Board** (*IRB*) that the proposed human subject research has been reviewed and approved in accordance with **MPA** assurance

A copy of the research proposal, including the protocol

A written description of the procedures already used to obtain informed consent from subjects participating in the study and a copy of the consent form to be used

Secure the approval of the **HSRRO** for any assistance or interagency agreement involving the research testing of human subjects prior to the submission of the funding package to your GMO. The GMO will include a standard term and condition if human subject research is involved.

Laboratory Animals

An assistance application for a project involving the use of warm-blooded animals must include written assurance that the applicant has registered with the Department of Agriculture. Applicants must also sign an assurance that they will comply with the **Animal Welfare Act of 1966** and the rules, regulations, and standards of the Department of Health and Human Services. The GMO will include a standard term and condition when the project includes laboratory animal research.

Data, Patents and Copyrights

Data: All assistance agreements and sub-agreements are subject to **40 CFR Parts 30.36** and **31.34.** These provide the Federal government with the unrestricted right to use data or information that is developed with

assistance funds, and received by EPA in the assistance agreement. The Federal government has a royalty-free, irrevocable license to use any copyrighted data in any manner for Federal government purposes.

You should be aware that data published under Agency extramural agreements might be releasable to the public under the Freedom of Information Act (*FOIA*). Consult your FOIA coordinator if you receive a request for data.

Copyright: A recipient may copyright any work that is subject to copyright if it was developed or bought under an assistance award. EPA reserves a royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use such work for Federal purposes, and to authorize others to do so. This right may be subject to interpretation. If you anticipate sharing of outputs (*e.g., software, models, reports, training materials, etc.*) with non-Federal entities, you should add a term and condition to the agreement at the time of award that says that. Remember that assistance cannot be used to acquire goods for the direct use of the government; so any outputs distributed by EPA should not be identified as EPA materials.

Inventions and Patents: Recipients are subject to regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at **37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."**

As provided in **40 CFR Part 40.160-3 for research,** all inventions must be reported fully and immediately to the EPA. A final invention statement must also be filed within 90 days of the end of the project period. When a principal investigator changes institutions or ceases to direct a project, the recipient must promptly submit an invention statement to GAD with a list of all inventions made during his/her administration of the grant.

A recipient must report any invention(s), and notify EPA of decisions regarding retention of rights within the periods specified in the patent rights clause cited in **40 CFR 30.36.** If a recipient does not retain the rights to an invention, EPA may acquire the title. Even if the recipient retains title, EPA has the royalty-free, irrevocable license to use the invention throughout the world by, and on behalf of, the Federal government.

Applications Involving International Activities

All applications where all or part of the project is to be performed in a foreign country by a US recipient, a foreign recipient, or an international

organization regardless of where it is located must be: Approved by the Assistant Administrator for International Affairs; and, if necessary; submitted to the Department of State for clearance. A minimum of 35 calendar days must be allowed to obtain State Department clearance. The OIA will submit the applications to the Department of State.

Any agreement where there will be foreign travel must go through OIA. The program office is responsible for sending a copy of the application to OIA for approval. This approval must be obtained before the program office submits the funding recommendation to the GMO. The program office is responsible for sending a copy of the application to OIA for approval. This approval must be obtained before the program office submits the funding recommendation to the GMO.

The Assistant Administrator for International Affairs will review each proposal with an international component to determine whether it is in accordance with the EPA's and US Government's International Environmental Mission as well as EPA's and the US Government's overall relationship with the foreign country concerned. Regulations for foreign awards are subparts from 40 CFR Part 30.

The "Fly America Act" requires that all government- financed foreign air travel must be on U. S. air carriers certified under 49 U. S. C. §1371 to the extent that service by such carriers is available. This applies to Federal employees and their dependents, consultants, contractors, recipients, and others traveling for the U.S. Government.

If you have any questions, call the Office of International Affairs.

Information Collection Requirements (ICR)

Under the Paperwork Reduction Act, Federal agencies must obtain approval from the Office of Management and Budget (OMB) to collect information from the public. To comply with this requirement, an "Information Collection Request (ICR)" must be submitted to OMB for review and approval. An ICR explains what information will be collected, why the information is needed, who will need to respond, and gives an estimate of the burden hours the public will need to get and report the information. This requirement is required under assistance agreements when:

- A cooperative agreement's scope of work includes the survey or collection of identical information from 10 or more persons or;

- A grant's scope of work includes the survey or collection of identical information from 10 or more persons **and** EPA wants to influence, design or develop the activities of the survey.

In these instances, GMOs must include the following term and condition in the assistance agreement:

"EPA and the recipient agree to comply with the requirements of the Paperwork Reduction Act in completing the project. Because the scope of work includes a survey, a questionnaire or similar information-gathering activity, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), requires EPA to obtain Office of Management and Budget (OMB) clearance prior to the recipient's collection of information by means of identical questions posed to 10 or more persons. The recipient will provide to the EPA Project Officer the following information: (1) description of the information to be collected; (2) explanation of the need for the information; and (3) to whom the survey is being directed.""

EPA Project Officers are responsible for requesting assistance from EPA's Office of Policy, Regulatory Information Division, to complete the ICR and obtain OMB's approval. No work dealing with data collection should be initiated by a recipient until the Project Officer obtains OMB's approval.

Quality Assurance

EPA uses its Quality System to manage the quality of its environmental data collection, generation, and use. The primary goal of the Quality System is to ensure that our environmental data are of sufficient quantity and quality to support the data's intended use. Under the EPA Quality System, EPA organizations develop and implement supporting quality systems. Similar specifications may also apply to contractors, grantees, and other recipients of financial assistance from EPA.

Generally, quality assurance (QA) requirements apply if any part of the agreement involves: Direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media or data supporting the design, construction, and operation of environmental technology EPA applies the industry consensus standard, **ANSI/ASQC E-4 "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs."** The quality requirements for organizations receiving financial assistance from EPA through assistance agreements are discussed in the following documents:

EPA QA/R-2: EPA Requirements for Quality Management Plans (*QMP*).

QA/R-2 contains the specifications and requirements for QMPs for organizations with which EPA has assistance agreements. The QMP defines the process to be used to ensure that the assistance agreement addresses Quality Systems issues and complies with **ANSI/ASQC E-4.**

EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans *QAPPs).* **QA/R-5** establishes the requirements for QAPPs prepared for activities funded by EPA. The QAPP identifies the policies, organizational structure, objectives, functional activities, and specific QA and Quality Control *(QC)* activities designed to achieve the quality objectives of a specific project. Please clarify the specific elements you are looking for in a **QMP** or a **QAPP** before the applicant or other agency starts to develop the documentation. Consult your **QAM** early in the process to establish the best approach for addressing QA issues under the proposed agreement.

EPA advocates a graded approach to QA documentation so some discretion is available for applying the E-4 standards to a specific project. Projects of larger scope and significance might require more QA documentation than smaller, less significant projects.

All applicants for EPA assistance involving environmental programs must submit a Quality Management Plan prepared in accordance with **QA/R-2** or documentation determined by EPA to be equivalent to **QA/R-2.** *(Some organizations have "corporate" QMPs that address our needs. You don't have to ask for another document when their existing plan will do.)*

If required, a Quality Assurance Management Plan is generally developed by the recipient and submitted to EPA for approval within 60 days of the award. You would ask, with support from your Quality Assurance Manager for a **QAPP** within 60 days, reminding the recipient not to proceed with environmental analysis or data generation until the plan is approved by EPA. The Office of Environmental Information's Quality Staff is responsible for developing Agency-wide policy for quality assurance, developing guidance and tools, providing training and outreach, and overseeing the implementation by EPA organizations.

http://www.epa.gov/quality/

In-Kind Assistance

In addition to transferring money to an authorized assistance recipient, EPA may use an assistance agreement to transfer anything of value, such as

equipment or services to a recipient. This type of award without funds is called in-kind assistance.

If it is more efficient in terms of cost or time for EPA rather than the recipient to purchase equipment or services, EPA may do so and provide the equipment or services to the recipient under the assistance agreement. This approach would be appropriate, for example, where a piece of equipment necessary for an assistance project can be purchased at a considerably lower price or be delivered much earlier using an existing EPA contract. Likewise, EPA may provide the services of an EPA contractor to an assistance recipient in lieu of money, where appropriate.

To use in-kind assistance, the program office must comply with the following conditions:

- Document the expected savings of cost or time;
- Ensure that all charges are to the grants object class category; and
- Ensure that the in- kind assistance complies with the requirements in 40 CFR Part 30 or 31, (e.g., it is allowable and reasonable), and any program guidance.

Cost Share

Cost Share is defined as the portion of allowable project costs that a recipient contributes toward completing its project – costs not borne by the Federal Government (40 CFR Part 30.2 (i)). In-kind services can also be added to an assistance award by the recipient. Some examples of a recipient's in-kind contribution to an award are: volunteer hours, personnel hours, equipment, supplies and so on. Recipients' may choose to meet their cost share or match requirements through in-kind contributions.

Determining Programmatic Capability

In addition to determining that grant recipients have the technical qualifications to be able to carry out their proposed project, it is vital that the PO determine the extent to which an applicant's proposal/application demonstrates that they possess the programmatic capacity to effectively and successfully perform the proposed project.

The term "programmatic capability" means the technical capability of an applicant or recipient to successfully carry out a project taking into account such factors as the applicant's (i) past performance in successfully completing federally and/or non-federally funded projects similar in size, scope, and relevance to the proposed project, (ii) history of meeting reporting requirements on prior or current assistance agreements with federal and/or

non-federal organizations and submitting acceptable final technical reports, (iii) organizational experience and plan for timely and successfully achieving the objectives of the project, and (iv) staff expertise/qualifications and knowledge, resources or the ability to obtain them, to successfully achieve the goals of the project.

Factors to be considered for non-profit organizations are:

(1) **Before sending a non-profit funding** recommendation to the Grants Management Office (GMO), Program Offices must assess the applicant's programmatic capability. At a minimum, it must include an analysis of information from the application and the Grantee Compliance Database. If the assessment identifies weaknesses in programmatic capability, the Program Office may not approve the application for funding until it determines that the applicant has taken, or is on schedule to take, satisfactory corrective action.

(2) The Program Office must provide an assurance in the funding recommendation that it has conducted the review required by paragraph (1), that it believes the applicant possesses, or will possess, the necessary programmatic capability, and that any problems identified during the review have been appropriately addressed. The Program Office must also include in the funding recommendation any recommended award conditions necessary to ensure programmatic capability.

Evaluation of Applications for Competitive Awards to Non-Profit Organizations

Competitive announcements under which non-profit organizations may compete for an award must contain a ranking factor, or ranking factors, for evaluating all applicants on their ability to demonstrate the programmatic capability to successfully carry out the proposed project. The ranking factor(s), must, at a minimum, evaluate all applicants on the programmatic capability criteria described in the Pre-Award Order. The programmatic capability criteria included under the ranking factor(s) must be given significant weight in the evaluation process.

Section IV of competitive announcements must require applicants to submit information relating to the programmatic capability criteria to be evaluated under the ranking factor(s) in Section V of the announcement. The announcement must also indicate that in evaluating an applicant for programmatic capability purposes under the relevant ranking factor(s), EPA will consider information provided by the applicant and may consider information from other sources including agency files.

Competitive announcements which may involve individual non-profit awards in excess of the pre-award threshold must contain a provision in Section VI of the announcement, Award Administration Information, stating that non-profit applicants which qualify for funding under the announcement are subject to a pre-award review for administrative capability under the Pre-Award Order. The provision must explain that these applicants will be required to fill out and submit to the GMO, with supporting documents, the Administrative Capability Form contained in Appendix A of the Pre-Award Order.

Factors to be considered for all other applicants are:

- The applicant's past performance in performing projects similar in size, scope and relevance to the proposed project under prior or current grants with federal and non-federal organizations. This serves as an indicator of their ability to successfully perform the project. The currency and relevance of the information, source of the information, general trends in performance, and problems encountered and corrective actions taken will be considered.

- The extent to which the applicant has the necessary organizational experience, operational controls, prior experience, and management plan for timely and successfully achieving the objectives of the proposed project within budget.

- The applicant's history of submitting timely and complete progress and other reports on prior or current grants with federal and non-federal organizations.

- The extent to which the applicant's key personnel (e.g., principal investigator, co-investigators) are qualified and possess the relevant knowledge, expertise, experience, and capabilities to successfully and effectively perform and manage the project.

- The extent to which the proposal demonstrates that the roles, responsibilities and time commitments of the proposed project staff (including consultants, subcontractors and partners) are clearly defined and will facilitate successful completion of the project.

- The extent to which the applicant has the necessary technical equipment, resources, and facilities, or the ability to obtain them, to successfully and effectively perform the project.

Budget Review Responsibilities

Negotiating a comprehensive, clearly defined workplan is a critical component to ensuring the adequacy of the proposed budget. The narrative/ work plan must justify the necessity for every item.

The PO is responsible for reviewing the proposed budget against the Narrative/ Workplan to determine whether the budget is reasonable from a programmatic perspective. In making this determination, the PO should consider the technical necessity for and price reasonableness of proposed personnel, travel, equipment, supplies, procurements, and other items in the budget. There is no one way to determine the reasonableness of any particular item. If the PO questions whether a particular item is "reasonably" priced, they should ask other POs, call various suppliers, ask the GMO for advice, or ask the applicant how it arrived at the cost. **The PO must document in the file that a cost review was performed.** Many Programs have cost review checksheets that are required to be completed. Please check with your office to see if there is a checklist available.

Criteria for Reviewing and Approving Proposed Costs

Recipients must maintain and report costs in accordance with the regulation that governs the agreement, i.e., either 40 CFR 30.27 or 40 CFR 31.20. Each recipient must follow the Federal cost principles applicable to that type of organization. (See Chapter 2 for a list of the cost principles.) The recipient cannot be reimbursed for costs that are contrary to the specific terms of the agreement or are outside its scope. The recipient may only charge costs if they resulted from obligations made during the approved funding period. The next few pages explain "eligible," "reasonable," "allowable," and "allocable" in detail.

COSTS MUST ALSO BE ELIGIBLE, REASONABLE, ALLOWABLE, AND ALLOCABLE

The PO shares the responsibility with the GMO to determine that costs are:

Eligible: A cost is eligible, if it is permitted by statute, program guidance, or regulations. The costs must also conform to any Federal limitations (e.g., real property purchases under the Construction Grants program, mobile treatment systems under Superfund);

Reasonable: A cost is reasonable if it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time

the decision was made to incur the cost. To determine the reasonableness of a specific cost, consideration must be given to:

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or performance of the award.

- The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

- Whether the individuals concerned acted with prudence under the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Government.

Allocable: A cost is "allocable" to an assistance agreement to the extent that it ;

- Benefits the award and can be distributed in reasonable proportion to the benefits received;

- Is incurred specifically for the award;

- Is treated consistently with other costs incurred for the same purposes in like circumstances and if it:

- Is necessary to the over all operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

Allowable: To be allowable, the costs must be necessary and reasonable for the performance of the award.

- Be authorized by the appropriate Cost Principles;

- Be authorized, or not prohibited, under Federal, State or local laws or regulations (see definition of "eligible);

- Be consistent with the recipient's policies, regulations, and procedures. The recipient must apply the same policies, regulations, etc. to both Federally assisted and non- Federally assisted activities;

- Be consistent with Generally Accepted Accounting Principles;
- Not be included as a cost or used to meet cost sharing/ matching requirements of any other federally financed program (unless specifically authorized by Federal law); and
- Be adequately documented.

The GMO has final responsibility for ensuring that budget information is complete and costs are consistent with Federal cost principles and policies including whether costs are allowable and allocable. The GMO also reviews the indirect cost rate (if indirect costs are claimed) and will verify that the applicant has a current, approved rate (provisional or final).

Applicants Budget Narrative

In order to adequatly conduct a cost review, the applicant must provide the PO a narrative explanation of the components of the budget. The following discuss the minimun level of detail a applicant should provide.

Personnel:
The applicant must identify all staff positions by title, annual salary, and the percentage of time each position will be assigned to the project/ program. Any person placed on this line must be actual employees of the applicants organization, **not contractors or consultants. Therefore the PO must examine staffing requirements for the project and must determine whether project staff support is adequate and the right mix to meet the project objectives.** Some questions the PO should consider are:
Who is charged with the ultimate responsibility to manage the project?
Will key staff members participate full time?
Are the staff identifyed necessary to complete the project?

Fringe Benefits:
Fringe benefit costs are those costs for personnel employment other than the employees' direct income (i.e., employer's portion of FICA insurance, retirement, sick leave, holiday pay, and vacation costs) that will be paid by the recipient. Fringe benefits are typically not subject to negotiation. The GMO will review fringe benefit costs for reasonableness.

Equipment:
For Federal purposes equipment is defined as an item with a unit acquisition cost of $5,000 or greater and a useful life of more than one year. The applicant must identify each item of equipment and its cost. Applicants

cannot rebudget into or out of this category without prior EPA approval.

Some programs (such as Superfund) require applicant to conduct a cost/ benefit analysis of purchasing equipment, leasing, or letting a contractor purchase the equipment. ***The PO is responsible for ensuring that the applicant complies with any preaward program specific requirements regarding equipment.***

The title to equipment purchased with assistance funds vests with the recipient subject to the obligations and conditions described in the assistance agreement or program regulation. Therefore, the PO should make a decision on the ultimate disposition of equipment during the pre-award phase of an assistance agreement if possible. The following are options for the disposition of equipment:

Option 1: The recipient may keep the equipment and continue to use it on the project originally funded through the assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds. Unless otherwise instructed by the PO, the grant specialist will automatically select this default option for assistance agreements with equipment appearing in the budget. An administrative term and condition indicating this choice may be placed on assistance agreements.

Option 2: EPA may direct the recipient to transfer the title of the equipment from the recipient to a third party once the project funded by the assistance agreement is complete. If the PO decides the EPA will want the equipment transferred to a third party the PO should notify the GMO and contact their EPA Facilities Office to discuss this option. The EPA is required to issue equipment disposition instructions within 120 calendar days after the receipt of the final equipment inventory. Costs for the transfer of the equipment should be included in the budget.

The PO should note this option in the Funding Recommendation if possible. The grant specialist will include a programmatic term and condition acknowledging this choice in the assistance agreement.

Option 3: The EPA may direct the recipient to transfer title of equipment from the recipient to the EPA once the project funded by the assistance agreement is complete. The PO should note this option in the Funding Recommendation or Decision Memorandum . The grant specialist will include a programmatic term and condition acknowledging this choice in the assistance agreement . If the PO is taking this option they should contact their EPA Facilities Office and discuss the option.

Special Cases

States: State agencies may manage and dispose of equipment acquired under assistance agreements in accordance with state laws and procedures.

Superfund: Equipment purchased under Superfund projects are subject to specific disposal options. Refer to 40 CFR 35.6345 when dealing with such equipment.

Supplies:
The applicant must only request supplies which are needed to complete the proposed work plan. ***The PO must review these costs to determine that they are reasonable compared to the proposed work plan.*** Some examples of supplies could be computers, software, or film.

Travel:
The applicant must identify the number of trips planned, the destination for each trip, the number of travelers, and the estimated cost of each trip. ***The PO must review these costs to ensure that the trips are necessary to complete the scope of work and that the number of travelers is consistent with the purpose of the trip.*** The GMO also will review these costs prior to award to verify the costs are reasonable, e.g., airline ticket costs, per diem rates, mileage rates. If the applicant wants to travel but the location has not been determined it should be stated in the budget narrative.

Contractual Costs:
The applicant must identify what contracts they intend to award during the budget period. Additionally, proposed consultants are listed in this area.

Project Officers must: Review proposed procurements against the narrative/work plan to determine whether the procurements are reasonable and necessary from a programmatic perspective. In making this determination, the PO should consider the technical necessity for and price reasonableness of the proposed procurements. This review must be documented in writing in the PO's grant file.

PO's must question contracts for cost reasonableness if grant applicants propose sole-source contracts in their narrative/work plan. **If an applicant proposes to award a sole-source contract, it must provide the reasoning so the PO and GMO can determine if there is adequate justification. The PO must remind the applicant that although EPA may award a grant, EPA is not approving their contractors and the applicant must follow the appropriate procurement procedures outlined in the regulations.**

For contract actions under $100,000 the PO should inform recipients of their obligation to follow applicable procurement regulations which include that all contract actions have a cost or price analysis and if applicable a sole-source justification.

For contract actions over the $100,000 small purchase threshold inform the recipient that the PO may request the contract be made available to the EPA for pre-award review. The PO can provide a technical review of the qualifications of the contractor but cannot recommend selection. If the PO has concerns over a applicants proposed procurements they should talk to their Program contact and the GMO.

It is inappropriate for Agency staff to direct or require the use of particular persons or firms by assistance recipients in the performance of a grant or cooperative agreement.

Consultant Cap

EPA limits the Agency's participation in the amounts recipients pay to consultants to the maximum daily rate of pay for Level IV of the Executive Schedule.

A consultant is an individual with specialized skills who, although not on the recipient's payroll as an employee, provides personal services to the recipient under an agreement that essentially establishes an employer-employee relationship between the recipient and the individual providing the services. Consultants are typically individuals who are experts with excellent qualifications and are usually regarded as authorities or practitioners of unusual competence and skill by other individuals engaged in the same profession. An employer-employee relationship may be found to exist when the recipient selects the individual based on expertise in a particular field, directs the individual's work, and exercises day-to-day control of the individual's activities.

Consultant fee cap is the daily or hourly salary of Federal employees at Level IV of the Executive Schedule. EPA will not participate in any amount greater than that rate; recipients may, however, pay more. As of January 1, 2005, the limit is $537.76 per day and $67.22 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Applicant's budgets must break down consultant fees by either an hourly or daily rate. A lump sum is not adequate for the PO to perform a budget review.

Recipients may pay more than the consultant fee cap, but **EPA will not participate in any amount over the maximum**. The consultant fee cap also applies to consultants hired by a recipient's contractors.

If the recipient, or its contractor, chooses to pay more than the consultant fee cap, the recipient must use its own funds to pay the difference. (If the assistance agreement includes a recipient indirect cost rate, the recipient can apply it only to allowable costs, not to amounts in excess of the consultant fee cap). Further, recipients cannot use the amount in excess of the consultant fee cap for cost sharing purposes. The consultant fee cap does not apply to reasonable consultant overhead or travel direct costs. Recipients may reimburse these costs in accordance with their normal practices.

The consultant fee cap does not apply to contracts awarded to firms or individuals that are awarded under the procurement procedures under 40 CFR Parts 30 and 31 (40 CFR §30.27(b) and 40 CFR §31.36(j)(2)) so long as the terms of the contract do not provide the recipient with responsibility for the selection, direction, and control of the individual(s) who will be providing services under the contract. Conversely, the consultant fee cap does apply to contracts awarded to firms or individuals that are awarded under the procurement procedures of 40 CFR Parts 30 and 31 if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. The cap does not apply to fixed priced or lump sum contracts for specified products such as reports or delivery of a training course.

For example, a contract with a multi-person firm that does not require the firm to provide to the recipient the services of a particular individual, and that does not require the recipient to exercise control and direction over the individual, would not be subject to the cap. On the other hand, the consultant fee cap would apply to a contract awarded to a firm with one or more persons that is justified on the basis of the qualifications of a designated individual with specialized skills if the terms of the contract require the firm to provide the recipient with the services of that individual at an hourly or daily rate of compensation and the recipient will exercise direction and control over that individual in the performance of the contract. Questions regarding whether a particular individual under a contract may be performing as a consultant and thus be subject to the consultant fee cap

should be directed to the Office of General Counsel or Office of Regional Counsel, as appropriate.

In addition, the consultant fee cap does not apply to contracts for technical advisory services awarded competitively under EPA's Superfund Technical Assistance Grant (TAG) program regulations at 40 CFR 35.4205 provided that the terms of the contract indicate that the technical advisor has the discretion of an independent contractor and do not vest the TAG recipient with responsibility for the direction and control of the technical advisor.

Project officers should alert Grants Management Offices (GMOs) if they find indications that a recipient is using consultants, e.g., statements in work plans or findings as a result of post award monitoring activities. If the application or other information, including the budget, indicates the recipient will use funds for contracts or consultants, the Grants Specialist must include the "Consultant Fee" Term and Condition in the award document

Other category of costs:

Examples of other costs could be postage, printing, sub-grants or stipends. The PO must review the other costs to determine the costs are consistent with the proposed work plan and are necessary to complete the approved work plan.

Note: Grantees are encouraged, but are not required, to award subgrants and subawards competitively. Grant recipients have the sole responsibility of selecting an entity to subaward, transfer, or contract out any work under an award. Agency personnel can exercise authority under 40 CFR 30.25(c)(2)(v) and 40 CFR 31.30(d)(4) to approve the qualifications of subgrantees that were not described in the grant agreement. However, absent express authority, EPA personnel must not direct grantees to award subgrants to particular organizations or take other actions which circumvent EPA Order 5700.5A1, *Policy for Competition in Assistance Agreements.* In other words, EPA program offices shall not use subgrants to circumvent the competitive process outlined in the *Policy for Competition in Assistance Agreements.* To this end, **EPA project officers shall not provide any advice to recipients concerning the selection of an entity.**

Ultimately, grant recipients are responsible to EPA for the use of grant funds. Although the grantee has discretion in choosing the means to implement the grant, **subject to applicable statutes,** regulations, and the terms of the grant agreement, there are restrictions on the extent to which the grant recipient subgrants. **For example, a grantee may not award a**

subgrant to another entity for a purpose not authorized by, or an activity not eligible under, the federal grant statute. Similarly, grantees cannot use subgrants to circumvent the competitive procurement requirements of EPA's grant regulations, 40 CFR Parts 30.40 and 31.36. **Subgrants cannot be used to acquire commercial services or products that the recipient will use primarily to support its own organization.** The nature of the transaction between the recipient and the subgrantee must be consistent with the standards for distinguishing between vendor transactions and subgrantee assistance under OMB Circular A-133.

Indirect Costs:

In addition to direct costs, the EPA supports a policy of full reimbursement of indirect costs also known as facilities and administrative (F&A) costs or overhead for most grant programs. **The Grants Management Office will review the indirect cost budget line.** Universitys negotiate their rates with the Department of Health and Human Services. Tribes negotiate their rates with the Department of Interior. EPA accepts rates negotiated by other Federal agencies. If the applicant does not have an approved rate the GMO will term and condition the grant appropriately.

What are Indirect Costs:

Indirect costs are those costs of an institution or organization that are not readily identifiable with a particular project or activity but are necessary to the general operation of the organization and the conduct of its grant activities.

Allowable indirect costs may include:

- Depreciation use allowance;
- Facilities operations and maintenance;
- General administration and general expense;
- Departmental administration; and
- Sponsored project administration

These costs are documented and assigned to the indirect pool from which they are distributed to all activities of an organization on the basis of a rate. The rate is a ratio of the indirect costs to a direct cost base.

An indirect cost rate is simply a device for determining fairly and expeditiously the proportion of general (non-direct) expenses that each project will bear. It is the ratio between the total indirect costs of an applicant and some equitable direct cost base.

The applicant must comply with the applicable OMB Circular

Cost Sharing

Cost sharing may be match, maintenance of effort or level of effort.

Cost sharing requirements for a program may be required by statute (e.g., Air §105 grants require States to provide a 40% match), program policy (Toxic Substances Control Act §10 grants), or by regulation (Superfund Technical Assistance Grants.)

Recipients can claim only allowable and eligible costs to meet cost sharing requirements. For example a recipient could not use alcohol or entertainment costs from a reception to meet its match. Recipients subject to OMB Circular A-110 (40 CFR 30) may claim unrecovered indirect costs as part of their cost share, with the prior approval of the EPA Award Official.

Funds awarded under assistance programs of other Federal agencies cannot be used to meet EPA cost sharing requirements unless legislation explicitly authorizes such use, e.g., Department of Housing and Urban Development's Community Development Block Grant program, or the Indian Self-Determination Act.

Funds for recipient cost sharing may include:

Third Party in-kind contributions e.g., facilities, equipment, materials, professional services, volunteer staff time provided by non- Federal public agencies, organizations, or individuals.

Recipients cannot decide which task, sub task, or item of equipment is funded with Federal dollars and which is not. **Each assistance-related dollar includes both Federal and recipient shares.** Recipients cannot avoid Federal statutory or regulatory requirements by separating recipient funds from Federal funds.

Program Income

"Program Income" is the gross income received by the recipient or subrecipient: directly generated by an assistance supported activity, or earned as a result of the assistance agreement during the project period

"Program Income" does not include interest earned on assistance funds, rebates, credits, discounts, refunds, or income from royalties and license fees for copyrighted materials. Patents and inventions developed by a recipient or

sub-recipient is not "program income" unless specifically identified as program income in the assistance agreement or EPA regulations.

Recipients must use program income:

1. Added to funds committed to the project by EPA and recipient and used to further eligible project or program objectives;
2. To finance the non-Federal share of the project or program (for cost-share purposes); or
3. To deduct from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

NOTE: The PO should determine prior to award which of the three options is the most appropriate for the project.

Unless the terms of the agreement or EPA regulations provide otherwise, there are no Federal requirements governing disposition of program income earned after the project period end date.

Further program income which was not anticipated at the time of award shall be used to reduce the Federal and recipient contributions rather than increase the funds committed to the project ***unless*** the award is amended to permit the funds to be used differently.

Preaward Costs

STATE, LOCAL GOVERNMENTS, AND INDIAN TRIBES

Generally state and local governments and Indian Tribes, subject to 40 CFR Part 31, may be reimbursed for pre-award costs if the costs meet the following definition:

"Costs incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance and are in conformance with the appropriate statute and costs principles". This policy was established in Grants Policy Issuance (GPI-00-02) dated March 30, 2000.

http://intranet.epa.gov/ogd/policy/7.0-GPI-GPI-00-02.htm

The policy made the treatment of Part 31 grantees consistent with that afforded to universities and non-profits under 40 CFR Part 30.25. Some part

31 recipients vary, and may be subject to additional limits on preaward costs. For example for awards subject to 40 CFR Part 35 the following applies:

Construction Grants: The Award Official must specifically approve preaward costs before they are allowable. (See 40 CFR 35.2118 for the limitations on pre-award costs.)

State and Tribal Environmental Program Awards: EPA will reimburse the applicant for allowable costs incurred from the beginning of the funding period established in the agreement, provided such costs are **contained in the approved application** and that the application was submitted before the expiration of the prior budget period. (40 CFR 35,113 and 35.513)

If an application is **not** received before the end of the prior budget period, a deviation from the regulation must be approved if the preaward costs are to be allowed.

Superfund Awards: Except as permitted in §35.6285 (credits and advanced match), the Award Official must sign the assistance agreement before costs are incurred. The recipient may incur costs between the date the Award Official signs the assistance agreement and the date the recipient signs the agreement, if the costs are identified in the agreement and the recipient does not change the agreement.

INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFITS (Subject to 40 CFR Part 30)

Preaward costs may be incurred up to 90 calendar days before the award without prior approval from EPA.

Preaward costs incurred more than 90 calendar days prior to award are allowable only with prior approval from the EPA Award Official.

The Applicants must include all preaward costs in it application.

All Applicants (40 CFR Parts 30, 31 and 35) incur preaward costs at their own risk, EPA is not obligated to pay for any costs if:

The applicant does not receive an award,
The award is less than anticipated,
The award is inadequate to cover preaward costs, or
The costs do not conform to the cost principles.

Additional cost review guidance is available in GPI 00-5 located on the intranet at:

http://intranet.epa.gov/ogd/policy/7.0-GPI-GPI-00-05.htm

Note: Profit is not allowable under assistance agreements unless there is specific statutory authority allowing profit.

When the PO is reviewing the budget they should consider if it may be necessary to add the term and condition requiring the recipient to notify the PO if major cost components change.

SUMMARY:

At the beginning of the chapter, we identified several objectives you would accomplish after reading the chapter. The objectives are listed below, each followed by a brief summary of the key points the chapter covered.

1. Understand what types of reviews are required. Programs must perform an administrative review to ensure that the applicant submitted all information requested by the announcement and is eligible to receive the assistance. After the administrative review, the regulation for research 40 CFR Part 40 requires a relevancy review. It is performed by EPA technical experts (not including the PO). For research you need at least one internal and two external reviewers, and you may have more. Internal reviewers must come from within EPA and should come from outside of the chain of command. They must be impartial and independent. The external reviewers must be external to EPA, technically qualified, and independent. Use as many reviewers as necessary to assure that you have the required expertise. Non-research awards require one technical review be performed on the scope of work.

2. Describe the selection for award process. Relevancy, coupled with the results of the technical review, will usually provide the basis for funding recommendations. Final funding decisions are delegated to the Approval Official. In most cases, the proposal(s) with the highest technical merit will be selected for further processing and consideration by the Agency.

3. Understand how the selection for award dispute process works. An unsuccessful applicant may appeal a decision not to select its initial or final proposal to the EPA disputes decision official appointed by the Award Official for the assistance funding that will be awarded as a result of the competition (for example, the Grants Administration Division for Headquarters competitions, or the Regional Grants Management Office for

regional competitions) for his/her final decision. The EPA disputes decision official must consult with OGC or ORC, as appropriate, to determine whether it is in the Agency's best interest to delay the award process pending resolution of the dispute.

4. Identify the contents of an application package. The application (SF 424) consists of four parts -- the Face sheet, Budget information, Assurances, and a Program Narrative/Workplan.

5. Understand the importance of negotiating a complete work-plan. The approved project narrative/work-plan is the basis for making an award and is used by the PO to manage and evaluate performance under the agreement. The purpose of the project narrative is to outline all activities to be performed by the recipient. It is especially critical for the PO to spend time negotiating with the recipient on this portion of the application package.

6. Conduct a cost review of an application budget. The PO is responsible for reviewing the proposed budget against the Narrative/ Workplan to determine whether the budget is reasonable from a programmatic perspective. In making this determination, the PO should consider the technical necessity for and price reasonableness of proposed personnel, travel, equipment, supplies, procurements, and other items in the budget. Additional guidance is available in GPI 00-5.

7. Be aware of Quality Assurance (QA) requirements under assistance agreements. EPA uses its Quality System to manage the quality of its environmental data collection, generation, and use. The primary goal of the Quality System is to ensure that our environmental data are of sufficient quantity and quality to support the data's intended use.

8. Define in-kind assistance and cost share. In-kind assistance in awards allows EPA to use an assistance agreement to transfer anything of value, such as equipment or services to a recipient. In-kind assistance can also be where the recipient contributes anything of value to the award. Cost share is defined as the portion of allowable project costs that a recipient contributes toward completing its project – costs not borne by the Federal Government (40 CFR Part 30.2 (i)).

QUESTIONS

1. What does the application package consist of? Who fills out the application package?

2. Who is responsible for reviewing the proposed budget against the Narrative/ Workplan to determine whether the budget is reasonable from a programmatic perspective?

3. Who signs the application and accompanying certifications?

4. What will an effective narrative/work plan do?

5. Why must programs perform an administrative review?

6. Why must reviewers be impartial, independent, and free from conflict of interest?

7. A programmatic review must?

EXERCISE

Using your text please review the following work-plan and budget identifying any deficiencies and areas that need to be addressed.

SCOPE OF WORK

Organization: For more than 100 years, the city of Crocker's zoo has dedicated itself to scientific literacy for all citizens by creating opportunities for adults and children to explore and enjoy the world of science. The Zoo's exhibition and education programs build on the Zoo's commitment to the natural and environmental sciences. By interacting with exhibits, conducting experiments, or handling live animals, people directly experience the world of science and these experiences become both a base and a springboard for further science learning. One of the exhibits in our newly created Nature Museum that will enhance science learning both inside and beyond the walls of the museum is the Butterfly Haven.

Summary: Butterflies are a universal attraction among old and young alike; they elicit an intense emotional and aesthetic response from individuals of all ages, backgrounds, and locations. The curiosity fostered from watching butterflies provides an opportunity to convey scientific and conservation information to an audience previously unaware or unfamiliar with environmental issues. Butterflies are an entry point into creating public interest in environmental issues. With this in mind, the Butterfly haven in the new Nature Museum was created to allow visitors to explore the entire life cycle of butterflies and moths native to the State and Region ecosystems, and appreciate more fully biodiversity and conservation issues associated with the region.

Learning, however, does not end when the visitor leaves the building. In order to create life-long learners, a connection must be made between the natural phenomena occurring inside the exhibit and that which happens outside, in the visitors own community. To this end, the Zoo is seeking funds to use our successful *Ecological Citizenship* model to create butterfly habitats in schools across the City. These habitats will not only serve as bridges, linking environmental classroom content with an outdoor laboratory, but will serve as an educational tool for parents, and other members of the community. In this pilot project, school teams, comprised of three teachers and their students, will develop local butterfly gardens on their school grounds with assistance from Zoo educators and butterfly experts.

Education Priority: The eighteen teachers selected will participate in an comprehensive teacher training program, a lecture series by experts in the field of butterfly husbandry, receive interactive, educational resources on the World Wide Web, and continual support and interaction from Zoo staff members. The teacher workshops will incorporate hands-on lessons from successful environmental curricula, including the City Zoo of Sciences' *Ecological Citizenship* program, while the lectures will be open to the community, and used as a means of enhancing public understanding of current environmental issues.

Delivery: To reach our audience the BUGS project will select 6 school teams, each comprised of three teachers and their students. Teachers will receive three workshops, three site visits, and continual assistance from Zoo staff throughout the 1998-1999 school

year. A series of public lectures by butterfly experts will be held to attract community involvement, as will the creation and maintenance of a web site, devoted to the BUGS project. Due to the universal appeal of butterflies and the ease with which this project can be adapted, this model can be disseminated throughout the country to assist other environmentally-active institutions in introducing environmental issues, such as biodiversity, restoration and conservation and community action projects into their school-based communities.

Cost: The Zoo is requesting $24,500 to conduct three teacher workshops, offer two, public lectures, develop, install, and maintain a web site, and conduct a comprehensive evaluation strategy.

Personnel

One *Zoo Outreach Instructor* will create and conduct all teacher workshops and site visits to each school, organize and oversee public lectures, establish locations for teacher workshops and first public lecture, and provide general science assistance to all 18 teachers.- one third time = $10,000
Benefits for Outreach instructor - 25% of salary = $2,500
manager (matching, in-kind) - one fifth time to oversee project, manage Outreach Instructor, create evaluation instruments (+ benefits) = $4,500
Total $12,500

Travel

Mileage - Outreach Instructor will make 3 site visits per school throughout the 2004-2005 school year to document progress of *BUGS* project = $200

Supplies

Printing - Printing of evaluation instruments (student pre/post tests, teacher pre/post tests, workshop surveys, lecture evaluation forms), materials and lesson plans for teacher workshops, flyers for teacher workshops and public lectures and the printing of tote bags = $1,700
Postage = Postage necessary to send flyers for two public lectures and correspondence with teachers = $500
Materials - Materials needed for 3 teacher workshops, and materials needed for 6 schools to create and maintain a butterfly habitat (seedlings, soil, grow lights, germinating mix, hand tools, water cans, books, tote bags, posters, hoses, refreshments, etc.) = $200/workshop x 3 workshops = $600 = $1,000/school x 6 schools = $6,000
Disposable Cameras - Photos needed to document progress of project, and for creation of classroom portfolio. To allow all teachers access to a camera, a disposable camera and reimbursement for developing will be given to every teacher at each workshop.

18 x 3 workshops = 54 cameras
54 x $25/camera + developing = $1,350

Other

Facility Use - The second public lecture will be conducted in the newly created Nature Museum, however, the Museum will not be ready for the first public lecture, so a space must be rented, or personnel reimbursed for use of an auditorium = $500
Facility Use (Matching, In-kind) - rate to hold second public lecture in Nature Museum = $500
Web Access - Line charges and memory storage for 12 month period = $1,200
Indirect Costs *38.5% (Matching, In-kind)* = $9,451.75
Honorarium (Matching, In-kind) for public speakers of lecture series = $1,000

Non-Personnel Total	**$22,050**
Personnel and Non-Personnel Total	**$20,550**

Major Activity	**EPA Funds**	**Zoo Match**	**Total**
Education/Dissemination (Workshops, Lectures, Web Site)	8,800	4,500	13,300
Habitat Development	10,200	1,000	11,200
Evaluation	5,500	500	6,050
Indirect Cost		9,451.75	9,451.75
TOTAL	**24,550**	**15,051.75**	**40,001.75**

Budget Information - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.						
2.						
3.						
4.						
5. Total						

SECTION B- BUDGET CATEGORIES

6. Object Class Categories:	GRANT PROGRAM, FUNCTION OR ACTIVITY				TOTAL
	(1)	(2)	(3)	(4)	(5)
a. Personnel	12,500	4,500			17,000
b. Fringe Benefits					
c. Travel	200				200
d. Equipment					
e. Supplies	10,150				10,150
f. Contractual					
g. Construction					
h. Other	1,700	1,500			3,200
i. Total direct Charges (sum 6a - 6h)	24,550	6,000			31,550
j. Indirect Charges		9,451.75			9,451.75
k. TOTAL $ (sum 6i and 6j)	24,550	15,451.75			40,001
l. Program Income					

Is this a fundable project?
Are the costs reasonable, allocable and allowable? What costs would you question as the PO?

Version 7/03

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:		Organizational Unit: Department:	
Organizational DUNS:		Division:	
Address:		Name and telephone number of person to be contacted on matters involving this application (give area code)	
Street:		Prefix:	First Name:
City:		Middle Name:	
County:		Last Name:	
State:	Zip Code:	Suffix:	
Country:		Email:	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐		Phone Number (give area code)	Fax Number (give area code)

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	7. TYPE OF APPLICANT: (See back of form for Application Types) Other (specify) 9. NAME OF FEDERAL AGENCY:
10 CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc):	
13. PROPOSED PROJECT Start Date: / Ending Date:	14. CONGRESSIONAL DISTRICTS OF: a. Applicant / b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$	a. Yes ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$	
c. State	$	
d. Local	$	b. No ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$	
f. Program Income	$	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes" attach an explanation. ☐ No
g. TOTAL	$	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
Title		c. Telephone Number (give area code)
b. Signature of Authorized Representative		e. Date Signed

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable)	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13.	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

OMB Ap No. 0348-0044

BUDGET INFORMATI... - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel					0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges (sum of 6a-6h)	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS (sum of 6i and 6j)	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION C - NON ERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.				$ 0.00
9.				$ 0.00
10.				$ 0.00
11.				$ 0.00
12. Total (SUM OF LINES 8-11)				$ 0.00

SECTION D - FORECASTED CASH NEEDS

13. Federal	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL (sum of lines 13 and 14)	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16-19)	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

Cost Review Analysis Guide

Purpose of a Cost Review Analysis

What is a cost review analysis?
A cost review analysis is defined as a review of a potential recipient's budget to determine that costs are eligible, reasonable, allowable, and allocable to complete the proposed project/program work.

Is a cost review analysis always required?
EPA policy requires a project officer to conduct a cost review analysis for every project selected for funding. Project officers are required to fill out the OW Cost Review Analysis Checklist and include a copy in the Funding Recommendation Package and in the Official Project File.

What cost principles do I use?
The Office of Management and Budget (OMB) has issued three sets of cost principles for determining costs of grants. An understanding of these principles is necessary for budget evaluation. The chart below summarizes the applicable OMB cost principles:

If this type of organization receives an award or sub-award	Then these cost principles apply:
Educational Institutions (colleges or universities)	OMB Circular A-21 (Section J)
Private Non-Profit Organizations other than Institutions of Higher Education or Hospitals	OMB Circular A-122 (Attachment B)
State, Local, or Tribal Governments	OMB Circular A-87 (Attachment B)

Are the cost principles online?
The OMB Circulars can be found online at:
http://www.whitehouse.gov/omb/grants/grants_circulars.html

Performing a Cost Review Analysis

WHY **must I perform a cost review analysis?**
A cost review analysis is required under Grants Policy Issuance (GPI-00-05). The policy can be found online at: http://intranet.epa.gov/ogd/regulations_policy.htm

WHEN **should I perform a cost review analysis?**
A cost review analysis should be performed when the application and work plan are received and reviewed.

WHAT **do I need to perform a cost review analysis?**
Three things are required in order to perform a cost review analysis: a work plan, budget (424A), and the budget detail. Although budget detail information is not required for "small grants" as defined in the "Small Grants Policy," you may request additional information, if necessary, to do the cost review analysis.

HOW **do I perform a cost review analysis?**

1) Read and evaluate the project proposal to gain a complete understanding of the project and its methodology. Compare the proposed budget to the narrative or work plan to determine whether the budget is reasonable from a programmatic perspective.

2) Verify the accuracy of the cost and pricing information submitted and evaluate if the costs are eligible, reasonable, allowable, and allocable.

- **Eligible** – Permitted by statute, program guidance, or regulations.
- **Reasonable** – Does not exceed that which would be incurred by a prudent person under the circumstances at the time the decision was made to incur the cost. A cost can be allowable and allocable, and still not be reasonable (e.g., first class airfare for a proposed recipient travel).
- **Allowable** – Necessary and reasonable for the performance of the award.
- **Allocable** – Incurred specifically for the award; treated the same no matter when or where applied and consistent with the recipients' policies, regulations, and procedures; and necessary to the overall operation of the organization.

3) Question the OBVIOUS costs which appear unreasonable and unallowable. This would include costs which are prohibited by the OMB cost principles applicable to the assistance applicant. A few examples are as follows:

- **Bad Debts.** This includes any losses arising from uncollectible accounts and other claims and related costs.
- **Entertainment.** Costs of amusements, social activities and incidental costs thereto such as meals, beverages, etc., are included.
- **Fines and Penalties.** Costs resulting from violations of, or failure to comply with Federal, State, and local laws and regulations.
- **Legislative expenses.** Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction.
- **Lobbying.**

4) Other costs that should be questioned:

- Requests for money where funding is being supplied by another outside source;
- Requests for funding for costs normally borne by the organization;
- An inflated project budget as compared to general operating expenses;
- Budget not cost-effective (too expensive for expected outcome);
- Inaccurate calculations;
- Inadequate justification for costs; and
- Costs not tied to project objectives.

Understanding the Cost Categories

Project Officers should perform a thorough examination of all relevant cost categories when performing a cost review analysis. Explanations have been provided for each.

PERSONNEL costs are for labor efforts directly related to the proposed project/program and should be defensible. Education, experience, level of responsibility, and level of program and technical difficulty are elements of salary consideration. The personnel rates in the budget should be reasonable and consistent with prevailing rates for similar positions within the organization or in the geographic area where the project will be performed.

Consider:

(1) The level of effort or the total amount of time proposed. The proposed effort should be consistent with the effort required by the work plan.

(2) The labor mix or the labor categories proposed. Labor mix should be consistent with the caliber of effort – *professional/nonprofessional/clerical* – required by the grant work plan. The

U.S. Department of Labor, Bureau of Labor Statistics (BLS) publishes a large amount of information on the wages, earnings, and benefits of workers. The website address is: http://stats.bls.gov/bls/wages.htm

At a minimum, the budget detail should include a list of all participants' titles. The percentage of time that each individual will devote to this project during the entire project period should also be indicated. The budgeted cost should be derived through each person's time percentage multiplied by his or her annual salary. The sum of each person's costs should be reflected as total personnel costs.

FRINGE BENEFITS are those costs for personnel employment other than the employees' direct income (i.e., employer's portion of FICA insurance, retirement, sick leave, holiday pay, vacation costs, etc) that will be paid by the recipient. **The Grants Administration Division (GAD) is responsible for reviewing fringe benefit costs for reasonableness.**

TRAVEL expenses are allowable only when travel is directly related to the proposed project and will provide a benefit to it. **All international travel must be approved by the Office of International Activities.**

Consider:
(1) place(s) to be visited
(2) length of stay
(3) number of visits
(4) number of persons traveling

EQUIPMENT is tangible, nonexpendable personal property with a unit acquisition cost of $5,000 or greater and a useful life of more than one year. A list of planned equipment purchases must be provided to EPA. **No equipment may be purchased without the express approval of EPA.** The recipient should make a distinction between project specific equipment and general purpose equipment. Project specific equipment directly facilitates a project's mission and is reimbursed fully as a direct cost, whereas general purpose equipment is used for things other than technical or specialized activities and is usually reimbursed as a part of indirect (overhead) costs.

Consider:
(1) The need to itemize equipment. If equipment is intended to be used to support more than one project/program, only the portion of costs which are allocable to your project/program is allowable to be charged to the grant.

(2) The cost of rental/loaning vs. the cost of purchase. Would it be more economical to rent or loan the item than to purchase it?

(3) The ratio of employees to the authorized equipment (i.e., are we approving sixteen computers when the assistance applicant only has twelve employees who are working on the program/project?)

(4) Have we authorized this same equipment for this project/program in past years (i.e., have we approved the purchase of an automobile every year for the past twelve years?)

SUPPLIES are all tangible property other than equipment. Supplies differ from equipment in that they are consumable, expendable, and of relative low unit cost. The project officer must review these costs to determine that they are reasonable compared to the work plan.

CONTRACTUAL costs are those contractual services directly related to the proposed project. The budget narrative in the proposal should fully explain the reasons for seeking third-party services and affirmatively state that the anticipated costs are reasonable. The recipient's solicitation(s) are subject to the competitive procurement procedures laid out in the Federal regulations at 40 CFR 30.40-30.48 for Non-Profits and Institutions of Higher Education or 40 CFR 31.36 for State and Local Governments. Note that a State may use the same policies and procedures it uses for procurements from its non-Federal funds.

Applicants should review EPA's regulations concerning procurement and the need to provide justification for sole source agreements and documentation concerning cost-price analysis for contracts and other agreements.

Consider:
(1) The hourly/daily rate and the number of hours/days proposed for consultant services. There is a salary cap on the amount payable for individual consultants. Refer to GPI-03-02 online at http://intranet.epa.gov/ogd/regulations_policy.htm

(2) The project officer, in his/her monitoring role, may ask for copies of and examine all agreements under the assistance agreement, including leases, consultant agreements, and all other contracts.

OTHER costs are any other category of costs directly related to the proposed project. For example, the budget might include categories for postage, printing and reproduction, conference room rentals, scholarship payments to recipients under a grant, sub-grant awards, and any other activity that might be supported by an assistance agreement. The project officer must review these costs to determine that they are consistent with the work plan and are necessary to complete the work.

INDIRECT COSTS are those operating costs that are not readily identified with a project and are difficult to directly allocate to the project. If indirect charges are budgeted, the recipient must indicate how indirect charges were calculated for this project and include a copy of the indirect cost rate agreement. The indirect cost rate typically is negotiated between the recipient and his/her cognizant Federal agency. **GAD is responsible for reviewing indirect costs for reasonableness.**

PROGRAM INCOME Program and granted-related income is gross income generated by an assistance supported activity and earned as a result of the assistance agreement during the project period. Recipients are accountable to the government for any income earned as a result of an assistance agreement. The recipient has no obligation to the government for income earned after a project has ended. **Profit is not allowable under assistance agreements unless there is specific statutory authority allowing profit.**

The recipient should provide an explanation of how the income will be used, i.e., to expand, support or sustain the project, used to finance the non-Federal share, or deducted from the total allowable cost. Put another way, the recipient must inform the project officer where the funds are going.

Examples of program income include: registration fees collected, income from the sale of products produced under an assistance agreement, and rental fees generated from equipment purchased with assistance funds.

The project officer should discuss the disposition of program income with the applicant before award and specify how the recipient may use the funds in the Funding Recommendation Package.

For More Information...

Office of Grants and Debarment Intranet Site
http://intranet.epa.gov/ogd/

Office of Management and Budget Website (Cost Principles)
http://www.whitehouse.gov/omb/grants/grants_circulars.html

OPTIONAL PROJECT OFFICER COST REVIEW ANALYSIS CHECKLIST

Project Officer:	**Project Period** **Start Date:** **End Date:**
Date of Cost Review:	**Grant Number:**
Grantee:	

INSTRUCTIONS: *A cost review analysis is defined as a review of a potential recipient's budget to determine that costs are eligible, reasonable, allowable, and allocable. The checklist follows the cost categories found in the Standard Form 424A Budget Sheets. For each cost category, record costs accepted and any costs that were questioned and provide a brief description of the solution to the questioned costs. Examples of questioned costs include bad debts, entertainment, and lobbying expenses. If a recipient did not include costs in a particular budget category, check the "Not Applicable" box. Upon completion, print the checklist and include a copy in the Funding Recommendation Package and in the Official Project File.*

REMEMBER: All costs must be Eligible, Reasonable, Allowable, Allocable.

- ✓ Eligible – Permitted by statute, program guidance, or regulations.
- ✓ Reasonable – Does not exceed that which would be incurred by a prudent person under the circumstances at the time the decision was made to incur the cost.
- ✓ Allowable – Necessary and reasonable for the performance of the award.
- ✓ Allocable – Incurred specifically for the award; treated the same no matter when or where applied and consistent with the recipients' policies, regulations, and procedures; and necessary to the overall operation of the organization.

PERSONNEL: Costs for labor effort directly related to the proposed project.

COSTS ACCEPTED	COSTS QUESTIONED	NOT APPLICABLE

	Y	N
1. Was a comparison done of the proposed budget and the narrative work plan to determine whether the budget is reasonable?		
2. Was an examination done on the staffing requirements for the project?		
3. Are the personnel appropriate (the right mix) to meet the project objectives?		
4. Was the personnel budget category reviewed to determine if salary ranges are reasonable?		
5. Are the personnel listed in the documentation supporting the personnel budget category actually employees of the grant recipient?		
Solution to Costs Questioned:		

FRINGE BENEFITS: Costs for personnel employment other than employee's direct income.

COSTS REPORTED BY RECIPIENT	NOT APPLICABLE

Record the fringe benefit costs reported by the recipient. GAD is responsible for reviewing these costs for reasonableness.

TRAVEL: Costs for travel and per diem directly related to the proposed project.

COSTS ACCEPTED	COSTS QUESTIONED	NOT APPLICABLE

	Y	N
1. Are the number of trips and the destination planned necessary to complete the scope of work?		
2. Is the number of travelers consistent with the proposed trips?		
Solution to Costs Questioned:		

- *All international travel must be approved by the Office of International Activities.*

EQUIPMENT: Tangible, nonexpendable personal property with a unit acquisition cost of $5,000 or greater and a useful life of more than one year (lower limits may be established consistent with recipient policy).

COSTS ACCEPTED	COSTS QUESTIONED	NOT APPLICABLE

	Y	N
1. Do the project objectives support equipment purchases or should other options be considered, such as leasing, renting, or loan of government property?		
2. Has a decision been made about what will happen to the equipment after it is no longer needed for the project or the project is terminated?		
3. Is a term and condition for disposition needed on the award?		
Solution to Costs Questioned:		

- *No equipment may be purchased without the express approval of EPA. The recipient must identify each item of equipment and its cost.*
- *State recipients may manage and dispose of equipment acquired in accordance with State laws*

and procedures.

SUPPLIES: All tangible personal property other than equipment. Supplies differ from equipment in that they are consumable, expendable, and of relative low unit cost.

COSTS ACCEPTED	COSTS QUESTIONED	NOT APPLICABLE

	Y	N
1. Is the amount budgeted for supplies reasonable based on the scope of work?		
Solution to Costs Questioned:		

CONTRACTUAL: Those contractual services directly related to the proposed project.

COSTS ACCEPTED	COSTS QUESTIONED	NOT APPLICABLE

	Y	N
1. Does the proposed contract appear necessary to carry out the objectives of the project?		
2. Are the costs reasonable based on the scope of work?		
3. Have you made the recipient aware of the procurement procedures required under 40 CFR 30.40-30.48 (Non-profits and Institutions of Higher Education) or 40 CFR 31.36 (State and Local Governments)?		
Solution to Costs Questioned:		

- *Consider the hourly/daily rate and the number of hours/days proposed for consultant services.*
- *If a recipient proposes a sole-source contract, it must provide a justification.*

OTHER: Any other category of costs directly related to the proposed project. Examples include postage, printing and reproduction, and conference room rentals.

COSTS ACCEPTED	COSTS QUESTIONED	NOT APPLICABLE

	Y	N
1. Are the costs consistent and necessary to complete the scope of work?		
2. Are the costs reasonable based on the scope of work?		

Solution to Costs Questioned:

INDIRECT COSTS: Those operating costs that are not readily identified with a project and are difficult to directly allocate to the project. These costs are based on the recipient's Negotiated Indirect Cost Agreement.

COSTS REPORTED BY RECIPIENT	NOT APPLICABLE

Record the indirect costs reported by the recipient. GAD is responsible for reviewing these costs.

PROGRAM INCOME: Gross income directly generated by an assistance supported activity and earned only as a result of the assistance agreement during the project period.

COSTS ACCEPTED	COSTS QUESTIONED	NOT APPLICABLE

	Y	N
1. Has agreement been reached on the disposition of program income?		
2. Are the costs to be paid by program income allocable to the grant and addressed in the budget?		
Solution to Costs Questioned:		

CHAPTER 5
FUNDING AND AWARD

Chapter 5
Funding and Award Phase

Managing Your Financial Assistance Agreements
Project Officer's Manual
Sixth Edition, January 2006

CHAPTER 5:
Funding and Award Phase

OBJECTIVES

At the end of this chapter you will be able to:

1. Identify the statutory authority, Catalog of Federal Domestic Assistance (CFDA) number and Delegation of Authority number for your assistance agreement.
2. Know what documents are needed to prepare a funding package.
3. Describe the execution of the assistance agreement.
4. Conduct a review of the funding package for completeness.
5. Understand when you need to include programmatic Terms and Conditions on an award.

The award phase begins with the development of the funding package by the program office and ends with the acceptance of the award by the recipient. The following provides a step-by-step description of the award phase.

STEP ONE
The Program Office

I. Prepares the funding package for approval by Decision Official.

II. Obtains funding approval through the commitment notice (all funds need to be entered into IFMS) Funding loses its identity when it is placed on a grant.

III. Obtains Decision Official signature; sends the completed funding package to the GMO.

STEP TWO
Grants Office

I. The Grants Specialist reviews the funding package, prepares the award document and verifies commitments against data in IFMS

II. The Award Official reviews the award document for accuracy and then awards the agreement by signature.

III. The Office of Congressional Liaison is notified of the award. They in turn notify the appropriate House and Senate members that the assistance agreement has been awarded. This notification period lasts 5 days. After the 5 Day Congressional notification period, the original award document will be sent to the recipient. A copy of the award document will be sent to the Project Officer and the Las Vegas Financial Management Center or the Regions Financial Management Office.

STEP THREE
The Recipient

I. The recipient should review the award document before signing.

The recipient must return the signed acceptance back to the Grants Office within 3 weeks of receipt. Until the Grants Office receives the signed acceptance, the recipient cannot draw down on any funds.

Remember: Project Officers (and reviewers) do not have the delegated authority to inform potential recipients that their applications will be funded. Such notification could give applicants the mistaken impression that an agreement has been awarded. Only the Award Official has that delegated authority and no notification should be given until after the award has been signed and gone though the Congressional notification process.

DOCUMENTS NEEDED TO PREPARE THE FUNDING PACKAGE

The PO ensures that applications for funding consideration are relevant to EPA objectives, programmatically and scientifically meritorious, and deserve funding. Once the determination is made, the PO can proceed with preparing the funding package.

A funding package generally consists of the following documents:

#1 Funding Recommendation/Commitment Notice

#2 Terms and Conditions/Special Conditions

#3 Commitment Notice

#4 Reviews/Summary of Reviews

#5 Environmental Review Form if applicable

#6 Quality Assurance/Quality Control Review Form if applicable

#7 Copy of the Applicant's full application with original signature of the authorized representative

#8 Allocation Methodology if applicable

#9 Budget Review check sheet attached in IGMS to the Funding Recommendation

Quick Reference Chart

CONTENTS OF FUNDING RECOMMENDATION PACKAGE	NEW AWARD	INCREMENTAL AWARD	SUPPLEMENTAL AWARD
Funding Recommendation	**X**	**N/A**	**X**
Assistance Funding Order (paper process)	**X**	**X**	**X**
Programmatic Terms & Conditions (if applicable)	**X**	**X**	**X**
Commitment Notice w/IFMS REQL screen	**X**	**X**	**X**
One In-House Review	**X**	**N/A**	**X**
Two Extramural Reviews ** (Research Projects Only)	**X**	**N/A**	**X**
Environmental Review (ORD only)	**X**	**N/A**	**N/A**
Any Revised or Additional Information Negotiated with the Applicant	**X**	**X**	**X**

NOTE: ** or Panel Review

New Award Funding - The initial award of a project.

Incremental Funding - An amendment to an initial award to provide additional funds to the recipient per the original application when the initial award was partially funded.

Supplemental Funding - An amendment to an initial award, based on a written request from the recipient to provide additional funds **over and above the request in the original application** to perform additional work or pay for unexpected costs.

Continuation Award - the award of a subsequent budget period within an approved project period. For Projects over two years, more than one budget period may be required. The PO should consult appropriate regulations for limits that apply to duration of budget and project periods.

Funding Recommendation

The Funding Recommendation is the most important part of the package. It lays the groundwork for why certain decisions were made. Your **Senior Resource Official** will review and concur on funding recommendations for awards over $1 million for project awards, and $5 million for Continuing Environmental Program grants. Some Programs have reduced these levels. Check with your Program for your SRO approval level.

Below is the most current at printing paper version of the electronic funding recommendation and a copy of the IGMS Funding Recommendation from the IGMS Knowledge Database.

EPA Funding Recommendation

Section A – Project Information

1. Grant Number:	2. Grant Type: ☐ Construction ☐Non Construction	3. Agreement Type: ☐ Grant ☐ Co-Operative	4. Awarding Region	5. Record Type: ☐ New ☐ Amendment ☐ No-Cost
6. Applicant Type:	7. Applicant Name:		8. DUNS:	

9. Project Title:

10 Amount Requested:	11. Program Code:	12. CFDA:
13. Statutory Authority:	14. Delegation of Authority:	15. Media:
16. Project Period Start:	17. Project Period End:	
18. Budget Period Start:	19. Budget Period End:	

Please provide a complete description of all the work to be accomplished in this project.

20. Project Description:

Section B – Project Justification and Characteristics

1. Please describe the project objectives and how the project relates to the statutory authority.

2. Select the appropriate competitive status for this agreement. (Check one.)

☐ **Competitive assistance agreement resulting from a competitive funding announcement issued before January 1, 2005. (If checked, proceed to #2.a).**

☐ **Competitive assistance agreement resulting from a competitive funding announcement issued after January 1, 2005. (If checked, proceed to #2.b)**

☐ **Non-competitive funding package. (If checked, proceed to #2.b)**

2.a. In accordance with Grants Policy Issuance (GPI) 04-02, describe how this project or program supports the Agency's strategic goal(s).

2.b. Please list the Program Results Code(s) (PRCs) that will be used to fund this project. If more than one PRC is used list the amount allocated to each.

PRC	AMOUNT	PROGRAM/PROJECT

For five or more PCRs, please create separate attachment.

2.c. Describe how the Program/Project fits within the Agency's Strategic Plan/GPRA architecture.

2.d. The PRCs assigned to the funding for this assistance agreement are consistent with these strategic goals/objectives/sub-objectives.

☐ **Yes** ☐ **No**

3. Is this a Research Grant? (If no, proceed to #4) ☐ Yes ☐ No	
	a. Research grants require two extramural and one intramural review. Provide a summary or attach the required reviews.
	b. Enter response to contrary reviews.
	c. Is this an unsolicited Research Proposal? ☐ Yes ☐ No
	If yes, does the recipient's cost sharing reflect their mutuality of interest? ☐ Yes ☐ No
4. Please explain any apparent duplicate or excessive efforts identified with this project. (Enter NA if not applicable.)	
5. Could an Invention be one of the results of this project? ☐ Yes ☐ No	
	a. If yes, enter or attach anticipated Disposition Instructions.
6. Does the agreement comply with the FGCAA? ☐ Yes ☐ No (FR cannot be submitted for signature when answer is "No".	
	a. Enter or attach justification. Please see EPA Order 5700.1 entitled, "Policy for Distinguishing Between Assistance and Acquisition". EPA will not award a grant unless the decision to fund an assistance agreement is based upon criteria stated in the Order.
7. Based on a cost review analysis, all costs are necessary and reasonable in accordance with the Cost Review Guidance (GPI-00-05). ☐ Yes ☐ No	
	a. Enter the Cost Review Analysis
8. Is this grant a Congressional earmark?	
	a. If yes, cite Statutory Authority or Report Number or provide other appropriate references.
9. Is this a small grant as defined by the Small Grant Policy? If so, it must be fully funded. ☐ Yes ☐ No	
10. Quality Assurance: Does this program or project include generation of environmental data, or use of existing environmental data? (If no, proceed to #11.) ☐ Yes ☐ No	
	a. Are the proposed measurement activities covered by an existing or draft Quality Management Plan (QMP), or Quality Assurance Project Plan (QAPP)? If no, QA Term and Condition required,. If yes, proceed to 10 (b). ☐ Yes ☐ No (For questions on document(s) required or a document's status, contact your organization's Quality Assurance Manager.)
	b. Are the QA Plans or QA documents required for this grant approved? If no, QA Term and Condition required) ☐ Yes ☐ No
11. Is the agreement funded with more than one Program Result Code? ☐ Yes ☐ No	
	a. If yes, enter or attach an allocation methodology.
12. Is this agreement funded with funds from more than one appropriation?	
	a. If yes, provide justification for mixed appropriations and include allocation methodology.
13. Does this project include preaward costs? ☐ Yes ☐ No	
	a. If yes, were any of the costs incurred more than 90 days before award? ☐ Yes ☐ No
	Enter or attach justification.
14. Does the project involve human subjects? If yes, attach signed approval. ☐ Yes ☐ No	
	a. ORD Approver's Name:
	b. ORD Approver's Title:
	c. ORD Date of Approval:
15. Does the project involve animal subjects? ☐ Yes ☐ No	
	If yes, Term and Condition required.
16. Does the proposal include projects which will be performed entirely or in part outside of the United States? If yes, attach OIA clearance approval. ☐ Yes ☐ No	

EPA Form 216-X-04-001
Pages 2 – 8
Approved: March 21, 2005

17. Does the scope of the work involve conducting any conferences or workshops? If yes, answer the following questions)	
	a. Who is initiating the conference/workshop/meeting?
	b. How is the conference/workshop/meeting being advertised?
	c. Whose logo will be on the agenda and conference/workshop/meeting materials?
	d. What is the percentage distribution of the persons attending the conference/workshop/meeting (i.e. percent federal government, public participants, state and locals)?
	e. Is the recipient going to prepare the proceedings or analysis and disseminate this information back to the appropriate (state/local/scientific) community? ☐ Yes ☐ No
	f. Do you anticipate any program income being generated from this conference/workshop/meeting? ☐ Yes ☐ No If yes, how will these funds be used (40 CFR 30.24 or 40 CFR 31.25)?
	g. Based on the above, an assistance agreement is the appropriate instrument for funding this activity since the financial assistance is to support a public purpose rather than for EPA's direct use or benefit and the recipient expects to control the planning and agenda or will share these responsibilities with EPA as a cosponsor? ☐ Yes ☐ No (See chapter 3 and chapter 4 or GPI-98-11, Best Practices for Conferences)
	h. Other Conference Attachments:
18. Is this a cooperative agreement which will include the survey or collection of identical information form 10 or more persons, or a grant which will include the survey or collection of identical information from 10 or more persons and under which EPA influenced the design, development or implementation of the survey? ☐ Yes ☐ No (See Grants Policy Issuance 99-1, Information Collection Requirements)	
	If yes, OMB Approval required. See Grants Policy Issuance 99-1, Information Collection Requirements) Attach appropriate Terms and Conditions.
19. Will the award result in the development of any copyrighted software or written materials? (If yes, answer the following questions). ☐ Yes ☐ No	
	a. How is the work primarily benefiting the recipient and the public?
	How does it support the recipient's mission?
	b. Who are the models being developed for under the project? Who will use them?
	c. Who will the model or other products be delivered to at the end of the grant?
	d. How is the information being disseminated to the public? Who is the primary audience?
	e. Will the recipient use assistance funds to provide advice to EPA or another Federal Agency? ☐ Yes ☐ No Does the project support activities of any Federal Advisory Committee set up to advise the Federal government under the Federal Advisory Committee Act (FACA)? ☐ Yes ☐ No If applicable, confer with OGC.
	f. If this project involves development of a web site, will it be available for the public to access? ☐ Yes ☐ No If so, where will it be located? Please provide the web site address.
	g. If the project involves development of a web site, who will maintain it during and after the project?
	h. Will a fee be charged to access the web site during the project period? ☐ Yes ☐ No If yes, the program income should be:
		Used to support additional eligible project activities
		Used to meet the recipient's cost sharing requirements
		Deducted from total costs to determine net allowable project costs

i. Is it anticipated that the recipient will develop and copyright software or written material? ☐ Yes ☐ No

If yes, it is EPA policy for the Grants Administration Division to insert the condition below into the assistance agreement. If this condition is not appropriate for this project, please provide alternative language:

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works developed under this assistance agreement for Federal purposes. Examples of Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the grantee to use the copyrighted material.

If yes, Term and Condition required.

20. Does this award require White House notification before signature because it is energy related or for an amount equal to or greater than $1 million? ☐ Yes ☐ No

21. Does the grant involve or relate to geospatial information? ☐ Yes ☐ No

22. For non-profit grants only and only after March 31, 2005 – Does the Recipient exhibit adequate programmatic capability to complete the work plan incorporated as part of this assistance agreement?
☐ Yes (If yes, go to #7) ☐ Yes with special conditions

23. Project justification attachments (If needed):

Section C- Competition

1. a. For competitive awards, does the award result from an announcement/solicitation issued before January 15, 2005?
☐ Yes (If yes, go to #7) ☐ No (If no, proceed to #2)

or;

For non-competitive awards, does the award result from a funding recommendation submitted to a grants management office before January 15, 2005?
☐ Yes (If yes, go to #10) ☐ No (If no, proceed to #6)

1. b. For amendments, go to #11.

For competitive awards subject to 2005 competition policy

2. What type of competitive process was used? (Check one)

TYPE OF COMPETITION	CODE
☐ Open Competition	C
☐ Simplified Competition	O
☐ Statutory/Regulatory Open Competition	B
☐ Statutory/Regulatory Simplified Competition	D
☐ Exempt Program/Open Competition	E
☐ Exempt Program/Simplified Competition	F
☐ Waiver authorized competitive process – If selected enter GCA approval date. (mm/dd/year) Date:	W

3. Include an attachment documenting the selection rationale. (See Section 9.f of EPA Order 5700.5A1)

4. Announcement Number:

5. Date the announcement was released, posted or issued? (mm/dd/year)
Date:

For non-competitive awards subject to 2005 competition policy

6. Please select the reason this award is not subject to competition under the 2005 competition policy. (Check One)

Exempt from competition policy – 6.c

REASON	CODE
☐ Assistance award to State/Interstate/Local agencies and Tribes/Intertribal consortia and other eligible recipients under the programs identified in – 6.c(1)	P
☐ Programs available only to Indian Tribes and Intertribal Consortia – 6.c(2)	
☐ Assistance Agreements required by law, Executive Order, International agreements or Congressional earmarks to identified recipients – 6.c(3)	
☐ Senior Environmental Employment Program Cooperative Agreements – 6c(4)	
☐ Assistance awards to Foreign Governments and United Nations agencies and similar International organizations for International environmental activities – 6.c(5)	
☐ Other programs exempted by the AA OARM – 6.c(6) AA OARM approval date:	

Exception from competition – 12.a

REASON	CODE
☐ The award is for $15,000.00 or less – 12.a(1) Note: Lead Agency Official or Designee (if permitted under Section 12.d of the 2005 competition policy) non-competition Justification approval date required for 12.a(2) - 12.a(6):	J
☐ There is only one responsible source 12.a(2) Note: Requires detailed justification and for awards over $250,000.00 GCA approval date:	
☐ The award can not be delayed because of unusual or compelling urgency or national security - 12.a(3) Note: Requires detailed justification and for awards over $250,000.00 GCA approval date:	
☐ The award is to an organization that represents the interests of EPA co-regulator/co-implementor entities to perform co-regulator/co-implementor work – 12.a(4) Note: Requires detailed justification and for awards over $250,000.00 GCA approval date:	
☐ The award is based on an unsolicited proposal - 12.a(5) Note: Requires detailed justification and GCA approval date:	
☐ Competition is not in the public interest - 12.a(6) Note: requires detailed justification and GCA approval date:	
REASON	**CODE**
☐ Exempted under 6.b(7) or 7.a of October 2002 competition policy – AA OARM approval date:	A
☐ Waiver from competition policy under section 20 GCA approval date:	Y

Questions 7 – 10 for competitive and non-competitive AWARDS subject to the October 2002 competition policy

7. Was the application selected through a competitive process?

☐ Yes ☐ No (If no, proceed to #10)

8. What type of competitive process was used? (Check one)

TYPE OF COMPETITION	CODE
☐ Simplified Competition NOTE: If Simplified Competition is chosen – Go to Section D – Project Funding	O
☐ Open Competition	C
☐ Managed Competition SRO approval date: GCA approval date:	M
☐ Exempt Program Competed	R

9a. Solicitation number (or other identifier for the Solicitation):

9b. Date the Solicitation was announced/issued:

10. Please select the reason this award is not subject to competition under the 2002 competition Order. (Check one.)

Exempt from competition policy – 6.b

REASON	CODE
☐ Assistance award to State/Interstate/Local agencies and Tribes/Intertribal Consortia under listed environmental programs – 6.b(1)	P
☐ Programs available only to Indian Tribes and Intertribal Consortia – 6.b(2)	
☐ Technical Assistance Grants under 40 CFR Part 35 Subpart M and other programs that have competition procedures – 6.b(3)	
☐ Congressional earmarks to identified recipients – 6b(4)	
☐ Senior Environmental Employment Cooperative Agreements – 6.b.(5)	
☐ Assistance awards to Foreign Governments and United Nations agencies and similar International organizations – 6.b.(6)	
☐ Other assistance programs exempted by the Assistant Administrator OARM – 6.b.(7) AA OARM approval date:	

Exempt Assistance Program - 7.a

REASON	CODE
☐ Unusual and compelling urgency - 7.a. (1)	P
☐ Interests of national security – 7.a. (2)	
☐ Competition is not in the public interest – 7.a. (3) NOTE: 7.a selections require AA approval date:	

Exempt Individual Award - 8.a – Please attach additional justification

REASON	CODE
☐ There is $75000 or less available for award - 8.a. (1)	
☐ There is only one responsible source – 8.a. (2)	
☐ It can not be delayed because of unusual or compelling urgency or national security – 8.a. (3)	
☐ The award is required by a Federal statute/executive order/or international agreements – 8.a.(4)	
☐ The recipient represents the interests of EPA co-regulators/co- implementors – 8.a.(5)	
☐ The award is based on an unsolicited proposal – 8.a.(6)	
☐ Competition is not in the public interest – 8.a.(7)	

11. Was the amendment selected through a competitive process?

☐ Yes ☐ No (If no, proceed to #14)

12. What type of competitive process was used? (Check one)

TYPE OF COMPETITION	CODE
☐ Open Competition	C
☐ Simplified Competition	O
☐ Statutory/Regulatory Open Competition	B
☐ Statutory/Regulatory Simplified Competition	D
☐ Exempt Program/Open Competition	E
☐ Exempt Program/Simplified Competition	F
☐ Waiver authorized competitive process – If selected enter GCA approval date. (mm/dd/year) Date:	W

13a. Solicitation number (or other identifier for the Solicitation:

13b. Date the Solicitation was announced/issued:

14. What was the reason for not competing the Amendment? (Check one.)

REASON	CODE
☐ The amendment is to a non-competitive award exempt from competition under Section 6.c of the competition policy	I
☐ The amendment is a within scope incremental funding or decrease amendment	
☐ The amendment is a no-cost time extension to perform the work and/or for using unexpected funds for additional within scope work	
☐ The amendment is solely for a within scope cost increase with no added work	
☐ The amendment is a supplemental funding amendment for additional within scope work not exceeding a cumulative total of $15,000.00 (per agreement)	
☐ The amendment is a supplemental funding amendment (those above the $15,000.00 cumulative total per agreement) for additional in scope work that is integrally related to, and necessary for, the satisfactory completion of the original agreement so that only the recipient can perform the added work in a cost-effective manner (requires attaching additional explanation)	
☐ Other (Please specify or attach additional explanation):	

Section D – Project Funding

Approved Budget:

Cost Category Classification: (Non-construction)	Approved Allowable Budget Period Cost
1. Personnel:	
2. Fringe Benefits:	
3. Travel:	
4. Equipment:	
5. Supplies:	
6. Contractual:	
7. Construction:	
8. Other:	
9. Total Direct Costs:	
10. Indirect Costs:	
IDC % Base Rate	
11. Total	
12. Total Requested Amount	
13. Total Request to Fund Amt This Action	

Section E – Project Funding Information				
1. Does the funding for this action include any EPA In-Kind Contribution? ☐ Yes ☐ No (If no, proceed to #2)				
	a. Please justify the In-Kind Contribution.			
	b. Did the recipient request the contribution? ☐ Yes ☐ No			
	c. Type of savings (e.g. Time/Cost). (Keep documentation in file).			
2. Is the funding Partial (Incremental) or Full? ☐ Yes ☐ No				
3. Is this project expected to generate program income? ☐ Yes ☐ No				
	a. The applicant has indicated that the following amount of program income will be generated during this project.			
	b. Recommendation for the disposition of this income: (See 40 CFR 30.24 or 31.25)			
		☐ Add to funds committed to the project by EPA and recipient and used to further eligible project or program objectives. ☐ Use to Finance the non-Federal share of the project or program ☐ Deduct from the total project or program allowable cost in determining the net allowable costs on which the Federal Share of costs is based.		
4. Please provide recommendation for disposition of the equipment at project's end (Equip> $5,000) (See 40 CFR 30.34 or 31.32, as appropriate and Grants Policy Issuance 02-02)				
5. Is the recipient providing cost sharing under this agreement? ☐ Yes ☐ No				
	a. Cost Share Basis:			
	b. What percentage cost share or maintenance of effort level is required?			
		i. Enter or attach explanation.		
6. Does this action include approval to carry forward obligated funds from prior years?				
	a. Amount of Prior Year Funds.			
	b. Source of Funds (Grant Number).			
7. Does this Funding Recommendation document require the SRO signature? ☐ Yes ☐ No (If yes, obtain SRO signature in Section I)				

Section F – Programmatic Special Term & Conditions
Programmatic Conditions
Attach terms and conditions here.

Section G – Project Officer Approval		
Project Officer Name (print) :		
I have reviewed and approved the work plan/scope of work and budget for this project and I recommend the Award.		
Division:		
Address:		
City:	State:	Zip:

Section H – Review and Approvals			
Approvers:		Submitted:	
		Due Date:	
Response:	Concurrence By	Date	

Section I – Approval Official Signature	
Approval Official:	
Title:	Phone:
Delegate:	
Title:	Phone:

Section I – SRO Official Signature (if applicable)	
SRO Official:	
Title:	Phone:

Project Description

Grants Policy Issuance (GPI) 04-05
July 30, 2004

Data Quality Standard for the Project Description Field in the Integrated Grants Management System

I. Purpose. The purpose of this policy is to establish a data quality standard for the Project Description field in the Integrated Grants Management System (IGMS).

II. Background. On May 13, 2004, the U.S. Senate Committee on Environment and Public Works issued a report entitled "Transparency in EPA Grants: Web Access to Available Grants and Disclosure of Recipients". In the report, the Committee concluded that it was difficult to locate information on EPA-funded assistance projects on the Agency's internet site. The Committee recommended a number of changes to the site to enhance the public's access to grant information, including improving the quality of grant project descriptions.

The Office of Grants and Debarment developed a plan to respond to the report's recommendations. One action item under the plan is to develop a data quality standard for the Project Description Field in IGMS.

III. Policy. The Project Description field in IGMS must include a concise, clear description of the purpose of the project. More specifically, the Project Description may not exceed three (3) lines of narrative in IGMS and must address the scope of the project and/or the primary activity to be supported by the grant in a manner that is understandable to the public. (Note that in a word processing document, you would get three lines or less of IGMS text when using a 10-pitch font or larger.) The Project Description should contain media-specific or environmental **KEY TERMS** that may be used as search terms by the public (e.g., air quality, toxins, solid waste, mercury, etc.).

This field must not be used to identify the grant program (e.g., "State Underground Source Protection"). It must not contain language suggesting that EPA grant funds are being used for unallowable costs (e.g., lobbying or suing the Federal government) or for the principal purpose of obtaining goods or services for the direct benefit or use of the Federal government.

Appendix A provides examples of acceptable and unacceptable IGMS project descriptions. (Note that the examples under the "Acceptable" column will appear as three (3) lines or less when displayed in IGMS.)

The Agency must also review the project descriptions of all active grants to non-profit organizations and revise them as necessary to meet the data quality standard in this policy. Revised descriptions must be loaded into IGMS by December 31, 2004.

IV. Anticipated Outcome/Result. The public will understand the purpose and/or primary activity of a grant by reading the project description.

Performance Measures. One or more of the following methods will be used to measure the success of this policy: 1) Data quality reviews conducted by the Grants Administration Division (GAD); 2) Data quality checks of selected IGMS data fields conducted as part of future Grants Management Self-Assessments and GAD Comprehensive Grants Management Reviews; and public feedback to GAD on the accessibility of grant project description data on the EPA internet.

VI. Scope/Applicability. This policy shall apply as follows:

A. Regional Project Officers and Approval Officials. All funding recommendations created in IGMS after October 1, 2004 must contain project descriptions that comply with this policy.

B. Regional Grants Specialists and Award Officials. All award documents created in IGMS based on funding recommendations submitted after October 1, 2004, must contain project descriptions that comply with this policy.

C. Headquarters Project Officers and Approval Officials. Decision memoranda and funding recommendations submitted to the Office of Grants and Debarment after October 1, 2004, must comply with this policy. Those offices using decision memoranda shall include a Project Description (i.e., statement of project scope and/or primary activity) in the first paragraph of the "Objectives" section. Those offices using the electronic funding recommendations will include the Project Description under the"Project Description" section.

D. Headquarters Grants Specialists and Award Officials. All award documents created in IGMS based on decision memoranda or electronic funding recommendations submitted after October 1, 2004, must contain project descriptions that comply with this policy.

E. Active Non-Profit Grants. GAD will review project descriptions of all active non-profit grants to determine whether the descriptions comply with this policy. GAD will provide

Senior Resource Officials with a spreadsheet of non-compliant descriptions which need to be revised. Program offices will provide GAD with revised project descriptions which GAD will load in IGMS by December 31, 2004.

VII. Roles and Responsibilities. The **Project Officer** must develop a Project Description that complies with this policy and enter it in the IGMS funding recommendation or, for Headquarters project officers not yet using IGMS, the decision memorandum or word processing version of the funding recommendation. The **Approval Official** must ensure that each Project Description complies with this policy. The **Award Official** must ensure that the Project Description complies with this policy before signing the award document. The **Grants Administration Division** will be responsible for conducting data quality reviews of active grants in IGMS for compliance with this policy.

VIII. Keys to Success. EPA staff will understand their respective roles in implementing this policy. The public will better understand the activities EPA is funding with its grants.

IX. Sunset/Review Date. To be sunset with the issuance of the IGMS users manual in 2005.

X. Supersedes/Cancels. This policy expands rather than supercedes existing policy.

XI. References.

1. Owner: Chief, Policy, Information and Training Branch, Grants Administration Division, Office of Grants and Debarment, Office of Administration and Resources Management. (202) 564-5325.
2. Key Terms: Integrated Grants Management System (IGMS), project description
3. Reference: US Senate Committee on Environment and Public Works, report entitled "Transparency in EPA Grants: Web Access to Available Grants and Disclosure of Recipients ", May 13, 2004

APPENDIX A
Examples of Unacceptable and Acceptable IGMS Project Descriptions

Unacceptable	Feedback	Acceptable
CEPP Technical Assistance Grants Program	This is the program name not the project description.	To build the environmental emergency response capability of the San Mateo Pueblo Nation by training members of the tribal emergency response committee and revising the emergency notification plan by January 2006
Survey of internet sites	This is too general and does not adequately explain the purpose or key activity of the project.	The project will increase the quality of scientific data available to non-governmental organizations (NGO's) through implementation of a five-point data quality plan which involves a survey of internet sites and participation in science-based public policy forums.
The objectives for the year 2007 are: to increase from 49.7% to 85.0% the proportion of persons who live in Maryland counties that have not exceeded the national air quality standard during the previous 12 months, etc.... The intended outcomes are: a reduction in asthma morbidity, as measured by a reduction in hospitalizations for asthma, to no more than 160 per 100,000 persons (baseline: 188 per 100,000 in 1987)....	Detailed Information on objectives or environmental results does not belong in this field. The IGMS Funding Recommendation has an "objectives" field that asks the PO to "Please describe the project objectives and how the project relates to the statutory authority" and an "environmental results" field where the PO is asked to "describe how the project or program supports the Agency's strategic goal(s)."	This project aims to improve air quality and reduce asthma-related deaths in Maryland counties that have not exceeded the national air quality standard during the previous 12 months by using environmental education and tax incentives.
This action approves an extension to the project and budget period to 8/31/04.	This statement belongs under the Project Information section, "Explain. of Changes" field in IGMS, not the project description field.	The project will reduce air pollution from commercial and industrial sites, increase business owners' knowledge of EPA and state pollution prevention regulations, and compile baseline data on community-based industrial and business sites.
This project will investigate MB in developing countries. This project will assist in evaluating the transition from MB to alternative PCMs and methods in developing countries.	Acronyms must be defined. While the grantee and EPA program staff may know what the acronyms mean, the public may not know.	The project will investigate methyl bromide (MB) in 21 developing countries. This project will assist the developing countries in evaluating the transition from MB to alternative pest control materials (PCMs) and methods in developing countries.
Fellowship	This describes the type of assistance, not the purpose of the project.	The fellow will study the implications of Secondary Mineral Formation on the Fate of Cesium in Aluminosilicate Minerals. The focus of the study will be solid-state nuclear magnetic resonance and will expand on a study currently underway at the University of Barton.

Budget Period/Project Period

Please enter the project and budget dates or project duration for the project in the funding recommendation. You will obtain these from the application.

Cross-Reference Guide to U.S. EPA Federal Assistance Programs

Below is the link to a listing of assistance programs that includes, for each program, the CFDA Number, Program Title, Statutory Authority, Integrated Grants Management System (IGMS) Program Code, and the Delegation of Authority.

http://intranet.epa.gov/ogd/useful_grant_links.htm

Environmental Results/Program Results Code

You must include a discussion in the funding recommendation of how the project/program work plan supports the goals of the Agency's strategic plan. The Program Results Code (PRC) of the funding assigned to the project must be consistent with the discussion. If this agreement is being funded with more than one PRC, you would attach the allocation methodology. The following EPA Web Sites can help in developing this discussion:

EPA Strategic Plan:
http://www.epa.gov/ocfo/plan/2003sp.pdf

EPA Program Project Description Book:
http://intranet.epa.gov/ocfo/budget/fy05ppdbook.pdf

Explanation of any Apparent Duplicative or Excessive Efforts

The PO must include a statement on whether this project duplicates any other previous or ongoing federally funded effort. If the answer is yes, include a justification for supporting this project.

Multiple Appropriations Award Policy

It is currently EPA's policy to generally use only one appropriation as the funding source for an assistance project. Where a project's activities benefit more than one appropriation, the Agency should award separate grants for the activities falling within the scope of each appropriation. However, a single, multiple appropriation (MA) award may be awarded, with adequate justification documented in the grant funding recommendation, and on an exception basis, if *all of a project's activities are of a type that is fundable from all of the supporting appropriations*. Separate grants must be awarded if all of the supporting appropriations are not legally available for all of the types of activities to be performed. This is because of the procedural difficulties

involved in individually charging payments to the benefited appropriations. In awarding and administering separate grants, the Agency will work to minimize application, accounting and reporting burdens on recipients.

As part of the justification for an MA grant, the Project Officer must include in the funding recommendation a description of the methodology for charging payments that reflects the proportional benefit to each appropriation. The allocation methodology should include the following:

- Define what will be allocated. For example, grant funding for (insert scope of work narrative).
- Define the time period for the methodology.
- Describe the allocation methodology. This includes: a) The allocation statistic proposed to distribute costs among Sub-objectives; b) The method used to derive the statistic; and c) The total cost including the portion of cost to be distributed by Sub-objective (this could be via a table listing the activities in the scope of work down the left side and rows defining the corresponding PRCs and funds across the top).

(The funding placed on the grant must be consistent with the allocation methodology.) See the below chart for an example allocation methodology:

Sample Allocation Methodology for 000000-01-0

All of the project's activities are of a type that is fundable from all of the supporting appropriations.

Project or Description	Appropriation	Funding Request ($)	Funding %
support Tribal capacity building in training in pollution abatement and control	B	193,000	86%
support Tribal capacity building activities in hazardous waste- related activities	T	32,000	14%
	Total	225,000	100%

Terms and Conditions

Terms and Conditions and Special Conditions are the additional requirements that will govern an award. They are added to the award document by the Grants Specialist (Administrative Terms and Conditions) and the Project Officer (Programmatic Terms and Conditions). Special Terms and Conditions are added by the Award Official. A separate attachment of the Programmatic Terms and Conditions (if they apply) should be included in the funding package.

Administrative Terms and Conditions

(Added to the award document by Grants Specialist)

Each recipient is subject to certain terms and conditions. These include all applicable provisions of Title 40 of the Code of Federal Regulations as well as other pertinent laws and regulations.

Terms and Conditions of an Administrative nature may include requirements which:

- Are not in a regulation because the requirement was implemented after the regulation was last changed. E.g., recycled paper, the 8% DBE plan, or
- Are added to emphasize a requirement for a particular project, recipient or group of recipients, e.g., the need for an approved indirect cost rate before the recipient can draw down on indirect costs.

Programmatic Terms and Conditions

(Project Officer develops and includes them in the funding package)

Unlike Administrative Terms and Conditions which are general in nature and apply to all recipients, Programmatic Terms and Conditions are specific to that program/project.

If the assistance agreement is to be awarded as a Cooperative Agreement, Terms and Conditions demonstrating substantial involvement on the part of EPA should be included in the funding package. Some examples include:

"The Project Officer will review and approve of project phases prior to their implementation"

"The Project Officer will approve of key personnel involved with the project, other than the Project Manager"

Special Terms and Conditions

In some cases, EPA may determine that an applicant is a "High Risk" and should, therefore, be subject to certain "Special Conditions"

This can only be added by the Award Official. If the PO feels that Special Terms and Conditions need to be added, he/she should contact the Grant Specialist or make a note to the Funding Recommendation outlining the concerns.

An applicant is considered "high risk" if it:

- Has a history of unsatisfactory performance
- Is not financially stable
- Has a management system which does not meet the management standards set forth in EPA administrative regulations
- Has not conformed to the terms and conditions of a previous award;
- Is otherwise considered "not responsible" by the Award Official.

The following Special Conditions may be included in the assistance agreement:

- Paying on an reimbursement basis
- Establishing additional prior approvals
- Withholding authority to proceed beyond one phase without proof of acceptable performance
- Requiring the recipient to furnish specially detailed financial reports
- Providing additional project monitoring
- Requiring the recipient to obtain technical or management assistance

Sample Programmatic Terms and Conditions

(Attach to Funding Recommendation)

1. EPA will be substantially involved in this project by participating in the following activities:

a. Development of the experimental design—EPA personnel will provide comments on the experimental design aspects for consideration by the recipient.

b. EPA will participate with the recipient in the collection of samples in the field and will provide some laboratory support activities related to sample analysis.

c. EPA will assist with the interpretation of data.

d. EPA anticipates co-authorship with the recipient of papers published in a scientific journal discussing the results of the research.

Publication Notices/Disclaimers

Subject to [40 CFR 30.36 or 40 CFR 31.34]* the recipient may publish and distribute scientific, technical and other works developed under there cooperative agreement. There are special requirements under 40 CFR 40.160-5* when a publication is also a final report for a research cooperative agreement. Any documents developed under this agreement for distribution to the public or inclusion in a scientific, technical or other journal shall include one of the following statements, depending upon the outcome of the EPA review process.

Alternate A. Documents that have not been reviewed by EPA.

"This publication [article] was developed under Cooperative Agreement No. _____ awarded by the U.S. Environmental Protection Agency. It has not been formally reviewed by EPA. The views expressed in this document are solely those of [name of recipient] and EPA does not endorse any products or commercial services mentioned in this publication."

Alternate B. Documents that have been reviewed by EPA, but the recipient declines to accommodate suggested material changes identified by the Agency.

"This publication [article] was developed under Cooperative Agreement No. _____ awarded by the U.S. Environmental Protection Agency. However, the views expressed in this document are solely those of [name of recipient] and EPA does not endorse any products or commercial services mentioned in this publication."

Alternate C. Documents that have been reviewed by EPA and the material changes suggested by the Agency were accommodated.

"This publication [article] was developed under Cooperative Agreement No. _____ awarded by the U.S. Environmental Protection Agency. EPA made comments and suggestions on the document intended to improve the scientific analysis and technical accuracy of the document. However, the views expressed in this document are those of [name of recipient] and EPA

dos not endorse any products or commercial services mentioned in this publication."

The Commitment Notice is used to reserve funds. EPA cannot make an award unless funds are "committed" in the Integrated Financial Management System (IFMS). The PO is responsible for ensuring the Commitment Notice is filled out and is in the Funding Package. The PO can get budget information from his/her Budget Office.

EPA Form 2550-0 The amount **must** agree with the sum of "Amount(s)" entered under "Financial and Accounting Data" at the bottom of the form.

Insert the **Grant Proposal Number** of the project

Insert the name of the **Recipient** as it appears in block (5) of the Application Form (SF-424).

Provide the signature, date, and telephone number of the **person authorized** to certify the availability of funds.

Provide **complete and accurate** accounting information. All lines of accounting data must be **"prevalidated"**, which means they must be entered in **IFMS** before Grants Administration Division can issue an award. Attach a printout of the **REQL** data screen from IFMS. See the "Commitment Clerk" or authorized "Funds Certification Officer" in your office.

NOTE: Many awards are delayed because of incorrect accounting data, the most notable error is the "object class". Please see the following table for object class codes:

Categories of Assistance

	Object Class Code	Program Code	Budget Period
Special Purpose Project	41.83	XA(grant)/CXA(coop.)	2 or 3 years
Research (Grant)	41.41	R	2 years
Research (Coop.Agreement)	41.42	CR	2 years

Project Period should not exceed 5 years for research or special purpose projects

In-House and Extramural Review Memo

Below is a sample In-House Reviewer/Extramural memo. Your Program may have its own form. Check with your office for further guidance. In-house reviews are not required on competitively selected grants. The competition serves as the review.

MEMORANDUM

SUBJECT: Review of Assistance Agreement No._____

FROM: [In-House Reviewer/Extramural Reviewer]

TO: [EPA Project Officer]

I. OBJECTIVE

Give a brief description of the proposed project objectives and its relationship to EPA's mission. However, be careful when discussing a project's relationship to EPA's mission. Make sure that the review does not give the impression that the project is for EPA's benefit.

II. EXPLANATION OF ANY APPARENT DUPLICATIVE OR EXCESSIVE EFFORT

Compare the proposed work with other similar efforts within your own cognizance. Any overlap or duplication between the proposed work and on-going or completed projects should be pointed out.

III. STRENGTHS AND WEAKNESSES OF PROPOSAL

Comment on the quality of the proposed work with regard to the soundness and/or uniqueness of approach and significance of anticipated results.

Comment on the qualifications and competency of the staff identified for the project in light of their demonstrated prior performance in the proposed or other research areas.

Comments on the adequacy of the support offered by the applicant's organization in terms of general facilities, support personnel and services, library, specific equipment and/or facilities available to the investigator, etc.

IV. RECOMMENDATION

Indicate the strengths and weaknesses of the proposed project as related to the probability of the project accomplishing the stated objectives.

Indicate your recommendations for any suggested modifications to improve the proposed project.

Comment on the appropriateness of the proposed project period and project budget.

DEFINITIONS AND NOTES:

In-House Review: A technical evaluation of the proposal from an EPA Program person other than the PO with expertise in the subject area.

Extramural Review: A technical evaluation of the proposal from a qualified non-EPA person with expertise in the subject area. Be sure to write the application number at the top of each review.

Be specific. Provide detailed statements of your response to each of the requested review points.

NOTE: Research projects require 2 extramural and one in-house review. Special purpose projects only require 1 in-house review by someone other than the PO.

Software/Modeling/Web Site Questions

Assistance Agreement Number:_____

Recipient Name:_____

This application is being reviewed to determine if assistance is the appropriate funding mechanism. Please review the Scope of Work/Decision Memorandum to address the following:

1. How is the work primarily benefiting the recipient? How does it support the recipient's mission?

2. Who are the models being developed for under the grant? Who will use them?

3. To whom will the model or other products be delivered to at the end of the grant?

4. How is the information being disseminated to the public? Who is the primary audience?

A. Will the recipient use assistance funds to provide advice to EPA or another Federal Agency? Does the project support activities of any Federal Advisory Committee set up to advise the Federal government under the Federal Advisory Committee Act (FACA)? If applicable, confer with OGC.

B. If this project involves development of a web-site, will it be available for the public to access? If so, where will it be located? Please provide the web-site address.

C. IF the project involves development of a web-site, who will maintain it during and after the project?

D. Will a fee be charged to access the web-site during the project? If yes, the program income should be:

____ Used to support additional eligible project activities

____ Used to meet the recipient's cost sharing requirement

____ Deducted from total costs to determine net allowable project costs

E. Is it anticipated that the recipient will develop and copyright software or written material?

YES ____ NO____

If yes, it is EPA policy for the Grants Administration Division to insert the condition below into the assistance agreement. If this condition is not appropriate for this project, please provide alternative language:

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works developed under this assistance agreement for Federal purposes. Examples of Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the comment does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the grantee to use the copyrighted material.

COPY OF THE APPLICANT'S FULL APPLICATION

A copy of the full application should accompany the original funding action. The EPA "Application Kit for Assistance" includes all the required forms for the applicant and is accessed at

http://www.epa.gov/ogd/grants/how_to_apply.htm

The Checklist for Assistance Agreement Funding Packages

Your Program may have a checklist similar to the one below for funding for funding assistance packages. Check with your office to see if one exists.

In the funding/award phase, the PO should:

a. Provide applicants with the **Catalog of Federal Domestic Assistance** (CFDA) number for the assistance program if requested. This number is always available in the RFA or RFIP.

b. Caution the applicant against making an award or permitting any award (*subgrant or contract*) at any tier to any party that is **ineligible for participation in federal assistance programs.**

c. Obtain required **in-house and extramural reviews** of the application as required.

d. **Review** the application to assure the narrative is consistent with the budget, e.g., whether any proposed procurements, property purchases, and travel are necessary and reasonable. If sole source procurement is proposed remind the applicant of their responsibility to perform all procurement in accordance with the regulations.

e. Compare **proposed project** with other similar efforts the PO is aware of and **ensure any overlap or duplication is necessary.** (*Some duplication in research may be beneficial.*)

f. Decide if the narrative activities are **appropriate,** ensure they **comply** with program regulations and guidelines, address milestones and environmental outcomes and **identify any deficiencies** in the application.

g. Consult the QA manager to define appropriate **QA requirements** for the agreement if needed.

h. Decide the **amount of federal involvement;** if substantial, develop a condition to include in the cooperative agreement identifying the substantial involvement.

i. **Negotiate the level of funding** within constraints of the available funds.

j. Obtain all **necessary approvals,** e.g., human subjects, international awards.

k. Prepare **a funding package** and obtain the necessary **concurrences and signatures.**

l. Ensure **unsuccessful applicants are notified** that they were not selected for award and provide a debriefing if requested.

m. Establish an **official file** for the project.

o. **Review** the award document when it is sent over by the GMO. The award is a binding legal document, so it is **important that everything is correct,** e.g., project period, total project cost (*EPA and recipient share*), amount of award (*in the case of incremental funding*), terms and conditions.

SUMMARY:
At the beginning of the chapter, we identified several objectives you would accomplish after reading the chapter. The objectives are listed below, each followed by a brief summary of the key points the chapter covered.

1. Identify the statutory authority, Catalog of Federal Domestic Assistance (CFDA) number and Delegation of Authority number for your assistance agreement. You can use the Cross-Reference Guide to U.S. EPA Federal Assistance Programs to find this information. The list is located on the OGD web site.

2. Know what documents are needed to prepare the funding package. A funding package generally consists of the following documents: Funding Recommendation, Funding Order (HQ only in paper process), Terms and Conditions/Special Conditions, Commitment Notice, Reviews/Summary of Reviews, Environmental Review Form if applicable, Quality Assurance/Quality Control Review Form if applicable, a copy of the Applicant's full application with original signature of the authorized representative, Allocation Methodology if applicable.

3. Describe the execution of the assistance agreement. The award phase begins with the development of the funding package by the program office and ends with the acceptance of the award by the recipient. This chapter provides a step-by-step description of the award phase.

4. Conduct a review of the funding package for completeness. This chapter provides a step-by-step description of the award phase. Use the chapter to conduct a review of your funding package.

5. Understand when you need to include programmatic Terms and Conditions on an award. Terms and Conditions and Special Conditions are the additional requirements that will govern an award. They are added to the award document by the Grants Specialist (Administrative Terms and Conditions) and the Project Officer (Programmatic Terms and Conditions). Special Terms and Conditions are added by the Award Official. A separate

attachment of the Programmatic Terms and Conditions (if they apply) should be included in the funding package.

6. Understand the "Multiple Appropriations Award Policy", split funding and allocation methodology. EPA's policy is to generally use only one appropriation as the funding source for an assistance project. Where a project's activities benefit more than one appropriation, the Agency should award separate grants for the activities falling within the scope of each appropriation. However, a single, multiple appropriation (MA) award may be awarded, with adequate justification documented in the grant funding recommendation, and on an exception basis, if *all of a project's activities are of a type that is fundable from all of the supporting appropriations*. Separate grants must be awarded if all of the supporting appropriations are not legally available for all of the types of activities to be performed

Questions:

1. What is the purpose of the funding recommendation?

2. Explain the difference between incremental and supplemental funding?

3. When must a PO use the publishing term and condition?

4. Can a PO declare a recipient high risk? Why or why not?

5. When do you need SRO approval?

6. Who awards the assistance agreement?

Statutory language examples:

831616-01

Clean Air Act Section 103(b)(3) allows for grants to nonprofit organizations to conduct research, investigations, experiments, demonstration projects, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution. Toxic Substances Control Act 10(a) allows for grants to nonprofit organizations to conduct research, development, monitoring, public education, training, demonstration projects, and studies on toxic substances. This project involves the above two statutes because MfCA will conduct an air sampling project which will be developed through a plan created in the targeted area using monitoring devices. The air pollution in the targeted community is a concern because of complaints about health symptoms and high incidences of some diseases suspected to be linked to air toxics. The project's main purpose is to reduce exposure of residents to air pollution, empower residents to communicate with regulatory authorities to change their environment in regards to air toxics, and understand community perceptions of cumulative risk.

831615-01

Solid Waste Disposal Act Section 8001(a) allows for grants to nonprofit organizations to conduct and promote the coordination of research, investigations, experiments, training, demonstration projects, surveys, public education programs and studies relating to solid waste (e.g., health and welfare effects of exposure to materials present in solid waste and methods to eliminate such effects). Safe Drinking Water Act, Section 1442 allows for grants to nonprofit organizations to develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water. Toxic Substances Control Act 10(a) allows for grants to nonprofit organizations to conduct research, development, monitoring, public education, training, demonstration projects, and studies on toxic substances. This project involves the above statutes because it is to address the problem of disposing solid waste in the colonias. Dumping in and around the colonias has posed a serious public health problem for the residents. The solid waste often include toxic substances that leach into the community's drinking water supply. This project will focus on clean-up efforts and recycling drives and lead to community awareness of the solid waste disposal problems. Through these activities it is hoped that the community members will take charge of the local problems and create opportunities for residents to manage the environmental issues independently.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

ASSISTANCE ID NO.			DATE OF AWARD
PRG	DOC ID	AMEND#	09/27/2004
XA -	83199901	- 0	
TYPE OF ACTION: New			MAILING DATE: 10/04/2004
PAYMENT METHOD: ACH			ACH#

RECIPIENT TYPE:
Not for Profit

Send Payment Request to:
Las Vegas Financial Management Center

RECIPIENT:
Building Performance Institute Inc
10 Hermes Road, Suite 200
Malta, NY 12020
EIN: 14-1789014

PAYEE:
Executive Director
Building Performance Institute, Inc.
10 Hermes Road, Suite 200
Malta, NY 12020

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Courtney Moriarta Building Performance Institute, Inc. 10 Hermes Road, Suite 200 Malta, NY 12020 E-Mail: courtney@bpi.org Phone: 518-899-2727	Lena Nirk 1200 Pennsylvania Ave, NW, 6202J Washington, DC 20460 E-Mail: Nirk.Lena@epamail.epa.gov Phone: 202-343-9841	Asher Weinberg Grants Administration Division 1200 Pennsylvania Ave. NW Washington, DC 20460, 3903R E-Mail: Weinberg.Asher@epa.gov Phone: 202-564-5348

PROJECT TITLE AND DESCRIPTION
National Certification Program for Whole-House Contractors
The objective of this proposal is to fund the continued efforts of the Building Performance Institute, Inc. to advance the development of a national certification program for contractors to deliver whole-house energy efficient improvements in existing homes. Energy efficient home improvements will help to improve air quality, while reducing pollution and decreasing energy costs.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
9/01/2004 - 08/31/2007	09/01/2004 - 08/31/2007	$296,000.00	$1,000,000.00

NOTE: The Agreement must be completed in duplicate and the Original returned to the appropriate Grants Management Office listed below, within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the Recipient subsequent to the document being signed by the EPA Award Official, which the Award Official determines to materially alter the Agreement, shall void the Agreement.

OFFER AND ACCEPTANCE

The United States, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers Assistance/Amendment to the Building Performance Institute Inc for 100.00 % of all approved costs incurred up to and not exceeding $296,000 for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed 07/13/2004 included herein by reference.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	ORGANIZATION / ADDRESS
Grants Administration Division 1200 Pennsylvania Ave, NW 3903R Washington, DC 20460	Environmental Protection Agency Office of Air and Radiation 1200 Pennsylvania Ave, NW Washington, DC 20460

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
	Mildred Lee, Chief - Grants Operations Branch A	09/27/2004

This agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter 1, Subchapter B and of the provisions of this agreement (and all attachments), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

IGNATURE	TYPED NAME AND TITLE	DATE
		10/15/2004

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 296,000	$ 296,000
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$	$ 0
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 296,000	$ 296,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.034 - Surveys-Studies-Investigations-Demonstrations and Special Purpose Activities relating to the Clean Air Act	Clean Air Act: Sec. 103	40 CFR PART 30

Fiscal

Site Name	DCN	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	EC4564	0405	B	58E2	105A46D	4183	-	-	166,000
	EC4565	0405	BR	58E0X18	105A46D	4183	-	-	130,000
									296,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$114,000
2. Fringe Benefits	$39,000
3. Travel	$24,000
4. Equipment	$0
5. Supplies	$2,000
6. Contractual	$53,000
7. Construction	$0
8. Other	$1,000
9. Total Direct Charges	$233,000
10. Indirect Costs: % Base See Terms and Conditions	$63,000
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	$296,000
12. Total Approved Assistance Amount	$296,000
13. Program Income	$0

Administrative Conditions

1. In accordance with Section 2(d) of the Prompt Payment Act (P.L. 97-177), Federal funds may not be used by the recipient for the payment of interest penalties to contractors when bills are paid late nor may interest penalties be used to satisfy cost sharing requirements. Obligations to pay such interest penalties will not be obligations of the United States.

2. The recipient agrees to comply with the MBE/WBE terms and conditions outlined in Attachment A.

3. By accepting this agreement for the electronic method of payment through the Automated Clearing House (ACH) network using the EPA-ACH payment system, the recipient agrees to:

(a) Request funds based on the recipient's immediate disbursement requirements by presenting an EPA-ACH Payment Request to your EPA Servicing Finance Office (see EPA-ACH Payment System Recipient's Manual for additional information).

(b) Provide timely reporting of cash disbursements and balances in accordance with the EPA-ACH Payment System Recipient's Manual; and

(c) Impose the same standards of timing and reporting on subrecipients, if any.

Failure on the part of the recipient to comply with the above conditions may cause the recipient to be placed on the reimbursement payment method.

4. As required by EPA regulations, the recipient agrees to submit a final **Financial Status Report (FSR) (Standard Form 269)** within 90 days after the end of this budget period to the following address:

U.S. Environmental Protection Agency
Las Vegas Finance Center
P.O. Box 98515
Las Vegas, Nevada 89193-8515

When the recipient submits a final FSR, the recipient will in one of the following ways make an adjustment for the amount of Federal funds, if any, received in excess of the EPA share of the reported total budget period costs:

(a) If the recipient is paid through EPA-ACH, they shall, in accordance with the enclosed payment guidance dated May 1995, refund excess assistance funds by either submitting a credit on a current EPA-ACH Payment Request or by sending a check to the lockbox address: U.S. Environmental Protection Agency, Las Vegas Financial Management Center, P.O. Box 371293M, Pittsburgh, Pennsylvania 15251.

(b) If the recipient is paid by treasury check, they shall, in accordance with the enclosed payment guidance dated May 1995, refund excess assistance funds by submitting a check to the lockbox address in paragraph (a).

If funds are due to the recipient at the time of submission of the final FSR, the recipient shall follow the procedures as outlined on the enclosed payment guidance to request the appropriate amount of funds from EPA.

5. The recipient agrees to submit to the EPA Project Officer within 90 days after the expiration or termination of the approved project period a final report and at least one reproducible copy suitable for printing. The final report shall document project activities over the entire project period and shall describe the recipient's achievements with respect to stated project purposes and objectives.

6. EPA is partially funding this budget period and will consider funding the balance of the budget request contingent upon satisfactory progress as certified by the EPA Project Officer, the availability of funds, and EPA priorities. It is understood that the scope of work will be renegotiated to reflect the amount awarded if additional funds are not available.

7. Payment to consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2004, the limit is $524.72 per day and $65.59 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices). Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provided the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b)

8. In accordance with EPA guidance and OMB Circular No. A-21 or A-122, as appropriate, the recipient agrees that it will not use assistance funds (Federal or non-Federal share) for lobbying or political activities.

9. In accordance with Section 18 of the Lobbying Disclosure Act of 1995, PL. No. 105-65, 109 Stat. 691, the recipient affirms that:

(1) it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or

(2) it is a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995.

10. The recipient agrees to provide EPA Form 5700-53, Lobbying and Litigation Certificate as mandated by EPA's annual appropriations act. A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The certification must be submitted in accordance with the instructions provided by the EPA award official and is due 90 days after the end of the project period.

11. Recipients shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. Recipients may access the Excluded Parties List System at http://epls.arnet.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

12. In accordance with 40 CFR 30.24(b)(1), program income will be added to funds committed to the project by EPA and used to further eligible project or program objectives.

13. NON-PROFIT ORGANIZATIONS & EDUCATIONAL INSTITUTIONS

If the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal and/or cost allocation plan in accordance with the appropriate Federal cost principle, OMB Circular A-122, "Cost Principles for Non-Profit Organizations" or OMB Circular A-21, "Cost Principles for Educational Institutions." The recipient must send its proposal to its cognizant Federal agency within ninety (90) from the effective date of the award for this assistance agreement.

If EPA is the cognizant Federal agency of either the educational institution or the non-profit organization, the recipient must send its indirect cost rate proposal within ninety (90) days from the effective date of the award to:

Grants Administration Division
Office of Grants and Debarment
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3903R
Washington, DC 20460
Attn: Indirect Cost Rate Proposal Control Desk

The non-profit recipient agrees to follow the enclosed "Sample Indirect Cost Proposal Format for Nonprofit Organizations." Additionally, the non-profit recipient must submit its indirect cost rate proposal (including audited proposals) for approval to the address above, if all of the following three conditions apply: (1) Recipient had an active EPA contract or grant(s) after June 1, 1998; (2) EPA was its cognizant agency for indirect cost rate negotiation and approval during that time; and (3) recipient did not have an approved indirect cost rate for that period.

Pursuant to 40 CFR 30.26, the non-profit recipient (including non-profit institutions of higher education) agrees to comply with the audit requirements prescribed in the Single Audit Act Amendments, and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations.

14. The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project. Except however, if a Federal agency is selected through the recipient's procurement process to carry out some of the work as a contractor to the recipient, funds may be used to allow necessary Federal travel and other costs associated with Federal participation in this project.

Programmatic Conditions

1. The recipient agrees to submit quarterly progress reports to the EPA Project Officer within thirty days after each reporting period. These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

2. The recipient will submit copies of all articles, reports, newsletters, initiative summaries, studies, evaluations and other outputs developed under this agreement to the Project Officer for review prior to release to the general public. However, final decisions on the content of the materials will be made by the grantee.

3. The recipient and the Project Officer will meet quarterly, in person or via conference call, to review key accomplishments.

4. The recipient will submit trip reports as part of quarterly reports indicating progress made towards project goals.

CHAPTER 6
POST AWARD/AUDIT

Chapter 6
Post Award Management/Audit

Managing Your Financial Assistance Agreements
Project Officer's Manual
Sixth Edition, January 2006

CHAPTER 6:
Post Award Management/Audit

OBJECTIVES:
At the end of this chapter you will:
1. Understand the importance of post-award monitoring.
2. Be aware of what you need to do to ensure that Federal funds are being spent appropriately.
3. Understand the importance of reviewing progress reports.
4. Know why you must Document, Document, Document.

Post Award Management

During the post-award phase, the PO takes the lead in:

1. Ensuring the recipient is complying with the programmatic terms and conditions of the agreement.

2. Ensuring that the project is being carried out as originally outlined in the workplan/proposal and that adequate progress is being made toward achieving project goals and objectives.

3. Ensuring that Federal assistance funds are being expended properly.

This cannot take place without active post award monitoring!

EPA Order 5700.6A1 contains guidance and policy on post award monitoring and located on the web at:

http://intranet.epa.gov/ogd/policy/5.0-Grantee-Topics.htm

Project Officer Responsibilities:

The PO is responsible for:

Baseline Monitoring

Baseline Monitoring is the minimum, basic monitoring that should take place on *every award* issued by the Program Office *on an ongoing basis* throughout the lifetime of the award. For the purposes of this Policy, Baseline Monitoring will include ensuring, to the best of the Program's

ability, that programmatic award terms and conditions are satisfied including but not limited to, receipt and acceptance of progress reports, and Quality Assurance requirements. During this process, the Project Officer (or other designated, and qualified, personnel) will make contact with the Grant Specialist and the recipient, annually during the life of the agreement. At this time, the Project Officer should also review the financial status of the award by comparing funds available to project progress and/or time remaining on the project. If follow-up is needed, the Project Officer will do so. All baseline monitoring must be documented in the Official Project File.

Baseline monitoring could be triggered by the receipt of a progress report. Regardless of whether progress reports are received quarterly, semi-annually, or annually, the project officer must review the progress report to determine adequacy of work status, allowability of fund expenditures, and the recipient's compliance with programmatic terms and conditions. Several Programs have developed an optional form for project officers to use to document this baseline monitoring. A sample of the OAR form can be found at the end of this section. While use of this form is optional in OAR, documentation of the results of this review is mandatory for everyone. Progress reports are the primary mechanism available to the PO to determine if the recipient is fulfilling their obligations as outlined in the work plan.

Reviewing progress reports and other work products to assure that the recipient is complying with applicable regulations and the programmatic terms and conditions in the agreement. These products should be reviewed for timeliness and completeness. Progress reports can be requested in the programmatic terms and conditions no more frequently than quarterly no less than annually. Progress reports should be reviewed against the work plan commitments.

All progress reports must contain the following to be acceptable:

- The progress report should contain information 1) on the rate of expenditure versus progress on the project, 2) actual accomplishments, 3) problems encountered during the performance period, which may interfere with meeting program/project objectives. 4) proposed remedy's, 5) information on equipment purchased during the reporting period, and 6) any other information requested through terms and conditions.
- When reviewing the progress report, the PO should also check the Financial Data Warehouse (a sample is available at the end of this chapter) to review drawdowns and compare the funds spent with the progress of the project. The Financial Data Warehouse can be accessed through:

http://oasint.rtpnc.epa.gov/neis/grant_web.grant_inquiry

- Many Programs have created optional forms to assist POs perform progress report reviews. These checklists are also designed to make documentation of the POs review of recipient progress easier. **Regardless of whether you use the checklist or not, you must document your monitoring activities in your project file!**

- After reviewing the progress report, the PO must provide comments to the recipient. Even if everything looks satisfactory, feedback should be provided to the recipient about the adequacy of the progress report.

Communicating regularly with the recipient, the GMO and other program staff to keep everyone informed of the status of the assistance agreement. Communicating regularly with the recipient also keeps the PO updated on the progress of the grant/cooperative agreement.

Maintaining the official technical project file and documenting all records of communications. Assistance agreement files should be documented to ensure that the Agency documents the obligations and responsibilities of all parties before, during, and after the agreement so that a third party can easily follow the sequence of events regarding the project.

Advanced Monitoring

Advanced Monitoring is the process by which a recipient's compliance with applicable programmatic and financial statutes, regulations, conditions and policies is validated. This can take place through the use of on-site evaluations or off-site evaluations (desk reviews). Program Offices are responsible for conducting on-site or off-site evaluations on a minimum of 10% of their active grantees (as of the previous October 1). Only Advanced Monitoring Activities will count towards a Program Office's 10% requirement. Counting towards the 10% requirement for Program Offices will be done on an award/program basis provided separate reports are filed for each evaluation conducted. Reports should be completed within 60 calendar days of the completion of the evaluation. Activities should not be counted until a report is filed. All advanced monitoring activities completed by the Program Office must include a final report which utilizes the format in Attachment Two of the Order. All reports must be attached electronically in the Compliance Database.

The Director, GAD, may approve the use of a Program's standard national report format provided the format contains the information included in Attachment Two,

and the Program provides a crosswalk between the Program's format and GAD's format. Requests to use an alternative format must be made in writing to the Director, GAD, no later than 60 days from the effective date of this Order. As part of the 10% requirement, Program Offices must conduct on-site evaluations during the Plan year.

Attachment Three describes the process of planning and conducting a Desk Review. Attachment Nine is a suggested protocol to use in conducting a Desk Review or on-site evaluation. Program Offices may modify the protocol to meet their individual needs. When doing so, five core areas must be addressed; these areas are: 1) Ensuring equipment purchased under the award is properly managed and accounted for, 2) Compare the recipient's workplan/application to actual progress under the award. 3) Examine the award's finances to ensure funds are available to complete the project, 4) Ensure all programmatic terms and conditions are met, and 5) Ensure all programmatic statutory and regulatory requirements are met. All Advanced Monitoring Activities must be documented in the Official Project File. Copies of completed protocols or reports must be included in the Official File. Reports and correspondence, if generated, must also be included in the Official File.

Criteria for selecting recipients for review should be spelled out in the Plan and documented in the Official Project File for each review. Suggested criteria may include, but are not limited to: Referrals, Audit Findings, Agency Priority, Recipient Experience, Project(s) Cost, Risk, Recipient Location, Statutory or other Requirements, Earmarks, and Funding by Multiple Programs. Attachment Seven is a sample scorecard which may be adapted for local use or guidance. Use of this scorecard is optional.

Program Offices must ensure appropriate follow-up actions are taken in response to the results of advanced monitoring activities. Where desk reviews identify significant problems, Programs will be expected to take necessary corrective action (see 40 CFR § 30.60 and §31.43) or target the matter for an on-site review.

Modifications to the Award Document

The PO is often the first person the recipient will contact when they have a request for a change to their project. It is important to get the request in writing. A recipient's written request for a change must be accompanied by a narrative justification for the proposed revision, and must be submitted to the PO.

The PO must forward to the GMO requests for changes requiring formal amendments. The PO must also include their recommendation for approval.

Changes not requiring prior approval or formal amendment:

- *Minor changes* that are consistent with the project objective and within the scope of the agreement. For example, a recipient may make minor changes to the methodology, approach, or other aspects of the project to meet objectives sooner or to expedite completion.

- **For universities and nonprofit recipients,** a one-time, no-cost extension for up to 12 months can be made without prior approval unless:

  - the terms and conditions of the award prohibit the extension;

  - the extension requires additional Federal funds; or

  - the extension involves any change in the approved objectives or scope of the project.

  The recipient must notify the award official in writing with supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. To merely use up unobligated balances is not a justification for an extension.

- *Minor adjustments* to the project budget, provided they use the funds in accordance with the approved workplan/proposal, EPA regulations, and applicable cost principles. **For universities and non profits, the EPA technical program office may restrict the transfer of funds among cost categories or programs,** functions and activities for awards in which the **Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent** of the total budget (for States, local governments, and Indian tribal governments, a formal amendment is necessary).

Changes which require only PO approval (no formal amendment):

- **For universities and nonprofits,** the recipient may seek PO approval for:

- A change in a key person specified in the application or award document;

- The absence for more than three months or a 25 percent reduction in time devoted to the project, by the approved project director or principle investigator;

- The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa;

- The transfer of funds allotted for training allowances to other categories;

- Unless described in the application and funded in the approved award, the subaward, transfer or contracting out of any work under an award.

Changes which require a formal amendment for universities and nonprofits (signed by the Award Official):

Any revision resulting in the increase or decrease in funds.

Revisions to the objectives or scope of the project. (PLEASE NOTE: The recipient cannot request revisions that substantially change the original project objectives selected under the competitive process.)

Inclusions of costs which require prior approval under the cost principles, e.g., equipment, contractor costs.

For State, local government, and Indian Tribal governments:

- Extensions to the period of availability of funds.

- Changes in key project personnel, if key personnel were identified in the agreement. For research projects, this means a change in the recipient's project manager or principal investigator.

- Cumulative transfers among direct cost categories or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed 10% of the current total approved budget, whenever EPA's share exceeds $100,000.

- Transfer of funds allotted for training allowances, i.e., from direct payments to trainees to other expense categories.

- Contracting out or otherwise obtaining services of a third party to perform activities central to the purpose of the award not already approved in the workplan/narrative.

Changes Requiring a Deviation:

Recipients are required to comply with all EPA requirements. In some cases, however, it may be necessary to deviate from (waive) a regulatory provision. For example, under 40 CFR 30.54 and 40 CFR 31.45, the recipient is required to develop a Quality Assurance Plan if the project involves any environmentally related measurements or data generation. However, if the Project Officer decides that Quality Assurance is not appropriate for the project, he/she can request a deviation from that requirement, provided there is adequate justification.

EPA does not have the authority to deviate from statutory or Executive Order requirements.

The Director of the Grants Administration Division is the person delegated by the Administrator to approve or disapprove deviations from regulatory provisions not required by statute or Executive Order. The recipient must send the request directly to the PO who forwards the request with a recommendation to GAD. For Headquarters the Grants Specialist will process and submit the request to the Director of GAD for signature. The request for a deviation must include:

- The name of the applicant or recipient, the assistance identification number of the application or award, the date of the award, and the dollar value of the application or award and the amount in question.

- The section(s) of the regulation from which a deviation is requested.

- A complete description of the circumstances, a careful analysis of the situation, justification for the deviation, an explanation of what the deviation will do, and any pertinent background information, including a copy of the applicant's or recipient's request.

- A statement as to whether the same or similar deviation has been previously requested for the same project, and if so, an explanation as to why the previous request was made and the outcome.

If in doubt as to whether a modification requires prior approval, amendment, etc., contact your Grants Specialist for assistance. Keep records of any modifications made to the grant in your official file! Document all memos and communications concerning the modification.

EPA Response to Recipient Performance

There are instances when a Project Officer may face problems involving the participant (recipient, contractor, sub-contractor, supplier, etc.) in the assistance process. The problem may be technical in nature or it may involve nonperformance, poor performance, or it might be a criminal matter that places the Agency's assistance programs at significant risk. Issues of this type should be elevated immediately. PO documentation will be critical in supporting Agency decisions to impose special terms and conditions or take other actions.

Noncompliance and High Risk Recipients:

To deal with noncompliance or high risk recipients, Award Officials may:

- ✓ Impose special conditions on the award,
- ✓ Issue stop work orders,
- ✓ Withhold payment of funds,
- ✓ Terminate or annul an award, or
- ✓ Initiate an investigation to determine if further action is necessary.
- ✓ If all administrative remedies are exhausted, the EPA Debarment Official may suspend and/or debar any person or organization from participation in all EPA assisted activities for a specified period of time.

Because the remedies for recipient noncompliance may have ramifications outside the Agency, it is important that any Agency action be coordinated among the various offices concerned. Principal participants in the decision to take an action are the program office, the GMO, and the Office of General Counsel. The Office of Inspector General is also a key participant in

suspension or debarment actions or where a matter may involve an audit or potential criminal wrongdoing.

Research Misconduct:

EPA defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing or reviewing research, or in reporting research results. Assistance recipients are expected to use their own procedures to address indications or allegations of research misconduct with the Federal agency becoming involved only if it is not satisfied with the assistance recipient's handling of the matter.

If the assistance recipient notifies the GMO of any indication or allegation of research misconduct, the GMO must then notify the EPA Project Officer, the Office of the Inspector General, and OARM's Suspension and Debarment Office.

Disputes

Whenever possible, disputes between EPA and recipients should be resolved at the lowest level possible. The Award Official may designate one or more Dispute Decision Officials. The Disputes Decision Official is responsible for arbitrating disagreements between EPA and recipients (they may also arbitrate disputes with applicants). The most frequent formal disputes are a result of recipient disagreements with audit findings.

The following EPA actions cannot be disputed:

- Denials of deviation requests (40 CFR Parts 30 and 31);
- Bid protest decisions (40 CFR Parts 30 and 31);
- National Environmental Policy Act decisions (40 CFR Part 6);
- Audit Resolution Board decisions (EPA Order 2750); and
- Debarments/suspensions (40 CFR Part 32).

The disputer may request that the Assistant Administrator review the Dispute Decision Official's decision and render the Agency's final decision. These requests must be sent directly to the Assistant Administrator or SRO.

Your Programs
Sample Baseline Monitoring Checklist

It is some programs policy to conduct baseline monitoring linked to the receipt of all progress reports. This optional form has been designed to make documentation of these monitoring activities easier. When Project Officers receive their progress reports they complete this form and put both the report and the checklist in their project file.

Assistance #:_____
Recipient Name: _____

Type of Progress Report (Please check appropriate box):
Q Annual Q Semi-annual Q Quarterly

Progress Report Date:_____

In the progress report, did the recipient....
cover work status, work progress, preliminary data results and evaluations? YES NO
discuss funds expenditures? YES NO
if yes, are the expenditures consistent with the work performed to date? YES NO
address difficulties encountered? YES NO
if yes, were satisfactory remedies proposed? YES NO
discuss planned activities for the next reporting period? YES NO
In your review of the progress report, did you...
find the recipient's work progress to date satisfactory? YES NO
utilize EPA's Financial Data Warehouse? YES NO
if yes, did you find any areas of concern? YES NO
find that the recipient is in compliance with programmatic terms and conditions? YES NO
was the recipient scheduled to procure equipment for this quarter? (If no, skip questions a-b) YES NO
a. Was equipment purchased for this reporting period? YES NO
b. If yes, did the recipient provide you with the make, model, and serial number? YES NO
Was the recipient scheduled to submit a Quality Assurance Plan? YES NO
a. If yes, did the recipient provide you with an acceptable plan? YES NO
Comments:

To Be Completed at the End of the Project
Did you receive the Final Technical Report? YES NO
Did you find the report acceptable? YES NO
Did you contact GAD to certify the receipt of the Final Technical Report? YES NO
Date of contact:_____

(Form Updated 8/04)

Audits

The Inspector Generals Act authorizes the Inspector General (IG) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the Agency. To meet its responsibilities, the IG must have the cooperation of Agency personnel.

Title 18, United States Code, Section 1516 states that whoever, with intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal auditor shall be fined or imprisoned. Therefore, it is imperative that all personnel recognize their obligation to make full disclosure of information pertaining to instances of waste, fraud, or abuse.

Internal Audits:

Internal Audits are performance audits that examine the programs or operations of Federal Agencies. *(However, as part of an internal audit, State agencies or assistance recipients may be evaluated to provide further information about the performance of a Federal agency).* Internal audits are used to test the adequacy of an organization's regulatory compliance and financial reporting. Additionally, they are used to test the effectiveness of its resource management, operating procedures, program results, and financial operations. Internal audits may evaluate the entire organization or only one or two of an organization's programs or operations. Internal audits of EPA are conducted by the U.S. General Accounting Office (GAO) or EPA's Office of Inspector General.

External Audits:

External Audits are audits that examine a Federal agency's assistance recipients. These audits are conducted by the EPA OIG or its contractor, or, in the case of Single Audits, by the recipient. They may be performed before, during, or after the completion of a project. Examples of external audits include single audits, pre-award audits, interim and final cost audits and indirect costs audit.

- Pre-award audits are reviews conducted to evaluate a prospective offeror's cost or pricing data.

- Interim and final cost audits are reviews conducted to assess the allowability of costs claimed under the assistance agreement or contract and to ensure compliance with the applicable requirements and award conditions.

- Indirect cost audits are reviews conducted to determine whether the prospective offeror's indirect cost rate properly allocates allowable costs.

Audits of recipients may be requested by the program office or the GMO when considered necessary. These requests should be made on EPA Form 5700-29 "Assistance Audit Request." The PO may submit the form directly to the appropriate Divisional Office of the Assistant Inspector General of Audits (DIGA), **but to the extent possible, the POs should coordinate requests for audits with the GMO.**

EPA is authorized to audit the financially assisted activities of any recipient organization. However, it is Federal policy to place maximum reliance on a recipient's own audits (i.e. Single Audits) if they are carried out in accordance with applicable Federal audit standards.

EPA'S Internal Audit Process

Steps in the Audit Process for Internal Audits:

STEP 1 - The Entrance Conference

- At the entrance conference, the auditors explain the purpose and scope of the audit and receive comments from the organization being audited regarding potential audit areas. Logistical issues are addressed, such as access to records, working space requirements, and who will be interviewed.

- All personnel with extensive knowledge of the area being audited should be at the entrance conference. The OIG will ask for program and GMO contacts for the audit, and will provide a list of key audit personnel.

- Also, have the OIG state in writing the objectives of the audit.

STEP 2 - Advisement of Findings

- During the audit, the auditors should provide the organization with feedback about preliminary findings and developing issues. If any of these findings are inaccurate, based on factual information, you should immediately discuss your concerns with the lead auditor and explain your interpretation of the situation. Conversely, if any of the preliminary findings are accurate, you should immediately begin to take corrective action. Further, significant or sensitive findings should be brought to the attention of the organization's senior management immediately.

STEP 3 - Exit Conference

- The auditors discuss the audit findings with the organization to clarify any questions they may have about the audit. If possible, auditors and management should try to reach agreement on the audit results.

STEP 4 - The Draft Report

- A draft report is usually issued shortly after the audit is completed. The report contains the auditor's findings and documentation to support these findings. Agency management is expected to provide a written response to the audit findings contained in the draft report within 30 days, either concurring with the findings or providing explanations for any disagreements with the findings. Any planned or implemented corrective actions should be documented in the response. **By starting corrective actions immediately, you may be able to resolve the audit finding(s) before the final audit report is issued and avoid having to respond to the finding(s) in your response to the final audit report.**

STEP 5 - Final Report

- The final report contains the auditor's findings and recommendations. It should reflect the pertinent information obtained from the audit and from the discussions with Agency management throughout the audit process.

STEP 6 - Audit Resolution

- Audit resolution occurs when a "final response" is issued. If the questioned costs are $100,000 or more, the Action Official must

obtain the concurrence of the EPA OIG on proposed corrective action. If the questioned costs are less than $100,000, management does not have to get OIG concurrence before issuing the decision.

Under the Inspector Generals Act Amendments, EPA management must track audit follow-up actions until all corrective actions are complete. Further, EPA management must report to Congress semi-annually on the status of audit resolution and follow-up activities, as well as provide an explanation for audits not resolved within 180 days and final actions that have not been completed.

SURVIVING AN INTERNAL AUDIT

Documentation:
The PO must document in the official project file all decisions, communications, memos, etc. from the beginning of the agreement. The auditors will assume that the PO has approved all actions taken by the recipient unless there is some documentation in the file to show otherwise.

The following list of documents may be helpful in identifying project management records needed by the auditors:

- ✓ Applications, agreements, amendments, contracts, and subcontracts;
- ✓ Accounting records, including reimbursements of funds, travel, records of in-kind contributions, etc.
- ✓ Copies of performance reports and any other reports or products developed under the agreement.

Courtesy:

- ✓ Maintain good working relationships with the auditors;
- ✓ Be responsive to requests for information. Make all documents available to the auditors;
- ✓ Use the audit as an opportunity to identify and address weaknesses.

Preparation:

✓ Determine what auditors will look for;

✓ Cooperate and demonstrate steps already taken to resolve issues or agree to take corrective action;

✓ Demonstrate knowledge of program;

✓ Ask other POs who have been through an audit what to expect during an audit.

Communication:

✓ Answer all questions;

✓ Tell auditors what action(s) you have taken to improve problem areas;

✓ Be truthful. Discuss all problems and issues; give auditors all data they request.

SUMMARY:

At the beginning of the chapter, we identified several objectives you would accomplish after reading the chapter. The objectives are listed below, each followed by a brief summary of the key points the chapter covered.

1. **Understand the importance of post-award monitoring**. During the post-award phase, the PO takes the lead in ensuring the recipient is complying with the programmatic terms and conditions of the agreement, ensuring that the project is being carried out as originally outlined in the workplan/proposal and that adequate progress is being made toward achieving project goals and objectives and ensuring that Federal assistance funds are being expended properly. This cannot take place without active post award monitoring.

2. **Be aware of what you need to do to ensure that Federal funds are being spent appropriately.** The progress report should contain information on the rate of expenditure versus progress on the project, actual accomplishments, and problems encountered during the performance period which may interfere with meeting program/project objectives. When reviewing the progress report, the PO should also check the Financial Data

Warehouse (a sample is available at the end of this chapter) to review drawdowns and compare the funds spent with the progress of the project.

3. Understand the importance of reviewing progress reports. Many Programs have created optional forms to assist POs performing a review of a progress report. These checklists are also designed to make documentation of the POs review of recipient progress easier. Regardless of whether you use the checklist or not, you must document your monitoring activities in your project file! After reviewing the progress report, the PO must provide comments to the recipient. Even if everything looks satisfactory, feedback should be provided to the recipient about the adequacy of the progress report.

4. Document, Document, Document

QUESTIONS

1. How often do you have to perform baseline monitoring? What does it consist of?

2. Can a recipient extend their assistance agreement to use up the money? What would you do if you came across this in monitoring?

3. Where can you find the required post-award monitoring report format? Do you need to use this format?

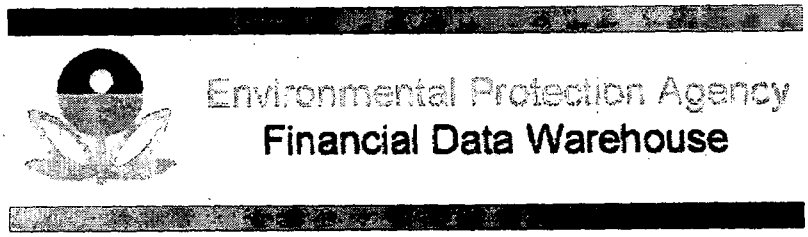
4. Who can deviate from regulation? Statute?

5. Where would you send the deviation request?

6. Why might your grant get audited?

7. Why is documentation important?

8. Why would a PO use the Financial Data Warehouse? Study the below record and determine why might there be a decrease amount.



Financial Data Warehouse Homepage

Grant Inquiry

While this intranet grant inquiry process was developed for EPA staff who work with Senior Environmental Employment Program assistance agreements (grants), it has been found to be a useful for all types of grants. You may either enter the assistance agreement number or a commitment number. Please note that commitment document numbers are usually the last two digits of the fiscal year, the allowance holder, and the six characters DCN. For example: "9750CPT014" is a commitment for fiscal year 97, allowance holder 50 using DCN CPT014. After either typing in the grant number or the commitment number click on the GO button.

Document Number: Go

Financial Data Warehouse Homepage
EPA@Work Home | EPA Internet | Search | Comments

http://oasint.rtpnc.epa.gov/pls/neis/grant_web.grant_inquiry
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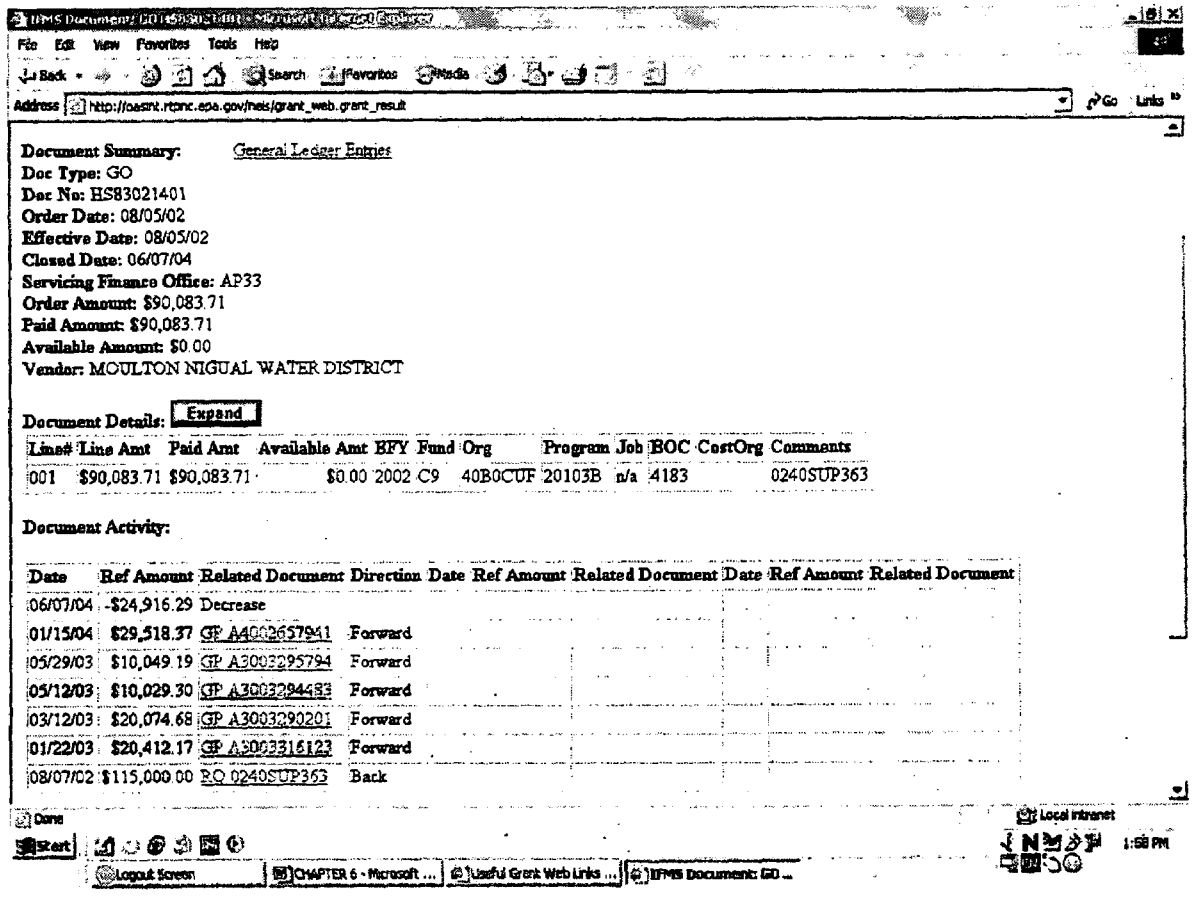
This data was last updated on 07/28/2004 12:05
This page coordinated by: Natasha McCann



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Address http://oasnt.rtpnc.epa.gov/nels/grant_web.grant_result

Go Links

Document Summary: General Ledger Entries
Doc Type: GO
Doc No: HS83021401
Order Date: 08/05/02
Effective Date: 08/05/02
Closed Date: 06/07/04
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Order Amount: $90,083.71
Paid Amount: $90,083.71
Available Amount: $0.00
Vendor: MOULTON NIGUAL WATER DISTRICT

Document Details: Expand

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Document Activity:

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05/12/03	$10,029.30	GP A3003294483	Forward						
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01/22/03	$20,412.17	GP A3003316123	Forward						
08/07/02	$115,000.00	RQ 0240SUP363	Back						

Done Local intranet

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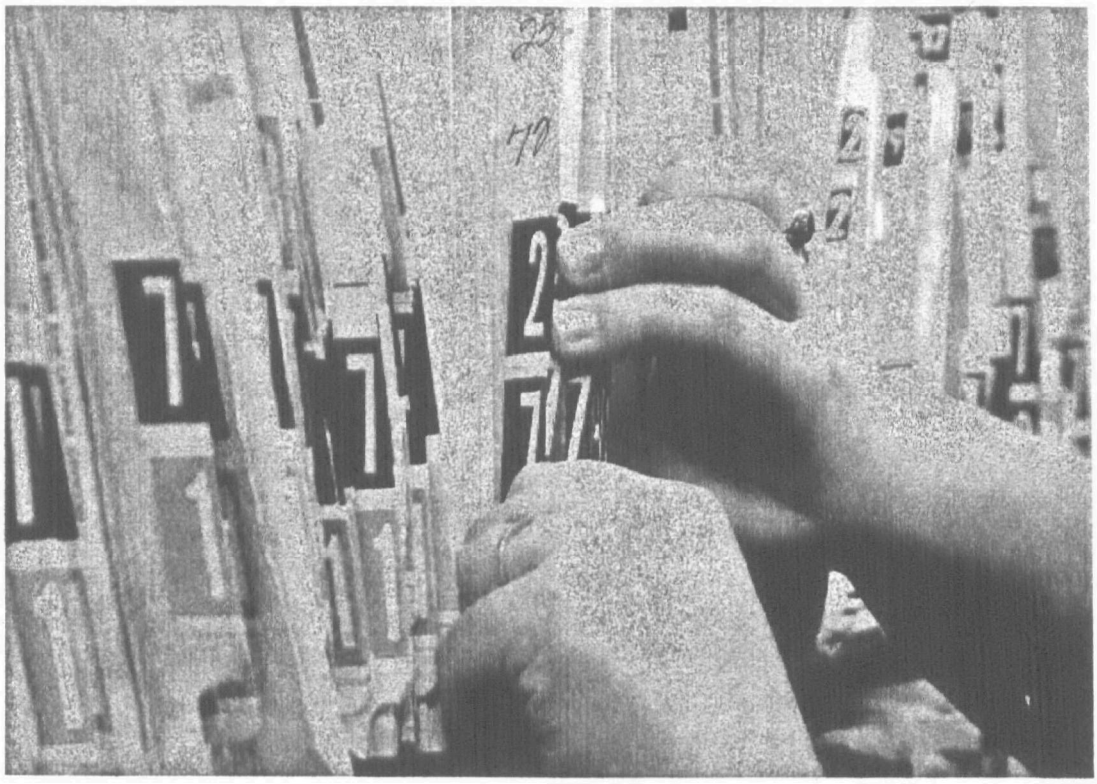
CHAPTER 7
CLOSEOUT



Chapter 7
Closeout

Managing Your Financial Assistance Agreements
Project Officer's Manual
Sixth Edition, January 2006

CHAPTER 7:
Closeout

OBJECTIVES:
At the end of this chapter you will:
1. Understand the importance of closeout.
2. Know what is required to closeout your agreement.
3. Have an awareness of EPA's rights to use reports and products produced under a grant.
4. Understand the importance of proper equipment disposition.
5. Become aware of how a final audit can impact the project and the recipient.

The closeout process is a systematic method of ensuring that all technical work (e.g., product development) and administrative requirements (e.g., review of FSRs) have been finalized. Closeout also ensures that any remaining unexpended funds are de-obligated.

Formal closeout can occur only when all parties are satisfied with the final product, all eligible costs have been accepted, all repayments have been received, all terms and conditions or Special Conditions have been met. **If an audit is underway prior to closeout, all issues must be resolved prior to closeout.**

▸ An audit can take place *after* the assistance agreement has been closed. If this is the case, the GMO should inform the recipient that while the assistance agreement is being closed out, the award may be audited at a later date and the recipient is responsible for maintaining all records for three years after the date the recipient submits the final Financial Status Report.

Please do closeouts as soon as the technical work and the administrative work are finished. Closeouts become more difficult the later they're done: key personnel leave; delays tie up unexpended funds. (In 1997 the Agency was criticized by Congress when it accrued a backlog of over 19,000 unclosed assistance agreements.)

EPA issued a closeout policy for all EPA programs on August 27, 1992.

http://intranet.epa.gov/ogd/policy/7.0-GPI-GPI-92-04.htm

The timing of closeout depends primarily on the type of agreement. The chart below illustrates when closeout of various types of agreements should take place. Closeout of most non-Superfund project grants, including WWT Construction grants, begins when the project period has expired.

Closeout of Continuation Awards and Environmental Program Grants begins on the date the most recent continuation agreement expires.

RECIPIENT TYPE	TIMING
Project Grants	Project Complete
SUPERFUND	
Pre-Remedial	Work Complete
Single Site	Work Complete
Multi- Site	Work Complete at Each Site, Activity or All Sites
Core Program	Work Complete
ALL	Project Complete, Terminated or Annulled

Closeout of Superfund Cooperative Agreements occurs at the following times: Pre-remedial - when all preliminary assessment/site inspection (PA/SI) activities have been completed or terminated at all sites.

Single-Site CA - when all activities covered by the statement of work (SOW) are completed or terminated at that site.

Superfund Multi-Site Cooperative Agreement (MSCA) - is somewhat different from other CAs. Closeout of an individual site covered by the MSCA occurs when all activities at that site are completed or terminated. Closeout of the MSCA occurs when all activities at all sites covered by the SOW have been completed or terminated.

Superfund Core Program Cooperative Agreements (CPCAs) - when the State has completed the activities specified in the SOW.

Steps to Closing out an Assistance Agreement:

Step 1 90 days prior to the project expiration date, the GMO will send a "Reminder Letter" to the recipient and the Project Officer reminding them of the closeout requirements.

▸If the recipient needs more time to complete the project, they can opt to extend the grant/cooperative agreement. The recipient would then need to notify the Award Official in writing at least 10 days prior to the expiration date.

Step 2 After the project is complete, the recipient will submit for the PO's review and acceptance the Final Technical Report/Project to the Project Officer. Any administrative reports, such as the SF-334 "MBE/WBE Reports", should be submitted to the GMO.

▸If on a reimbursement system, the recipient should submit a final SF 270, "Request for Payment" to the Financial Management Office. Otherwise, the recipient should submit the final SF 269 "Financial Status Report" to the Financial Management Office.

▸ If the recipient owes EPA funds, the recipient has 30 days to pay this debt. The Financial Management Office will establish an accounts receivable in IFMS. **The assistance agreement cannot be closed out until the debt is paid.**

▸ If there are any unused funds remaining on the grant/cooperative agreement, the Financial Management Office will send the EPA form 5700-42, "Assistance Adjustment Notice", to the recipient in order to deobligate any unobligated balances.

Step 3 After the PO receives and reviews the Final Report/Product and finds it to be satisfactory, he/she needs to inform the Grants Specialist that the report/product was acceptable and ready for closeout. An email is sufficient, but your program may have other requirements.

▸ If any equipment, personal property, real property, or invention is associated with the assistance agreement, the PO must notify the GMO of the final disposition (more information on disposition in the following pages).

Step 4 Once the recipient has submitted the final Financial Status Report to the Financial Management Office, and the PO has found the Final Technical Report/Project to be acceptable, the assistance agreement can be officially closed. The GMO will update all records to reflect the closeout status.

Step 5 The GMO will prepare a closeout letter to the recipient informing them that the assistance agreement has been closed. A copy of the letter will be forwarded to the PO.

DISPOSITION OF PROPERTY REQUIREMENTS

At the time of closeout, the Project Officer must reaffirm to the GMO the ultimate disposition of personal property, real property, intangible property, or Federally-

owned property. Remember, the PO should have already addressed the ultimate disposition of the personal property, real property, etc. during the ***pre-award stage***.

Personal Property (equipment and supplies): Local Governments, Indian Tribal Governments, Universities, and Non-profits

Equipment: If the recipient retains the equipment for continued use on the project or other federally funded projects:

When all projects are complete and the equipment, due to depreciation, no longer possesses a unit acquisition cost of greater than $5,000, the recipient is free to dispose of the item with no further obligation to the federal government.

When all federal projects are complete and the equipment still possesses a unit acquisition cost of $5,000 or greater, the recipient may continue to use the equipment if they reimburse the US Treasury Department for an amount calculated by applying the proportionate Federal share of the original purchase price to the fair market value of the item.

When the recipient sells the equipment they must reimburse the US Treasury Department for an amount calculated by applying the proportionate Federal share of the original purchase price to the sales proceeds from the item. The recipient is entitled to retain $500 or 10% of the proceeds, whichever is less, for the selling and handling of expenses.

If the recipient returns the equipment to the EPA:

When there is no need for the equipment within EPA, the GMO reports the equipment to the GSA to see if other Federal agencies need the equipment.

When the recipient ships the equipment to EPA or elsewhere, per EPA instructions, EPA will reimburse the recipient for an amount calculated by applying the proportionate recipient share of the original purchase price of the item and any reasonable shipping or storage costs.

When the recipient otherwise disposes of the equipment, per EPA instructions, EPA will reimburse the recipient for such costs incurred in that disposition of the equipment.

Supplies: When the award is terminated or completed, or the supplies are no longer needed for any Federally sponsored program or project, disposition will be as follows:

If the aggregate fair market value of the unused supplies total $5,000 or more, the recipient or sub-grantee will compensate the awarding agency for its share.

If the aggregate fair market value is less than $5,000, the recipient or sub-grantee may keep the supplies and is not required to reimburse EPA.

State Governments

- Equipment: A State will dispose of equipment acquired under an assistance agreement in accordance with State laws and procedures.

- Supplies: The same disposition requirements apply to States as they do to local governments, Indian Tribal governments, universities, and non-profits.

Real Property (land, land improvements, structures, and appurtenances): States, Local Governments, Indian Tribal Governments, Universities, and Non-profits

When real property is no longer needed for the originally authorized purpose, the recipient must request disposition instructions from EPA.

Real property must be disposed of using of the following options: Retain title and compensate EPA;

Sell the property and compensate EPA; or

Transfer title to EPA or a third party designated/approved by EPA

The amount paid to EPA (or to the recipient, if transferred) is computed by applying EPA's (or the recipient's) percentage participation in the cost of the original purchase to the proceeds of the sales after deducting any actual and reasonable selling and fix-up expenses.

Sales procedures must provide for competition to the extent practicable and result in the highest possible return.

Intangible Property (trademarks, copyrights, patents, and patent application): States, Local Governments, Indian Tribal Governments, Universities, and Non-profits

Unless waived by EPA, the Federal Government retains a royalty free, nonexclusive, and irrevocable license to: Obtain, reproduce, publish, or otherwise use the data first produced under an assistance agreement and authorize others to receive, produce, publish, or otherwise use such data for federal purposes.

Research Findings produced under an award that were used by the Federal Government in developing an agency action - the Federal awarding agency shall request, and the recipient shall provide, the research data so that it can be made available to the public through the procedures established under FOIA (see OMB Circular A110, revised 9/30/99).

Federally Owned Property: States, Local Governments, Indian Tribal Governments, Universities, and Non-profits

If the recipient used any Federally-owned property, the recipient must ensure the property is disposed of before closeout can be completed.
The recipient must notify the GMO that the property is available for return to EPA and the GMO will issue disposition instructions to the recipient.

Record Retention

Record retention requirements apply to all supporting documentation, including documentation of significant actions and decisions, cost records, scope of work, correspondence, applications, pre-award reviews, and funding decisions.

If litigation, claim, negotiation, audit, or other action involving the records was started before the end of the retention period, the recipient must keep records until either the completion of the action and resolution of all issues which arise from it, or until the end of the established retention period, whichever is later.

Record retention requirements are different for EPA and recipients!

Recipients:
Most recipient's record retention requirements begin with the date the recipient submits the final expenditure report SF-269, "Financial Status Report".

For reimbursement programs, the recipient record retention requirements start with the final payment request either the SF 270, "Request for Advance or Reimbursement".

For **Continuation awards** (including Environmental Program Grants), the recipient's record retention date begins with the date it submits its **last FSR** (SF 269) for the period covered in the agreement.

Also, if litigation, claim, negotiation, audit, or other action involving the records was started before the end of the retention period, the recipient must keep records until either the completion of the action and resolution of all issues which arise from it, or until the end of the established retention period, whichever is later.

- Recipients must keep their records for three (3) years after the date they submitted the final SF 269, "Financial Status Report".

EPA:

EPA must keep records in-house for at least one (1) year after the closeout of the agreement and then send the records to the Federal Records Center (FRC). The FRC will destroy the records when they are seven (7) years old.

SUMMARY:

At the beginning of the chapter, we identified several objectives you would accomplish after reading the chapter. The objectives are listed below, each followed by a brief summary of the key points the chapter covered.

1. Understand the importance of closeout. The closeout process is a systematic method of ensuring that all technical work (e.g., product development) and administrative requirements (e.g., review of FSRs) have been finalized. Closeout also ensures that any remaining unexpended funds are de-obligated.

2. Know what is required to closeout your agreement. Formal closeout can occur only when all parties are satisfied with the final product, all eligible costs have been accepted, all repayments have been received, all terms and conditions or Special Conditions have been met.

3. Have an awareness of EPA's rights to use reports and products produced under a grant. Unless waived by EPA, the Federal Government retains a royalty free, nonexclusive, and irrevocable license to: Obtain, reproduce, publish, or otherwise use the data first produced under an assistance agreement and to authorize others to receive, produce, publish, or otherwise use such data for federal purposes.

4. Understand the importance of proper equipment disposition. At the time of closeout, the Project Officer must reaffirm to the GMO the ultimate disposition of personal property, real property, intangible property, or Federally-owned property. Remember, the PO should have already addressed the ultimate disposition of the personal property, real property, etc. during the ***pre-award stage.***

5. Become aware of how a final audit can impact the project and the recipient. If litigation, claim, negotiation, audit, or other action involving the records was started before the end of the retention period, the recipient must keep records until either the completion of the action and resolution of all issues which arise from it, or until the end of the established retention period, whichever is later.

QUESTIONS

1. Who initiates closeout?

2. What is the PO's main responsibility under closeout?

3. What would you do if your recipient had equipment and you had not addressed disposition preaward?

GLOSSARY

GLOSSARY

1. ACCRUED EXPENDITURES: The charges incurred by the recipient during a given period requiring the provision of funds for

(a) goods and other tangible property received;

(b) services performed by employees, contractors, subrecipients,

and other payees, and

(c) other amounts becoming owed under programs for which no current services or performance is required (such as annuities, insurance claims, and other benefit payments. (40 CFR Parts 30 & 31)

2. ACCRUED INCOME: The sum of:

(a) earnings during a given period from services performed by the recipient and goods and other tangible property delivered to purchasers, and

(b) amounts becoming owed to the recipient for which no current services or performance is required by the recipient. (40 CFR Parts 30 & 31)

3. ACQUISITION COST OF EQUIPMENT: The net invoice unit price of the equipment, including the cost of modifications,, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices. (40 CFR Parts 30 & 31)

4. ADMINISTRATIVE REQUIREMENTS: Those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from programmatic requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as activities that can be supported by grants under a particular program. (40 CFR Part 31)

5. ADVANCE: A payment made by treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules. (40 CFR Part 30)

6. ALLOCABLE COSTS:

(a) A cost is allowable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

(b) All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive and appropriate allocation of indirect costs.

(c) Any cost allowable to a particular Federal award or cost objective under the principles provided for in OMB Circular A-87 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restriction imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

(d) Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E of OMB Circular A-87. (OMB Circular A-87)

7. ALLOTMENT: An amount representing a state's share of funds requested in the president's budget or appropriated by Congress for an environmental program, as EPA determines after considering any factors indicate by 40 CFR Part 35--Subpart A. The allotment is not an entitlement but rather the objective basis for determining the range for a state's planning target. (40 CFR Par 35--Subpart A)

8. ALLOWABLE COSTS: Those project costs that are: eligible, reasonable, necessary, and allocable to the project; permitted by the appropriate Federal cost principles, and approved by EPA in the assistance agreement. (40 CFR Part 30)

9. AMENDMENT:

(a) FORMAL AMENDMENT: A written modification of an assistance agreement signed by both the Award Official and the authorized representative of the recipient.

(b) INFORMAL AMENDMENT: Proposed project change which does not substantially alter the objective or scope of the project.

10. APPLICABLE CREDITS:

(a) Those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs, e.g., purchase discounts; rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs,they shall be credited to the Federal award either as a cost r reduction or cash refund, as appropriate.

(b) In some instances the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B of OMB Circular A-87, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal Financing of activities.)

10. APPLICANT: Any entity that riles an application or unsolicited proposal for EPA Financial assistance under 40 Chapter I--Environmental Protection Agency, Subchapter A -- General. (40 CFR Part 30)

11. APPROVAL MEMO: A memo originated by the Project Officer and concurred in by the immediate supervisor which denotes work plan and Federal funding approval. (Region 9)

12. APPROVAL OFFICIAL: An EPA official delegated the authority toapprove or reject applications for assistance and the technical/programmatic terms and conditions of proposed assistance projects.

13. ASSISTANCE AGREEMENT: The legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose. It is either a grant or a cooperative agreement and will specify: budget and project periods; the Federal share of eligible project costs; a description of the work to be accomplished, and any terms and conditions/special conditions.

14. AUTOMATED CLEARING HOUSE (ACH): Electronic wire transfer system to pay recipients through the Federal Reserve System and their local bank (Replaced former letter of credit system.)
(Region 9)

15. AWARD: (see also "Assistance Agreement", "Cooperative

Agreement", "Grant", "Grant Agreement") (a) Financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money by

the Federal Government to an eligible recipient. The term does not include: technical assistance which provides services instead of money, other assistance in the form of leans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals, and contracts which are required to reentered into and administered under procurement laws and regulations. (40 CFR Part 30)

(b) Grants, cost reimbursement contracts and other agreements between a State, local and Tribal government and the Federal Government. (OMB Circular A-87)

16. AWARD OFFICIAL: The EPA official with the authority to execute assistance agreements and to take other actions authorized by 40 CFR Chapter 1, Subchapter A and by EPA Orders. (40 CFR Part 30) The EPA official delegated the authority to execute assistance agreements. (Assistance Administration Manual)

17. AWARDING AGENCY:

(a) With respect to a grant, cooperative agreement,, or cost reimbursement contract, the Federal agency, and

(b) With respect to a subgrant/subaward, the party that awarded the subgrant/subaward. (40 CFR Part 31 & OMB Circular A-87)

18. BUDGET PERIOD: (see also "Funding Period"): The length of time EPA specifies in an assistance agreement during which the recipient may expend or obligate Federal funds.

19. CASH CONTRIBUTIONS:

(a) The recipient's cash outlay, including the outlay of money contributed to the recipient or subrecipient by other public agencies and institutions, and private organizations and individuals (i.e., third parties). When authorized by federal legislation, Federal funds received from other assistance agreements may be considered as recipient or subrecipient cash contributions. (40 CFR Parts 30 & 31)

(b) Actual non-Federal dollars that a recipient expended for goods and services and real or personal property used to satisfy cost sharing requirements (see "In-kind Contributions").

20. CENTRAL SERVICE COST ALLOCATION PLAN: The documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

20. CLOSEOUT:

(a) The process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and federal awarding agency. (40 CFR Part 30)

(b) The final EPA actions to assure satisfactory completion of project work and administrative requirements: the submission of acceptable required final reports; financial settlement; the resolution of any outstanding issues under an assistance agreement, and the notification of the recipient.

21. CLOSEOUT MEMO: The Project Officer's memo which documents their review of the recipient's financial status report against their performance; states that performance has been completed, and identifies the disposition of any remaining Federal funds. (Region 9)

22. COGNIZANT AGENCY: The Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under OMB Circular A-87 on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies. (OMB Circular A-87)

23. COMMITMENT:

(a) The official reservation of funds and authorization to incur obligations.

(b) A formal action to reserve funds for a specific purpose in the future (e.g., a grant/cooperative agreement). For Financial assistance, the commitment is reflected by a commitment notice. (Region 9)

24. CONTINUATION: An extension of an assistance agreement for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years.

25. CONTINUATION AWARD: (see also "Renewal") An assistance agreement after the initial award, for a project which has more than one budget period in its approved project period, or annual awards, after the First award, to state, interstate, or local agencies for Continuing Environmental Programs. (40 CFR Part 30)

26. CONTINUING ENVIRONMENTAL PROGRAM: A state/interstate/local environmental agency pollution control program which will not be completed within a definable time period. (See 40 CFR Part 35-Subpart A.)

27. CONTINUING RESOLUTION: Legislation enacted by Congress to provide budget authority for Federal agencies and/or specific activities to continue in operation until the regular appropriations are enacted. Continuing Resolutions are enacted when action on appropriations is not completed by the beginning of a Fiscal Year.

28. CONTRACT:

(a) A procurement contract under a grant or subgrant, and a procurement subcontract under a contract. (40 CFR Parts 30 & 31)

(b) A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by -written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.

29. CONTRACTOR: Any party to whom a recipient awards a contract.

30. COOPERATIVE AGREEMENT: (see also "Assistance Agreement","Award"): An assistance agreement in which substantial EPA involvement is anticipated during the performance of the project (does not include fellowships). (Federal Grant and Cooperative Agreement Act)

31. COST: An amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund. (OMB Circular A-87)

32. COST ALLOCATION PLAN (CAP): Central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. (OMB Circular A-87)

(a) "Central service cost allocation plan" - the documentation identifying, accumulating, and allocating or billing the allowable costs of services provided by a governmental unit on a centralized basis to its departments/agencies as described in Attachment C of OMB Circular A-87.

(b) "Public assistance cost allocation plan" - the documentation identifying, accumulating, and distributing the allowable costs of services provided by a public

assistance agency/department in support of all federal Financial assistance programs administered or supervised by that agency/department as described in Attachment D of OMB Circular A-87. A narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of OMB Circular A-87.

(c) "Indirect cost rate proposal" - the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of OMB Circular A-87.

33. COST OBJECTIVE: A function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred. (OMB Circular A-87)

34. COST SHARING: (see also "Matching Funds") The portion of allowable project costs that a recipient contributes toward completing its project (i.e., non-Federal share, matching share). (40 CFR Part 30)

35. COST-TYPE CONTRACT: A contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee. (40 CFR Part 31)

36. DATE OF COMPLETION: The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends. (40 CFR Part 30)

37. DECISION OFFICIAL: (see "Approval Official")

38. DEVIATION: Written approval from the Director, Grants Administration Division for exception(s) from financial assistance regulations not based on statutory or Executive Order requirements. (Grants Administration Division)

39. DISALLOWED COSTS: Those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award. (40 CFR Part 30)

40. EQUIPMENT: Tangible, nonexpendable, personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established. A recipient may use its own definition of equipment provided that such definition would at least include all equipment defined above. (40 CFR Parts 30 & 31)

41. ENVIRONMENTALLY RELATED MEASUREMENTS: Any data collection activity or investigation involving the assessment of chemical, physical, or biological factors in the environment which affect human health or the quality of life.

42. EXCESS PROPERTY: Property under the control of any federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities. (40 CFR Part 30)

43. EXEMPT PROPERTY: Tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306) for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research. (40 CFR Part 30)

44. EXPENDITURE REPORT:

(a) For non-construction grants, the SF-269 "Financial Status Report" (FSR) (or equivalent report);

(b) For construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or equivalent report). (40 CFR Part 31)

45. FEDERAL AWARDING AGENCY: The Federal agency that provides an award to the recipient. (40 CFR Part 30)

46. FEDERAL FUNDS AUTHORIZED: The total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions. (40 CFR Part 30)

47. FEDERAL SHARE OF REAL PROPERTY, EQUIPMENT, OR SUPPLIES: That percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds. (40 CFR Part 30)

48. FEDERALLY RECOGNIZED TRIBAL GOVERNMENT: The governing body or a governmental agency of any ITribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs. (OMB Circular A-87 & 40 CFR Part 31)

49. FINANCIAL STATUS REPORT (FSR): A standard, government wide report recipients must submit to the Federal funding agency that identities the status of funds for a specific grant or cooperative agreement. (40 CFR Part 31)

50. FUNDING PERIOD: (see also "Budget Period") The period of time when Federal funding is available for obligation by the recipient. (40 CFR Part 30)

51. GOVERNMENT: A State or local government or a Federally recognized Indian tribal government. (40 CFR Part 31)

52. GRANT: (see also "Assistance Agreement", "Award", "Cooperative Agreement", "Grant Agreement") An award of Financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for. (40 CFR Part 31)

53. GRANT AGREEMENT: (see also "Assistance Agreement") An assistance agreement that does not substantially involve EPA in the project and where the recipient has the authority and capability to complete all elements of the program (does not include fellowships). (40 CFR Part 30)

54. GRANT SPECIALIST: The EPA official designated in the assistance agreement as EPA's administrative contact with the recipient. The grant specialist provides administrative guidance to recipients and Project Officers; reviews and approves the administrative portion of the application; prepares the assistance agreement; evaluates effectiveness/compliance with administrative conditions, and closes out assistance agreements.

55. GRANTEE: (see also "Recipient") The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. (40 CFR Part 31)

56. INDIRECT COSTS: Costs

(a) incurred for a common or joint purpose benefitting more than one cost objective and

(b) not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved. (OMB Circular A-87)

57. INDIRECT COST RATE: A device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base. (OMB Circular A-87)

58. INDIRECT COST RATE AGREEMENT: An agreement between the recipient and the cognizant Federal agency which identities the basis for the indirect cost rate. (Region 9)

59. INDIRECT COST RATE PROPOSAL: The documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in OMB Circular A-87.

60. IN-KIND CONTRIBUTION: The value of a non-cash contribution to meet a recipient's cost sharing requirements. An in-kind contribution may consist of charges for real property and equipment or the value of goods and services directly benefitting the EPA funded project. (40 CFR Part 30) note: the assistance amount may also include an EPA in-kind contribution. (See "cost sharing" and "cash contributions.")

61. INTEGRATED FINANCIAL MANAGEMENT SYSTEM (IFMS): EPA's official automated accounting system.

62. INTERAGENCY/INTERGOVERNMENTAL AGREEMENT/INTERNATIONAL AGREEMENT (IAG):

(a) a written agreement between Federal agencies under which goods and services are provided in exchange for funds, or where services are provided without payment.

(b) A written agreement between a Federal agency and a State or local government under which the State or local government reimburses the Federal agency for the costs of providing a specific technical service, e.g., statistical studies and compilations, technical tests and evaluations, training, surveys, reports, documents, and data.

(c) A written agreement between a Federal agency and a foreign government under which work will be conducted for, or services provided to, a foreign government or international organization.

63. INTANGIBLE PROPERTY AND DEBT INSTRUMENTS: Means (but is not limited to) trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and

other instruments of property ownership, whether considered tangible or intangible. (40 CFR Part 30)

64. LOCAL GOVERNMENT: A county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government. (OMB Circular A-87 & 40 CFR Part 31)

65. MAINTENANCE OF EFFORT: A requirement contained in certain legislation or regulations that a recipient must maintain/contribute a specified level of financial effort in a specified area in order to receive Federal assistance funds, which ensures that those Federal funds are used to supplement, but not supplant, expenditures of the recipient's funds.

66. MATCHING FUNDS: (see also "Cost Sharing") The portion of allowable project costs a recipient contributes to a Federally funded project (sometimes determined by statute). The match may include in-kind as well as cash contributions.

67. NEGOTIATION: The process of give and take by assistance Project Officers and applicants to agree on work plans and funds available to carry out the work plan activities.

68. NONEXPENDABLE PERSONAL PROPERTY: Personal property with a useful life of at least two years and an acquisition cost of $5000 or more.

69. OBLIGATIONS: The amounts of orders placed, contracts and grants/subgrants awarded, goods and services received and similar transactions during a given period that will require payment by the grantee/recipient during the same or a future period. (40 CFR Parts 30 & 31)

70. OFFICIAL FILE: The administrative file for each assistance agreement (or each application or unsolicited proposal) that is established and maintained by the appropriate grants management office and/or State office when provided for under a delegation agreement. (The official technical file and the official Financial management rile both complement the official administrative file.)

71. OMB: The U.S. Office of Management and Budget.

72. OUTLAYS OR EXPENDITURES: Charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred [charged], the value of

[third-party] in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees [subrecipients]. For reports prepared on an accrued expenditure [accrual] basis, outlays are the sum of actual cash disbursements [for goods and services], the amount of indirect expense incurred, the value of [third-party] in-kind contributions applied, and the new [net] increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees/subrecipients, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments. (A combination of OMB Circulars A-102 & A-110; 40 CFR Part 35)
73. OUTPUT: An activity or product which the applicant agrees to complete during the budget period.

74. PERCENTAGE OF COMPLETION METHOD: A system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's/recipient's cost incurred. (40 CFR Part 31)

75. PERSONAL PROPERTY:

(a) Property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities. (40 CFR Part 30)

(b) Property other than real property. It may be tangible (having physical existence)g such as equipment and supplies, or intangible (having no physical existence), such as patents inventions, and copyrights. (40 CFR Part 30)

76. PLANNING TARGET: The amount of Financial assistance which the Regional Administrator suggests that an applicant for Continuing Environmental Program Support (State, interstate or local agency) consider in developing its application and work program.

77. PRICE ANALYSIS: The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed contract price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.

78. PRINCIPAL INVESTIGATOR: (see "Project Manager")

79. PRIOR APPROVAL: Documentation/written approval by an authorized official evidencing consent prior to incurring specific cost. (40 CFR Parts 30 & 31)

80. PROFIT: The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this definition of profit is based on applicable Federal Cost Principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee".)

81. PROGRAM ELEMENT: One of the major groupings of outputs of a Continuing Environmental Program (e.g., administration, enforcement, monitoring).

82. PROGRAM INCOME:

(a) Gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in paragraphs 30.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them. (40 CFR Part 30)

(b) Gross income the recipient earns during its project period from charges for the project. This may include income from service fees, sale of commodities, trade-in allowances, or usage or rental fees. Fees from royalties are program income only if the Assistance Agreement so states. Revenue generated under the governing powers of a State or local government which could have been generated without an award is not considered program income. Such revenues include mines or penalties levied under judicial or penal power and used as a means to enforce laws. (Revenue from wastewater treatment construction grant projects under title H of the clean water act, as amended, is not program income. It must be used for operation and maintenance costs of the recipient's wastewater facilities.)

83. PROJECT COSTS: All allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period. (40 CFR Part 30)

84. PROJECT MANAGER: (see also "Principal Investigator") The researcher, business officer, or other person authorized and designated by the recipient to serve as its principal contact with EPA.

85. PROJECT NARRATIVE: (see "Work plan/Work program")

86. PROJECT OFFICER: The EPA official designated in the assistance agreement as EPA's program contact with the recipient. Project Officers are responsible for monitoring the project.

87. PROJECT PERIOD:

(a) The period established in the award document during which . Federal sponsorship begins and ends. (40 CFR Part 30)

(b) The length of time EPA specifies in the assistance agreement for completion of all project work It may be composed of more than one budget period.

88. PROPERTY: Unless otherwise stated, real property, equipment, intangible property and debt instruments. (40 CFR Part 35; 40 CFR Part 30)

89. QUALITY ASSURANCE NARRATIVE STATEMENT: A description included in an application which explains how precision, accuracy, representativeness, completeness, and comparability will be assessed, and which is sufficiently detailed to allow an unambiguous determination of the quality assurance practices to be followed throughout a research project.

90. QUALITY ASSURANCE PROGRAM PLAN: A formal document which describes an orderly assembly of management policies, objectives, principles, organizational responsibilities, and procedures by which an agency or laboratory specifies how it intends to: (a) produce data of documented quality, and (b) provide for the preparation of Quality Assurance Project Plans and standard operating procedures.

91. QUALITY ASSURANCE PROJECT PLAN: An organization's written procedures which delineate how it produces quality data for a specific project or measurement method.

92. REAL PROPERTY: Land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment. (40 CFR Parts 30 & 31)

93. RECIPIENT: (see also "Grantee")

(a) An organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients,

subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as Federally-Funded Research and Development Centers. (40 CFR Part 30)

(b) Any entity which has been awarded and accepted an EPA assistance agreement.

94. RECURRENT EXPENDITURES: Those expenses associated with the activities of a Continuing Environmental Program. All expenditures, except those for equipment purchases with a unit acquisition cost of $5,000 or more, are considered recurrent unless justified by the applicant as unique and approved as such by the Award Official in the assistance award. (40 CFR Part 35)

95. RENEWAL: (see also "Continuation Award") An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

96. RESEARCH AND DEVELOPMENT: All research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities use the same facilities as other research and development activities and where such activities are not included in the instruction function. (40 CFR Part 30)

97. SERVICES: A contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents, (e.g., Reports, design drawings, specifications). This term does not include employment agreements or collective bargaining agreements.

98. SHARE: When referring to the awarding agency's portion of real property, equipment or supplies, share means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted -- not the value of third-party in-kind contributions. (40 CFR Part 31)

99. SMALL AWARD: A grant or cooperative agreement not exceeding the small

purchase threshold fixed at 41 U.S.C. 403(11) (Currently $1009000). (40 CFR Part 30 and 40 CFR Part 31)

100. STATE: Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and
Indian housing agency under United States Housing Act of 1937. (OMB Circular A-87)

101. CONTRACT: A written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.
102. SUBAWARD: An award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes Financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award". (40 CFR Part 30)

103. SUBGRANT: An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in 40 CFR Part 31. (40 CFR Part 31)

104. SUBGRANTEE: The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. (40 CFR Part 31)

105. SUBRECIPIENT: The legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency. (40 CFR Part 30)

106. SUPPLIES:

(a) All tangible personal property other than equipment as defined in 40 CFR Part 31. (40 CFR Part 31)

(b) All tangible personal property excluding equipment, intangible . property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements." (40 CFR Part 30)

107. SUSPENSION:

(a) An action by a federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the grantee/recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate act from suspension under Federal agency regulations implementing E.O.s 12549 And 12689, "Debarment and Suspension." (40 CFR Part 30)

(b) Depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a Suspending OMcial in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue. (40 CFR Part 31)

108. TERMINATION:

(a) Permanent withdrawal of the authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. Termination does notinclude: (1) withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a grant; (3) refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception. (40 CFR Part 31)

(b) The cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion. (40 CFR Part 30)

(c) The cancellation of an assistance agreement, in whole or in part, before the scheduled project completion date. The recipient is entitled to be paid the EPA share of allowable costs incurred up to the date of termination and of allowable costs related to non-cancelable commitments made prior to termination.

109. TERMS OF A GRANT OR SUBGRANT: All requirements of the grant or subgrant, whether in statute, regulations or the award document. (40 CFR Part 31)

110. THIRD PARTY IN-KIND CONTRIBUTIONS:

(a) The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or program. (40 CFR Part 30)

(b) Property or services which benefit a Federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. (40 CFR Part 31)

111. TOTAL COST: Total cost of Federal award is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits. (OMB Circular
A-87)

111. UNEXPENDED FEDERAL FUNDS: (see also "Unobligated Balance") Federal funds obligated but not yet disbursed. Represents the difference between the amount of EPA funds awarded to the recipient of an assistance agreement and the amount EPA has paid that recipient.

112. UNLIQUIDATED OBLIGATIONS:

(a) For reports prepared on a cash basis -- the amount of obligations incurred by the grantee that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded. (40 CFR Part 31)

(b) The portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized. (40 CFR Part 30)

(c) An obligation for which payment has not been made; contingent liabilities for contracts and orders outstanding.

113. UNOBLIGATED BALANCE: The portion of the funds authorized by the federal awarding agency that has not been obligated by the grantee/recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized. (40 CFR Parts 30 & 31)

114. UNOBLIGATED FEDERAL FUNDS: Federal funds that the recipient has not spent; the difference between the amount of EPA funds awarded to the recipient of an assistance agreement and the EPA share of the project obligations that the recipient has incurred under that agreement.

115. UNRECOVERED INDIRECT COST: The difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate. (40 CFR Part 30)

116. UNSOLICITED PROPOSAL: An informal written offer to perform EPA funded work for which EPA did not publish a solicitation. (40 CFR Part 30)

117. VIOLATING FACILITY: Any facility that is owned, leased, or supervised by an applicant, recipient, contractor, or subcontractor that EPA lists under 40 CFR Part 15 as not in compliance with Federal, State, or local requirements under the Clean Air Act or Clean Water Act. A facility includes any building, plant, installation, structure, mine, vessel, or other floating craft. (40 CFR Part 30)

118. VOLUNTARY EXCLUSION: A term of settlement in lieu of a finding for debarment under which a person or entity agrees to voluntarily abstain from participation in EPA assisted projects.

119. WORKING CAPITAL ADVANCE: A procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period. (40 CFR Part 30)

120. WORK PLAN/WORK PROGRAM: (see also "Project Narrative") The document which identities how and when the applicant will use program funds to produce specific outputs. (40 CFR Part 35)

FILE CONTENTS

OFFICIAL EPA PROJECT FILE

Project File: The official file developed and maintained by the Project Officer to serve as a collection of documents and or items that provide programmatic and/or fiscal information on the purpose, performance and history of an award to a specific recipient.

Suggested Contents:

Part I

1) Copy of application and any application amendments with Work Plan/Budget (copy)
2) Administrative Review Checklist signed by the Grants Specialist the Project Officer (copy, Regional requirement)
3) Quality Assurance documentation

Part II

1) Correspondence relating to the application and/or summaries of same
2) Application reviews, in-house and extramural
3) Programmatic reviews
4) Program memo regarding funding recommendation to Regional Administrator

Part Ill

A copy of Assistance Agreement and any amendments.

Part IV

1) Copies of Correspondence relating to the awards
   A. Award document
   B. Close-out letter

2) Correspondence concerning negotiations and agreements
3) Recipients requests for deviation; EPA approval or denial
4) Correspondence concerning continuation or renewal of project
5) Site-visit reports
6) Administrative reports
7) Stop-work order and related correspondence
8) Correspondence concerning termination actions

9) Correspondence concerning disputes and appeals
10) Final determinations
11) Audit reports
12) Regional and General Counsel Opinions
13) End of year evaluation

Part V
1) Reimbursement requests if applicable (copy)
2) Payment vouchers if applicable (copy)
3) Financial Status Reports if applicable (copy)
4) Automated Clearinghouse Authorization if applicable (copy)
5) Increase and decrease amendments (copy).
6) Close-out checklist/memo (copy)
7) Commitment Notices (copy)

Part VI

Technical Reports -- if the report is too bulky, place it in an accordion file and rubber band it to the six part file. If it is a film, computerized disk, etc., a document spelling out its location must be filed in this section.

Electronic Code of Federal Regulations (e-CFR)

BETA TEST SITE

e-CFR Data is current as of August 2, 2004

Title 40: Protection of Environment

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PART 30—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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Source: 61 FR 6067, Feb. 15, 1996, unless otherwise noted.

Subpart A—General

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§ 30.1 Purpose.

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This subpart establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. The Environmental Protection Agency (EPA) may not impose additional or inconsistent requirements, except as provided in §§30.4, and 30.14 or unless specifically required by Federal statute or Executive Order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 30.2 Definitions.

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(a) Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) Accrued income means the sum of:

(1) Earnings during a given period from;

(i) Services performed by the recipient; and

(ii) Goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) Closeout means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

(j) Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) Disallowed costs means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) Excess property means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) Federal awarding agency means the Federal agency that provides an award to the recipient.

(p) Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) Funding period means the period of time when Federal funding is available for obligation by the recipient.

(s) Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by

the recipient during the same or a future period.

(u) Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) Prior approval means written approval by an authorized official evidencing prior consent.

(x) Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §30.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) Project period means the period established in the award document during which Federal sponsorship begins and ends.

(aa) Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) Recipient means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies,

research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) Small award means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

(ff) Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e) of this section.

(gg) Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) Suspension means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 and 12689, "Debarment and Suspension."

(jj) Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) Unobligated balance means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) Working capital advance means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 30.3 Effect on other issuances.

top

For awards subject to Circular A–110, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of Circular A–110 shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §30.4.

§ 30.4 Deviations.

top

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of Circular A–110 when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of Circular A–110 shall be permitted only in unusual circumstances. EPA may apply more restrictive requirements to a class of recipients when approved by OMB. EPA may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by EPA.

§ 30.5 Subawards.

top

Unless sections of Circular A–110 specifically exclude subrecipients from coverage, the provisions of Circular A–110 shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations in 40 CFR part 31 implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,".

§ 30.6 Availability of OMB circulars.

top

OMB circulars cited in this part are available from the Office of Management and Budget (OMB) by writing to the Executive Office of the President, Publications Service, 725 17th Street, NW., Suite 200, Washington, DC 20503.

Subpart B—Pre-Award Requirements

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§ 30.10 Purpose.

top

Sections 30.11 through 30.18 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 30.11 Pre-award policies.

top

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, EPA shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* EPA shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

(c) By submitting an application to EPA, the applicant grants EPA permission to share the

application with technical reviewers both within and outside the Agency.

§ 30.12 Forms for applying for Federal assistance.

top

(a) EPA shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by EPA in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by EPA.

(c) For Federal programs covered by Executive Order 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from EPA or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) If the SF–424 form is not used EPA should indicate whether the application is subject to review by the State under Executive Order 12372.

§ 30.13 Debarment and suspension.

top

EPA and recipients shall comply with the nonprocurement debarment and suspension regulations in 40 CFR part 32 implementing Executive Orders 12549 and 12689, "Debarment and Suspension." 40 CFR part 32 restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 30.14 Special award conditions.

top

If an applicant or recipient: has a history of poor performance, is not financially stable; has a management system that does not meet the standards prescribed in Circular A–110; has not conformed to the terms and conditions of a previous award; or is not otherwise responsible, EPA may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 30.15 Metric system of measurement.

top

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205), declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. EPA shall follow the provisions of Executive Order 12770, "Metric Usage in Federal Government Programs."

§ 30.16 Resource Conservation and Recovery Act (RCRA).

top

Resource Conservation and Recovery Act (RCRA) (Public Law 94–580 codified at 42 U.S.C. 6962). Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA (40 CFR parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines. Further, pursuant to Executive Order 12873 (dated October 20, 1993) recipients are to print documents/reports prepared under an EPA award of assistance double sided on recycled paper. This requirement does not apply to Standard Forms. These forms are printed on recycled paper as available through the General Services Administration.

§ 30.17 Certifications and representations.

top

Unless prohibited by statute or codified regulation, EPA will allow recipients to submit certifications and representations required by statute, Executive Order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

§ 30.18 Hotel and motel fire safety.

top

The Hotel and Motel Fire Safety Act of 1990 (Public Law 101–391) establishes a number of fire safety standards which must be met for hotels and motels. The law provides further that Federal funds may not be used to sponsor a conference, meeting, or training seminar held in a hotel or motel which does not meet the law's fire protection and control

guidelines. If necessary, the head of the Federal agency may waive this prohibition in the public interest.

Subpart C—Post-Award Requirements

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Financial and Program Management

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§ 30.20 Purpose of financial and program management.

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Sections 30.21 through 30.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 30.21 Standards for financial management systems.

top

(a) EPA shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §30.52. If EPA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the

recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the EPA guarantees or insures the repayment of money borrowed by the recipient, the recipient shall provide adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) Recipients shall obtain adequate fidelity bond coverage where coverage to protect the Federal Government's interest is insufficient.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 30.22 Payment.

top

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and financial management systems that meet the standards for fund control and accountability as established in §30.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the EPA to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. EPA may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, EPA shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and EPA has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, EPA may provide cash on a working capital advance basis. Under this procedure, EPA shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, EPA shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, EPA shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h) (1) or (2) of this section applies.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, EPA may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, EPA shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraph (k) (1), (2) or (3) of this section applies.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from EPA, it waives its right to recover the interest under CMIA. In keeping with Electronic Funds Transfer rules, (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check.

(m) Except as noted elsewhere in Circular A–110, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. EPA shall not require more than an original and two copies of these forms.

(1) *SF–270, Request for Advance or Reimbursement.* EPA shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. However, EPA has the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) *SF–271, Outlay Report and Request for Reimbursement for Construction Programs.* EPA shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, the SF–270 may be substituted when EPA determines that it provides adequate information to meet its needs.

§ 30.23 Cost sharing or matching.

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EPA shall not require cost sharing or matching unless required by statute, regulation, Executive Order, or official Agency policy.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are identified in the approved budget.

(7) Conform to other provisions of Circular A–110, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the EPA Award Official.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If, after consultation with Agency property management personnel, the EPA Award Official authorizes recipients to donate buildings or land for construction or facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's

accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the EPA Award Official may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section applies.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the EPA technical program office, after consultation with EPA property management personnel, has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of

the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 30.24 Program income.

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(a) EPA shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with EPA regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by EPA and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When EPA authorizes the disposition of program income as described in paragraphs (b)(1) or (2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the EPA does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless EPA indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in §30.14.

(e) Unless EPA regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by EPA regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§30.30 through 30.37).

(h) Unless EPA regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 30.25 Revision of budget and program plans.

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(a) The budget plan is the financial expression of the project or program as approved during the award process. The budget shall include both the Federal and non-Federal share. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, unless EPA regulations provide otherwise, recipients shall request prior written approvals from:

(1) The EPA Award Official for the following:

(i) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) The need for additional Federal funding.

(iii) The inclusion of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(2) The technical program office for the following:

(i) Change in a key person specified in the application or award document.

(ii) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(iii) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

(iv) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(v) Unless described in the application and funded in the approved award, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1)(i) and (ii) of this section, the EPA Award Official may waive cost-related and administrative prior written approvals required by this part and OMB cost principles. For awards that support research, these prior approval requirements are automatically waived unless:

(1) EPA provides otherwise in the award or agency regulation or

(2) One of the conditions in paragraph (f)(2)(i) of this section applies.

(f) Recipients are authorized without prior approval or a waiver to:

(1) Incur pre-award costs 90 calendar days prior to award.

(i) Pre-award costs incurred more than 90 calendar days prior to award require the prior approval of the EPA Award Official.

(ii) The applicant must include all pre-award costs in its application.

(iii) The applicant incurs such costs at its own risk (i.e., EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(iv) EPA will only allow pre-award costs without approval if there are sufficient programmatic reasons for incurring the expenditures prior to the award (e.g., time constraints, weather factors, etc.), they are in conformance with the appropriate cost principles, and any procurement complies with the requirements of this rule.

(2) Extend the expiration date of the award one time for up to 12 months.

(i) A one-time extension may not be initiated if:

(A) The terms and conditions of the award prohibit the extension;

(B) The extension requires additional Federal funds; or

(C) The extension involves any change in the approved objectives or scope of the project.

(ii) For one-time extensions, the recipient must notify the EPA Award Official in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award.

(iii) This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(3) Carry forward unobligated balances to subsequent funding periods providing the recipient notifies the EPA Award Official by means of the Financial Status Report.

(g) The EPA technical program office may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by EPA. Except as provided for at paragraph (c) of this section, for awards in which the Federal share is less than $100,000 there are no restrictions on transfers of funds among direct cost categories. EPA shall not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(h) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(i) For construction awards, recipients shall request prior written approval promptly from EPA for budget revisions whenever paragraph (h)(1), (2) or (3) of this section applies.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in §30.27.

(j) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(k) When EPA makes an award that provides support for both construction and nonconstruction work, EPA may require the recipient to request prior approval before making any fund or budget transfers between the two types of work supported.

(l) For both construction and nonconstruction awards, EPA shall require recipients to

notify the agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(m) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the EPA indicates that a letter clearly describing the details of the request will suffice.

(n) Within 30 calendar days from the date of receipt of the request for budget revisions, EPA shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, EPA shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 30.26 Non-Federal audits.

top

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of EPA or the prime recipient as incorporated into the award document.

[61 FR 6067, Feb. 15, 1996, as amended at 62 FR 45939, 45944, Aug. 29, 1997]

§ 30.27 Allowable costs.

top

(a) For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher

education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31. In addition, EPA's annual Appropriations Acts may contain restrictions on the use of assistance funds. For example, the Acts may prohibit the use of funds to support intervention in Federal regulatory or adjudicatory proceedings.

(b) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (Recipient's may, however, pay consultants more than this amount.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices. Contracts with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

§ 30.28 Period of availability of funds.

top

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by EPA.

Property Standards

top

§ 30.30 Purpose of property standards.

top

Sections 30.31 through 30.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. EPA shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§30.31 through 30.37.

§ 30.31 Insurance coverage.

top

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 30.32 Real property.

top

EPA shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of EPA.

(b) The recipient shall obtain written approval by EPA for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by EPA.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from EPA or its successor Federal awarding agency. EPA shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by EPA and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 30.33 Federally-owned and exempt property.

top

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to EPA's property management staff. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to EPA's property management staff for further utilization.

(2) If EPA has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless EPA has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by EPA's property management staff.

(b) *Exempt property.* When statutory authority exists, EPA has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions EPA considers appropriate. Such property is "exempt property." Should EPA not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 30.34 Equipment.

top

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of EPA. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority: Activities sponsored by EPA, then activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by EPA; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by EPA. User charges shall be treated as

program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of EPA.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates EPA for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal

Government, the recipient shall promptly notify EPA.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from EPA. EPA shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by EPA to determine whether a requirement for the equipment exists in other Federal agencies. EPA shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse EPA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by EPA for such costs incurred in its disposition.

(4) EPA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) EPA shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If EPA fails to issue disposition instructions within the 120

calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When EPA exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 30.35 Supplies and other expendable property.

top

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 30.36 Intangible property.

top

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. EPA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the EPA shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the

procedures established under the FOIA. If the EPA obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of EPA. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of §30.34(g).

[61 FR 6067, Feb. 15, 1996, as amended at 65 FR 14407, 14417, Mar. 16, 2000]

§ 30.37 Property trust relationship.

top

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or

improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

top

§ 30.40 Purpose of procurement standards.

top

Sections 30.41 through 30.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and Executive Orders. No additional procurement standards or requirements shall be imposed by EPA upon recipients, unless specifically required by Federal statute or Executive Order or approved by OMB.

§ 30.41 Recipient responsibilities.

top

The standards contained in this part do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to EPA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 30.42 Codes of conduct.

 top

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The

standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 30.43 Competition.

top

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 30.44 Procurement procedures.

top

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a) (1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(6) If the prime contractor awards subcontracts, requiring the contractor to take steps in paragraphs (b)(1) through (5) of this section.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for EPA, pre-award review and

procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in EPA's implementation of Circular A–110.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 30.45 Cost and price analysis.

top

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 30.46 Procurement records.

top

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: Basis for contractor selection; justification for lack of competition when competitive bids or offers are not obtained; and basis for award cost or price.

§ 30.47 Contract administration.

top

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 30.48 Contract provisions.

top

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall 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) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, EPA may accept the bonding policy and requirements of the recipient, provided EPA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold)

awarded by recipients shall include a provision to the effect that the recipient, EPA, the Comptroller General of the United 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 a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of the appendix to Circular A–110, as applicable.

Reports and Records

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§ 30.50 Purpose of reports and records.

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Sections 30.51 through 30.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 30.51 Monitoring and reporting program performance.

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(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in §30.26.

(b) EPA shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. EPA may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related

to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify EPA of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) EPA may make site visits, as needed.

(h) EPA shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 30.52 Financial reporting.

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(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) *SF–269 or SF–269A, Financial Status Report.* (i) EPA shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. However, EPA has the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) EPA shall prescribe whether the report shall be on a cash or accrual basis. If EPA requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) EPA shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) EPA shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting

period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by EPA upon request of the recipient.

(2) *SF–272, Report of Federal Cash Transactions.* (i) When funds are advanced to recipients EPA shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272A. EPA shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) EPA may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, EPA may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. EPA may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) EPA may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in EPA's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When EPA needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, EPA shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When EPA determines that a recipient's accounting system does not meet the standards in §30.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. EPA, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) EPA may shade out any line item on any report if not necessary.

(4) EPA may accept the identical information from the recipients in machine readable

format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) EPA may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 30.53 Retention and access requirements for records.

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(a) This section sets forth requirements for record retention and access to records for awards to recipients. EPA shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by EPA. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by EPA, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by EPA.

(d) EPA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, EPA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) EPA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, EPA shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when it can be demonstrated that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to EPA.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to EPA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to EPA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 30.54 Quality assurance.

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If the project officer determines that the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. The quality system must comply with the requirements of ANSI/ASQC E4, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs", which may be obtained from the National Technical Information Service (NTIS), 5885 Port Royal Road, Springfield, VA 22161.

Termination and Enforcement

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§ 30.60 Purpose of termination and enforcement.

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Sections 30.61 and 30.62 set forth uniform suspension, termination and enforcement procedures.

§ 30.61 Termination.

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(a) Awards may be terminated in whole or in part only if paragraph (a) (1), (2) or (3) of this section applies.

(1) By EPA, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By EPA with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to EPA written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EPA determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in §30.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 30.62 Enforcement.

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(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, EPA may, in addition to imposing any of the special conditions outlined in §30.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by EPA.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, EPA shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which

the recipient is entitled under any statute or regulation applicable to the action involved. EPA's Dispute Provisions found at 40 CFR part 31, subpart F, Disputes, are applicable to assistance awarded under the provisions of this part.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless EPA expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689 and EPA's implementing regulations (see §30.13).

§ 30.63 Disputes.

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(a) Disagreements should be resolved at the lowest possible level.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements. If the dispute cannot be resolved the procedures outlined at 40 CFR part 31, subpart F, should be followed.

Subpart D—After-the-Award Requirements

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§ 30.70 Purpose.

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Sections 30.71 through 30.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 30.71 Closeout procedures.

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(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. EPA may approve extensions when requested by the recipient.

(b) Unless EPA authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) EPA shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that EPA has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, EPA shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§30.31 through 30.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, EPA shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 30.72 · Subsequent adjustments and continuing responsibilities.

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(a) The closeout of an award does not affect any of the following.

(1) The right of EPA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in §30.26.

(4) Property management requirements in §§30.31 through 30.37.

(5) Records retention as required in §30.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of EPA and the recipient, provided the responsibilities of the recipient referred to in §30.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 30.73 Collection of amounts due.

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(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, EPA may reduce the debt by paragraph (a) (1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, EPA shall charge interest on an overdue debt in accordance with 4 CFR chapter II, "Federal Claims Collection Standards."

Appendix to Part 30—Contract Provisions

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All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts and subgrants in excess of $100,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient 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 recipient shall report all suspected or reported violations to EPA.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). 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 than once a week. The recipient 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 recipient shall report all suspected or reported violations to EPA.

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1/2 times the basic rate of pay for all hours worked in excess of 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. 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.

5. Rights to Inventions Made Under a Contract or Agreement—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by EPA.

6. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other

award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (Executive Orders 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

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PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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Appendix A to Part 31—Audit Requirements for State and Local Government Recipients

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Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; 42 U.S.C. 6901 *et seq.*; 42 U.S.C. 300f *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 9601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1401 *et seq.*

Source: 53 FR 8075 and 8087, Mar. 11, 1988, unless otherwise noted.

Subpart A—General

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§ 31.1 Purpose and scope of this part.

top

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 31.2 Scope of subpart.

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This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 31.3 Definitions.

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As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF–269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF–271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the U.S. Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on

an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *grant* in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than *equipment* as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. *Termination* does not

include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 31.4 Applicability.

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(a) *General.* Subparts A–D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §31.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental

Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in §31.4(a) (3) through (8) are subject to subpart E.

§ 31.5 Effect on other issuances.

top

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §31.6.

§ 31.6 Additions and exceptions.

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(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

(1) In the Environmental Protection Agency, the Director, Grants Administration Division, is authorized to grant the exceptions.

(2) [Reserved]

(d) The EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program—specific assistance regulations other than those which implement statutory and executive order requirements.

[53 FR 8068 and 8087, Mar. 11, 1988, and amended at 53 FR 8075, Mar. 11, 1988]

Subpart B—Pre-Award Requirements

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§ 31.10 Forms for applying for grants.

top

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 31.11 State plans.

top

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 31.12 Special grant or subgrant conditions for "high-risk" grantees.

top

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

§ 31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

top

Grantees shall comply with all applicable Federal laws including:

(a) Section 306 of the Clean Air Act, (42 U.S.C. 7606).

(b) Section 508 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1368).

(c) Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h–3(e)).

[53 FR 8075, Mar. 11, 1988]

Subpart C—Post-Award Requirements

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Financial Administration

top

§ 31.20 Standards for financial management systems.

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(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such

funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time

subsequent to award.

§ 31.21 Payment.

top

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or

subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with §31.43 (c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 31.22 Allowable costs.

top

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a_	Use the principles in_
State, local or Indian tribal government..	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OBM Circular A-122.
Educational institutions.....	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 31.23 Period of availability of funds.

top

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 31.24 Matching or cost sharing.

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(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be

met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in §31.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in §31.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in §31.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 31.25 Program income.

top

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §31.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§31.31 and 31.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 31.26 Non-Federal audit.

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(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends $300,000 or more (or other amount as specified by OMB) in Federal

awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, §31.36 shall be followed.

[53 FR 8075, 8087, Mar. 11, 1988, as amended at 62 FR 45939, 45944, Aug. 29, 1997]

Changes, Property, and Subawards

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§ 31.30 Changes.

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(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see §31.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §31.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §31.22)

may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 31.31 Real property.

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(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 31.32 Equipment.

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(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §31.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow 31.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 31.33 Supplies.

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(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 31.34 Copyrights.

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The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 31.35 Subawards to debarred and suspended parties.

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Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 31.36 Procurement.

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(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, the standards identified in this section,

and if applicable, §31.38.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee 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:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) 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 or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §31:36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) 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; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5) (i)–(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic

material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commerical quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). 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 the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 31.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

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

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

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

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

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

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

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

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §31.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies,

changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) 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. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives 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.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) 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). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) 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 (Pub. L. 94–163, 89 Stat. 871).

(j) *Payment to consultants.* (1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS–18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Pub. L. 99–591).

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.* (1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under §31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities,

favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in §31.36.

[53 FR 8068 and 8087, Mar. 11, 1988, and amended at 53 FR 8075, Mar. 11, 1988; 60 FR 19639, 19644, Apr. 19, 1995; 66 FR 3794, Jan. 16, 2001]

§ 31.37 Subgrants.

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(a) *States.* States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with §31.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 31.10;

(2) Section 31.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in §31.21; and

(4) Section 31.50.

§ 31.38 Indian Self Determination Act.

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Any contract, subcontract, or subgrant awarded under an EPA grant by an Indian Tribe or Indian Intertribal Consortium shall require to the extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians as defined in the Indian Self Determination Act (25 U.S.C. 450b); and

(b) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 U.S.C. 1452].

[66 FR 3794, Jan. 19, 2001]

Reports, Records, Retention, and Enforcement

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§ 31.40 Monitoring and reporting program performance.

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(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant

support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 31.41 Financial reporting.

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(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with §31.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant

support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in §31.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard

Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in §31.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in §31.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by §31.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in §31.41 (d).

(iii) The Federal agency may substitute the Financial Status Report specified in §31.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by §31.41(b)(2).

§ 31.42 Retention and access requirements for records.

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(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see §31.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers,

or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 31.43 Enforcement.

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(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(i) EPA can also wholly or partly annul the current award for the grantee's or subgrantee's program,

(ii) [Reserved]

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §31.35).

[53 FR 8068 and 8087, Mar. 11, 1988, as amended at 53 FR 8076, Mar. 11, 1988]

§ 31.44 Termination for convenience.

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Except as provided in §31.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §31.43 or paragraph (a) of this section.

§ 31.45 Quality assurance.

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If the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions.

[53 FR 8076, Mar. 11, 1988]

Subpart D—After-the-Grant Requirements

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§ 31.50 Closeout.

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(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable.)

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with §31.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 31.51 Later disallowances and adjustments.

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The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in §31.42;

(d) Property management requirements in §§31.31 and 31.32; and

(e) Audit requirements in §31.26.

§ 31.52 Collection of amounts due.

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(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

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Subpart F—Disputes

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§ 31.70 Disputes.

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(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall be filed with the Assistant Administrator responsible for the

assistance program.

(2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant (s) to submit briefs in support of the petition for review and may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written

decision which will then become the final Agency action.

(l) Reviews may not be requested of:

(1) Decisions on requests for exceptions under §31.6;

(2) Bid protest decisions under §31.36(b)(12);

(3) National Environmental Policy Act decisions under part 6;

(4) Advanced wastewater treatment decisions of the Administrator; and

(5) Policy decisions of the EPA Audit Resolution Board.

[53 FR 8076, Mar. 11, 1988]

Appendix A to Part 31—Audit Requirements for State and Local Government Recipients

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EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Circular No. A–128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Public Law 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to

participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. *Cognizant agency* means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. *Federal financial assistance* means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. *Federal agency* has the same meaning as the term *agency* in section 551(1) of Title 5, United States Code.

d. *Generally accepted accounting principles* has the meaning specified in the generally accepted government auditing standards.

e. *Generally accepted government auditing standards* means the *Standards for Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. *Independent auditor* means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. *Internal controls* means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. *Indian tribe* means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. *Local government* means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. *Major Federal Assistance Program,* as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. *Public accountants* means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. *Subrecipient* means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal

year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110. "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles:

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and

local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether.

—The amounts reported as expenditures were for allowable services, and —The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met, —Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and —Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110. "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that

requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurance they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in additon to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for congnizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits build up such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also program 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assitance program as identified in the *Catalog of Federal*

Domestic Assistance. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The author's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements; —Negative assurance on those items not tested; —A summary of all instances of noncompliance; and —An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit its completed satisfactorily, —Withholding or disallowing overhead costs, and —Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and

controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries,* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman, *Director.*

Attachment—Circular A–128

Definition of Major Program as Provided in Pub. L. 96–502

Major Federal Assistance Program, for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $308,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

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